

WRITTEN TESTIMONY OF
MEREDITH MOORE
FISH CONSERVATION DIRECTOR, OCEAN CONSERVANCY
LEGISLATIVE HEARING
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON WATER, OCEANS, AND WILDLIFE
U.S. HOUSE OF REPRESENTATIVES

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Thank you to Chairman Huffman and the Subcommittee for the opportunity to submit written testimony and for the Subcommittee's consideration of H.R. 4690, the Sustaining America's Fisheries for the Future Act, which proposes to amend the nation's premier marine fishery law, the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Today, our fisheries and the communities they support face a number of growing threats; from climate disruptions to declining fish populations, our fisheries are up against significant challenges and our previous successes are slipping away. For instance, the number of overfished stocks is back to where it was a decade ago,¹ with 20% of known fish stocks at population sizes that are too low and that jeopardize the ability to produce ongoing maximum sustainable yield.² At the same time, climate change is dramatically affecting the health of our fisheries, causing fish populations to shift, become less productive and more vulnerable to stress, disease, and heat waves.

Now more than ever, we need to move forward: Congress has an opportunity to sustain and strengthen our fisheries and avoid harmful rollbacks that would damage coastal communities and our ocean. Previous reauthorizations have created a science-based resource management system which has significantly improved the status of fish stocks in the United States, rebuilt fish populations and supported sustainable fishing. The Fisheries for the Future Act continues this progress by offering comprehensive updates to address current challenges, strengthen sustainable management approaches, and prepare our fisheries for the impacts of climate change.

These new legislative ideas are both timely and critical. Fishery management has important environmental, economic and social implications. Indigenous people have stewarded fish and marine ecosystems since time immemorial and remain closely tied to these resources as the foundation for

¹ In 2011, 21% percent of known fish stocks were overfished. See: NOAA Fisheries. 2012. Status of stocks 2011 Annual Report to Congress on the Status of U.S. Fisheries.

² NOAA Fisheries. 2021. Status of Stocks 2020 Annual Report to Congress on the Status of U.S. Fisheries.

culture, food security and economies. Fishery management also has important economic impacts: in 2017, the fishing and seafood industry supported 1.74 million jobs and generated \$244.1 billion in sales.³ These impacts were enabled in part by the MSA and its requirements to rebuild overfished stocks, prevent overfishing and keep catch to sustainable levels. The core rationale for managing stocks at abundant levels remains unchanged: healthy fish stocks better support vibrant marine ecosystems and resilient Tribal and coastal communities and provide opportunities for sustainable fishing. Healthy stocks are now even more important, as they are more resilient to the current and expected impacts of climate change and other anthropogenic and environmental pressures.

Despite the gains made under our current management system, there are serious challenges that jeopardize the hard-earned success of our fisheries. Of note, H.R. 4690 seeks to address difficult challenges caused by climate change impacts, stalled rebuilding plans, and lingering bycatch issues. It also seeks to modernize fisheries science and data and begin to address inequities in our fishery management process by expanding representation, inclusiveness and accountability. Each previous reauthorization of the MSA has made substantial changes needed to improve the law. This bill is no different and makes changes that reflect the scope of the challenges that U.S. fisheries face.

The Sustaining America's Fisheries for the Future Act addresses and improves five key areas of fishery management, which I explain in greater detail in this testimony:

- ***Climate-ready fisheries:*** Climate change is already impacting fisheries and ocean ecosystems. The oceans are growing warmer and more acidic, circulation patterns are changing, fish populations are shifting their ranges and showing altered productivity, and extreme weather events are becoming more frequent. Every part of the conservation and management of fisheries—the research and survey process, stock assessments, management decisions and fishing practices—will be affected. The proposed changes to the MSA contained in H.R. 4690 would catalyze the adaptive responses needed to address the impacts of climate change on our fisheries.
- ***Resilient fisheries and ecosystems:*** Over the past 45 years, the U.S. model for fishery management via the MSA has led the world in sustainable fishery management. However, some fine tuning is needed to prevent stocks from declining to levels that require rebuilding, ensuring that rebuilding plans make progress, and ultimately meeting goals to bring stocks back to healthy levels. Additionally, improvements are needed to strengthen how we manage our impacts on marine ecosystems, including addressing critical conservation and equity concerns arising from fishery bycatch.
- ***Supporting fishing communities and subsistence fishing:*** Amid the backdrop of severe disruptions to fisheries and the seafood supply chain as a result of the COVID-19 pandemic, it is

³ NOAA Fisheries. 2020. Fisheries Economics of the United States Infographics, 2017. U.S. Dept. of Commerce: <https://www.fisheries.noaa.gov/national/sustainable-fisheries/fisheries-economics-united-states>.

a critical time to improve the MSA to better support fishing communities whose livelihoods and cultures depend on healthy oceans and fisheries. In addition, changes to the law to include subsistence fisheries and Tribes are long overdue.

- **Modernizing fisheries science and data:** Data on what fishermen catch is essential for managing fisheries and assessing the status of fish stocks, but it is often a challenge to collect. Ensuring the accuracy, timeliness and credibility of fishery data is paramount, and updates are needed so that new technologies and innovations are effectively harnessed and that data from many sources can be appropriately integrated into management.
- **Strengthening public process, inclusion and transparency:** The MSA's management system allows resource users to be directly involved in management decisions—a system unlike any other federal resource management framework. The Fisheries for the Future Act improves upon this system by making it more inclusive, ethical, accessible and transparent. In particular, the addition of two designated seats on the North Pacific Fishery Management Council, as requested by Alaska Native Tribes, represents a critical step forward for the future of our fishery management system.

