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Magnuson-Stevens Fishery Conservation and Management Act (MSA): Reauthorization Issues for the 115th Congress

In the 115th Congress, both chambers have continued efforts to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. §§1801 et seq.). The MSA governs management and conservation of commercial and recreational fisheries in the U.S. exclusive economic zone (EEZ; between 3 nautical miles [nm] and 200 nm from shore). The MSA established eight Regional Fishery Management Councils (councils), which develop fishery management plans and amendments. The Secretary of Commerce approves and implements those plans.

The MSA was last reauthorized and extensively amended in 2006 (P.L. 109-479). Although the authorization of appropriations expired at the end of FY2013, the act's requirements remain in effect and Congress has continued to appropriate funds to administer the act. There have been efforts to reauthorize the MSA in both chambers during the last several Congresses. Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act (H.R. 200) is the only comprehensive reauthorization bill that has been introduced in the 115th Congress. On July 11, 2018, the House of Representatives passed H.R. 200.

Policy Challenges

During the first decade following the MSA's passage in 1976, fishery policy focused on controlling and replacing foreign fishing and on developing U.S. fisheries in the newly declared 200-mile Fishery Conservation Zone. Over the next two decades, management priorities shifted to include greater recognition of the need to sustain fish populations and respond to overfishing.

An ongoing policy challenge is to balance conservation and utilization of fish populations. Despite general agreement that fish stocks should not be overfished and that overfished stocks should be rebuilt, questions remain with regard to the timing of management actions, the choice of management objectives, how stock management objectives should be achieved, and the amount and types of information needed to make these decisions. Achieving balance among different management objectives is closely related to allocating fishery resources among users, developing and supporting management institutions, and investing in management and research. Fisheries bills introduced during the last several Congresses have focused on these general issues.

House Action

Many of the provisions in H.R. 200 are similar to those in bills introduced during previous Congresses. H.R. 1335 was passed by the House in the 114th Congress. H.R. 1335 included many of the provisions that were introduced in H.R. 4742, a bill reported in the 113th Congress. Another reauthorization bill introduced during the 114th Congress, H.R. 1826, would have made fewer changes to the existing

statute than H.R. 1335 and focused on data collection, aquaculture, and fishing industry grants. Another bill introduced in the 115th Congress that would amend the MSA is the Modernizing Recreational Fisheries Management Act of 2017 (H.R. 2023). H.R. 2023 and a similar bill in the Senate, S. 1520, are less comprehensive bills that generally focus on recreational fishing. Although not identical, most sections in H.R. 2023 have been included in the House-passed version of H.R. 200.

Management Flexibility

Currently, the MSA includes requirements to stop overfishing, rebuild overfished stocks, and establish annual catch limits (ACLs). According to H.Rept. 115-758, H.R. 200 would increase management flexibility by amending related sections of the act. National Oceanic and Atmospheric Administration (NOAA) Fisheries has attempted to address some of these issues in the revisions to the guidelines for National Standard 1. National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. Actual changes to fisheries management would depend on related sections of the act and how these changes are interpreted and implemented by NOAA Fisheries.

When specifying a time period for rebuilding stocks, H.R. 200 would amend the current section from "as short as possible" to "as short as practicable." H.R. 200 would replace the 10-year rebuilding requirement with a time frame that "may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation." This exception is allowed already for long-lived species that cannot be rebuilt within 10 years in the complete absence of fishing mortality. H.R. 200 would add exceptions to stock rebuilding requirements such as

- the cause of stock depletion is outside the jurisdiction of the council or the rebuilding program cannot be effective only by limiting fishing activities;
- one or more components of a mixed-stock fishery is depleted but cannot be rebuilt within the specified time without significant economic harm to the fishery or without causing another component to approach a depleted status;
- management activities by another country under informal trans-boundary agreements hinder conservation and management efforts by U.S. fishermen; and
- the stock is affected by unusual events that make rebuilding within the specified time improbable without significant economic harm to fishing communities.

The bill also would replace the term *overfished* with *depleted* and would define depleted as a decline in stock biomass, regardless of its cause.

