

**H.R. 200 - The “Strengthening Fishing Communities
and Increasing Flexibility in Fisheries Management Act”**

Sponsor – Congressman Young (R-Alaska)

Introduced on January 3, 2017

Referred to the House Natural Resources Committee

Section 1 – Short Title.

Section 2 – Definitions. This section clarifies that terms used in the bill have the same meaning as those terms are defined in the Magnuson-Stevens Fishery Conservation and Management Act.

Section 3 – References. This section clarifies that unless otherwise specified, the amendments made by the bill are made to the Magnuson-Stevens Fishery Conservation and Management Act.

Section 4 - Flexibility in Rebuilding Fish Stocks. The bill would remove the term “possible” and replace it with “practicable” in the requirement in section 304 of the Act that a rebuilding period “be as short as possible”. The bill would remove the language requiring a 10-year time frame for rebuilding overfished/depleted fisheries and replace 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 except in the case that: the biology of the stock, other environmental conditions, or management measures under an international agreement dictate otherwise; the Secretary determines that the cause of the stock being overfished/depleted is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities; the Secretary determines that one or more components of a mixed-stock fishery is depleted but cannot be rebuilt within the timeframe without significant economic harm to the fishery or cannot be rebuilt without causing another component of the mixed-stock fishery to approach a depleted status; the Secretary determines that recruitment, distribution, or life history of or fishing activities for are affected by informal transboundary agreements under which management activities outside the EEZ by another country may hinder conservation and management efforts by the US; and the Secretary determines that the stock has been affected by unusual events that make rebuilding within the specified time period improbable without significant economic harm to fishing communities.

The bill would allow Councils to take into account environmental conditions and predator/prey relationships when developing rebuilding plans.

The bill would also require that the fishery management plan for any fishery that is considered overfished/depleted must specify a schedule for reviewing the rebuilding targets, evaluating environmental impacts on rebuilding progress, and evaluating the progress that is being made toward reaching the rebuilding targets.

The bill would allow a fishery management plan for any fishery that is considered overfished/depleted to use alternative rebuilding strategies including harvest control rules and fishing mortality rate targets.

The bill would allow a Council to terminate any rebuilding plan for a fishery that was initially determined to be overfished/depleted and then found not to be overfished/depleted within two years or within 90 days after the completion of the next stock assessment.

Finally, current law allows the Secretary to implement emergency interim measures for fisheries in which overfishing is taking place. If the action is taken for a fishery that is under a fishery management plan, the interim measure may only remain in place for 180 days; however, the measures may then be extended for an additional 186 days (with the extension, this allows the Secretary to implement interim measures for a year and a day). The bill would modify this authority to allow the Secretary to implement the interim measures for one year with the ability to extend for a second year. Current law allows a Council to take up to two years to prepare and implement a fishery management plan or plan amendment to address a fishery that is overfished yet current law only allows interim measure to be implemented for one year (assuming the extension is granted). This provision would allow the interim measure authority to be consistent with the time period allowed for a Council to prepare and implement a rebuilding plan for a fishery identified overfished.

Section 5 - Modifications to the Annual Catch Limit Requirement. The bill would allow Councils to consider changes in the ecosystem and the economic needs of the fishing communities when setting Annual Catch Limits (ACLs). This allows flexibility but does not allow Councils to set an ACL at a level that allows overfishing.

The bill would provide an exception to the requirement that Councils set an ACL for “ecosystem component species”. Ecosystem component species are defined in the bill to mean those stocks of fish that are not targeted and are caught incidentally in a fishery as long as that stock of fish is not subject to overfishing, is not approaching a condition of being overfished, and is not likely to become subject to overfishing in the absence of conservation and management measures.

The bill would also provide an exemption to the ACL requirement for those stocks of fish with a life cycle of approximately 1 year as long as the Secretary has determined the fishery is not subject to overfishing. The bill would also provide an exemption to the ACL requirement for a stock for which more than half of a single year class will complete their life cycle in less than 18 months and for which fishing mortality will have little impact on the stock.

The bill would also allow Councils, when setting ACLs, take into account management measures under international agreements in which the U.S. participates and, in the case of an annual catch limit developed by a Council for a species, may take into account fishing activities for that species outside the U.S. EEZ and the life-history characteristics of the species that are not subject to the jurisdiction of the Council.

The bill would also provide an exemption to the ACL requirement if fishery management activities by another country outside the US EEZ may hinder conservation efforts by US fishermen for a fish species for which recruitment, distribution, life history, of fishing activities are transboundary and for which no informal transboundary agreements are in effect. In this case, if an annual catch limit is developed by a Council for the species, the ACL shall take into account fishing for the species outside the U.S. EEZ that is not subject to the jurisdiction of the Council.

