

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

December 11, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff—Subcommittee on Water, Power and Oceans (x58331)

Mark-Up: **H.R. 200 (Rep. Don Young, R-AK)**, To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes.
December 12-13, 2017; 1324 Longworth HOB

H.R. 200 (Rep. Don Young), “*Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act*”

Summary of the Bill

H.R. 200, introduced by Chairman Emeritus Don Young, reauthorizes the Magnuson-Stevens Fishery Conservation and Management Act, which is the primary law governing fisheries resources and fishing activities in United States federal waters. H.R. 200 tailors federal fishery management actions to give Regional Fishery Management Councils (Councils) the proper tools and flexibility to manage their fisheries effectively. The bill specifically: 1) affords flexibility by allowing Councils to base fishery stock rebuilding timeframes on science rather than the one-size-fits-all approach; 2) inserts greater transparency in science and management by including the public more in the development of science and Fishery Management Plans (FMPs); 3) gives stakeholders a voice in the management process and requires the Secretary of Commerce (Secretary) to develop a plan for implementing cooperative research with fishermen and outside groups; and 4) seeks to further improve the science and data that Councils base their management on, including key provisions relating to the collection of data from the recreational saltwater fishing industry.

This bill is very similar to H.R. 1335, which passed the House of Representatives by a bipartisan vote in June 2015.¹

Background

In 2015, commercial and recreational saltwater fisheries supported 1.6 million U.S. jobs.² Commercial and recreational fisheries combined generated upwards of \$208 billion in sales impact, and nearly \$97 billion in value-added impacts to the U.S. economy.³

¹ [U.S. House of Representatives Roll Call vote 267, H.R. 1335, June 1, 2015](#)

² [Department of Commerce: Fisheries Economics of the United States 2015, May 2017, p.6](#)

³ [Id at 2, p.6](#)

The Magnuson-Stevens Fishery and Conservation Management Act, commonly referred to as the “Magnuson-Stevens Act,” or “MSA,” was enacted in 1976 and since then, has been the primary law governing fisheries resources and fishing activities in federal waters. The Secretary, working through the National Oceanic and Atmospheric Administration (NOAA), enforces the MSA.

The original MSA created eight Councils charged with implementing the goals of MSA, in coordination with NOAA.⁴ This process of managing fisheries is accomplished through Council-based Fisheries Management Plans (FMPs) for each fishery. FMPs require scientific stock assessments of the fishery. Following the Council’s development of an FMP, the Council forwards the plan to the Commerce Secretary for approval. If the plan is approved, the National Marine Fisheries Service (NMFS) within NOAA must then issue regulations to implement a plan.⁵

