



Mid-Atlantic Fishery Management Council

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MEMORANDUM

Date: June 7, 2023
To: Chris Moore, Executive Director
From: Mary Sabo, Council Staff
Subject: SHIFT Act Overview

The Council has been invited to provide comments on a draft bill, titled “Supporting Healthy Interstate Fisheries in Transition (SHIFT) Act,” which is being developed by Senator Richard Blumenthal’s office. The following is a brief overview of the bill’s main provisions.

Section 2 SHIFTING STOCKS

- This section would amend the Atlantic Coastal Fisheries Cooperative Management Act to require the Atlantic States Marine Fisheries Commission to account for climate change impacts on coastal fishery resources when establishing or revising quota allocations.
- “Climate change impacts” includes any change or shifting trend in fish abundance and distribution and any potential economic, social, or ecological impact, including food web and habitat impacts, arising from such revised quota allocations.

Section 3 ACTION BY THE SECRETARY

This section would amend MSA 304(f) to establish a framework for designating Council jurisdiction for cross-jurisdictional stocks.

- Any Council could request that the Secretary determine whether a substantial portion of a fishery extends beyond the geographical area of authority of any one Council.
- If the Secretary determined that a substantial portion of a fishery extends beyond the geographical area of authority of any one Council, the relevant Councils would be required to decide, within one year, whether to manage the fishery jointly or designate one Council to prepare a plan or amendments. The decision would need to be approved by a majority of voting members from both Councils involved.
- If the Councils failed to reach a decision within the required timeframe, the Secretary would assign management authority to one Council or require development of a joint plan.

- Once the Council(s) or Secretary have made a decision regarding management authority for a fishery, the responsible Council(s) would have two years to prepare and submit a plan or amendment.
- A Council could also request that the Secretary determine if a fishery *no longer* extends beyond the geographical area of authority of a Council (i.e., request termination of joint management). If the Secretary finds that the fishery no longer has a substantial portion that extends across jurisdictions, the Secretary may designate a single Council to prepare a plan or amendment for the fishery.
- Finally, this section requires the Secretary to identify its criteria (through notice and rulemaking) for determining the geographical scope of a fishery.
- Staff Comment: Unlike NMFS' draft climate governance policy, this process (as the bill is currently written) could only be initiated at the request of a Council. Another key difference is that the Councils (not NMFS) would have the first opportunity to decide which Council should manage a fishery or whether to develop a joint FMP. The Secretary/NMFS would only get involved if the Councils can't reach a decision.

Section 4 FISHERY AUTHORIZATION

This section proposes new requirements for the Councils to review the list of authorized fisheries and gear types and revises the procedures for authorization of a new fishery or gear type.

- Currently, the Secretary is required under MSA 305(a) to publish and maintain a list of all fisheries under the authority of each Council and all fishing gear used in such fisheries (see the table at [50 CFR 600.725](#)).
- This section would require each Council to review, within 18 months, the fisheries and gear under its authority and propose any changes. Such changes “shall ensure only active fisheries are included” on the list.
- Proposed changes must be defined in “specific and narrow terms, including geographic range.” These recommendations to the Secretary should reflect “new understanding of the effects of new fisheries or gear on marine ecosystems.”
- This section requires the Secretary to issue guidance for authorizing a new fishery or fishing gear that is not included on the list (this differs from H.R. 4690, which proposed detailed requirements for secretarial review of new fisheries or gear).
- Staff Comment: The current list of fisheries and gear types is fairly generic and not geographically detailed. These requirements could be quite time-consuming for the Councils. The requirement to only include active fisheries on the list of authorized fisheries and gear may reduce the flexibility of the Councils and fisheries to adapt to climate change.

End of SHIFT Act Summary

The following is an excerpt from the Council's [comment letter on H.R. 4690](#) regarding the provisions related to shifting stocks and management authority determinations.