The bill would allow Councils to establish ACLs for multi-species stock complexes and allow Councils to set ACLs for up to a three year period.

Section 6 - Distinguishing Between Overfished and Depleted.

The bill would replace the term “overfished” with the term “depleted” throughout the Act and adds a definition of “depleted”.

The bill would require the Secretary when issuing the annual report on the status of fisheries note if a stock was “depleted” as a result of something other than fishing.

The bill would also require that the report state, for each fishery identified as depleted, whether the fishery is a target of directed fishing.

Section 7 - Transparency and Public Process.

The bill would require Scientific and Statistical Committees (SSCs) of the Councils to develop the scientific advice that they provide to the Councils in a transparent manner and to allow for public involvement in the process.

The bill would also require that each Council, to the extent practicable, provide a Webcast, an audio recording or a live broadcast of each Council meeting and for the Council Coordination Committee meetings. In addition, the bill would require 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. The bill would require that the Secretary maintain these audios, videos and transcripts and make them available to the public.

The bill would require that each fishery management plan, plan amendment, or proposed regulation contain a fishery impact statement which are required to assess, specify, and analyze the likely effects and impacts of the proposed action on the quality of the human environment.

The bill would require that each fishery impact statement describe: the purpose of the proposed action; the environmental impact of the proposed action; any adverse environmental effects which cannot be avoided should the proposed action be implemented; a reasonable range of alternatives to the proposed action; the relationship between short-term use of the fishery resources and the enhancement of long-term productivity; the cumulative conservation and management effects; and the economic and social impacts of the proposed action on participants in the fisheries affected by the proposed action, on fishing communities affected by the proposed action, on participants in fisheries conducted in adjacent areas, and on the safety of human life at sea.

The bill would require that a “substantially complete” fishery impact statement be available not less than 14 days before the beginning of the meeting at which the Council makes its final decision on the proposal. The bill would require that the availability of this fishery impact statement be announced by the same methods currently used by Councils to disseminate public information and that relevant government agencies and the public be invited to comment on the fishery impact statement.

The bill would require that a completed fishery impact statement accompany the transmittal of a fishery plan or plan amendment as well as the transmittal of proposed regulations.

The bill would require Councils, subject to approval by the Secretary, to establish criteria to determine actions or classes of actions of minor significance for which the preparation of a fishery impact statement is unnecessary and for which a categorical exception to the fishery impact statement may allow an exclusion from this requirement.

The bill would require the Councils, subject to the approval of the Secretary, prepare procedures for compliance with the fishery impact statement requirement that provide for timely, clear, and concise analysis that will be useful to decision makers and the public as well as reducing extraneous paperwork. These procedures may include using Council meetings to determine the scope of issues to be addressed, may include the integration of the fishery impact statement development process with preliminary and final Council decisionmaking, and may include providing scientific, technical, and legal advice at an early stage of development of the fishery impact statement.

The bill would deem that actions taken in accordance with this section fulfill the requirements of the National Environmental Policy Act (NEPA) and all related implementing regulations.

The bill would require the Secretary of Commerce, when reviewing plans or plan amendments, to evaluate the adequacy of the accompanying fishery impact statement for fully considering the environmental impacts of implementing the plan or plan amendment.

The bill would require the Secretary, upon the transmittal of proposed regulations by a Council, to immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan or plan amendment and an evaluation as to whether the accompanying fishery impact statement is a basis for fully considering the environmental impacts of implementing the proposed regulations. The Secretary would be required to make a determination within 15 days of initiating any such evaluation.

Section 8 - Limitation on Future Catch Share Programs.

The bill would define the term “catch share” and create a pilot program for four Councils - the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils - which would prohibit those Councils from submitting and prohibit the Secretary from approving or implementing any new catch share program from those Councils or under a secretarial plan or amendment unless the final program has been approved in a referendum by a majority of the permit holders eligible to participate in the fishery.

The bill would clarify that for multispecies permits in the Gulf of Mexico, any permit holder with landings within the last five years from within the sector being considered for the catch share program and who is still active in the fishery shall be eligible to participate in the referendum.

The bill would clarify that if a referendum fails, it may be revised and submitted in a subsequent referendum.

The bill would allow the Secretary, at the request of the New England Council, to include crew members who derive a significant portion of their livelihood from fishing to participate in a referendum for any fishery within that Council’s jurisdiction.

The bill would also require that prior to the referendum, the Secretary must 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), an estimate of the amount of fish or percentage of the quota each permit holder

would be allocated, and information on the schedule, procedures and eligibility criteria for the referendum.

