

MAGNUSON STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

REAUTHORIZATION EFFORTS

1st Session of the 114th Congress

A side-by-side comparison of the major elements of House and Senate MSFCMA reform legislation for the 1st Session of the 114th Congress is provided here by ROMEA. The House legislative effort was initiated by Alaska Rep. Don Young (supported by House Natural Resources Full Committee Chairman Rob Bishop; UT-3) with the introduction of H.R. 1335 – *“The Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act”*. H.R. 1335 was favorably reported to the full House by the Natural Resources Committee on May 29, 2014 where it passed on June 1, 2015 by a vote of 225-152.

The Senate Commerce Committee marked-up S. 1403, a “Manager’s Amendment” version of Florida Sen. Marco Rubio’s *“Florida Fisheries Improvement Act”* on June 25th 2015. This is the starting point for the MSA reauthorization effort in the Senate. During the Committee action the bill was opposed by eight Senators.

Prepared & Updated by: Rick Marks, ROMEA

Date: Updated June 25, 2015

<p><i>H.R. 1335 “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act”</i>; AK Rep. Don Young with Reps. Bishop/Byrne/Radewagen (passed the full House on 6/1/2015; vote 225-152)</p>	<p><i>S. 1403 “Florida Fisheries Improvement Act”</i>; FL Senator/Commerce Subcommittee Chairman Marco Rubio Passed the Senate Commerce Committee by voice vote on 6/25/2015</p>
<p>(New SEC. 23) SUBSISTENCE FISHING Tribal and Subsistence Issues: adds comprehensive definition of “subsistence fishing”; and consideration of subsistence experience as appropriate for RFMC nominations, esp. in Alaska</p>	<p>Tribes are afforded same status as States with respect to a federal fishery disaster request (See “FISHERIES DISASTER RELIEF” provision in “Additional Provisions” at the end of this side...)</p>
<p>SEC 4. FLEXIBILITY IN REBUILDING FISH STOCKS Replaces “possible with practicable”; replaces 10 year rebuilding requirement with time = “no fishing + 1MGT” for: international stocks under a formal & informal trans-boundary agreements; issues beyond RFMC control or when rebuilding cannot be effective by only limiting fishing; mixed stock allowance provided the weak stock does not become depleted; unusual events where rebuilding may negatively impact communities</p>	<p><u>Original rebuilding flexibility provisions contained in Sec.103 struck during Committee mark-up</u></p>
<p>REBUILDING PLANS: can now take into account environmental factors, predator/prey relationships; must include a schedule to review FMP targets and progress; can now use alternative harvest control rules and F-rates; rebuilding plan may be terminated if it is determined the depleted status was in error; emergency rule/interim measure period increased to 1-yr (from 180 days) with an option to extend for an additional 1-yr period</p>	<p>Provides the RFMC SSC’s the ability to use alternative management measures in recreational fisheries and for recreational components of mixed-use fisheries (e.g. extraction rates, F-rates, harvest control rules) -- if consistent with MSA requirements</p>
<p>SEC. 5 – MODIFICATIONS TO THE ANNUAL CATCH LIMIT (ACL) REQUIREMENT RFMCs may consider ecosystem changes and economic need of fishing communities when setting ACLs; new ACL exceptions – ecosystem component species; a species with a life cycle of approx. 1-yr or where more than half of a single year class will complete their life cycle in less than 18-mos and fishing mortality has little impact on the stock. RFMCs may also consider</p>	<p>Clarifies that ACL requirements will not apply for: short-lived species (12-mos or less; <u>reduced during Committee mark-up from 18-mos in original bill</u>); or to a fishery/species to which all spawning and recruitment occurs beyond state waters and the EEZ if not overfished</p>