While the administrative steps outlined in Section 105 do formalize a process for revising Council authority as a result of changes in fishery distribution, many of these issues are already addressed by the Councils themselves. This has been a particular area of focus on the Atlantic coast, where fisheries management authority in federal waters is divided between the New England, Mid-Atlantic, and South Atlantic Councils. These Councils have recognized this challenge and are working closely with each other to adapt to changing conditions. For example, the three East coast Councils are currently collaborating with the Atlantic States Marine Fisheries Commission and NOAA Fisheries on a climate change scenario planning initiative. Through this structured process, fishery scientists and managers are exploring how to best adapt and respond to jurisdictional and governance issues related to shifting fishery stocks.

It is important to note that a number of fishery management plans already account for overlap between Council management areas. For example, the New England Fishery Management Council and Mid-Atlantic Fishery Management Council manage two fisheries under joint fishery management plans and cooperate on the management of several other fisheries that overlap the geographic areas of both Councils. Similar arrangements exist between the MidAtlantic and South Atlantic Councils and the South Atlantic and Gulf Councils.

It is difficult to predict or comment on the specific impacts of Section 105 without specific details regarding how “substantial portion” will be defined. However, there appears to be potential for these provisions to create a “musical chairs” scenario with our managed fisheries. Frequent reassignments of management authority could cause disruptions in Council operations, duplications of effort, and losses of institutional knowledge among the staff, Council and SSC members, and others who have acquired specialized knowledge about the management or biology of a stock through years of involvement with the fishery. While major changes in management regimes may be warranted in certain cases, the Council believes that less disruptive methods of adapting to climate change should be pursued first.

Title: To support healthy fisheries in dynamic ocean conditions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Supporting Healthy Interstate Fisheries in Transition Act” or the “SHIFT Act”.

SEC. 2. SHIFTING STOCKS.

Section 805(a) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5104(a)) is amended by adding at the end the following:

“(3) The Commission shall, in establishing or revising quota allocations between any State, Federal, or other management unit for purposes of developing or updating a coastal fishery management plan or plan amendment under this section, account for, using the best scientific information available, any climate change impact on coastal fishery resources, including—

“(A) any change or shifting trend in fish abundance and distribution; and

“(B) any potential economic, social, or ecological impact, including food web and habitat impacts, arising from such revised quota allocations.”.

SEC. 3. ACTION BY THE SECRETARY.

Section 304(f) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1854(f)) is amended—

(1) in paragraph (1)—

(A) by striking “as provided in paragraph (3)” and inserting “as provided in paragraph (2)”; and

(B) by striking “No jointly prepared plan” and all that follows through “each Council concerned.”;

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

“(2)(A) At the request of a Council in accordance with procedures established by the Secretary, the Secretary shall determine whether a substantial portion of a fishery extends beyond the geographical area of authority of any one Council.

“(B) If the Secretary determines under subparagraph (A) that a substantial portion of a fishery extends beyond the geographical area of authority of any one Council, the Secretary shall—

“(i) not later than 6 months after the date on which the request is made under subparagraph (A), notify the Councils concerned; and

“(ii) require, not later than 1 year after the date on which the notification is made

under clause (i), that each of the Councils concerned, by a majority of the voting members, present and voting—

“(I) designate one of the Councils concerned to prepare the fishery management plan for such fishery and any amendment to such plan, if required under this Act; or

“(II) agree to jointly prepare the fishery management plan for such fishery and any amendment to such plan, if required under this Act.

“(C) In the case that the Councils concerned are unable to meet the requirements of subparagraph (B)(ii) within the time period specified in such subparagraph, the Secretary shall—

“(i) designate one of the Councils concerned to prepare the fishery management plan and any amendment to such plan, if required under this Act; or

“(ii) require that such plan and any such amendment, if required under this Act, be prepared jointly by the Councils concerned.

