

116TH CONGRESS  
2D SESSION

# S. 5053

To improve the management of forage fish.

---

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2020

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

## 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”.

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 Management 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.**

2  
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-  
24 nities and ecosystems. Therefore, particular atten-

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

5 **SEC. 4. DEFINITIONS.**

6       Section 3 (16 U.S.C. 1802) is amended—

7           (1) by redesignating the second paragraph (33)  
8       (relating to waters of a foreign nation) as paragraph  
9       (53);

10          (2) by redesignating paragraphs (28) through  
11       (50) as paragraphs (30) through (52), respectively;

12          (3) by redesignating paragraphs (19) through  
13       (27) as paragraphs (20) through (28), respectively;

14          (4) by inserting after paragraph (18) the fol-  
15       lowing:

16           “(19) The term ‘forage fish’ means—

17               “(A) any fish that, throughout its life  
18               cycle—

19                   “(i) is at a low trophic level;

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

23                   “(iii) serves as a conduit for energy  
24                   transfer to species at a higher trophic  
25                   level; or

1           “(B) any other fish specified as a forage  
2 fish for purposes of this paragraph in a fishery  
3 management plan or amendment that is trans-  
4 mitted by a Council and approved by the Sec-  
5 retary in accordance with section 304(a).”;

6           (5) by inserting after paragraph (28), as redes-  
7 igned by paragraph (3), the following:

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

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

13           (A) in subparagraph (B), by striking  
14 “and”;

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

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

18           “(D) in the case of a forage fish, is re-  
19 duced, pursuant to subparagraph (B), to pro-  
20 vide for the diet needs of fish species and other  
21 marine wildlife, such as marine mammals and  
22 birds, for which forage fish is a significant part  
23 of their diet.”.

1 **SEC. 5. SCIENTIFIC ADVICE.**

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

4 “(B) Each scientific and statistical com-  
5 mittee shall provide its Council ongoing sci-  
6 entific advice for fishery management decisions,  
7 including recommendations for—

8 “(i) acceptable biological catch;

9 “(ii) preventing overfishing;

10 “(iii) maximum sustainable yield;

11 “(iv) achieving rebuilding targets;

12 “(v) maintaining a sufficient abun-  
13 dance, diversity, and localized distribution  
14 of forage fish populations to support their  
15 role in marine ecosystems; and

16 “(vi) reports on stock status and  
17 health, bycatch, habitat status, social and  
18 economic impacts of management meas-  
19 ures, and sustainability of fishing prac-  
20 tices.”.

21 **SEC. 6. COUNCIL FUNCTIONS.**

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

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

3 (1) in paragraph (8), by striking “; and” and  
4 inserting “;”;

5 (2) by redesignating paragraph (9) as para-  
6 graph (10); and

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

9 “(9) develop a list of unmanaged forage fish oc-  
10 ccurring in the area under its authority and prohibit  
11 the development of any new directed forage fish fish-  
12 ery until the Council has—

13 “(A) considered the best scientific informa-  
14 tion available and evaluated the potential im-  
15 pacts of forage fish harvest on existing fish-  
16 eries, fishing communities, and the marine eco-  
17 system;

18 “(B) determined whether conservation and  
19 management of the forage fish fishery is need-  
20 ed;

21 “(C) if a determination is made that con-  
22 servation and management is needed, prepared  
23 and submitted to the Secretary a fishery man-  
24 agement plan or amendment consistent with  
25 section 303; and

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

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

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

8           (a) FORAGE FISH MANAGEMENT.—Section 303(a)  
9 (16 U.S.C. 1853(a)) is amended—

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

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

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

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

20           (b) EFFECTIVE DATE.—The amendments made by  
21 subsection (a) shall take effect 5 years after the date of  
22 enactment of this Act.

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

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

1           (1) by redesignating the second subsection (i)  
2           (relating to international overfishing) as subsection  
3           (j); and

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

5           “(k) FORAGE FISH MANAGEMENT GUIDELINES.—

6           “(1) IN GENERAL.—Not later than 18 months  
7           after the date of enactment of the Forage Fish Con-  
8           servation Act, the Secretary shall establish by regu-  
9           lation guidelines to assist the Councils in imple-  
10          menting sections 3(19), 302(h)(9), and 303(a)(16).

11          “(2) WORKSHOPS.—In developing the guide-  
12          lines under paragraph (1), the Secretary shall con-  
13          duct workshops with Councils and other scientific,  
14          fisheries, and conservation interests.”.

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

16          (a) DEFINITIONS.—In this section—

17               (1) RIVER HERRING.—The term “river herring”  
18               means blueback herring (*Alosa aestivalis*) and ale-  
19               wife (*Alosa pseudoharengus*).

20               (2) SHAD.—The term “shad” means American  
21               shad (*Alosa sapidissima*) and hickory shad (*Alosa*  
22               *mediocris*).

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



1           (1) amend the fishery management plans for  
2 the Atlantic Herring and Atlantic Mackerel, Squid,  
3 and Butterfish fisheries for the New England and  
4 Mid-Atlantic Regions to add shad and river herring  
5 as managed stocks in such plans consistent with sec-  
6 tion 302(h)(1) of the Magnuson-Stevens Fishery  
7 Conservation and Management Act (16 U.S.C.  
8 1852(h)(1));

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

18           (3) notwithstanding any other law, rule, or fish-  
19 ery management plan provision, including conserva-  
20 tion and management measures under section  
21 303(a)(11) of the Magnuson-Stevens Fishery Con-  
22 servation and Management Act (16 U.S.C.  
23 1853(a)(11)), reallocate existing resources to pro-  
24 vide, for not less than 50 percent of all relevant fish-  
25 ing trips, not fewer than one at-sea observer or an

1 on-board electronic or video means of producing  
2 equivalent at-sea monitoring information, for any  
3 vessel using mid-water trawl or paired mid-water  
4 trawl fishing gear in the Atlantic herring and Atlan-  
5 tic mackerel fisheries.

6 **SEC. 10. RULE OF CONSTRUCTION.**

7 Nothing in this Act shall be construed as—

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

10 (2) affecting—

11 (A) section 306 of the Magnuson-Stevens  
12 Fishery Conservation and Management Act (16  
13 U.S.C. 1856); or

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

○