

Statement for the Record

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

U.S. DEPARTMENT OF COMMERCE

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

JANUARY 20, 2022

Chairman Grijalva, Ranking Member Westerman, and Members of the Committee, thank you for the opportunity to provide comments regarding H.R. 3540, the Chesapeake Science, Education, and Ecosystem Enhancement Act, and also on H.R. 4057, To Implement the Agreement on the Conservation of Albatrosses and Petrels. NOAA supports the intent and substance of both bills.

H.R. 3540 would reauthorize the NOAA Chesapeake Bay Office, update our legislative authority, and provide additional direction and flexibility. We would like to thank Rep. Sarbanes for introducing this important piece of bipartisan legislation along with the bill's sixteen co-sponsors who represent the Chesapeake Bay watershed jurisdictions of Maryland, Virginia, Pennsylvania, Delaware, and the District of Columbia.

NOAA Chesapeake Bay Office

The NOAA Chesapeake Bay Office (NCBO) is a division of the Office of Habitat Conservation within the NOAA National Marine Fisheries Service. NCBO uses its capabilities in science, restoration, and community engagement to improve the understanding, management, and stewardship of the Chesapeake Bay. NCBO focuses on sustainable fisheries and habitat science, oyster restoration, oceanographic and meteorological observations, environmental literacy, and community partnerships.

NOAA has been a partner in the Chesapeake Bay Program since 1984. In 2014, NOAA and its Federal and state partners committed to the Chesapeake Bay Watershed Agreement, which included goals supporting the restoration and protection of the Bay watershed and guiding the work of the Chesapeake Bay Program.

NCBO is the Federal agency lead working to implement the Watershed Agreement objectives for oysters, blue crabs, forage species, and fish habitat. As part of this effort, NCBO is working with partners to support the restoration of oyster populations in 10 Bay tributaries by 2025—the largest oyster reef restoration project in the world. NCBO funds important fisheries research that provides real-world applications that support Federal and state marine resource managers.

NCBO is also committed to place-based initiatives to improve fisheries habitat and coastal community resilience in the Choptank River Habitat Focus Area in Maryland and the Middle Peninsula of Virginia.

NCBO monitors Bay conditions by maintaining the Chesapeake Bay Interpretive Buoy System. This network of buoys, acoustic receivers, and water column sensors tracks water quality, fish movement, and weather information at key locations and delivers this data to NOAA colleagues engaged in marine weather and ecological forecasting, as well as to boaters, recreational anglers, and other researchers.

In support of the Environmental Literacy Goal of the Watershed Agreement, NCBO partners with states and school districts throughout the region to increase systemic and sustainable implementation of K-12 environmental literacy programs through the Chesapeake Bay Watershed Education and Training (B-WET) competitive grant program.

Climate change is a critical issue facing the Chesapeake Bay and its watershed. Climate considerations are embedded into all NCBO does—from observations and fisheries research to education, workforce development, and community engagement programs. NCBO coordinates the Chesapeake Bay Program's climate and resilience activities, including supporting the development of green infrastructure in underserved communities.

Finally, NCBO is strongly committed to increasing diversity, equity, inclusion, and justice both in our office culture and in our programs. We do this by actively seeking engagement of underserved communities in our place-based initiatives, supporting internship programs focused on students from populations historically excluded from science fields, and ensuring our grant funding supports the priorities of diverse communities and is accessible to them.

H.R. 3540 - Chesapeake Science, Education, and Ecosystem Enhancement Act

NOAA supports the objectives of H.R. 3540, which would reauthorize the NOAA Chesapeake Bay Office and update its legislative authority.

The bill would recognize and provide authority for long-standing NCBO programs and activities, including two programs not included in the 2002 reauthorization act—the Chesapeake Bay Interpretive Buoy System and the Chesapeake B-WET Program. The Chesapeake Bay Coastal Living Resources Management and Habitat Program will also allow for development of programs that restore, protect, and build the resilience of critical coastal habitats and vulnerable communities to offset the effects of climate change.

This legislation would empower NCBO with the tools and capabilities to directly support the conservation and restoration goals of NOAA, the Chesapeake Bay Program, and the Chesapeake Bay Watershed Agreement.

H.R. 4057 to Implement the Agreement on the Conservation of Albatrosses and Petrels

NOAA supports passage of H.R. 4057 because this bill would enhance NOAA's goal of maintaining seabirds as integral components of healthy and resilient ocean ecosystems by providing clear authorities for managing seabirds and their habitats as well as providing for participation in all aspects of the Agreement on the Conservation of Albatrosses and Petrels (ACAP or the Agreement). If adopted, this bill would authorize the Secretaries of Commerce and the Interior to undertake a range of activities to reestablish, manage, and conserve albatross and petrel species. NOAA supports becoming a Party to ACAP and appreciates Congress' efforts to work with the relevant agencies on accession to the agreement.

Albatrosses and petrels are among the most threatened birds in the world, with life history characteristics that make populations especially vulnerable to adult mortality. Bycatch in fisheries is widely recognized as one of the principal threats to albatrosses and petrels. Land-based threats, such as invasive predators, have also caused severe declines and even extirpation of some breeding colonies. Climate change may exacerbate these threats to populations, but also result in sea level rise and storm surges that affect breeding colonies.