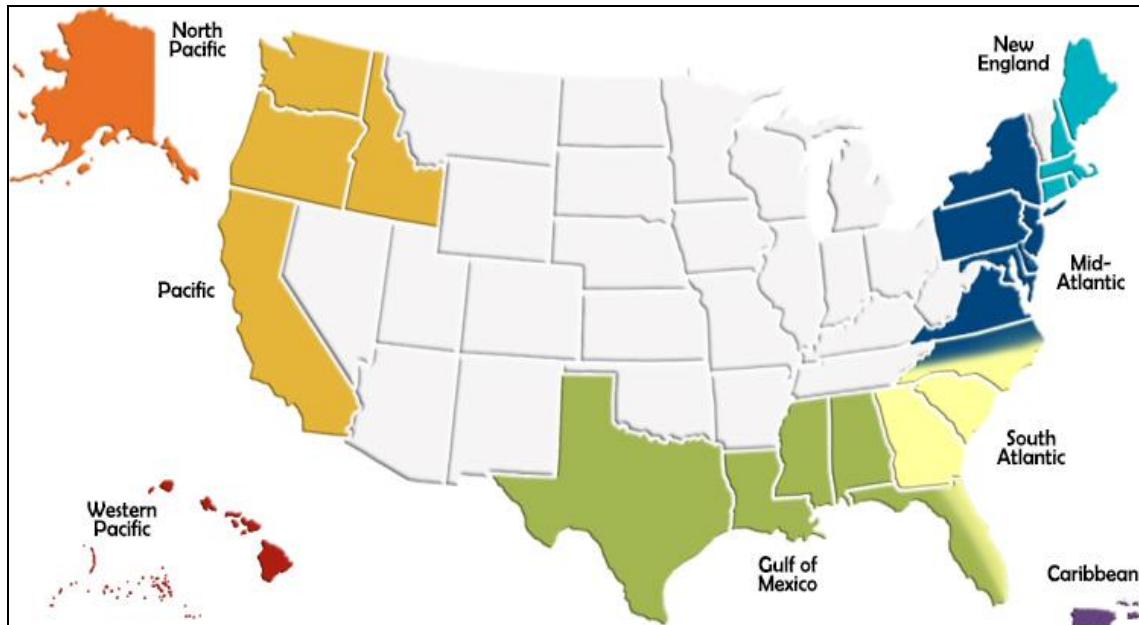


Figure 1: The eight Fishery Management Councils established by MSA.

Source: NOAA Fisheries

Congress reauthorized MSA in 1996⁶ and 2006.⁷ According to some, NOAA added layers of precaution in its implementation of the 2006 amendments with regard both to scientific and management uncertainty.⁸ In a July 2017 hearing, the Subcommittee on Water, Power and Oceans (Subcommittee) explored the successes and challenges of implementing MSA since the 2006 amendments. Mr. Nick Wiley, Executive Director of the Florida Fish and Wildlife Conservation Commission, testified that “[t]he requirements to manage fisheries under strict annual catch limits, the overly prescriptive constraints for stock rebuilding plans, and general

⁴ <http://www.nmfs.noaa.gov/sfa/management/councils/>

⁵ <http://www.fisherycouncils.org/>

⁶ U.S. P.L. 104-297

⁷ U.S. P.L. 109-479

⁸ [Testimony of Mr. Richard Robins, Jr. before the House Committee on Natural Resources, September 11, 2013.](#)

inflexibility within the current version of the law have hindered management of fish stocks in the South Atlantic and Gulf of Mexico. This inflexibility has fostered a serious erosion of public confidence, trust, and support for this fishery management system.”⁹

H.R. 200 would improve the management process by affording regional fisheries managers the flexibility to manage stocks effectively and to better tailor management plans to the needs of their regions.

Major Provisions/Analysis of H.R. 200

Section 4. Flexibility in Rebuilding Fish Stocks

This section would improve fisheries science by basing fish stock rebuilding timeframes on such stock’s biology rather than on an arbitrary, one-size-fits-all deadline. Section four specifically: 1) removes the language requiring a 10-year time frame for rebuilding overfished/depleted fisheries and replaces it with a requirement that the rebuilding timeframe be the time it would take for the fishery to rebuild without any fishing occurring plus one mean generation time; 2) allows Councils to phase in rebuilding plans for highly dynamic fisheries over a three-year period to lessen the economic harm to fishing communities; 3) replaces the term ‘possible’ with ‘practicable’ in the requirement that rebuilding period ‘be as short as possible;’ and 4) allows Councils to take into account environmental conditions and predator/prey relationships when developing rebuilding plans.¹⁰

Section 5. Modifications to the Annual Catch Limit requirements

This section gives Councils the flexibility they need to develop fishery management plans that are tailored to regional needs by allowing Councils to consider changes in the ecosystem and the economic needs of the fishing communities when setting Annual Catch Limits (ACLs).¹¹ This will allow flexibility but not allow Councils to set ACLs at a level that allows overfishing. This section also adds a new exception to the requirement that Councils set an ACL for ‘ecosystem component species’ – those species of fish that are not targeted and are caught incidentally as long as that stock of fish is not subject to overfishing and is not likely to become subject to overfishing – and provides an exemption for those short-lived stocks of fish for which a single year class will complete their lifecycle in less than eighteen months as long as fishing mortality will have little impact on the stock.¹²

Section 6. Distinguishing Between Overfished and Depleted

Section six defines “depleted” as a stock where biomass has declined below levels that allow that stock to produce maximum sustainable yield on a continuing basis.¹³

⁹ [Testimony of Mr. Nick Wiley before the House Committee on Natural Resources, July 19, 2017](#)

¹⁰ [H.R. 200, Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, introduced by Rep. Don Young \(R-Ak\) 115th Congress, Section 4](#)

¹¹ [Id, Section 5](#)

¹² [Id, Section 5](#)

