

117TH CONGRESS  
1ST SESSION

# H. R. 5770

To improve the management of forage fish.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 2021

Mrs. DINGELL (for herself, Mr. MAST, Mr. LOWENTHAL, Mr. LONG, Mr. HUFFMAN, Mr. UPTON, Mr. CASE, Mr. RICE of South Carolina, Mr. BLUMENAUER, Ms. SCHAKOWSKY, Mr. HUDSON, Mr. AUSTIN SCOTT of Georgia, and Mr. CARTER of Georgia) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To improve the management of forage fish.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Forage Fish Conservation Act of 2021”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References to the Magnuson-Stevens Fishery Conservation and Manage-  
ment Act.

Sec. 3. Findings.

Sec. 4. Definitions.

Sec. 5. Scientific advice.

- Sec. 6. Council functions.
- Sec. 7. Contents of fishery management plans.
- Sec. 8. Action by the Secretary.
- Sec. 9. River herring and shad.
- Sec. 10. Rule of construction.

1 **SEC. 2. REFERENCES TO THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT.**

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3       Except as otherwise expressly provided, wherever in  
4 this Act an amendment or repeal is expressed in terms  
5 of an amendment to, or repeal of, a section or other provi-  
6 sion, the reference shall be considered to be made to a  
7 section or other provision of the Magnuson-Stevens Fish-  
8 ery Conservation and Management Act (16 U.S.C. 1801  
9 et seq.).

10 **SEC. 3. FINDINGS.**

11       Section 2(a) (16 U.S.C. 1801(a)) is amended by add-  
12 ing at the end the following:

13               “(14) Forage fish are generally small to inter-  
14 mediate-sized species, occurring in schools or dense  
15 aggregations, and function as a main pathway for  
16 energy to flow from phyto- and zooplankton to high-  
17 er trophic level predators, such as tuna, Alaska pol-  
18 lock, and other wildlife, in marine ecosystems. While  
19 most species function as prey of others at some life  
20 stage, especially when small and young, forage fish  
21 maintain this important trophic role throughout  
22 their life. Further, fluctuations in their populations  
23 can result in significant changes in marine commu-

1 nities and ecosystems. Therefore, particular atten-  
2 tion to management of forage fish species, and ad-  
3 dressing their unique role in marine ecosystems, is  
4 critical to maintaining ecosystem function and sus-  
5 tainable fisheries.”.

6 **SEC. 4. DEFINITIONS.**

7 (a) SECRETARY TO DEFINE FORAGE FISH.—Section  
8 305 (16 U.S.C. 1855) is amended by adding at the end  
9 the following:

10 “(1) FORAGE FISH.—Not later than 6 months after  
11 the date of enactment of the Forage Fish Conservation  
12 Act of 2021, the Secretary shall issue a definition of the  
13 term ‘forage fish’ for the purposes of this Act. In defining  
14 such term, the Secretary shall consider factors including  
15 whether a species covered by such definition, throughout  
16 such species’ lifecycle—

17 “(1) is at a low trophic level;

18 “(2) is generally small- to intermediate-sized;

19 “(3) occurs in schools or other dense aggrega-  
20 tions;

21 “(4) contributes significantly to the diets of  
22 other fish, marine mammals, or birds; and

23 “(5) serves as a conduit for energy transfer to  
24 species at a higher trophic level.”.

1 (b) DEFINITIONS.—Section 3 (16 U.S.C. 1802) is  
2 amended—

3 (1) by redesignating the second paragraph (33)  
4 (relating to waters of a foreign nation) as paragraph  
5 (53);

6 (2) by redesignating paragraphs (28) through  
7 (50) as paragraphs (30) through (52), respectively;

8 (3) by redesignating paragraphs (19) through  
9 (27) as paragraphs (20) through (28), respectively;

10 (4) by inserting after paragraph (18) the fol-  
11 lowing:

12 “(19) The term ‘forage fish’—

13 “(A) has the meaning given the term by  
14 the Secretary under section 305(l); and