The ambitious scale of challenges tackled in this bill is accompanied by an acknowledgement that more resources will be needed to address them. Section 510 of H.R. 4690 increases the authorization of appropriations, meaning that it gives greater authority to Congress to provide substantially increased funding levels to the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NMFS or NOAA Fisheries) and the Regional Fishery Management Councils (Councils). The authorization represents a 50% increase from the level currently specified in the law, accounting for inflation, through fiscal year 2027. I agree with many who have pointed out that addressing the challenges our fisheries face will require more resources to carry out the important work of fishery management—section 510 reflects this much needed workload support. Sustainable and durable management requires time, money, and staff. While not a guarantee of funding, this increased funding authorization acknowledges that and indicates Congress's commitment to supporting the tools and approaches envisioned by this bill.

I. Climate-ready Fisheries

It is unequivocal that the climate and ocean are changing as a result of greenhouse gas emissions, including carbon dioxide, released by human activity. Each of the last four decades on our planet has been successively warmer than any decade that preceded it since 1850.⁴ It is essential that we reduce greenhouse gas emissions at the national and international level so that we can avoid the most extreme

⁴ IPCC. 2021. Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S. L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M. I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T. K. Maycock, T. Waterfield, O. Yelekçi, R. Yu and B. Zhou (eds.)]. Cambridge University Press.

and devastating impacts to our fisheries and fishing communities. Because of climate change, the ocean is becoming warmer, more acidic, and lower in oxygen.⁵ Additional changes include sea level rise; increases in extreme events, such as hurricanes and marine heatwaves; and worsening coastal erosion and sea ice loss.⁶ These impacts have already disrupted where fish are found, what they can eat, where they can live,⁷ and has changed the distribution and productivity of fisheries.⁸

Our oceans and the fisheries they support are being reshaped, which means our approaches to management must also change. Strong fishery management can foster the resilience of fish stocks and fisheries to climate change, for example by maintaining adequate fish biomass.⁹ Using the best information available, including Traditional Knowledge, managers must strive to understand how our fisheries are changing and which ones are most at risk. Climate change is impacting fisheries now; managers must respond in the near term by adapting to those changes, while continuing to increase the knowledge base and the ability to withstand the further changes to come. Put simply, there are grave costs of inaction, and current management approaches will not be adequate in the future.¹⁰ By working together, fishermen, scientists and managers can chart a course to a sustainable fishing future.

The proposed changes to the MSA contained in the Sustaining America’s Fisheries for the Future Act would provide a path to address the impacts of climate change on our fisheries and prepare for the changes ahead in the near and long term. These changes to the law are needed because every part of the conservation and management of fisheries—the research and survey process, stock assessments, management decisions and fishing practices—will be affected by climate change. Managers will need to consider adaptations to ensure sustainable fishing can continue for the long term. Some Councils have demonstrated leadership in assessing the effects of climate change on their fisheries via tools such as Fishery Ecosystem Plans, scenario planning, and engagement with their regional NOAA Integrated Ecosystem Assessment programs. However, managers are still grappling with how to understand climate impacts and adapt management accordingly and there is still a lot of work to do. The agency and Councils need more guidance, tools, and stronger directives in order to more meaningfully integrate climate change into management.

H.R. 4690 would advance climate-ready fisheries by improving the ability of NOAA Fisheries and the Fishery Management Councils to understand, predict, plan for and adapt to the impacts of climate change. The proposed legislation would add tools, authorities, and support to tackle the systemic

⁵ IPCC. 2019. IPCC Special Report on the Ocean and Cryosphere in a Changing Climate. Geneva: IPCC.

⁶ *Id.*

⁷ Hollowed, A. B., et al. 2013. Projected impacts of climate change on marine fish and fisheries. *ICES Journal of Marine Science*, 70: 1023–1037.

⁸ Free, C. M., et al. 2019. Impacts of historical warming on marine fisheries production. *Science*, 363: 979–983; Young, T., et al. 2019. Adaptation strategies of coastal fishing communities as species shift poleward. *ICES Journal of Marine Science*, 76(1): 93-103.

⁹ Kritzer, J.P. et al. 2019. Responsive harvest control rules provide inherent resilience to adverse effects of climate change and scientific uncertainty. *ICES Journal of Marine Science*, 76(6): 1424-1435.

¹⁰ Holsman, K.K., et al. 2020. Ecosystem-Based Fisheries Management Forestalls Climate-Driven Collapse. *Nature Communications*, 11 (1): 4579.

challenges of climate change. The Fisheries for the Future Act would integrate climate considerations into the regular fishery management cycle, including considering the effectiveness of management measures to ensure resilience and assessing the vulnerability of fisheries to impacts of climate change in order to prioritize action (section 102). New approaches are also included for two significant management challenges: shifting fish stock distributions (section 105) and the emergence of new fisheries (section 106).