¹³ [Id, Section 6](#)

Section 7. Transparency and Public Process

Transparency and public oversight are key to ensuring that the NMFS manages our nation's fisheries to the benefit of the stocks and our fishermen. Section 7 works to improve transparency in NMFS science and management by requiring Scientific and Statistical Committees (SSCs) develop the scientific advice provided to the Councils in a transparent manner and to allow for public involvement in the process.¹⁴ This section also requires that each Council, to the extent practicable, provide a webcast, audio recording, or live broadcast of each Council meeting. This section also requires audio, video, searchable audio or written transcript for each Council and SSC meeting on the Council's website not more than 30 days after the conclusion of the meeting.¹⁵

Section 8. Limitation on Future Catch Share Programs

This section aims to integrate stakeholders into fisheries management by creating a pilot project prohibiting the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils from implementing any new catch share program unless it has been approved by an industry referendum vote. Any federal permit holder who has fished in at least three of the five years preceding the referendum – unless sickness, injury or other unavoidable hardship prevented the permit holder from fishing – would be eligible to vote in the referendum. Prior to any such referendum vote, the Secretary of Commerce (Secretary) would be required to provide all eligible permit holders with a copy of the proposed program, an estimate of the costs of the program (including the costs to participants), and an estimate of the amount of fish or percentage of the quota each permit holder would be allocated.¹⁶ Outside of the four Councils referenced above, this section prevents the Secretary from implementing a catch share program for any federally managed fishery unless first petitioned by a majority of those eligible to participate in the fishery.¹⁷

Section 9. Report on Fees

This section requires the Secretary to generate an annual report on certain fees collected and how any such funds have been spent in the prior year on a fishery-to-fishery basis.¹⁸

Section 10. Cooperative Research and Management Program

Cooperative research and management together have the benefits of building trust between fishermen and the government and lowering data collection costs. This section expedites the implementation of cooperative research and management program by requiring the Secretary to publish a plan for implementing and conducting the program.¹⁹ The plan should

¹⁴ [Id., Section 7](#)

¹⁵ [Id., Section 7](#)

¹⁶ [Id., Section 8](#)

¹⁷ [Id., Section 8](#)

¹⁸ [Id., Section 9](#)

¹⁹ [Id., Section 10](#)

identify and describe critical regional fishery management and research needs, possible projects to address the identified needs, and the estimated costs for such projects.

Section 11. Council Jurisdiction for Overlapping Fisheries

To address unique management hurdles for fisheries that occur within multiple fishery management councils, this section establishes a “liaison” for each of the New England and Mid-Atlantic councils to ensure continuity of management between the councils on shared stocks.²⁰

Section 12. Gulf of Mexico Cooperative Research and Red Snapper Management

The Gulf of Mexico Red Snapper is a stock that has become the poster child for poor data and management by NMFS. H.R. 200 makes several revisions, in sections 12, 17, and 20, to the research and management of this species in the Gulf. This section requires the Secretary – in conjunction with the Gulf States, the Gulf of Mexico Council, and the charter and recreational fishing sectors – to develop and implement a real-time reporting and data collection program for the Gulf of Mexico Red Snapper fishery using available technology and a cooperative research program for fisheries in the Gulf of Mexico and the South Atlantic regions giving priority to those fisheries that are considered data poor.²¹

The section further improves the data collection of stocks in the Gulf of Mexico by requiring the Secretary to develop a schedule of stock surveys and stock assessments for the five-year period beginning on the date of enactment and for every five-year period thereafter, giving priority to those stocks that are commercially or recreationally important and ensuring that each important stock is surveyed at least once every five years.²² The section also corrects a discrepancy between management of Red Snapper by the Gulf States by extending state management out to nine nautical miles for the recreational sector of the Gulf of Mexico Red Snapper fishery.²³

Section 14. Ensuring Consistent Management for Fisheries Throughout their Range

This section ensures consistent and transparent fisheries management by affirming that MSA is the ultimate authority in fisheries management in federal waters. Specifically, this section looks to minimize conflicts between different offices within NOAA by formally stating that the open, transparent, stakeholder driven fishery management councils would set fisheries regulations within Marine National Monuments and Marine Sanctuaries. This section also states that any fishery restrictions necessary to implement a recovery plan under the Endangered Species Act (ESA) are done so through the authority of MSA. This section does nothing to rescind or adjust the boundaries of any Marine National Monument or Marine Sanctuary, nor does this section eliminate species protection under ESA.²⁴

