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Magnuson-Stevens Fishery Conservation and Management Act: Legislative Actions in the 114th Congress

During the 114th 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 Exclusive Economic Zone (EEZ; between 3 nautical miles and 200 nautical miles from shore). The act established eight Regional Fishery Management Councils, which develop fishery management plans and amendments. The Secretary of Commerce approves and implements plans.

The MSA was last reauthorized and extensively amended in 2006 (P.L. 109-479). On June 1, 2015, the House passed the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act (H.R. 1335). On June 25, 2015, the Senate Committee on Commerce, Science, and Transportation approved the Florida Fisheries Improvement Act (S. 1403). Although current House and Senate versions include some common provisions, they differ significantly and the outcome of these efforts remains an open question.

Policy Challenges

During the first decade following the act'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 balancing conservation and utilization of fish populations. Although there is 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 determinations. 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.

House Action

In the 114th Congress, two MSA reauthorization bills have been introduced in the House. H.R. 1335 is similar to a bill (H.R. 4742) that was reported by the Committee on Natural Resources in the 113th Congress. The Fishing Economy Improvement Act (H.R. 1826) would make fewer changes to the existing statute than H.R. 1335 and focuses on different issues. H.R. 1335 was reported by the Committee

on Natural Resources with amendments and subsequently was passed by the House. During the markup hearing and again during floor debate, a substitute similar to H.R. 1826 was introduced, but it was rejected on both occasions.

H.R. 1335

Currently, the MSA includes requirements to stop overfishing, rebuild overfished stocks, and establish annual catch limits (ACLs). H.R. 1335 would increase management flexibility by amending these sections. H.R. 1335 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." It also would add exceptions to stock rebuilding requirements for various reasons such as limited council jurisdiction over stocks, mixed stock fisheries, informal fishing agreements, and economic harm to fishing communities. It would add the term *depleted* and define it as a decline in stock biomass regardless of its cause, and it would replace the term *overfished* with *depleted*.

H.R. 1335 would modify ACL requirements for certain stocks and under specific circumstances. H.R. 1335 would allow councils to consider changes in an ecosystem and economic needs of fishing communities and would not require ACLs for certain stocks. It would allow councils to develop ACLs for stock complexes and for multiyear catch limits.

H.R. 1335 would add requirements for new catch share programs and provide a statutory definition of the term *catch share*. These programs currently are defined more narrowly as limited access privilege programs (LAPPs). H.R. 1335 would require a referendum of eligible fishermen for all new catch share programs. The referendum would apply only to New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico fishery management regions. H.R. 1335 also would require periodic review of catch share programs.

In addition, H.R. 1335 would add provisions to change 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). The bill would require councils to develop fishery impact statements for fishery management plans and amendments, which would satisfy and replace NEPA requirements. Another provision would provide the MSA with control when conflicts occur with NMSA and the Antiquities Act. H.R. 1335 also would add a provision to implement ESA

recovery plans under the authority of the MSA and in accordance with the processes and time schedules of the MSA.

The following are selected provisions in H.R. 1335:

- transparency and the public process;
- electronic data collection and data confidentiality;
- cooperative research and management;
- subsistence fishing (definition);
- Gulf of Mexico reef fish assessments (transfer to Gulf States Marine Fisheries Commission);
- fisheries research (assessment, planning, and data) ;
- process for allocation review of South Atlantic and Gulf of Mexico mixed-use fisheries; and
- authorization of appropriations.

Stakeholder Responses

Some stakeholders, especially some segments of commercial and recreational fishing sectors, support H.R. 1335. They assert that H.R. 1335 would provide the flexibility needed to continue rebuilding depleted fish stocks while offering economic relief to coastal communities. They point out that H.R. 1335 would increase transparency and ensure that more scientific information would become available for data-poor stocks.

Some stakeholders, especially those representing environmental interests, are opposed to providing greater flexibility to manage fish stocks. They assert that the MSA is working well, as indicated by the decreasing number of overfished stocks. They also claim that H.R. 1335 would weaken other related environmental laws such as the NEPA, ESA, NMSA, and Antiquities Act.

The Administration strongly opposes the bill and asserts that H.R. 1335 introduces a series of ambiguous provisions that would extend rebuilding time periods and delay significant economic and environmental benefits associated with stock rebuilding. According to a statement of Administration policy, “if the President were presented with H.R. 1335, his senior advisors would recommend that he veto the bill.”

Senate Action

In contrast to H.R. 1335, S. 1403 focuses on Southeastern and Gulf regional priorities and would not authorize appropriations levels. Although the bill concentrates on regional issues, many of its provisions also would apply to the other U.S. fishery management regions. H.R. 1403 is similar to S. 2824, which was introduced during the 113th Congress. Some sections of S. 2824 were similar to parts of two reauthorization drafts that were circulated by the Senate subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard. Near the end of the 113th Congress, a more comprehensive reauthorization bill based on the subcommittee drafts was introduced (S. 2991).

The committee-approved version of S. 1403 would not amend current stock rebuilding requirements. Further, it

would change ACL requirements only for species that spawn and recruit to the population outside of state waters and the EEZ. Both H.R. 1335 and S. 1403 would provide recreational fisheries the authority to use alternative management measures such as extraction rates, fishing mortality, and harvest control rules.

The allocation of fishery resources among different fishing sectors—commercial, charter, and recreational—can be extremely controversial. S. 1403 would direct the Gulf of Mexico and South Atlantic Councils to review the allocation of fishing privileges in their regions every five years. In addition, S. 1403 would require the Secretary to arrange for the National Academy of Sciences to conduct a study on fisheries allocation. H.R. 1335 also calls for a review of allocation in these regions and for a study. Although these provisions focus on the Gulf and South Atlantic regions, some commercial industry representatives have reservations about increasing attention to this issue and believe these inquiries could have national implications.

Other selected provisions of S. 1403 include the following:

- expanded use of the Capital Construction Fund to include fish processing facilities and aquaculture;
- transparency and public involvement in the council process;
- fisheries research (assessment planning);
- data collection and analysis; and
- use of Saltonstall-Kennedy Act funding.

Red Snapper

The Gulf of Mexico red snapper fishery is among the most controversial in the United States due to allocation issues, shortened recreational seasons, and uncertainties related to data and stock assessments. Although overfishing is no longer occurring, the stock still is considered to be overfished and annual quotas remain constrained to allow for stock rebuilding.

H.R. 1335 would repeal Section 407 of the MSA (red snapper research and sector quotas), while S. 1403 would repeal only Section 407(d), which requires sector quotas. H.R. 1335 includes several additional provisions specific to red snapper such as reporting and collecting data for red snapper management; expanding state jurisdiction over the recreational red snapper fishery to 9 nautical miles from shore; and providing funds for assessments if oil rigs adversely impact red snapper.

An amendment to H.R. 1335 was proposed to transfer all management authority for red snapper from the federal government to the Gulf States, but it was withdrawn. There are now two stand-alone bills that would transfer authority to manage red snapper (H.R. 3094 and S. 105).

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