15 “(B) with respect to a species in a fishery  
16 managed pursuant to a fishery management  
17 plan or plan amendment that is approved by  
18 the Secretary under section 304(a), means any  
19 species identified in such plan as a forage  
20 fish.”;

21 (5) by inserting after paragraph (28), as redес-  
22 igned by paragraph (3), the following:

23 “(29) The term ‘low trophic level’ means a posi-  
24 tion in the marine food web in which the fish gen-  
25 erally consume plankton.”; and

1 (6) in paragraph (35), as redesignated by para-  
2 graph (2)—

3 (A) in subparagraph (B), by striking  
4 “and”;

5 (B) in subparagraph (C), by striking the  
6 period and inserting “; and”; and

7 (C) by adding at the end the following:

8 “(D) in the case of a forage fish, is re-  
9 duced, pursuant to subparagraph (B), to pro-  
10 vide for the diet needs of fish species and other  
11 marine wildlife, including marine mammals and  
12 birds, for which forage fish is a significant die-  
13 tary component.”.

14 **SEC. 5. SCIENTIFIC ADVICE.**

15 Section 302(g)(1)(B) (16 U.S.C. 1852(g)(1)(B)) is  
16 amended to read as follows:

17 “(B) Each scientific and statistical com-  
18 mittee shall provide its Council ongoing sci-  
19 entific advice for fishery management decisions,  
20 including recommendations for—

21 “(i) acceptable biological catch;

22 “(ii) preventing overfishing;

23 “(iii) maximum sustainable yield;

24 “(iv) achieving rebuilding targets;

1           “(v) maintaining a sufficient abun-  
2           dance, diversity, and localized distribution  
3           of forage fish populations to support their  
4           role in marine ecosystems; and

5           “(vi) reports on stock status and  
6           health, bycatch, habitat status, social and  
7           economic impacts of management meas-  
8           ures, and sustainability of fishing prac-  
9           tices.”.

10 **SEC. 6. COUNCIL FUNCTIONS.**

11       (a) **RESEARCH PRIORITIES.**—Section 302(h)(7) (16  
12 U.S.C. 1852(h)(7)) is amended, in the matter preceding  
13 subparagraph (A), by inserting “forage fish populations  
14 and distribution,” after “habitats,”.

15       (b) **UNMANAGED FORAGE FISH.**—Section 302(h) (16  
16 U.S.C. 1852(h)) is amended—

17           (1) in paragraph (8), by striking “; and” and  
18           inserting “;”;

19           (2) by redesignating paragraph (9) as para-  
20           graph (10); and

21           (3) by inserting after paragraph (8) the fol-  
22           lowing:

23           “(9) develop a list of unmanaged forage fish oc-  
24           curring in the area under its authority and prohibit

1 the development of any new directed forage fish fish-  
2 ery until the Council has—

3 “(A) considered the best scientific informa-  
4 tion available and evaluated the potential im-  
5 pacts of forage fish harvest on existing fish-  
6 eries, fishing communities, and the marine eco-  
7 system;

8 “(B) determined whether conservation and  
9 management of the forage fish fishery is need-  
10 ed;

11 “(C) if a determination is made that con-  
12 servation and management is needed, prepared  
13 and submitted to the Secretary a fishery man-  
14 agement plan or amendment consistent with  
15 section 303; and

16 “(D) received final, approved regulations  
17 from the Secretary pursuant to section  
18 304(b)(3); and”.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 subsections (a) and (b) shall take effect 2 years after the  
21 date of enactment of this Act.

22 **SEC. 7. CONTENTS OF FISHERY MANAGEMENT PLANS.**

23 (a) FORAGE FISH MANAGEMENT.—Section 303(a)  
24 (16 U.S.C. 1853(a)) is amended—

1           (1) in paragraph (14), by striking “and;” and  
2 inserting “;”;

3           (2) in paragraph (15), by striking the period  
4 and inserting “; and”; and

5           (3) by adding at the end the following:

6           “(16) when setting annual catch limits for for-  
7 age fish fisheries, assess, specify, and reduce such  
8 limits by the diet needs of fish species and other ma-  
9 rine wildlife, such as marine mammals and birds, for  
10 which forage fish is a significant part of their diet.”.