H.R. 200 would modify ACL requirements for certain stocks and under specific circumstances. The bill would not require ACLs for ecosystem component species or generally for species with short life histories. It also would allow councils to develop ACLs for stock complexes and for multiyear catch limits. When establishing ACLs, councils could consider or take into account changes in ecosystems, the economic needs of fishing communities, management measures under international agreements, and fishing outside the EEZ. H.R. 200 would allow managers to use alternatives to ACLs in recreational fisheries such as fishing mortality rates or harvest control rules.

Catch Shares

Catch share programs are designed to eliminate the *race to fish* by allocating the total quota among individuals or groups. This allows fishermen to choose when to harvest their portion of the quota. H.R. 200 would add requirements for new catch share programs and provide a statutory definition of the term *catch share*. These programs are currently defined more narrowly as limited access privilege programs (LAPPs). H.R. 200 would require a referendum of eligible fishermen before any new catch share program is implemented in New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico regions. H.R. 200 also would require a study of catch share programs used in mixed-use fisheries and a temporary moratorium on new programs until the study is completed.

Recent House Actions

On July 11, 2018, the House passed H.R. 200 with 9 of the 11 amendments that were reported by the Committee on Rules. The manager's amendment, which modified or replaced six sections, was the most extensive. It also removed Sections 302(c) and 307, which would have changed the relationship between the MSA and other environmental laws, such as the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.), National Marine Sanctuaries Act (NMSA; 16 U.S.C. §§1431 et seq.), Antiquities Act of 1906 (16 U.S.C. §§431 et seq.), and Endangered Species Act (ESA; 16 U.S.C. §§1531-1543). These two sections were among the most controversial in the House-reported bill.

Additional Provisions

H.R. 200 also includes the following selected provisions that address

- review of South Atlantic and Gulf of Mexico allocation in mixed-use fisheries;
- transparency and public process;
- cooperative data collection;
- recreational data collection;
- stock assessment definition and plans;
- cooperative research and management;
- estimation of cost and deadlines for fishery resource disasters;

- subsistence fishing (definition); and
- exempted fishing permits.

Stakeholder Responses

Stakeholder responses to H.R. 200 have been diverse and vary by user group and management region. Some stakeholders, especially segments of the commercial fishing industry, have supported greater management flexibility that would be provided by H.R. 200. They claim flexibility can provide for both stock conservation and economic and social needs of coastal communities. However, other segments of the commercial fishing industry support relatively small changes to ACL and stock rebuilding requirements. They assert that commercial fishing depends on healthy stocks and that sufficient flexibility is already built into the law. Similar concerns have been expressed by some environmental interests. They assert that ACL and rebuilding requirements are working well as indicated by the decreasing number of overfished stocks. They believe that passage of H.R. 200 would threaten this success by weakening the law's conservation provisions and decreasing accountability.

Recreational groups are generally supportive of provisions that would provide greater flexibility in setting ACLs and allow for management alternatives to ACLs. They believe management approaches need to be adapted to the nature of recreational fishing. Allocation among fisheries sectors such as private, charter, and commercial fisheries has been a concern of many recreational groups. They support provisions in H.R. 200 that would require study and regular review of allocation among fisheries sectors in the Southeast and Gulf regions. They also support cooperative data collection efforts and greater integration of non-governmental sources of information.

Senate Action

In contrast to efforts in the House, no comprehensive MSA reauthorization bills have been introduced in the Senate during the 115th Congress. The last Senate reauthorization bill, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2014 (S. 2991), was introduced late in the 113th Congress. The Senate-introduced version of the Modernizing Recreational Fisheries Management Act of 2017 (S. 1520) and the Florida Fisheries Improvement Act (S. 1748) generally focus on topics related to recreational fishing. Both bills include sections that are specific to the South Atlantic and Gulf of Mexico regions and some provisions that would apply to more general national issues.

During the last three congresses the Senate Committee on Commerce, Science, and Transportation has held hearings related to MSA reauthorization. Four hearings were held during 2017 that covered topics pertaining to oversight of MSA successes and challenges, fisheries science, and perspectives of councils and the National Oceanic and Atmospheric Administration.

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