The bill defines “permit holder eligible to participate” in a referendum as a permit holder who has fished in at least 3 of the 5 years preceding the referendum unless sickness, injury or other unavoidable hardship prevented the permit holder from fishing.

The bill would clarify that the Secretary may not implement any catch share program for any fishery managed exclusively by the Secretary unless first petitioned by a majority of the permit holders eligible to participate in the fishery.

The bill clarifies that the requirement for the referendum does not apply to any catch share program that is submitted to or proposed by the Secretary before the date of enactment of the bill.

The bill would require the Secretary to issue regulations and provide for public comment on the referendum prior to conducting any referendum.

Section 9 - Report on Fee.

The bill would require the Secretary to report annually – to both Congress and each of the Councils from whose fisheries fee were paid - on the amount collected from each of the fisheries managed under a limited access privilege program and community development quota program and detail how the funds were spent on a fishery-by-fishery basis.

Section 10 - Cooperative Research and Management Program.

The bill would amend Section 318 of the Act to require the Secretary, within one year of the enactment of this Act and after consulting with the Councils, to publish a plan for implementing and conducting a cooperative research and management program. The bill would require that the plan identify and describe critical regional fishery management and research needs, possible projects to address the identified needs, and the estimated costs for such projects.

The bill would require that the plan be updated every five years and each update must include a description of projects that were funded during the previous five years and which management and research needs were addressed by those projects.

The bill would add would also amend current language to give priority to projects that use fishing vessels or acoustic or other marine technology, expand the use of electronic catch reporting programs and technology, and improve monitoring and observer coverage through the expanded use of electronic monitoring devices.

Section 11 - Council Jurisdiction for Overlapping Fisheries.

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

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

The bill would strike section 407 of the Act.

The bill 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.

The bill 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.

The bill would require the Secretary, acting through the NMFS Regional Administrator of the Southeast Region to develop a schedule of stock surveys and stock assessments for the Gulf of Mexico region and the Southeast region for the 5-year period beginning on the date of enactment and for every 5-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. The Secretary is required to direct the Science Center Director of the Southeast region to implement the schedule of stock surveys and stock assessments.

The bill 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.

The bill would extend state management out to 9 nautical miles for the Gulf of Mexico red snapper recreational sector of the fishery.

Section 13 - North Pacific Fishery Management Clarification.

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

Section 14 - Ensuring Consistent Management for Fisheries Throughout Their Range.

The bill would clarify that the Magnuson-Stevens Fishery Conservation and Management Act would be the controlling fishery management authority in the case of any conflict within a national marine sanctuary or an area designated under the Antiquities Act of 1906.

The bill would require that if any restrictions on the management of fish in the exclusive economic zone are required to implement a recovery plan under the Endangered Species Act, the restrictions would be implemented under the authorities, processes, and timelines of the Magnuson-Stevens Fishery Conservation and Management Act.

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

The bill would allow 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 percent.

Section 16 - Recreational Fishing Data.

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 require 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.

The bill would require the Secretary, within 60 days, to enter into an agreement with the National Research Council (NRC) of the National Academy of Sciences 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.

The bill would require the Secretary to submit a report to Congress on the result of the NRC study within one year of entering into the agreement with the NRC.

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

This section would create a new section 409 in the Act to require 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.

The bill would require that the stock assessments incorporate fisheries survey information collected by university researchers and, to the extent practicable, use State, university, and private assets to conduct fisheries surveys.

The bill would require that any stock assessments: incorporate fisheries surveys and other relevant information collected on and around natural and artificial reefs; emphasize constituent and stakeholder participation; contain all of the raw data used in the assessment and a description of the methods used to collect the data; and employ a transparent process that includes an independent scientific review and review by a panel of independent experts of the data and assessments.

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

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.

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

This section would require the Secretary of Commerce to make a decision regarding a disaster assistance request - submitted under the provisions of section 312(a) of the Magnuson-Stevens Act - within 90 days of receiving an estimate of the economic impact of the fishery resource disaster from the entity seeking the disaster declaration.

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

This section would prohibit 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 and prohibits the Secretary from counting those fish toward the quota for U.S. fishermen for the purposes of closing the fishery when the quota has been reached.

Section 21 – Prohibition on Considering Fish Seized from Foreign Fishing.

This section would prohibit the Secretary of Commerce from counting any fish seized from a foreign vessel engaging in illegal fishing in the U.S. EEZ against the total allowable catch for U.S. fishermen.

Section 22 – Subsistence Fishing.

This section defines “subsistence fishing”, “family”, and “barter” 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, 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). In addition, the amendment would amend the purposes section of the Act to add the promotion of subsistence fishing as a purpose of the Act (it is a purpose of the Act “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”).