Importantly, Ocean Conservancy agrees with the bill's targeted efforts to provide scientific support and capacity to the Councils and facilitate the use of new tools and approaches. The Scientific and Statistical Committees (SSCs) are well suited to consider climate change when advising the Councils, and climate should be added to Council research priorities. The bill establishes a program to develop innovative tools and approaches to increase the adaptive capacity of fishery management to the impacts of climate change (section 104), which is complementary to efforts underway or in development at NOAA Fisheries, such as the Climate and Fisheries Initiative. The program, which can include grants, creates a much-needed process to support development of science and management approaches and promote their incorporation into management at the Councils. Without these types of changes, management is likely to continue to address climate change in ways that are insufficient, intermittent, and inconsistent.

II. Resilient Fisheries and Ecosystems

Rebuilding Fish Stocks

Over the past 20 years, many Councils have seen success in rebuilding overfished stocks back to healthy levels. Since 2000, 47 stocks have been rebuilt, from black sea bass on the Eastern Seaboard to cowcod on the West Coast.¹¹ Healthy stocks are an important part of ocean ecosystems and provide opportunities for sustainable fishing now and in the future. Rebuilt stocks are among key commercial and recreational fisheries. For example, sea scallops on the Atlantic Coast, rebuilt in 2001, had catch valued at \$569.9 million in 2019, and scup, rebuilt in 2009, was a top species for recreational harvest.¹² Rebuilding plans have been identified as a key tool for recovering stocks, and in the face of climate change and other anthropogenic and environmental pressures, keeping stocks at healthy levels is critical for ensuring fishery resilience.

However, many stocks in need of rebuilding have not experienced such success. Nationwide, starting in 2017, there has been a concerning increase in the number of stocks declared overfished and in need of rebuilding (see Figure 1 below). Of the 47 stocks rebuilt, eight have become overfished again after rebuilding, indicating that measure taken after rebuilding were not enough to prevent stocks from declining once more. At the same time, many plans to rebuild stocks simply don't succeed (i.e., they

¹¹ NOAA Fisheries. 2021. Fishery Stock Status Updates Rebuilt Stocks by Region: Update as of September 30, 2021. Available at: <https://www.fisheries.noaa.gov/national/population-assessments/fishery-stock-status-updates#quarterly-updates-02>

¹² NOAA Fisheries. 2021. Fisheries of the United States, 2019. U.S. Department of Commerce, NOAA Current Fishery Statistics No. 2019 at xxv. Available at: <https://www.fisheries.noaa.gov/national/sustainable-fisheries/Fisheries-united-states>

reach the end of their rebuilding time period with stocks still overfished) and some stocks have faced years of continued overfishing while being managed under a rebuilding plan. Of the 41 stocks currently in rebuilding plans with set time limits, 10 are in a second or even third plan after the first plan failed, and some stocks are subject to plans with no set timeline.¹³ Many of these stocks just continue to decline—60% of stocks in rebuilding plans in 2020 had flat or declining biomass.¹⁴

Ocean Conservancy supports the changes to rebuilding (section 504) that would do more to prevent stocks from declining to levels that require rebuilding and to ensure that rebuilding plans make progress and ultimately meet goals to bring stocks back to healthy levels.

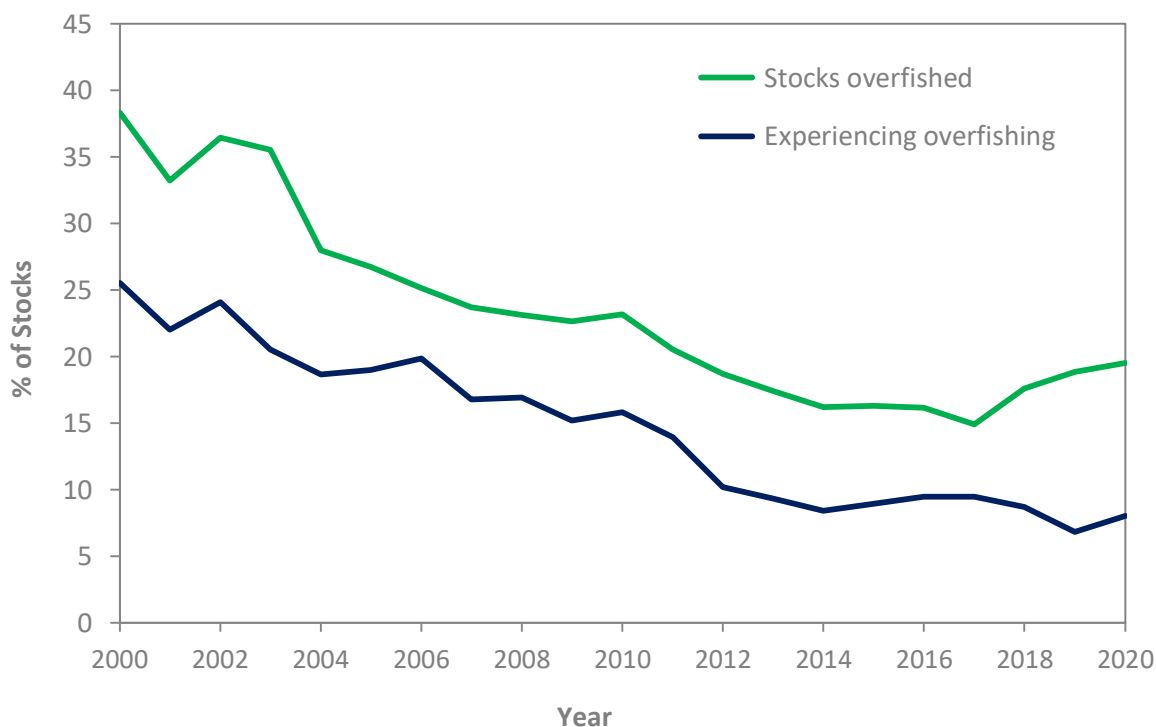


Figure 1: Percent of stocks that are overfished or experiencing overfishing since 2000. Data compiled from NOAA Fisheries Status of the Stocks Annual Reports to Congress on the Status of U.S. Fisheries.