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<p>international agreements, informal transboundary agreements and where no agreement exists but activities outside the EEZ hinder conservation efforts for species whose recruitment, distribution, life history or fishing activities are transboundary</p>	
<p>MULTISPECIES COMPLEX ACLs: can be set for a stock complex and for up to 3 years</p>	
<p>Defines “Ecosystem Component Species” as a non-target incidentally harvested species – or -- such species identified by a RFMC that is not depleted or likely to become depleted in the absence of management measures</p>	
<p>SEC 6. DISTINGUISHING BETWEEN OVERFISHED AND DEPLETED Clarifies the definition of “overfishing” at (34) by removing the term overfished from the existing definition</p> <p>Defines “depleted” as a stock or complex whose biomass has declined below a level that threatens to produce MSY; and replaces the term “overfished” with the term “depleted” each place it appears</p>	
<p>Requires Secretary to distinguish (in its Annual Report) between stocks that are depleted (or approaching that condition) due to fishing and those that are depleted due to factors other than fishing; Secretary must also state for each identified fishery whether they are the target of directed fishing</p>	
<p>SEC 7. TRANSPARENCY AND PUBLIC PROCESS RFMC SSC’S required to be transparent and provide for public participation; RFMCs/CCC must make available audio, webcast, or</p>	<p>RFMC SSC’s required to be transparent and provide for public participation; provides the SSC’s the ability to use alternative management measures in recreational fisheries and for recreational components of mixed-use fisheries (e.g. extraction</p>

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<p>live cast of meetings (to the extent practicable); and Secretary must archive RFMC and SSC meetings, video, transcripts</p>	<p>rates, F-rates, harvest control rules) -- if consistent with MSA requirements; RFMC’s where practicable, shall make available a video or audio webcast of RFMC and SSC meetings w/in 30 days</p>
<p>PAGE 11-16: NEPA STREAMLINING WITH NEW FISHERY IMPACT STATEMENT AND ADEQUACY DETERMINATION : for any FMP/amendment which details social and economic impacts, cumulative impacts, participants affected, safety, and must be made available 14 days prior to a RFMC meeting; this Section is intended to serve as a “FISH NEPA”</p>	
<p>SEC. 8 LIMITATION ON FUTURE CATCH SHARE PROGRAMS The term “catch share” is comprehensively defined; any future catch share program in the GOMEX/NE/SA/MID is required to have a fully-informed majority vote referendum by fishermen with landings in 3 of 5 recent years (hardship provided); in the GOMEX multispecies fishery, any active permit holder with landings in past 5 years can vote; in the NE region, crewmembers who derive a significant portion of their livelihood from such fishing can participate in the referendum; Sec is required to report annually to Congress on how fees are used to manage every existing catch share program</p> <p>(New SEC. 24) INTER-SECTOR TRADING OF COMMERCIAL CATCH SHARE ALLOCATIONS IN THE GOMEX Any commercial catch share allocation in the GOMEX may only be traded by sale or lease for use in the same commercial fishing sector</p>	

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<p>SEC 10. DATA COLLECTION AND CONFIDENTIALITY AND ELECTRONIC MONITORING Secretary shall issue national EM regulations & criteria w/in 12-months of data of Act; RFMCs may develop EM for their fisheries; prior to final regulations, RFMCs may also do EM pilot projects <i>(NOTE***this section is comprehensive...suggest interested parties read this section in its entirety)</i></p>	
<p>DATA CONFIDENTIALITY: defines confidential information comprehensively to include trade secrets, proprietary information, observer information, and information of a competitive business nature; specifies and reinforces how information is to be protected, and in what specific instances it can be shared</p>	
<p>USE OF ASSET FORFEITURE FUND: funds can be used for data collection in the region where collected; incl. for cooperative research and data poor-species surveys and assessments; includes use of State personnel and resources</p> <p>Floor Amendment successfully added by Rep. Keating (D-MA) to expand uses of AFF revenues for research, independent stock assessments, conservation gear engineering, shoreside and at-sea monitoring, etc.</p>	<p>Expands Sec. 311(e) to allow fines, penalties and forfeitures under the Act to be used for the costs of stock assessments, surveys and data collection in fisheries managed under the Act</p>
<p>DATA-POOR STOCKS: data-poor stocks are defined; RFMCs must identify these stocks & prioritize them</p>	
<p>SEC 11. COOPERATIVE RESEARCH & MANAGEMENT PROGRAM</p>	<p>FISHERIES RESEARCH/STOCK ASSESSMENT PLAN: Fisheries Research -- Requires the Secretary to publish on same schedule as</p>

