

Section-by-Section for the Magnuson-Stevens Act Reauthorization Discussion Draft
by Congressman Huffman (D-California) - Dated September 18, 2017 (6:05 pm)

Section 1. Short Title; Table of Contents. This section includes the short title of the bill “Strengthening Fishing Communities through Improving Science, Increasing Flexibility, and Modernizing Fisheries Management Act” and provides a table of contents for the bill.

Title I – MSA AMENDMENTS AND REAUTHORIZATION

Section 101. Definitions. This section clarifies that any terms used in the bill have the same meaning as the term does under the Magnuson-Stevens Fishery Conservation and Management Act.

Section 102. References. This section clarifies that unless otherwise provided, any amendments or repeals in the bill refer to provisions in the Magnuson-Stevens Fishery Conservation and Management Act.

Section 103. Amendments to Findings and Purposes. This section adds a new Finding regarding recreational fishing that says “While both provide significant cultural and economic benefits to the Nation, recreational fishing (including charter fishing) and commercial fishing are different activities. Therefore, management approaches may be adapted to the characteristics of each sector.”

This section also amends another Finding (Finding #3) to make it read as follows “Commercial and recreational fishing (including charter fishing) constitute major sources of employment and contribute significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources; ensuring sustainable utilization of fishery resources is essential to the economic wellbeing of these areas.”

This section would amend Purpose (3#) to add “subsistence”. The amended Purpose would read “to promote domestic commercial, recreational, and subsistence fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing.”

This section would amend Findings (#9) to read as follows “One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing degradation of marine ecosystems, including the loss of marine, estuarine, and other aquatic habitats. Habitat and ecosystem considerations should receive increased attention for the conservation and management of fishery resources of the United States.”

Section 104. Amendments to Definitions. This section would replace the existing definition for “overfishing and overfished” and insert new definitions for “overfishing” and “overfished or otherwise depleted”.

This section would insert new definitions for “marine aquaculture” and amend the term “fishing” to clarify that marine aquaculture is not considered “fishing”.

This section would insert new definitions for “subsistence fishing”, “habitat areas of particular concern”, “adverse effect”, and “forage fish”.

This section would substitute the new term “overfished and otherwise depleted” anywhere in the Act that the term “overfished” is currently used.

Section 105. Authorization of Appropriations. This section would reauthorize the Act for the Fiscal Years 2018 through 2022 with each year’s authorization increased from the previous year by the estimated percentage change in the Consumer Price Index.

Title II – FISHERIES MANAGEMENT FLEXIBILITY AND MODERNIZATION

Section 201. Authority to Use Alternative Fishery Management Measures.

This section amends section 302(h) of the Act to give Councils the authority – when implementing Annual Catch Limits – to consider alternative fishery management measures such as extraction rates, fishing mortality targets, and harvest control rules particularly in recreational fisheries or in the recreational components of mixed use fisheries.

Section 202. Modifications to the Annual Catch Limit Requirements.

This section would amend section 302 of the Act to allow Councils to account for relevant economic, social, and ecological factors in establishing the annual catch limits for a fishery as long as these actions remain consistent with the definition of “optimum”.

This section would not require Councils to set an Annual Catch Limit for “ecosystem component species” and for species that have a natural life cycle of approximately 1 year and that the Secretary has determined are not subject to overfishing, are not in an otherwise depleted condition or are not approaching either of those conditions, and is not likely to become subject to either of those conditions in the absence of conservation and management measures. “Ecosystem Component Species” is defined as “a stock of fish that a Council or Secretary has determined does not require conservation and management, but has determined should be listed in a fishery management plan in order to achieve ecosystem management objectives.”

This section would allow Councils and the Secretary, when establishing Annual Catch Limits and to prevent overfishing, to take into account management measures under international agreements in which the United States participates and, in the case of Annual Catch Limits, take into account fishing for the species outside the EEZ that is not subject to the jurisdiction of the U.S. and that U.S. fishing vessels do not account to overfishing of the species.