Great amberjack in the Gulf of Mexico provides an eye-opening example. It is now in its third rebuilding plan after it was determined to be overfished in 2000. The first two plans failed, the timeline to rebuild was pushed back, and overfishing has continued on the stock. Great amberjack was initially supposed to be rebuilt by 2009, yet now the target is 2027. The most recent stock assessment indicates the stock has been experiencing overfishing in every year since at least 1985.¹⁵ As of 2020, overfishing continues on the stock and it remains overfished. The bill would address this unusual, but egregious, sort of inaction

¹³ Calculated using data from NOAA Fisheries. 2021. 2020 Fish Stocks in Rebuilding Plans: A Trend Analysis.

¹⁴ NOAA Fisheries. 2021. 2020 Fish Stocks in Rebuilding Plans: A Trend Analysis.

¹⁵ SEDAR. 2020. Southeast Data, Assessment, and Review (SEDAR) 70 Stock Assessment Report: Gulf of Mexico Greater Amberjack. SEDAR, North Charleston, SC.

to end overfishing and rebuild the stock by tightening NOAA Fisheries' oversight role and addressing the question of how management should operate in the face of rebuilding failures.

The Sustaining America's Fisheries for the Future Act addresses many of these challenges associated with rebuilding and overfishing. The solutions offered in this bill include:

- *Act when stocks are near overfished levels to avoid the need to rebuild.* Rebuilding can be a challenge, and it makes sense to avoid having to rebuild stocks in the first place by taking steps to improve stock health before stock size falls below the overfished threshold. The MSA includes provisions that allow for a stock to be designated as "approaching an overfished condition," but the designation is not frequently or effectively used. Improving the use of this designation could help the Fishery Management Councils and NOAA Fisheries avoid rebuilding plans by having more advance warning and taking earlier steps.
- *If a rebuilding plan fails, make the next plan better.* The MSA currently has no guidance for what to do when a rebuilding plan fails. The Fisheries for the Future Act addresses this by clarifying that, in the instance that an existing rebuilding plan fails to rebuild a stock by the end of the plan, the next rebuilding plan should have a 75% likelihood of success when designed. This provision of the bill has been widely misunderstood. The change to 75% would not apply to all rebuilding plans and does not require current rebuilding plans to be revised. This would only apply to stocks that reach the end of their rebuilding cycle and have not rebuilt, which is a circumstance that most Councils have not experienced. Since repeated rebuilding failures increase the risk of stock collapse and leave fishermen with constrained catch levels for longer periods, successful rebuilding is the quickest path to better fishing. This change would seek to end the rebuilding plan purgatory that many stocks are now trapped in by ensuring management measures are sufficient to rebuild.
- *Improve the monitoring of rebuilding progress in a plan.* The MSA currently suggests that the Secretary of Commerce and Councils should monitor and respond to signals that stocks are failing to make adequate progress to rebuild during a plan. NOAA Fisheries currently has criteria in its regulations for making these determinations,¹⁶ but the agency's criteria are disconnected from whether the stock's biomass is actually increasing. Further, monitoring of adequate progress has been unevenly applied and, in many rebuilding plans, managers have completely failed to adapt or improve their rebuilding plans while biomass remains flat or continues to decline. Adaptive management during rebuilding will be even more important as climate impacts increase. The Fisheries for the Future Act would clarify the description of what constitutes adequate progress, strengthen the procedures needed to respond to failures to make progress, and increase transparency in NOAA Fisheries' reporting around rebuilding plan progress. For many Councils, adapting management plans to ensure rebuilding success is already a common practice, and plans have been designed and implemented in ways that have shown

¹⁶ See 50 C.F.R. § 600.310(j)(3)(iv).

great results in rebuilding. For Councils with stocks struggling to rebuild, these changes will help ensure that rebuilding stays on track. If Councils fail to take action to put measures in place to make progress on rebuilding, the Secretary takes action to do so to ensure changes are made within 2 years. This is similar to the current provision 304(e)(5) in the law, in which the Secretary is required to create a rebuilding plan for an overfished stock when a Council fails to do so.

Though the Fisheries for the Future Act includes a number of useful changes to the rebuilding provisions, we are concerned with the removal of the current requirement that rebuilding plans for overfished species shall not exceed 10 years unless stock biology, environmental conditions, or other factors mean that timeline is not possible. Research indicates that most stocks can be rebuilt within this timeframe, and removing the requirement makes it harder for fishery managers to make difficult decisions on reduction in catch when stocks are overfished.¹⁷ This is especially true for stocks that are targeted, have high economic value, and are fast-growing. For example, petrale sole, which is the third highest value groundfish species on the West Coast, was declared overfished in 2010. It was rebuilt in 2015—one year ahead of schedule—because harvest levels were cut in half under the rebuilding plan.¹⁸ Petrale sole likely would have remained overfished for much longer if a rebuilding plan that exceeded 10 years had been an option. Therefore, we recommend retaining the 10 year requirement, which has a record of success and will be a complement to the strengthening of the other rebuilding provisions in the law.

