Bristol Bay Fishermen's Association
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November 15, 2026

Senators Murkowski, Sullivan, Cantwell, Whitehouse,

Re: BBFA **opposes** the "Bipartisan American Affordability and Jobs Act of 2026" – both S. 5653 and the proposed Amendment in the Nature of a Substitute – because it increases the likelihood of an ecologically dangerous Pebble mine in Southwest Alaska.

Dear Senators,

The Bristol Bay Fishermen's Association (BBFA) is the largest and oldest voluntary association of holders of commercial salmon fishing permits in Bristol Bay, Alaska. It is the world's largest commercial salmon fishery, accounts for half of the world supply of sockeye salmon, about 15,000 jobs, and billions in commerce.

For two decades, the proposed Pebble mine has threatened that fishery. EPA's determination in 2023 under § 404(c) of the Clean Water Act ("CWA") *prohibits* and *restricts* discharges of dredged and fill material that exceed certain levels of harm associated with the 2020 Mine Plan of the Pebble Limited Partnership ("PLP") but does not prohibit future applications to develop a Pebble mine or eliminate the threat posed by a Pebble mine.

Now, the "Bipartisan American Affordability and Jobs Act of 2026" adds to the threat. For the following reasons, BBFA opposes that Act its current version, S. 5653, and as in the recently proposed Amendment in the Nature of a Substitute.

A. The bill facilitates Pebble mine by amending NEPA to define "major federal action" in a manner which excludes a "non-Federal project . . . with no or minimal Federal funding," such as Pebble mine, from review under NEPA.

Section 1102 of S. 5653 and the substitute would amend the National Environmental Policy Act ("NEPA") by adding definitions to 42 U.S.C. § 4321, including a proposed definition of "major federal action" – which triggers an environmental impact statement. That definition contains the following exclusion:

> (B) EXCLUSIONS.—The term 'major Federal action' *does not include*—
> (i) a proposed agency action associated with a *non-Federal project* or undertaking—
> (I) *with no or minimal Federal funding*;
> (II) with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project or undertaking; *or*
> (III) for which the only Federal involvement is a loan guarantee or loan, excluding assistance under chapter 6 of title 23 or chapter 224 of title 49, United States Code;

This amendment appears to eliminate environmental review under NEPA with respect to all future plans for a Pebble mine, because the proposed mine is on state public land and the only major federal requirement currently in place is that PLP must obtain a § 404 permit. This amendment would deprive the Corps of Engineers, other

agencies, and the public of the benefit of the information provided by an environmental impact statement on Pebble mine because it would be a "non-Federal project . . . with no . . . Federal funding." BBFA opposes this bill because it facilitates a Pebble mine by gutting NEPA review of future applications for permits for a Pebble mine.

B. The bill also facilitates Pebble mine by amending § 404 of the Clean Water Act to eliminate the regulatory portion of EPA's authority under § 404.

Section 1204 of S. 5653 and the substitute would amend § 404 of the CWA to provide that EPA can exercise its § 404(c) authority "only during the period that . . . begins on the date on which an applicant submits a complete application under this section" and "ends on the date on which the Secretary [of the Army through the Corps of Engineers] issues the permit.'' That has several flaws.

First, it appears to bar EPA from making a § 404(c) determination if the Corps denies an application as occurred in the case of PLP's 2020 Mine Plan.

Second, in the case of Pebble mine, EPA's § 404(c) determination has two parts:

(1) an *adjudicatory* prohibition of discharges of dredged or fill material under PLP's application for a §404 permit for PLP's 2020 Mine Plan, and that prohibition applies only to that application, and
(2) a *regulatory* restriction by rule-making which restricts future applications to develop a Pebble mine if they would exceed the levels of harm in the 2020 Mine Plan.[1]

This distinction between agency adjudication of an existing application and agency regulation by rule-making regarding future applications is rooted in the Administrative Procedure Act, and neither the adjudicatory prohibition nor the regulatory restriction prohibit future applications or eliminate the threat posed by a Pebble mine.

However, section 1204 of the bill and substitute eliminate EPA's ability to impose a regulatory restriction on future applications. That is inefficient. That begs an applicant to wait for a favorable federal administration and is poor governmental policy because it renders § 404(c) ineffective.

Third, the bill creates ambiguity by titling the period during which EPA can exercise § 404(c) authority as a "Period of Prohibition" when § 404(c) contains authority to "prohibit," "withdraw," "restrict," and "deny" the specification of a disposal site for dredged or fill material or use of an area for such specification. That inconsistency is poor drafting.

C. BBFA's Request and Recommendation

BBFA requests that you vote against cloture and oppose the bill. BBFA recommends that this bill should be sent back to the relevant committees for more work.

Sincerely,



Luke Peterson, BBFA President

[1] See Chapter 5, pp. 5-1 – 5-13, in EPA's final § 404(c) determination at https://www.epa.gov/bristolbay/final-determination-pebble-deposit-area.