This section would allow Councils to establish Annual Catch Limits for a stock complex if that ACL prevents overfishing on all species in the complex.

This section would allow Councils to establish Annual Catch Limits for up to a three-year period.

Section 203. Council Transparency and Public Process.

This section would require that decisions and recommendations of the committees and panels of the Councils be developed in a transparent manner.

This section would require that each Council make available on the internet website of the Council, to the extent practicable, a webcast, recording or live broadcast of each meeting of the Council and the Council Coordination Committee. This section would also require that each Council make available on their website an audio, video, searchable audio, or written transcript of each Council meeting and of the Council's committee meetings. These recordings must be available no later than 30 days after the conclusion of the meeting.

This section would require the Secretary to maintain and make available to the public an archive of Council and scientific and statistical committee meetings, audios, videos, and transcripts.

This section would require that, at the request of any Council voting member, the Council hold a roll call vote on any matter before the Council.

This section would require that each Council hold a recorded vote on all nonprocedural matters before the Council.

Section 204. Additional Amendments Related to Fishery Management Councils.

This section would add one voting seat to the New England Council to provide a liaison – and require that this additional seat be a current member of the Mid-Atlantic Council - to represent the interests of fisheries under the jurisdiction of the Mid-Atlantic Council.

This section would add two voting seats to the Mid-Atlantic Council to provide a liaison – and require that one of these additional seats be a current member of the New England Council - to represent the interests of fisheries under the jurisdiction of the New England. The second new seat would add a voting seat to the Mid-Atlantic Council to provide a liaison – and require that this additional seat be a current member of the South Atlantic Council - to represent the interests of fisheries under the jurisdiction of the South Atlantic Council.

This section would add one voting seat to the South Atlantic Council to provide a liaison – and require that this additional seat be a current member of the Mid-Atlantic Council - to represent the interests of fisheries under the jurisdiction of the Mid-Atlantic Council.

This section would require the Governor of Alaska, when submitting nominations for the North Pacific Council, to consult with subsistence fishing interests of the State. In addition, the amendment would add subsistence fishing as a qualification that could be required of Council appointees (to be individuals who are knowledgeable regarding the conservation and management of commercial, recreational, or subsistence fisheries).

This section would require each Council, to the extent possible, to minimize the amount and cost of member and staff travel by the use of electronic means for remote participation during meetings, including for voting.

This section would require each Council to develop and implement a plan to protect and recover essential fish habitat in the region under the authority of the Council. This plan would need to include quantitative and measurable milestones and goals for increasing the quality and quantity of such habitat and would need to include conservation and management measures to implement the plan.

This section would require each Council to develop and implement a plan for reducing bycatch in the region under the authority of that Council which will prioritize the reduction of bycatch of those species with high ecological, economic, or cultural importance. This plan would need to include quantitative and measurable milestones for decreasing bycatch and would need to include conservation and management measures to implement the plan.

This section would require, within two years of the completion of each Secretarial review required under a new section 304(k) (*Note: this new review appears on page 21 of the draft*), each Council to review each of the above required plans to be consistently timed with the Secretarial review and would require each Council to amend its fishery management plans as necessary and appropriate.

This section would require each Council to review its designations of essential fish habitat and habitat areas of particular concern at routine intervals not to exceed 5 years and base these reviews on new scientific evidence or other relevant information. This section would require each Council to amend its fishery management plans as necessary and appropriate.

This section would require the Comptroller General of the United States to report to Congress, within 180 days of the enactment of this legislation, on the operations of the Regional Fishery Management Councils. This report would require a full accounting of all grant money received and distributed by the Councils for the preceding 10 years including an analysis of the deliverables and results of all grant-funded projects.

In addition, the review would require an assessment of interactions of the Councils and Council staff with Congress for the 10-years preceding the enactment of this legislation including an analysis of the extent to which such interactions comply with prohibitions on lobbying Congress (*Note: I believe the legislation cites the wrong United State Code section*) and prohibitions included in the conditions of any grants received by the Councils from NMFS.

The section would also require an assessment of Council member and Council staff conflicts of interest.