Ocean Conservancy is also concerned with the removal of the key term “overfished” and its replacement with the term “depleted” in sections 504 and 505. We appreciate that Rep. Huffman has been clear, both in the drafting of the legislation and in comments to the public, that the intent of this change is to minimize the stigma of fault and recognize environmental and other factors that play a role in the productivity of a fishery, and that no change is intended to the rebuilding requirements in the law as a result. However, we remain concerned that the term change could increase political pressure on the Council process and add to the difficulty for fishery managers to compel reductions in fishing mortality at the outset of and throughout a rebuilding plan. Regardless of the cause of the decline in abundance, a reduction in fishing pressure is the most immediate means of bringing the stock back to healthier levels and improving fishery productivity long-term.

Bycatch

Bycatch, the unwanted or unintended catch of non-target fish and other wildlife, is a serious problem with ecological, equity and economic impacts. Bycatch has substantial impacts on marine ecosystems, as bycatch is often discarded dead or dying, and addressing this issue should be a priority for MSA reauthorization. Section 503 of the bill proposes important changes to drive our fishery management system towards greater bycatch reduction. Currently, the MSA requires only minimal action on bycatch, and inconsistent reporting means the full scale of the bycatch problem is not well known. The Fisheries

¹⁷ Safina C., et al. 2005. US Ocean Fish Recovery: Staying the Course. *Science*, 309(5735): 707-08; Patrick, W.S. and J. Cope. 2014. Examining the 10-Year Rebuilding Dilemma for U.S. Fish Stocks. *PLoS ONE*, 9(11): e112232.

¹⁸ Pacific Fishery Management Council. 20145. “West Coast Groundfish Stocks Improve.” Press release. June 15, 2015. Available at: <https://www.pcouncil.org/documents/2015/06/canary-and-petrale-sole-stocks-improve.pdf/>

for the Future Act would close loopholes in the law that are preventing meaningful bycatch reductions and would improve reporting of bycatch to ensure standardization across fisheries. Creating a standardized bycatch reporting methodology that is more consistent across fisheries and regions will improve understanding by managers and scientists of opportunities for and obstacles to reducing bycatch.

The most notable change in H.R. 4690 regarding bycatch is the proposal to remove “to the extent practicable” from the bycatch standard. Currently, MSA’s National Standard 9 states:

“(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.”¹⁹

This existing language applies two qualifiers to controlling bycatch: fishery management plans must (1) “minimize” bycatch and the mortality of such bycatch, and must (2) only do so “to the extent practicable.” Thus, the law does not require bycatch to be prevented; it merely needs to be “minimized” and that minimization merely needs to be “to the extent practicable.”

The “practicability standard” thus provides a double layer of latitude in the consideration of measures necessary to address bycatch. Removing the practicability standard still maintains the qualifier that bycatch only needs to be minimized but not prevented. In other words, bycatch would not be prohibited by removing the practicability standard. This change would allow for meaningful bycatch reductions, and would provide direct benefits to fishermen, communities and ecosystems that depend on directed fisheries for species caught and discarded as bycatch in other fisheries.

Pacific halibut bycatch in the Bering Sea Aleutian Islands is a key example of this problem. The directed Pacific halibut fleet is primarily a community-based fishery that supports coastal and Alaska Native communities across this remote region. While quotas have been reduced for the directed halibut fishery due to declining Pacific halibut stock, industrial trawl fisheries continue to catch large amounts of halibut as bycatch, using the “practicability” standard as a primary justification.²⁰ Bycatch of Pacific halibut is in fact increasing in proportion to directed fishery catches, and bycatch of halibut actually exceeded directed fishery removals from 2012-2014.²¹ Overall, Bering Sea trawl fisheries caught over

¹⁹ 16 U.S.C. § 1851(a)(9) (emphasis added).

²⁰ NPFMC. 2021. Draft Environmental Impact Statement (DEIS) for the Bering Sea and Aleutian Islands (BSAI) Halibut Abundance-Based Management (ABM) of Amendment 80 Prohibited Species Catch (PSC) Limit; September 2021. Anchorage, AK. 527 pp (e.g. page 32, reasoning that practicability should be set by historic levels of bycatch and current efforts and limited by the potential to cause economic harm to the groundfish fishery, in short, allowing “practicable” to be defined as what it considered to be immediately achievable: “The practicability of the Amendment 80 fleet to operate under reduced PSC limits relies on a number of different factors and behavioral modifications by the fleet in recent years. . . . Because of the efforts and expenditures already undertaken by the sector, dramatic increases in halibut avoidance or reductions in mortality are not expected with the tools that are currently available to the fleet.”).

²¹ *Id.* at 127 and 170.

two times more Pacific halibut than the directed fishery was able to intentionally catch from 2010-2019. These communities now find themselves on the brink of economic and cultural collapse due to the lack of equity built into a management system that allows large-scale trawl fisheries to take a disproportionate amount of catch as bycatch, thereby reducing fish available to the directed halibut fleet.