“(D) Not later than 2 years after the date on which the Councils concerned make a decision pursuant to subparagraph (B)(ii), or in a case described in subparagraph (C) the date on which the Secretary makes a decision pursuant to such subparagraph, and at such other times as required under this Act, the Council or Councils required under subparagraph (B)(ii) or (C) (as applicable) to prepare the fishery management plan or any such plan amendment, if required under this Act, shall prepare and submit such plan or amendment in accordance with the provisions of this Act.

“(E)(i) At the request of a Council in accordance with the procedures established under subparagraph (A), the Secretary shall determine whether a fishery described in subparagraph (B) no longer has a substantial portion that extends beyond the geographical area of authority of any one Council.

“(ii) If the Secretary determines under clause (i) that a fishery no longer has a substantial portion that extends beyond the geographical area of authority of any one Council—

“(I) the Secretary shall determine the Council that has predominant geographical authority over the fishery; and

“(II) not later than 2 years after the date on which the determination under subclause (I) is made, and at such other times as required under this Act, the Council determined under such subclause shall prepare and submit the fishery management plan or amendment for the fishery, if required under this Act, in accordance with the provisions of this Act.

“(F) The Secretary shall, through notice and comment rulemaking, identify its criteria in determining under subparagraphs (B) and (E) whether a substantial portion of a fishery extends beyond the geographical area of authority of any one Council.”; and

(4) by adding at the end the following:

“(4) No jointly prepared plan or amendment, as described in paragraph (1)(B), (2)(B)(ii)(II), or (2)(C)(ii) may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

“(5) This subsection shall not apply with respect to any fishery to which section 302(a)(3) applies.

“(6) Nothing in this subsection shall be construed as modifying or superseding subsection (e), section 302(h)(1), or any other provision of this Act.”.

SEC. 4. FISHERY AUTHORIZATION.

Section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(a)) is amended—

(1) in paragraph (2), by striking “as to require notification under paragraph (3)” and inserting “under this subsection”;

(2) by striking paragraphs (3) and (4) and inserting the following:

“(3) The Secretary shall authorize the development of a new fishery or fishing gear that is not included on the list under this subsection only after the Secretary determines that a sufficient analysis, in accordance with the guidance under paragraph (7), has been conducted by an appropriate Council on the potential impacts of such new fishery or fishing gear on existing fisheries, fishing communities, and the marine ecosystem.

“(4)(A) Not later than 18 months after the date of enactment of the Supporting Healthy Interstate Fisheries in Transition Act, and at least once every 5 years thereafter, each Council shall review the fisheries and gear on the list under this subsection that are under its authority and submit to the Secretary proposed changes to such list in specific and narrow terms, including geographic range. Such proposed changes shall ensure only active fisheries are included on such list and include recommendations for new fisheries or gear, as well as new understanding of the effects of new fisheries or gear on marine ecosystems, for the Secretary to review under paragraph (3).

“(B) As soon as practicable after receiving a proposed change under subparagraph (A) to add a new fishery or gear to the list under this subsection, the Secretary shall make a determination under paragraph (3). If, in such determination, the Secretary finds that the proposed change is consistent with such paragraph and other applicable law, the Secretary shall publish a revised list under this subsection to include such fishery or gear, along with the appropriate Council analysis and the Secretary’s determination of sufficiency of the analysis consistent with paragraph (3), after notice and an opportunity for public comment.

“(C) As soon as practicable after a new fishery has been added to the list under this subsection in accordance with subparagraph (B), the appropriate Council shall, in accordance with section 303, prepare a fishery management plan for the fishery or an amendment to include such fishery in an existing fishery management plan. No person or vessel may employ new fishing gear or engage in a new fishery until the appropriate Council has prepared, and the Secretary has approved and implemented, such plan or amendment.”; and

(3) by adding at the end the following:

“(7) The Secretary shall issue guidance for making a determination under paragraph (3).

“(8) Nothing in this subsection shall restrict the requirements for the experimental permitting process under section 318(d).”.