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<p>Within 1yr the Secretary must publish a plan detailing prioritized research needs and projects to meet them, and a summary of completed projects; to be revised every 5-yrs</p>	<p>Sec 404(b) timeline in the FR a plan to conduct stock assessments for all stocks of fish for which there is an FMP within 5-yrs with an allowance for a 3-yr delay. Secretary can identify outside sources of data that may reduce uncertainty</p> <p>Requires the Secretary to publish a detailed plan in the FR for conducting these assessments but provides a “waiver” to the stock assessment requirement if the Secretary determines the assessment is not necessary</p> <p>IMPROVED DATA COLLECTION: Amends Sec 404 to require the Secretary in 1-yr to report to Congress on facilitation of greater incorporation of data, analysis, assessments, and surveys from non-governmental entities into fisheries management to help reduce uncertainty and also establish a registry of info providers</p>
<p>SEC 12. COUNCIL JURISDICTION FOR OVERLAPPING FISHERIES In the Mid-Atlantic region: the MAFMC & NEFMC are provided with reciprocal liaison voting rights</p>	<p>For the SAFMC -- Governors are required to submit equal number of commercial and recreational RFMC nominees (adds SAFMC to current GOMEX requirement in Section 302)</p>
<p>SEC 13. GOMEX FISHERIES COOPERATIVE RESEARCH AND RED SNAPPER MANAGEMENT Secretary/Gulf States/GMFMC/sport fishing sector are required to develop a real-time reporting system for GOMEX red snapper fishery; prioritize S-K funds for this purpose</p>	<p>GULF OF MEXICO RED SNAPPER CATCH LIMITS: Section 407 (16 U.S.C. 1883) <u>is amended by striking the entire subsection below:</u></p> <p>5(d) CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—</p>

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	<p>(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and</p> <p>(2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvest in excess of such allocations.</p>
<p>GOMEX/SA COOPERATIVE RESEARCH PROGRAM: Gulf States/GSMFC/ASMFC/SAFMC/GMFMC/commercial/charter/sport sectors required to develop and implement a coop research program with priority on data-poor stocks using SK funds</p>	
<p>GOMEX/SA SURVEYS AND ASSESSMENTS: Secretary must develop a schedule of prioritized stock surveys and assessments for 5-yr period and direct SERO to complete the tasks, ensuring that each prioritized stock is surveyed at least every 5-yrs; fisheries information made available under this Act must be incorporated into assessments as soon as possible</p>	
<p>GOMEX & RED SNAPPER STATE MANAGEMENT BOUNDARIES: for the purposes of managing the recreational red snapper sector in the Gulf, the seaward boundary of each Gulf State is 9 miles seaward from the baseline from which the territorial sea is measured</p>	<p>GOMEX/SA ALLOCATION REVIEW: At least once every 5 years the GMFMC & SAFMC shall review any allocation of fishery privileges among commercial, recreational, and charter components “except the councils may delay action for not more than 3 additional one year periods if necessary”</p>
<p>CONSISTENCY WITH OTHER LAWS: in the case of conflict with NMSA and Antiquities Act -- the MSA will control; when it is</p>	

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<p>determined that fishing restrictions are necessary pursuant to ESA to manage fisheries, any measures must be developed/implemented via MSA process</p>	
<p>SEC. 16 NORTH PACIFIC PROVISIONS AFA is amended such that no entity in the Pollock fishery may harvest in excess of the maximum percentage = 24% of the Pollock available in the directed fishery</p> <p>SEC. 14 NORTH PACIFIC CLARIFICATION Removes data citation that has limited the NPFMCs ability to manage salmon fishery</p>	
<p>Sec 17. RECREATIONAL FISHING DATA Secretary shall develop partnerships with States to develop best practices and guidance for collection of recreational fishing data. Secretary shall report on a biennial basis on the accuracy of the registry and state programs and data collection programs and creation/results of federal grants-to-states program</p> <p>Floor amendment successfully added by Rep. Wittman (R-VA) to encourage RFMCs to use alternative approaches to managing sport fishing, other than traditional measures of length of season and bag limits, along with better data collection and promotion of real-time data management</p> <p>STUDY OF RECREATIONAL FISHERIES DATA: within 60-days of passage of the Act the Secretary shall enter into an agreement</p>	