Section 206. Flexibility and accountability in Rebuilding Fish Stocks.

This section would amend the current requirement for rebuilding overfished stocks (section 304(e)) to remove the requirement to rebuild within 10 years and replace it with the requirement for rebuilding to “not exceed the time the stock of fish would be rebuilt without fishing occurring plus one men generation, unless management measures under an international agreement in which the United States participates dictate otherwise” and adding a requirement that each rebuilding plan “specify a schedule for reviewing the rebuilding targets, evaluating environmental impacts on rebuilding progress, and evaluating progress being made toward reaching rebuilding targets.”

This section would require the Secretary to review any fishery management plan, plan amendment, or regulations required under the rebuilding provisions at routine intervals no to exceed 2 years. The Secretary would be required to find that adequate progress toward ending overfishing and rebuilding of the affected stocks has not resulted if: the biomass of the stock is not increasing at a sufficient rate (a rate that it is unlikely that the stock will be rebuilt within the time period for rebuilding established in the rebuilding plan without changes); the level of fishing mortality or catch consistent with the fishery management plan is exceeded and the causes and rebuilding consequences and harvests exceeding the management plan are not corrected; when rebuilding expectations of the stock or stock complex are

significantly changed due to new information about the status of the stock; or for any other appropriate reasons.

This section would require the Secretary, if the Secretary finds during his review that rebuilding plans, plan amendments, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected stocks, to assess the extent to which bycatch, the lack of forage fish, or adverse effects on essential fish habitat are causing or contributing to the lack of adequate progress. This section would also require the Secretary in the case where an overfished highly migratory species is not making adequate progress toward rebuilding, immediately make necessary revisions to achieve adequate progress. For all other fisheries where the Secretary determines that adequate progress is not being made toward rebuilding this section would require the Secretary to notify the appropriate Council and make recommendations on further conservation and management measures that the Council should consider to achieve adequate progress.

This section would require that if the Secretary determines that adequate progress is not being made toward rebuilding for any stock or stock complex, a revised rebuilding plan should be developed to ensure progress toward rebuilding. This requirement does not change the deadline for rebuilding a stock or stock complex unless the rebuilding expectations are significantly changed due to new information about the status of the stock.

This section would prohibit a Council from adopting, and prohibit the Secretary from approving, a fishery management plan, plan amendment or proposed regulation required under this section for any fishery that has previously been under a rebuilding plan that did not rebuild the fishery to the biomass necessary to achieve maximum sustainable yield (as determined by the Council's SSC) unless the new plan has at least a 75 percent chance of rebuilding the overfished or otherwise depleted stock within the time limit proposed by the Council.

This section would authorize the use of alternative rebuilding strategies, including harvest control rules and fishing mortality rate targets to the extent they are in compliance with the requirements of the Act.

This section would allow a Council to terminate a rebuilding plan if the Council's SSC determines and the Secretary concurs that the stock was not overfished in the year that the overfishing determination was based upon and that the stock has never been overfished in any subsequent year including the current year.

This section would include a new requirement that the Secretary review each Council's implementation of the new requirements for plans to protect and recover essential fish habitat and plans for the reduction of bycatch at least every five years. Under this review, if the Secretary finds that there is a lack of adequate progress toward achieving the goals of the plans, the Secretary is required to recommend plan revisions that the Council is required to consider in order to achieve adequate progress.

Section 207. Protecting Fish Stocks and Habitat.

Under current law, if the Secretary receives information from a Council, Federal or State agency that an action is being proposed, undertaken or funded which would adversely affect essential fish habitat, the Secretary is required to recommend to the action agency measures that can be taken to conserve such habitat. This section would amend that provision to require the Secretary, if he determines an action

undertaken by a State or Federal agency could adversely affect essential fish habitat or any stock of fish, the Secretary would be required to recommend to that agency measures that could be taken to avoid the adverse effects on such habitat or, to the extent that adverse impacts cannot be avoided, the Secretary would be required to recommend measures to mitigate or offset such adverse effects.