The bill would also create greater standardization of bycatch data by adding a national component to standardized bycatch reporting methodology, which is currently only required at the level of a fishery management plan. This would create nationally standardized requirements for collection, reporting, and assessment of bycatch data. Many regions have continually supported affordable and effective bycatch monitoring and reporting programs, including the use of electronic monitoring systems when appropriate, and achieved individual accountability through catch share programs; however, inconsistent reporting of bycatch around the country means the full scale of the problem is not well known.

Resilient Ecosystems

Healthy fish stocks make sustainable fisheries possible. Healthy habitat—from seagrass beds to kelp forests and coral reefs—and abundant prey populations are key components for maintaining fish stocks. Maintaining the structure and functioning of ecosystems is essential to ensure fish and fisheries are able to survive and thrive. Furthermore, protecting habitat and the forage base is critical for preparing marine ecosystems for the effects of climate change.

The habitats that fish stocks depend on are increasingly under threat and more must be done to ensure long term and effective protection for fish habitat. Protecting the diverse marine habitats that support fish populations is an important but underutilized element of sustainable fishery management under the MSA in many regions. We are thankful that H.R. 4690 includes improvements to the MSA's habitat provisions (see sections 501, 502 and 507), including a proposal to avoid damage to fish habitats from non-fishing activities and improvements to the process by which essential fish habitat (EFH) is designated, reviewed, and managed in order to meet goals for the fishery and ecosystem (section 507). The Fisheries for the Future Act would strengthen tools to protect EFH from the impacts of fishing gear, as well as safeguard habitat from non-fishing activities such as sand mining, dredging, and energy exploration (section 502). These changes would bring greater clarity and more national consistency to how EFH is identified and conserved.

Forage fish are a critical part of marine ecosystems, providing a foundation for ocean ecology and food for many important marine mammal and fish species, including those that support recreational and commercial fisheries. The bill includes provisions that would strengthen precautionary management of forage fish and better account for their ecosystem role. H.R. 4690 directs the Secretary (NOAA Fisheries) to define forage fish, requires an assessment of the potential impacts of a new commercial forage fish fishery, and would require consideration of predator needs in existing fishery management plans (section 508). Ocean Conservancy is supportive of strengthening management of forage fish and

accounting for their ecosystem role, and we note that Rep. Dingell's bill, H.R. 5770, contains similar provisions.

III. Supporting Fishing Communities and Subsistence Fishing

The MSA seeks to balance conservation and resource use. Amid the backdrop of severe disruptions to fisheries and the seafood supply chain as a result of the COVID-19 pandemic, it is a critical time to improve the MSA to better support fishing communities whose livelihoods depend on healthy oceans and fisheries. In addition, changes to the law to better reflect Tribal fisheries and subsistence fishing are long overdue.

Ocean Conservancy is supportive of the bill's proposals to reform fishery disaster declarations (section 201) and revitalize working waterfronts (section 203). As the impacts of climate change worsen, there is greater likelihood of extreme events, such as harmful algal blooms, floods, and marine heatwaves, which can contribute to fishery disasters.²² Ocean Conservancy supports improvements to accelerate the fishery resource disaster relief program by implementing timelines for faster delivery of disaster relief to impacted communities, including strengthening charter for-hire and Tribal eligibility, and by allowing direct payments to be made to affected members of fishing communities as an eligible use of relief funds. Disaster relief process reform is a key priority for ensuring fisheries are better able to endure unusual events like marine heat waves and oil spills. Earlier this fall, the Senate unanimously passed similar language for fishery disaster reform. Similarly, Ocean Conservancy supports infrastructure investment, and access to fishing port facilities is critical for the future success and stability of fishing communities. A Working Waterfront Grant Program is needed to preserve and expand access to coastal waters for dependent businesses, provide access loan funds for waterfront preservation, and to identify and prioritize critical needs for working waterfronts.

While disaster reform and fishing port infrastructure improvements will support access for all fishing sectors and provide support when it is needed most, we must also do more to ensure community participation in limited access privilege programs (LAPPs) by increasing consideration of community sustainability. In regard to section 205, past experience with LAPPs has shown that without safeguards in place, LAPPs can result in a paradoxical situation in which fishing communities have no rights to the fisheries that surround them. The proposed changes to the provisions on fishing communities for LAPPs provide improvements to help ensure that any new LAPP considers direct allocations to fishing communities that depend on that managed fishery.

Ocean Conservancy supports securing representation of Native American Tribes in the fishery management process and respecting Tribal sovereignty, though I defer to Tribes as to the sufficiency of the proposed definition of subsistence fishing. Further, Traditional Knowledge must be considered in decision-making.

²² Government Accountability Office. 2016. Federal Fisheries Management: Additional Actions Could Advance Efforts to Incorporate Climate Information into Management Decisions. GAO-16-827. Washington, D.C.

IV. Modernizing Fisheries Science and Data

Reliable, accurate and timely data are a core part of effective fishery management. Advances in technology are rapidly changing the world around us, but fisheries have largely been left behind in this digital revolution. Though the U.S. fishery management system is one of the most advanced in the world, its continued success in maximizing ecological, economic and social benefits relies on high quality information to inform sustainability measures. The data collection and management systems in use today are often outdated and are incapable of meeting the demands now placed on them by modern management systems and rapidly shifting ecosystems due to climate change. The Sustaining America's Fisheries for the Future Act would provide investment and momentum to ensure that new technologies and innovations are effectively harnessed and that data from many sources can be appropriately integrated into management.