²⁰ [Id., Section 11](#)

²¹ [Id., Section 12](#)

²² [Id., Section 12](#)

²³ [Id., Section 12](#)

²⁴ [Id., Section 14](#)

Section 15. Limitation on Harvest in North Pacific Directed Pollock Fishery

Many of the provisions in H.R. 200 result in greater flexibility for Councils to manage to the needs of their region. This section allows the North Pacific Council to change the harvest limitation under the American Fisheries Act for entities engaged in the directed Pollock fishery as long as that percentage does not exceed 24%.²⁵

Section 16. Recreational Fishing Data

According to a recent NOAA report, roughly twelve million recreational anglers took saltwater fishing trips in the U.S. annually from 2003-2012.²⁶ An industry that supported 381,000 American jobs in 2012,²⁷ the recreational saltwater fishing industry is a significant economic player. To address the growth of this industry, H.R. 200 takes several steps to improve the collection of recreational fishing data to improve management and ensure maximum access to our marine resources by the recreational industry.

This section specifically: 1) requires the Secretary to establish partnerships with states to develop best practices for implementing state recreational fisheries programs and to develop guidance that detail best practices for administering state programs; 2) requires a grant program to states to improve implementation of state recreational data collection programs and requires the Secretary to prioritize the grants based on the ability of the grant to improve the quality and accuracy of the data collection programs; and 3) requires the Secretary to enter into an agreement with the National Research Council (NRC) to study the implementation of the existing recreational data collection programs. The study must provide an updated assessment of recreational survey methods, an evaluation of the extent to which the 2006 NRC's recommendations have been implemented, and an examination of any limitations to the previous and current NOAA recreational data collection programs.²⁸

Section 17. Stock Assessments Used for Fisheries Managed under the Gulf of Mexico Council's Reef Fish Management Plan

Currently, the Gulf of Mexico Fishery Management Council has the responsibility of stock assessments and management of reef fish in the Gulf of Mexico. To address concerns surrounding the collection of data by NMFS, data is then passed down to the Council for use in management decisions. H.R. 200 gives the responsibility of providing this data to the Gulf States. This section requires the Gulf States, acting through the Gulf States Marine Fisheries Commission, to act as the entity responsible for providing the stock assessment information for the Gulf of Mexico Fishery Management Council for fisheries managed under the Reef Fish Plan. This section requires that the stock assessments incorporate fisheries survey information

²⁵ [Id., Section 15](#)

²⁶ [Fisheries Economics of the United States 2012 – Department of Commerce, Feb. 2014 , p.10](#)

²⁷ [Id., p. 8](#)

²⁸ [H.R. 200, Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, introduced by Rep. Don Young \(R-Ak\) 115th Congress, Section 16](#)

collected by university researchers and, to the extent practicable, use state, university, and private assets to conduct fisheries surveys.²⁹

Section 18. Estimation of Cost of Recovery from Fishery Resource Disaster

This section instructs the Secretary, within 30 days of declaring a fisheries disaster, to publish a cost estimation for recovery from such disaster. This provision is intended to assist Congress in appropriating fishery disaster funding should a disaster be declared by the Secretary.³⁰

Section 19. Deadline for Action on Request by Governor for Determination Regarding Fishery Resource Disaster.

Section 19 mandates that the Secretary make a determination regarding a fishery disaster request submitted by a Governor within 90 days of submission.³¹

Section 20. Prohibition on Considering Red Snapper Killed During Removal of Oil Rigs

This section works to ensure that fishermen are not adversely impacted by Red Snapper mortality outside of their control. This section prohibits the Secretary of Commerce from counting Red Snapper mortality that is a result of the removal of offshore oil rigs against the total allowable catch of that fish and from counting those fish toward the quota for U.S. fishermen for the purposes of closing the fishery when the quota has been reached.³²

Section 21. Prohibition on considering fish seized from foreign fishing

Illegal, Unreported, and Unregulated fishing is an international problem with significant domestic impacts. This section prohibits the Secretary from counting any fish seized from a foreign vessel engaging in illegal fishing in the U.S. Exclusive Economic Zone against the total allowable catch for U.S. fishermen.³³