Also under current law, a Federal agency that receives a recommendation from the Secretary must provide a detailed response in writing within 30 days. This section would require that a Federal agency must ensure that any action authorized, funded or undertaken avoids the adverse effects of such action on the habitat or, to the extent that the adverse impacts cannot be avoided, the agency must mitigate or offset such adverse impacts.

This section would require that any fishery management plan describe and identify habitat areas of particular concern based on the Secretarial guidelines to prevent adverse effects on such habitat caused by fishing, require that the plan monitor efficacy of actions to prevent adverse effects, and require that the plan identify other actions to encourage the conservation and enhancement of such habitat.

Section 208. Sense of Congress on Ecosystem-based Fisheries Management.

This section provides that it is the sense of Congress that “healthy fisheries and the coastal economies they support depend upon healthy marine ecosystems” and that “applying ecosystem science to fisheries decisionmaking reduces management uncertainty and increases the resiliency of valuable fish stocks” and that “the National Marine Fisheries Service should continue to refine and implement ecosystem-based approaches to the management of marine fishery resources”.

(Note: Sense of Congress statements do not amend the Act and do not carry the weight of law, but signal that the issue described in the Sense of Congress statement is important to Congress.)

Title III – HEALTHY FISHERIES THROUGH BETTER SCIENCE

Section 301. Healthy Fisheries through Better Science.

This section would require that the Secretary report to Congress within one year (and annually thereafter) on progress being made toward prioritizing and improving stock assessments. The report would summarize the methods used for assessing all stocks of fish for which a fishery management plan is in effect and explain which stocks have been assessed and why. The report will summarize each stock assessment and stock assessment update completed during the preceding year. The report will include the schedule for all upcoming stock assessments and stock assessment updates. The report will identify data and analysis, especially concerning recreational fishing, that, if available, would reduce uncertainty in and improve the accuracy of future stock assessments including whether such data and analysis could be provided by fishermen, fishing communities, universities and research institutions.

This section would amend an existing Finding such that it would read (with new language in italics), “The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States. *Fisheries management is most effective when it uses the best scientific information available, and incorporates such information from governmental and nongovernmental sources, including State and Federal agency staff, fishermen, fishing communities, universities, nonprofit organizations, traditional knowledge from Tribes and subsistence*

fishermen, and research institutions. Scientific and statistical committees should consider such information when seeing the best scientific information available to form the basis of conservation and management.”

This section would require the Secretary, in consultation with the Regional Fishery Management Councils, to submit a report to Congress within one year of the date of the enactment of this legislation with respect to each fishery governed by a fishery management plan in effect that: identifies the goals of the applicable monitoring and enforcement of fishing that is subject to the plan; identifies the methods to accomplish those goals including human observers, electronic monitoring, and vessel monitoring systems; and reviews the relative appropriateness of each method based on the effectiveness at gathering desired information and reviews the short-term and long-term costs and benefits.

Section 302. Cooperative Research and Management Program.

This section would require the Secretary, in consultation with the Regional Fishery Management Councils, and within one year of the date of enactment of this legislation, to publish a plan for implementing and conducting the cooperative research and management program already required under section 318 of the Act.

This section would require that the plan will identify and describe critical regional fishery management and research needs, possible projects to address those regional needs, and the estimated costs for such projects.

This section would require that the plan be revised and updated every five years and would require that each update will include a brief description of projects that were funded during the previous 5-year period and will describe the research and management needs that were addressed by those projects.

This section would also require that each Council provide a list of research and management needs to the Secretary each year and include a prioritization of such needs.

This section would require that the Secretary, when making funds available, will include several new uses including the expanded use of electronic catch reporting programs and technology and improving the use of monitoring and observer coverage through the expanded use of electronic monitoring devices and satellite tracking systems.

This section would authorize the Secretary to accept and use funding from other Federal agencies, academic institutions, persons, including fishery participants, and non-governmental organizations to expand cooperative fisheries research and management efforts including efforts to improve data collection in recreational fisheries for the purposes of improving management certainty and outcomes.