Well-implemented electronic monitoring and reporting programs can yield important gains in the efficiency of data collection and processing and can improve the quality of data. Successful programs like the new electronic logbook program for Gulf of Mexico charter for-hire and headboat vessels²³ have demonstrated the benefits of electronic reporting by improving the timeliness and accuracy of catch data. However, nationwide uptake of electronic technologies in U.S. fisheries has been somewhat slow, and changes to the MSA can promote greater development and adoption. H.R. 4690 would require a review of existing electronic technology capabilities at NOAA Fisheries and would facilitate implementation of electronic technologies for monitoring and reporting in all regions (section 402).

In addition to improving technology on boats, H.R. 4690 looks to improve data infrastructure at NOAA by supporting continued progress on implementing the Fisheries Information Management Modernization (FIMM) initiative in section 401.²⁴ This will facilitate much-needed improvements in the collection, intake, use, storage, and access to data from federal and non-federal sources. The FIMM initiative makes crucial recommendations that would modernize the internal data governance and management landscape at NOAA, which would result in improved data efficiency for data end-users. For instance, implementing NOAA Fisheries-wide cloud-based data science platforms would add accessibility to data while also protecting critical networks which are currently housed in siloed servers. There are significant vulnerabilities to fisheries data in their current state, and expanding the internal infrastructure and data management workforce will secure data and improve efficiency.

Section 406 seeks to address ongoing issues with recreational fishing data in the U.S., particularly to better understand the impact of private angling. Collecting accurate and timely data on this sector is one of the most challenging parts of implementing accountable and sustainable management under the MSA, given the large number of recreational fishermen, the many points of access they use, and the fact

²³ Southeast For-Hire Integrated Electronic Reporting Program. Available at: <https://www.fisheries.noaa.gov/southeast/recreational-fishing-data/southeast-hire-integrated-electronic-reporting-program>

²⁴ Margolis, S., et al. 2020. Fisheries Information Management Modernization Workshop. NOAA Tech. Memo. NMFS-F/SPO-204, 85 p.

that any retained catch is kept rather than sold. To get a sense of the scale of recreational fishing, in 2017, NOAA Fisheries estimates that 9.8 million anglers took over 205 million fishing trips.²⁵ In many regions, commercial, for-hire, and private recreational anglers are participating in the same fisheries, but differences in data quality and management accountability have resulted in private anglers regularly exceeding their portion of annual catch limits, which creates serious issues around the sustainability of shared stocks and inequities in management. This problem has manifested most acutely in management of the private recreational sector of the red snapper fishery in the Gulf of Mexico, where inconsistencies in survey design and a lack of data calibration are preventing accurate catch accounting and have allowed the private recreational sector to substantially exceed its quota, in violation of the MSA.

Improving recreational data collection will lead to more effective management of recreational fishing and benefit fish stock sustainability. The Fisheries for the Future Act would require NOAA Fisheries to establish guidelines to improve recreational catch data and to integrate data from multiple sources. This provides critical support to help managers bring disparate data sets together to improve science and management outcomes. Further, H.R. 4690 establishes a new dedicated program to improve the data and management of recreational fisheries; this program will focus on key research priorities, including improving surveys, using electronic technologies for reporting, increasing our understanding of discard mortality, and investigating new management approaches like the use of tags.

V. Strengthening Public Process, Inclusion And Transparency

The majority of federal marine fisheries are managed through a complex process involving the Councils and NOAA Fisheries. The Council system established under the MSA gives fishery stakeholders a unique role in decisions about fishery resources through the Council process. In practice, Councils consist largely of state officials and members that are nominated by state governors and appointed by the Secretary of Commerce that are typically commercial and recreational fishing representatives. This has created a management system unlike any other federal resource management framework in which the resource users are directly involved in making the management decisions. This system has many benefits, as it helps ensure that fishery management decisions are tailored to the unique circumstances of the regional fisheries and fleets. However, many voices are left out, and there are concerns that critical fishery management decisions are being made solely by people with a financial interest in the outcomes.

Successful management must, by necessity, be transparent and inclusive. Council membership should include consideration of a broad range of voices, including Tribes, subsistence fishermen, and conservation interests. To this end, the changes to Council membership in the bill are important steps toward broader representation and more balanced Councils, which will ultimately lead to better management. Ocean Conservancy supports fair and balanced apportionment and consideration of all qualified stakeholders, such as members of the conservation community, scientists, non-consumptive

²⁵ NOAA Fisheries. 2021. Fisheries Economics of the United States, 2017. U.S. Dept. of Commerce, NOAA Tech. Memo. NMFS-F/SPO-219, at 14.

users, and Indigenous and Tribal communities as applicable, in addition to the consideration of active participants (or their representatives) in the commercial, recreational, and subsistence fisheries under the jurisdiction of the Council.

