



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

July 14, 2025

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: *New England Fishermen's Stewardship Ass'n v. Pelter*, No. 23-cv-339 (D. Me.)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has decided not to defend the constitutionality of certain provisions of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, in the above-captioned case. A copy of the opinion of the U.S. District Court for the District of Maine is enclosed.

The Magnuson-Stevens Act empowers the Secretary of Commerce to manage and conserve the Nation's fisheries with the assistance of eight Regional Fishery Management Councils. The plaintiffs in this case challenged a fishery regulation on the ground that the Act's provisions governing the selection of the Councils' members are invalid. They argued that the members are officers of the United States who must be selected in accordance with the Constitution's Appointments Clause.

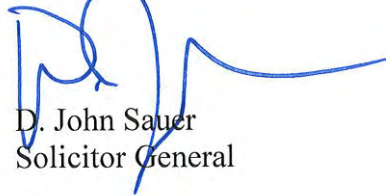
The district court sustained the Appointments Clause challenge in part. The court upheld the Magnuson-Stevens Act's core features, holding that most of the Councils' functions consist of making recommendations and therefore comply with the Appointments Clause. But the court held that two rarely invoked ancillary provisions of the Act—under which the Secretary must obtain a Council's concurrence before adopting certain limits on access to fisheries, see 16 U.S.C. 1854(c)(3), or repealing a fishery management plan, see 16 U.S.C. 1854(h)—are invalid.

The Department of Justice defended the Act's core features in district court, and it plans to continue doing so on appeal. The Department also plans to argue on appeal that the plaintiff lacks standing to challenge the Act's ancillary provisions. The Department has decided, however, not to defend the constitutionality of those provisions on the merits. The Appointments Clause governs the appointment of officers of the United States—that is, individuals who occupy continuing positions established by federal law and who exercise significant governmental authority. See *Lucia v. SEC*, 585 U.S. 237, 245 (2018). To the extent that the ancillary provisions empower the Regional Councils to block fishery management and conservation provisions that the Secretary wishes to adopt, they violate the Constitution by vesting continuing

and significant authority in Council members who are not federal officials selected in accordance with the Appointments Clause.

Please let me know if we can be of any further assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. John Sauer", with a long horizontal flourish extending to the right.

D. John Sauer
Solicitor General

Enclosure