This section would allow the Secretary to allocate funds from the Fisheries Conservation and Management Fund to a specific project or region regardless of the existing restrictions if the funds were identified by the Council that designated them for inclusion in the fund or if another source of the funds deposited those funds into the account for that specific project or region.

Section 303. Recreational Data Collection.

The bill would require the Secretary to establish partnerships with States to develop best practices for implementing State recreational fisheries programs.

The bill would require the Secretary to develop guidance, in cooperation with the States, that detail best practices for administering State programs and to provide the guidance to the States.

The bill would require the Secretary to submit a biennial report to Congress the estimated accuracy of the Federal recreational registry program, priorities for improving recreational fishing data collection programs, and explain the use of information collected by State programs and by the Secretary.

The bill would authorize the Secretary to make grants 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.

This section would require the Secretary, within 90 days of the enactment of this legislation, to enter into an agreement with the National Academy of Sciences to evaluate - in the form of a report - how the design of the Marine Recreational Information Program (MRIP) can be improved to better meet the needs of in-season management of annual catch limits for the purposes of stock assessments and the determination of stock management reference points.

This section would require the NAS to also report on what actions the Secretary, the Councils, and States could take to improve the accuracy and timeliness of data collection and analysis to improve the MRIP and facilitate in-season management.

This section would also require that within 6 months of receiving the report from the NAS, the Secretary will submit a report to Congress with recommendations for changes that could be made to MRIP to make the program better meet the needs of in-season management of annual catch limits and other requirements.

Section 304. Modernizing Fisheries Data Collection and Storage.

This section would require the Secretary, working with the Councils and nongovernmental entities to develop and implement the use of video survey technologies and the expended use of acoustic survey technologies.

This section would require the Secretary to enter into an agreement with the United States Digital Service (Service) within 90 days of the enactment of this legislation which would require the Service to make recommendations to modernize and streamline the fishery data collection, processing, analysis and storage systems of the National Marine Fisheries Service (NMFS). This agreement would specify that the Secretary is seeking recommendations that promote user-centered data and include open, secure architecture and clear performance specifications.

This section would allow the Service to access all data collection, processing, analysis, and storage systems of NMFS and any other information necessary to enable the development of recommendations that will ensure the optimization and modernization of such systems.

This section would require the Secretary, working with the Councils and fishery stakeholders, to consider and implement the recommendations made by the Service.

This section would require the Secretary, within one year of the date of enactment of this legislation and every two years thereafter to report to Congress on the status of the agreement and progress being made in modernizing fisheries data systems.

Section 305. Gulf of Mexico Fisheries Cooperative Research and Red Snapper Management.

This section would require the Secretary of Commerce - 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. The Secretary is required to make this a priority for funds received by NOAA through the Saltonstall-Kennedy Act.

This section would also require the Secretary - in conjunction with the Gulf States, the Gulf of Mexico and the South Atlantic Councils, and the commercial, charter and recreational fishing sectors - to develop and implement 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. The Secretary would be authorized, subject to the availability of appropriations, to make funds received by NOAA from the Saltonstall-Kennedy Act available for the research for this region.

This section also would require that the Science Center Director of the Southeast region ensure that the information gathered as a result of research funded through the RESTORE Act be incorporated as soon as possible into any stock assessments conducted after the date of enactment.

This section would require the Secretary of Commerce and the Secretary of the Interior (acting through the Bureau of Ocean Energy Management) to enter into a cooperative agreement for the funding of stock assessments that are necessitated by any action by the Bureau with respect to offshore oil rigs in the Gulf of Mexico that adversely impact red snapper.

Section 306. Science and Management for Shifting Stocks.

This section would amend the Atlantic Coastal Fisheries Cooperative Management Act to require the Atlantic States Marine Fisheries Commission (ASMFC), when developing or updating a coastal fisheries management plan or plan amendment, to account for any climate change impacts – including changes in fish abundance and distribution – on coastal resources when establishing quota allocations between any States or other management units. This section would also require that ASMFC use best scientific information available when making these climate change impact assessments.