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

This section would prohibit any commercial quota shares allocated under a catch share program in the Gulf of Mexico from being traded – by sale or lease – for use by the recreational fishing sector including any charter-for-hire vessel, head boat, or private recreational fisherman.

Section 24 – Arctic Community Development Quota.

The bill would create a new Arctic Community Development Quota program and would require the North Pacific Fishery Management Council, if the Council issues a fishery management plan for the EEZ in the Arctic Ocean that makes fishery resources available for commercial harvest, to set aside no less than 10 percent of the total allowable catch as a community development quota for coastal villages located north and east of the Bering Strait.

Section 25 – Preference for Students Studying Water Resource Issues.

The bill would amend the information collection section of the Magnuson-Stevens Fishery Conservation and Management Act to require, to the extent practicable, to give preference to students studying fisheries conservation and management, water resource issues, or other relevant subjects at U.S. institutions of higher learning when hiring individuals to collect information regarding marine recreational fishing.

Section 26 – Requirements for Limited Access Privileges.

Current law requires that fisheries managed under a limited access privilege program include regular monitoring and review by the Council under which the plan was developed. The bill would amend this to require that the Council and Secretarial review be a formal and detailed review on the operations and impacts of the program performed 5 years after the implementation of the program and at a minimum every seven years thereafter to: determine the progress in meeting the goals of the program and the Act; delineate the positive and negative economic effects on fishermen, processors, and coastal communities; and determining any necessary modifications of the program to meet those goals including a formal schedule for action to be taken within 2 years.

Section 27 – Healthy Fisheries Through Better Science.

This provision would require the Secretary, on the same schedule as required for the strategic plan already required under the Act, to develop a plan to conduct stock assessments of each stock of fish for which there is a fishery management plan in place and then, subject to the availability of appropriations, conduct a new stock assessment for each of those stocks that has previously been assessed at least once every five years (or within a time frame specified by the Secretary).

The provision would require the Secretary, for those stocks that have not been assessed previously, to establish a schedule for conducting an initial assessment and require the Secretary to conduct an initial stock assessment for each of those stocks within 3 years, subject to the availability of appropriations and unless the Secretary specifies a different time period.

The bill would require the Secretary to identify data and analyses, especially concerning recreational fishing, that would reduce uncertainty and improve the accuracy of future stock assessments and include whether such information could be provided by fishermen, fishing communities, universities, and research institutions.

The provision allows the Secretary to waive the stock assessment requirement if the Secretary determines that the assessment is not necessary and justifies that determination and publishes that determination in the Federal Register.

The bill would require the Secretary to issue the first stock assessment plan within two years of the enactment of this legislation.

This provision would amend one of the “Congressional Findings” in the Act.

The bill would require the Secretary within one year, in consultation with the scientific and statistical committees (SSC) of the Councils, develop guidelines that will facilitate greater incorporation of data, analysis and stock assessments from non-governmental sources for the use in fisheries management

decisions. The bill lists a number of sources of such data including fishermen, fishing communities, universities, and research institutions.

The bill would require that the guidelines: identify the types of data (especially concerning recreational fishing) that can reliably be used as best scientific information available; set standards for the collection and use of such data; provide specific guidance for the collection of the data and for performing analyses to reduce uncertainty.

The bill would require that the Secretary and the Councils use all of the data and analysis that meet the new guidelines in their fisheries management decisions unless the Council's SSC determines otherwise.

The bill would require that the Secretary and the Councils explain in each fishery management decision how the data and analysis that had been provided by these non-governmental sources had been used to establish conservation and management measures and publish the explanation in the Federal Register. If any of the data and analysis provided by these non-governmental sources is not used in a fishery conservation or management decision, the Federal Register notice announcing the decision must include an explanation – developed by the SSC – why the data or analysis was not used.

The bill would require the Secretary to issue the guidelines within one year.

The bill would require the Secretary of Commerce, in consultation with the Councils and within one year, to submit a report to Congress with respect to each fishery governed by a fishery management plan that identifies the goals the monitoring and enforcement programs, identifies the methods for accomplishing those goals, certify which methods are most cost-effective, and explains why the most cost-effective methods are not required.

Section 28 – Authorization of Appropriations.

The bill would reauthorize the Act for five years beginning in Fiscal Year 2018 at the currently authorized level.

Section 29 – Authority to Use Alternative Fishery Management Measures.

The bill would allow Councils to use alternative fishery management measures in a recreational fishery or for the recreational component of a mixed-use fishery including the use of extraction rates, fishing mortality targets, and harvest control rules in developing fishery management plans, plan amendments, or proposed regulations.