11          (b) **EFFECTIVE DATE.**—The amendments made by  
12 subsection (a) shall take effect 5 years after the date of  
13 enactment of this Act.

14 **SEC. 8. ACTION BY THE SECRETARY.**

15          Section 304 (16 U.S.C. 1854) is amended—

16           (1) by redesignating the second subsection (i)  
17 (relating to international overfishing) as subsection  
18 (j); and

19           (2) by adding at the end the following:

20           “(k) **FORAGE FISH MANAGEMENT GUIDELINES.**—

21           “(1) **IN GENERAL.**—Not later than 18 months  
22 after the date of enactment of the Forage Fish Con-  
23 servation Act of 2021, the Secretary shall establish  
24 by regulation guidelines to assist the Councils in im-



1       plementing sections 3(19), 302(h)(9), and  
2       303(a)(16).

3           “(2) WORKSHOPS.—In developing the guide-  
4       lines under paragraph (1), the Secretary shall con-  
5       duct workshops with Councils and other scientific,  
6       fisheries, and conservation interests.”.

7       **SEC. 9. RIVER HERRING AND SHAD.**

8       (a) DEFINITIONS.—In this section—

9           (1) RIVER HERRING.—The term “river herring”  
10       means blueback herring (*Alosa aestivalis*) and ale-  
11       wife (*Alosa pseudoharengus*).

12          (2) SHAD.—The term “shad” means American  
13       shad (*Alosa sapidissima*) and hickory shad (*Alosa*  
14       *mediocris*).

15       (b) AMENDMENTS OF PLANS.—Not later than 180  
16       days after the date of enactment of this Act, the Secretary  
17       of Commerce shall—

18           (1) amend the fishery management plans for  
19       the Atlantic Herring and Atlantic Mackerel, Squid,  
20       and Butterfish fisheries for the New England and  
21       Mid-Atlantic Regions to add shad and river herring  
22       as managed stocks in such plans consistent with sec-  
23       tion 302(h)(1) of the Magnuson-Stevens Fishery  
24       Conservation and Management Act (16 U.S.C.  
25       1852(h)(1));

1           (2) initiate additional fishery management plan  
2           amendments to be completed in not more than 1  
3           year from the date of the addition of the species  
4           identified in paragraph (1) in order to develop and  
5           implement all required conservation and manage-  
6           ment measures for such stocks consistent with the  
7           Magnuson-Stevens Fisheries Conservation and Man-  
8           agement Act (16 U.S.C. 1801 et seq.), and all other  
9           applicable law; and

10           (3) notwithstanding any other law, rule, or fish-  
11           ery management plan provision, including conserva-  
12           tion and management measures under section  
13           303(a)(11) of the Magnuson-Stevens Fishery Con-  
14           servation and Management Act (16 U.S.C.  
15           1853(a)(11)), reallocate existing resources to pro-  
16           vide, for not less than 50 percent of all relevant fish-  
17           ing trips, not fewer than one at-sea observer or an  
18           on-board electronic or video means of producing  
19           equivalent at-sea monitoring information, for any  
20           vessel using mid-water trawl or paired mid-water  
21           trawl fishing gear in the Atlantic herring and Atlan-  
22           tic mackerel fisheries.

23 **SEC. 10. RULE OF CONSTRUCTION.**

24           Nothing in this Act shall be construed as—

1           (1) extending or diminishing the jurisdiction or  
2 authority of any State within its boundaries; or

3           (2) affecting—

4                 (A) section 306 of the Magnuson-Stevens  
5 Fishery Conservation and Management Act (16  
6 U.S.C. 1856); or

7                 (B) the Atlantic Coastal Fisheries Cooper-  
8 ative Management Act (16 U.S.C. 5101 et  
9 seq.).

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