This section would amend section 305 (a) of the Act to prohibit the Secretary from authorizing the development of any new fishery not currently on the List of Fisheries unless the Secretary determines that the fishery's ecosystem impacts have been analyzed. This section further notes that this prohibition will not restrict the requirements for the experimental fishing permit process also under this section of the Act.

This section would also amend section 305 of the Act to require each Council to revise its list of approved fisheries and gear within 18 months of the date of enactment of this legislation and at least once every five years thereafter. This revision of the list must include specific and narrow terms and include the geographic range to ensure only active fisheries or new fisheries intended for Secretarial review are included.

This section would require the Secretary to make a determination related to any new fishery's ecosystem impacts under this section and under any other applicable law. The Secretary would then be required to publish a revised list after providing an opportunity for public comment.

This section would require a Council to prepare a fishery management plan or prepare an amendment to a current fishery management plan for any new fishery that the Secretary has placed on the revised list of approved fisheries prior to that fishery can begin.

This section would require the Secretary to issue guidance regarding how a determination to put a new fishery on the approved list will be conducted and how the determination will conclude that a new fishery's ecosystem impacts have been sufficiently analyzed.

Title IV – STRENGTHENING FISHING COMMUNITIES

Section 401. Saltonstall-Kennedy Act Reforms.

This section would amend the Saltonstall-Kennedy Act to remove a sunset date and to require that all funds collected by the Secretary of Agriculture and transferred to the Secretary of Commerce shall be used only for the purposes of providing grants for fisheries research and development projects.

Section 402. Fishery Resources Disaster Assistance.

This section would require the Secretary to publish the estimated cost of recovery from a fishery resource disaster within 30 days from the time the Secretary makes the disaster determination. This section would require that the estimate must include financial impacts to the broader seafood economy and coastal communities and not limited to harvesters, processor, charter fishing companies, ports and related infrastructure owners, service providers, and seafood shipping companies.

This section would require that the Secretary make a fishery disaster assistance decision regarding a request from a Governor within 120 days after the completion of the fishing season for which the relief was requested.

This section would change the way fisheries disaster funds appropriations are scored under the Balanced Budget and Emergency Deficit Control Act of 1985.

Section 403. Refinancing of Pacific Coast Groundfish Fishing Capacity Reduction Loan.

This section would require that the Secretary implement the fishing capacity reduction loan refinancing program within 90 days of the enactment of this legislation and without further appropriations from Congress.

Section 404. Strengthening Participation for Pacific Territories.

This section would require the Secretary to ensure participation for United States territories and their fishing communities in the management of highly migratory species that frequent the EEZ adjoining these territories. This section would also require the Secretary to consider the interests of these U.S. territories in the management of highly migratory species in the EEZ adjoining these territories.

This section would amend the Western and Central Pacific Fisheries Convention Implementation Act to require that the United States be represented on the Commission by 5 U.S. Commissioners to be appointed by the President. These Commissioners shall be knowledgeable and experienced in highly migratory species in the Central and Western Pacific Oceans and shall serve at the pleasure of the President.

This section would require that of these 5 Commissioners, one must be – 1) an officer or employee of the Department of Commerce, 2) the chairman or other member of the Western Pacific Fishery Management Council, and 3) a resident of American Samoa, Guam, of the Commonwealth of the Northern Mariana Islands who is not a member of the Western Pacific Fishery Management Council.

This section would clarify the appointments and terms for the U.S. Commissioners, and the requirements for the procedures and selection of a chairman of the United States section.

This section would amend the existing Western Pacific Sustainable Fisheries Fund and the authorization for U.S. Participating Territories to “use, assign, allocate, and manage catch limits of highly migratory fish stocks or fishing effort limits agreed to” by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean to authorize the Secretary (rather than the Western Pacific Fishery Management Council) to accept and deposit funds and to authorize the U.S. Participating Territories to use these funds for other purposes as these entities determine.

Section 405. North Pacific Fishery Management Clarification.

This section would remove a specific date that is currently in the Act regarding State management of vessels in the North Pacific region.