



## Mid-Atlantic Fishery Management Council

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Michael P. Luisi, Chairman | G. Warren Elliott, Vice Chairman  
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December 9, 2019

The Honorable Rob Bishop  
United States House of Representatives  
123 Cannon Building  
Washington, DC 20515

Subject: MAFMC Comments on H.R. 2236, "*The Forage Fish Conservation Act*"

Dear Representative Bishop:

The Mid-Atlantic Fishery Management Council ("The Council") appreciates the opportunity to comment on H.R. 2236, "*The Forage Fish Conservation Act*," introduced by Representative Dingell (D-MI). The following comments reflect discussion by the Council during our October 2019 meeting. These comments are intended to convey the points of previous majority Council agreement, but they do not reflect the perspectives of all members, past or current.

### **Overview of Existing Council Management of Forage Fish**

In 2016, the Council adopted a policy of supporting the "maintenance of an adequate forage base in the Mid-Atlantic to ensure ecosystem productivity, structure and function, and to support sustainable fishing communities." The Council acknowledges the important role that forage species play in the marine ecosystem and has worked proactively to effectively manage and conserve these species. The Council has developed several management measures to protect and manage forage fish in the Mid-Atlantic, as described in more detail below. We believe that these existing measures meet the intent of H.R. 2236.

Since 1983, the Council has managed four forage species – Atlantic mackerel, *Illex* squid, longfin squid, and butterfish – under a single Fishery Management Plan (FMP). In 2019, the Council approved an amendment to add Atlantic chub mackerel to this FMP. The Council sets annual catch limits, accountability measures, and other management measures that are intended to prevent overfishing while allowing these fisheries to achieve optimum yield.

In August 2016, the Council designated 16 previously unmanaged forage species groups as "ecosystem components" in all the Council's FMPs and established a commercial possession limit for these species in Mid-Atlantic federal waters. The intent of this action was to prohibit the development of new, and expansion of existing, directed commercial fisheries on certain unmanaged forage species in Mid-Atlantic federal waters until the Council has had an adequate opportunity to assess the scientific information regarding potential impacts to existing fisheries, fishing communities, and the marine ecosystem.

### **Comments on H.R. 2236**

Section 9 of H.R. 2236 would require the Council to add river herring and shad (RH/S) as managed stocks within the Mackerel, Squid, and Butterfish (MSB) FMP. While the importance (from fishery, cultural, and ecological perspectives) of RH/S has never been in dispute, the Council has previously voted twice to not

manage RH/S under a Council FMP<sup>1</sup>. The rationale, detailed in related supporting documents<sup>2</sup>, has been that (1) there is no evidence that RH/S are targeted in federal fisheries (despite spending the majority of their lives in the ocean), (2) RH/S are already being managed by the ASMFC<sup>3</sup>, (3) a Council FMP would not substantially improve the condition of RH/S stocks, and (4) the Council limits the catch of RH/S in federally-managed fisheries and reviews its approach annually.

It is important to note that contrary to the majority conclusion described above, some Council members believed, and continue to believe, that Council management would add substantially to RH/S conservation and that ocean bycatch is a primary reason why other RH/S conservation efforts (e.g. fish passage on the Susquehanna River) have not produced the desired results.

The Council acknowledges that there are still several outstanding lawsuits that have the goal of requiring management of RH/S under a Council FMP. If the facts and final results of these lawsuits determine that previous Council logic was faulty, and management under the Magnuson-Stevens Act is appropriate, the Council will take all appropriate action.

Because RH/S are caught in fisheries targeting other species that are managed by the Council, the Council works closely with its management partners, including the NOAA/ASMFC Technical Expert Working Group to promote the conservation of RH/S. The Council limits the incidental catch of RH/S in the Atlantic mackerel fishery through a catch cap that can and has closed the directed mackerel fishery when the cap is reached. The New England Council has similar provisions for the Atlantic Herring fishery. The combined caps on these federal fisheries allow catches representing only a few percent of historic RH/S landings (about 500 metric tons annually versus 20,000-35,000 metric tons annually of directed RH/S landings in the 1950s and 1960s).

Section 9 of H.R. 2236 would require the Council to complete an amendment to add RH/S as managed stocks to the MSB FMP within 6 months. Within the following year, the Council would be required to complete additional amendments “in order to develop and implement all required conservation and management measures for such stocks.” These timing requirements are problematic and unrealistic for several reasons. First, the Council could not add RH/S to an FMP without simultaneously establishing management measures for those stocks; the management measures are what makes an FMP. The Magnuson-Stevens Fishery Conservation and Management Act specifies that any FMP must contain the measures which are necessary and appropriate for the conservation of the fishery, to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery (16 U.S.C. §1853(a)(15)). Because the Council would add RH/S to the FMP and establish management measures within a single amendment, it does not make sense to include two separate timelines in the bill.

Additionally, the time requirements in Section 9 are not realistic and could not be met, according to procedures described in the MSA and the National Environmental Policy Act (NEPA). It generally takes **2.5-4.5 years** to complete a new FMP or major amendment, from the time the Council initiates action to implementation of new regulations. For example, when the Council established management of blueline tilefish through an amendment to the Tilefish FMP, it took about 2.5 years from initiation to final rule. Blueline tilefish is a single species that only resides in offshore federal waters with few stakeholders, narrow habitat requirements, and a clear need for federal management. An overview of the FMP/Amendment

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<sup>1</sup> Council Votes to Initiate Interagency Working Group on River Herring and Shad, October 2013 ([http://www.mafmc.org/s/pr13\\_15\\_RHS-Working-Group-Am15.pdf](http://www.mafmc.org/s/pr13_15_RHS-Working-Group-Am15.pdf)); Council Votes to Continue Collaborative Efforts on River Herring and Shad, October 2016 ([http://www.mafmc.org/s/pr16\\_16\\_RHS-Management.pdf](http://www.mafmc.org/s/pr16_16_RHS-Management.pdf)).

<sup>2</sup> River Herring And Shad - Potential Management By the Mid-Atlantic Fishery Management Council, October 2016 Discussion Document ([http://www.mafmc.org/s/MAFMC-RHS-Decision-Documents\\_2016-10.pdf](http://www.mafmc.org/s/MAFMC-RHS-Decision-Documents_2016-10.pdf)).

<sup>3</sup> See <http://www.asmfc.org/species/shad-river-herring> for details on ASMFC management.

development process and timeline is available at <http://www.mafmc.org/s/MAFMC-FMP-Amendment-Timeline.pdf>. If Congress did decide to require Council FMP management of RH/S, the upper range of FMP implementation timing may be more appropriate, especially considering that our previous work on this issue indicated that a Council FMP would not substantially improve the condition of RH/S stocks.

Once again, thank you again for the opportunity to comment on this proposed legislation. Please don't hesitate to contact me if you have any questions or would like clarification on any of the comments above. The Council would be pleased to provide additional comments if requested as the bill goes through the legislative process.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Moore".

Dr. Christopher M. Moore  
Executive Director

Cc: Michael Luisi, Chairman  
Mid-Atlantic Fishery Management Council and Staff  
Council Coordination Committee  
Chris Oliver, NOAA Fisheries  
William Ball, House Committee on Natural Resources  
Dave Whaley