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<p>with the National Research Council of the National Academy of Sciences to study methods to improve recreational survey methods, limitations of MRIP; report is due in 1-yr</p>	
<p>SEC 18. STOCK ASSESSMENTS USED FOR FISHERIES MANAGED UNDER THE GOMEX REEF FISH MANAGEMENT PLAN The GSMFC shall conduct all stock assessments to be used to manage reef fish in the GOMEX. Assessment shall incorporate surveys from university researchers; and also from private assets to conduct surveys. Any surveys conducted after passage of this Act shall incorporate relevant information from natural and artificial reefs. Each assessment shall allow for constituent and stakeholder input and provide for transparency of all data; and require independent review</p>	
<p>SEC. 19 ESTIMATION OF COST OF RECOVERY FROM FISHERIES RESOURCE The Secretary shall publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after the Secretary makes a formal determination</p> <p>SEC. 20 DEADLINE FOR ACTION ON FISHERY DISASTER REQUEST BY A GOVERNOR The Secretary must decide on a fishery disaster request within 90-days after receiving an estimate of the economic impacts from the entity making the request</p>	<p><u>***ADDITIONAL PROVISIONS***</u></p> <p>CAPITAL CONSTRUCTION FUND: Pages 7-16 (nearly 1/3rd of the entire bill) are dedicated to reforming the Capital Construction Fund (CCF) at U.S.C. Title 46. The CCF allows U.S.-owned companies to acquire fishing vessels or improve a current vessel through deferment of federal taxes on activities for property in a CCF account. The proposed changes include but are not limited to: adding “qualified fishery facilities”, including structure, appurtenance, land, equipment and vessels, and for processing and aquaculture purposes; and adding acquisition, construction and reconstruction of a fishery facility and also replacement,</p>

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<p>SEC. 21 PROHIBITION ON CONSIDERING RED SNAPPER KILLED DURING REMOVAL OF OIL RIGS Any GOMEX red snapper fishery killed in rig removal shall not be counted against the total catch</p> <p>SEC. 22 PROHIBITION ON CONSIDERING FISH SEIZED FROM FOREIGN FISHING Any fish seized from a foreign fishing vessel shall not be considered when setting the total catch for that species</p>	<p>acquisition or reconstruction of eligible vessels; amends/expands qualified tax withdrawal provisions (<i>NOTE***this section is comprehensive...suggest interested parties read this section in its entirety</i>)</p> <p>NATIONAL ALLOCATION STUDY IN MIXED-USE FISHERIES: Not later than 60 day after enactment, the Secretary shall enter into an agreement with the National Academy of Sciences to conduct a National study to provide guidance to RFMCs on criteria that could be used for allocating fishing privileges incl. consideration of the conservation and socioeconomic benefits of commercial, recreational and charter components of fishery; identify sources of information that could reasonably support the use of such criteria in allocation decisions; issue a National report to Congress not later than 1-yr after enactment</p> <p>FISHERIES DISASTER RELIEF: Secretary must decide on a fishery disaster request within 90-days after receiving an estimate of the economic impacts from the entity making the request; and Tribes are afforded consideration under this section equivalent to States and fishing communities</p>

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<p>Floor amendment successfully added by Rep. Don Young (R-AK) as follows to clean up provisions in the committee-passed-draft and to add new provisions agreed to on a bi-partisan basis. The Young amendment includes: (1) a provision providing a preference for hiring students studying fisheries conservation and management or water resource issues at higher education levels for positions involving the collection of recreational fisheries data; (2) requiring limited access privilege programs to be reviewed five years after implementation, and then periodically reviewed at least every seven years, to determine whether the programs have met the intended goals and objectives, and to determine positive and negative economic impacts on fishermen, processors, and communities; (3) require a stock assessment plan for each fish stock subject to a federal fishery management plan, including conducting the initial stock assessment within three years from the time the plan is published in the Federal Register; and (4) allowing for greater use of data, analysis, and stock assessments from nongovernmental sources, including fishermen, fishing communities, universities, and research institutions.</p>	<p>STUDY OF ALLOCATION IN MIXED USE FISHERIES: Directs the NAS, in coordination with the NOAA, to agree w/in 60 days to conduct a study to determine which variables, including consideration of conservation and socioeconomic benefits of each sector in a fishery, should be considered by the RFMCs in allocating fishing privileges in an FMP; and which sources should be used for such variables. NAS would have 1-yr to report to Congress</p>

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	<p>S-K FUNDS: Provides a budget point of order that can be raised during Congressional consideration of an appropriations bill that authorizes the transfer of S-K funds to NOAA</p>
<p>APPROPRIATIONS AUTHORIZED THROUGH 2019</p>	<p>INCLUDES NO AUTHORIZED APPROPRIATIONS</p>
<p>END --</p>	<p>END--</p>