In addition to incorporating subsistence and Tribal interests as groups to be included and balanced in Council appointments, two designated Tribal seats would be added to the Council make-up in the North Pacific (section 302), and the bill would remove term limits for the Tribal seat on the Pacific Fishery Management Council (PFMC, section 301). Tribes in the North Pacific have a history of fishing and stewardship that long predates the Council system and are inextricably linked to this ecosystem, yet they have no designated seats on the North Pacific Fishery Management Council (NPFMC). Adding Tribal seats to the NPFMC is an essential and long overdue change, and we are happy to see it included in this bill. Additionally, the Tribal seat on the Pacific Council represents Tribal sovereigns and, therefore, should receive equal treatment as the other government seats on the Council, which are not subject to term limits. Ocean Conservancy supports these requests from Tribes.

H.R. 4690 also clarifies the relationship between the Fishery Management Councils and the Secretary of Commerce. Under the existing law since 1976, the Secretary is tasked with reviewing all fishery management plans, amendments, and proposed regulations received from the Councils for compliance with legal requirements.²⁶ Absent Council action, it is imperative that the Secretary ensure conservation and management. Section 506 of the bill clarifies that the Secretary has the final responsibility to ensure legal and sustainable fishery management plans are in place in situations where necessary measures have not yet been implemented. The existing Secretarial action provisions only apply when “the appropriate Council fails to develop” a needed fishery management plan or amendment, and this element will remain unchanged.²⁷ Thus, while H.R. 4690 clarifies the Secretary’s duty to fill regulatory gaps, it does not diminish the Councils’ central role in management and the regulatory process.

Another important change is providing greater clarity to Councils with respect to lobbying. As federal grant recipients, Councils are prohibited from using federal funds to lobby Congress or the executive branch in connection with the federal funding they receive, pursuant to 31 U.S.C. § 1352 and implementing regulations. The Councils are also prohibited from attempting to influence Federal and State legislation under 50 CFR § 600.227 with very limited exceptions. However, confusion over these existing prohibitions persists. H.R. 4690 would add clarity and accountability, ensuring that the Councils get lobbying practices under control so that funding for fishery management is not put at risk. Notably, the executive branch lobbying prohibition in the bill does not encompass the routine communication the Councils undertake with NOAA Fisheries during the fishery management process and will leave the unique and important relationship between the Councils and NOAA Fisheries intact.

Further, we are happy to see language that works to address longstanding issues with sexual harassment at the Fishery Management Councils and with fisheries observers. All federal agencies

²⁶ See 16 U.S.C. § 1854(a)-(b).

²⁷ 16 U.S.C. § 1854(c)(1)(A).

should have zero tolerance for sexual harassment, whether committed by agency staff or by the members or staff of bodies they govern, such as the Councils. We support applying the full suite of federal sexual harassment rules to Council staff, members, and advisory panels, as well as the necessary result that offending persons be individually liable for their actions—with the Secretary authorized to impose civil penalties including suspension or expulsion from participation or membership (Section 305(a)). This change will reduce incidents of harassment by increasing the consequences for perpetrators and by increasing survivors' confidence in their ability to effectively respond to harassment when it occurs. We also support the amendments to 16 U.S.C. § 1857(L), which clarify that sexual harassment is prohibited both on and off vessels, and whether or not it is committed forcibly (Section 307(f)). Overall, we expect these changes will reduce harassment as well as make it easier for Council staff and employees to comply and to know when compliance has been achieved.

VI. Closing thoughts

In stark contrast to the Sustaining America's Fisheries for the Future Act (H.R. 4690), the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act (H.R. 59), would set back decades of improvements in fishery management. H.R. 59 would reauthorize the MSA with provisions aimed directly at weakening the core conservation requirements of the MSA. Undercutting the fundamental principles of fishery management, H.R. 59 would reverse decades of substantial improvements to how we sustainably fish by creating loopholes to science-based management, watering down legal standards, and promoting costly delays. Specifically, the bill:

- Unnecessarily lengthens rebuilding timeframes for unhealthy stocks, leaving them vulnerable for longer, and provides harmful exemptions from having a rebuilding timeframe at all, no matter how unhealthy the stock (section 303).
- Ends sustainable management for stocks that are not the main target of fishing by exempting them from annual catch limits (ACLs), even if they are caught and sold. This removes protections for possibly hundreds of species, vastly increasing the risk of overfishing (section 204).
- Exempts recreational fisheries from robust science-based limits, instead permitting the use of weak "alternative fishery management measures" that have resulted in significant overfishing in the past (section 203).
- Curbs the development of innovative management techniques and scientific studies by adding onerous new requirements for Exempted Fishing Permits (EFPs), making them incredibly difficult to use (section 304).

H.R. 59 would put coastal communities at risk and could have devastating impacts on our fisheries and those who depend on them. By exempting fisheries from ACLs, H.R. 59 would allow overfishing to occur where it currently is not happening. When our fisheries are depleted, our coastal communities are put at risk. The economy of our fishing communities is dependent on the health of the fisheries that surround them. Fishermen, business owners, and scientists have all opposed these ideas before in previously introduced and nearly identical bills. Unlike past reauthorizations of the MSA, H.R. 59 would erode the successes we have made in fishery management, impairing our fisheries and coastal communities alike.

Thank you to the House Natural Resources Subcommittee on Water, Oceans, and Wildlife for its careful consideration of H.R. 4690, and for the opportunity to provide this testimony in support. The proposals offered in the Sustaining America's Fisheries for the Future Act would enhance our ocean's long-term ability to provide food and support businesses, recreation, culture and thriving coastal communities. I look forward to working with you and your staffs throughout this Congress and in the future.