Given the bycatch threat to these species, NOAA already undertakes a range of activities that are covered under the Agreement and would be authorized under H.R. 4057 to conserve albatrosses and petrels. However, we appreciate that H.R. 4057 would provide clearer and direct authority for the Secretary of Commerce to undertake activities related to albatross and petrel conservation.

The Magnuson-Stevens Act (MSA) regulates fish and fishing. The MSA does require certain activities to minimize bycatch in U.S. fisheries but "bycatch" is limited to "fish." The statutory definition of fish is broad but explicitly does not include "birds" (16 USC 1802(12)). Nevertheless, there are a number of seabird avoidance measures that have been adopted for U.S. fisheries, primarily to avoid interactions with seabirds listed under the Endangered Species Act where applicable. Regulations for seabird bycatch mitigation measures were initially implemented under the MSA in certain fisheries in the Pacific Ocean subsequent to consultations

under the Endangered Species Act for the endangered short-tailed albatross. These measures have been beneficial for other albatrosses. NMFS and fishery management councils continue to monitor and assess the bycatch of seabirds and adapt and improve ways to mitigate bycatch within a fishery when it is determined to be warranted.

The authorities that would be provided by H.R. 4057 would complement current activities to address the bycatch of seabirds carried out under the *National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries* (NPOA-Seabirds), the NMFS National Seabird Program: Five-Year Strategic Plan, and the inclusion of seabirds in the National Bycatch Reduction Strategy. Even though seabird interactions are not considered to be bycatch, MSA Section 316(a) does provide for a Bycatch Reduction Engineering Program to develop technological devices and other conservation engineering changes designed to minimize bycatch, seabird interactions, bycatch mortality, and post-release mortality, and MSA Section 316(c) authorizes the Secretary of Commerce to undertake projects in cooperation with industry to improve information and technology to reduce seabird bycatch.

While the MSA only provides NOAA with the authority to manage 'fishing' as defined in Section 3 of the Act, it does also allow for discretionary measures 'to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations' (16 USC 1853(12)).

As indicated, the foregoing authorities provide NOAA with certain limited authority to address seabird interactions in fisheries. The measures contained in H.R. 4057 provide clearer and direct authority to address fisheries impacts on seabirds. Although NOAA would not be able to use its MSA authority to undertake activities under H.R. 4057 that are intended to address non-fishing impacts to seabirds and seabird habitats, NOAA could explore collaboration with the Department of the Interior to address these issues under existing authorities such as the Migratory Bird Treaty Act (16 U.S.C. 703–712) and relevant new authorities provided by Section 701 of H.R. 4057.

Section 104(c)(2) of H.R. 4057 contains provisions that reinforce NMFS's current monitoring of seabird bycatch in several fisheries, generating compilations of seabird bycatch reported by fisheries observers and bycatch estimates within a fishery. Also, Section 105 of H.R. 4057 reinforces NMFS's current outreach efforts with the fishing industry to discuss seabird bycatch trends and potential bycatch mitigation measures. In some cases, this outreach resulted in trials at sea as part of plans to develop or improve seabird bycatch mitigation measures. Work is also underway to study plastic ingestion, which would be further validated by Section 104(a) of H.R. 4057.

In addition to developing and undertaking measures to minimize bycatch of ACAP covered albatrosses and petrels, H.R. 4057 provides a comprehensive set of measures to ensure food resources for these species, manage non-native species in their habitats, develop and implement

measures for conserving and protecting such habitats, minimize effects of marine debris on these species, conduct research and monitoring, exchange information, and provide training and education, among other provisions. The provisions also include a prohibition on the take of covered albatrosses and petrels. Fishing vessels that incidentally take these species, however, would not be in violation of this prohibition if the vessels carry out the measures that NMFS implemented for minimizing bycatch.

Conservation of these migratory species would also be enhanced, under Section 601 of H.R. 4057, by the inclusion of seabirds protected under U.S. law or international agreements in the definition of protected living marine resources (PLMRs) under the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act). As a result, NMFS would be able to identify a nation if its fishing vessels engaged in fishing practices (during the relevant time period) that result in the bycatch of protected seabirds on the high seas or in areas beyond the EEZ of the United States if the PLMR is shared by the United States; the relevant international organization has failed to implement effective measures to end or reduce such bycatch, or the nation is not party to such organization; and the nation has not adopted a regulatory program designed to end or reduce such bycatch that is comparable to that of the United States. If H.R.4057 is passed, NMFS would need to amend its regulations for implementation of the Moratorium Protection Act, to make the regulatory definition of PLMR consistent with H.R. 4057 by including the seabird species in the scope of PLMRs.

In joining ACAP, the United States, a leader in science-based fisheries management, would signal its commitment to coordinating with other countries in multilateral efforts to address the many threats that albatross and petrel populations face. The United States would also more fully participate, through the rights to vote at ACAP meetings, chair the Meeting of the Parties and ACAP Advisory Committee or its working groups, and propose amendments to the Agreement and its Annexes. The United States would have greater influence over the research, development, and implementation of international standards for minimizing the incidental bycatch of seabirds in fisheries operations. This would provide an opportunity for the United States to level the playing field between foreign fishing fleets and U.S. fishing fleets that employ progressive mitigation practices and other measures required by NOAA.

Thank you again for the opportunity to provide feedback to the Committee. We appreciate the leadership by House Natural Resources Members on issues related to conservation and restoration of habitats and fish and wildlife and look forward to working with as you advance these bills and other legislation.