Section 22. Subsistence Fishing

This section defines 'subsistence fishing' and requires the Governor of Alaska, when submitting nominations for the North Pacific Council, to consult with subsistence fishing interests of the State. In addition, this section adds the knowledge of subsistence fishing as a qualification that could be required of Council appointees.³⁴

²⁹ [Id, Section 17](#)

³⁰ [Id, Section 18](#)

³¹ [Id, Section 19](#)

³² [Id, Section 20](#)

³³ [Id, Section 21](#)

³⁴ [Id, Section 22](#)

Section 23. Inter-Section Trading of Commercial Catch Share Allocations in the Gulf of Mexico

This section prohibits inter-sector trading of catch shares in the Gulf of Mexico. Under this provision, commercial catch shares in the Gulf of Mexico could only be leased or sold to entities within the same commercial sector.³⁵

Section 24. Arctic Community Development Quota

Specific to fisheries managed under the North Pacific Fishery Management Council, this provision instructs the Secretary to set aside 10 percent of the total allowable catch within an Arctic fishery management plan to be used as a “community development quota.” This quota would be available to small coastal villages located north and east of the Bering Strait.³⁶

Section 25. Preference for Students Studying Water Resources Issues

This section instructs NOAA to give preference to college students that are studying water resource issues when contracting assessments to the private sector. This is intended to reduce NOAA’s costs for contracting out work to the private sector while also providing valuable experience to college students.³⁷

Section 26. Requirements for Limited Access Privileges

This section adds additional requirements to NOAA’s Limited Access Privilege Program. Specifically, this section requires formal five year reviews of implementation of the program to ensure accurate and fair implementation of the program.³⁸

Section 27. Healthy Fisheries Through Better Science

Section 27 requires the Secretary to develop and publish a plan to conduct stock assessments for all stocks of fish for which a fishery management plan is in effect. Such plans must be developed and published on the same schedule as required for the fisheries research strategic plan. A stock assessment is not required for a stock of fish in the plan if Commerce determines that the assessment is not necessary and justifies the determination in the Federal Register notice.³⁹

Additionally, this section instructs the Secretary to develop and publish guidelines to incorporate data, analysis, and stock assessments from nongovernmental sources into fisheries management decisions and to establish a registry of information providers.⁴⁰

³⁵ [Id., Section 23](#)

³⁶ [Id., Section 24](#)

³⁷ [Id., Section 25](#)

³⁸ [Id., Section 26](#)

³⁹ [Id., Section 27](#)

⁴⁰ [Id., Section 27](#)

Section 28. Authorization of Appropriations

This section extends the most current authorization levels for MSA from fiscal year 2018 through 2022.⁴¹

Section 29. Authority to use Alternative Fishery Management Measures

This section gives NOAA the authority to use alternative fishery management measures, such as factors applicable to the recreational fishermen (i.e. recreational fishermen don't have by-catch) when setting management plans for recreational fisheries, or recreational sectors of a mixed-use fishery.⁴²

Cost

The Congressional Budget Office (CBO) has not submitted a cost estimate for this bill. However, based on an estimate of a nearly identical measure (H.R. 1335) in the last Congress, the bill would likely cost \$1.5 billion in discretionary funding over five fiscal years.⁴³

Administration Position

Mr. Chris Oliver, Assistant Administrator for the National Marine Fisheries Service, testified in support of the themes of the bill at a September 26, 2017 Water, Power and Oceans legislative hearing stating that “[w]e support legislative opportunities to provide flexibility in applying annual catch limits, improve our science, and create innovative management approaches to rebuild more fish stocks”⁴⁴.

Anticipated Amendments

- Rep. Don Young – Mr. Young will offer an amendment in the nature of a substitute that restructures the bill and includes several provisions from S. 1520.

Effect on Current Law (Ramseyer)

See the bill's effect on current law [here](#).

⁴¹ [Id., Section 28](#)

⁴² [Id., Section 29](#)

⁴³ <https://www.cbo.gov/sites/default/files/hr13350.pdf>

⁴⁴ [Testimony of Mr. Chris Oliver before the Subcommittee on Water, Power and Oceans, September 27, 2017, p. 6.](#)