



Mid-Atlantic Fishery Management Council

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MEMORANDUM

Date: March 27, 2014
To: Chris Moore
From: Mary Clark
Subject: Magnuson-Stevens Act Reauthorization Discussion

The Executive Committee will meet on Tuesday, April 8 from 2:00 a.m. – 5:00 p.m. to review a draft Magnuson-Stevens Act (MSA) reauthorization bill and to develop a Council position on Magnuson-Stevens Act Reauthorization. This position will be discussed among the full Council and finalized during Committee Reports on Thursday, April 10.

In December 2014, the House Natural Resources Committee released a discussion draft of an MSA reauthorization bill entitled "H.R. ____ 'Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.'" The Committee has held eight hearings over the past three years to gather input from fishery managers, scientists, and other stakeholders on the reauthorization bill.

The Senate Subcommittee on Oceans, Atmosphere and Fisheries has been holding hearings and listening sessions on MSA reauthorization and is expected to complete a bill within the next few weeks. Attached for Council and Executive Committee consideration is a summary of relevant provisions included in the draft bill. This summary is intended as a supplement to the discussion draft; for specific language and additional details, members should refer to the bill itself, which is included in the briefing book on our website at <http://www.mafmc.org/briefing/april-2014>.

A new "Legislative Affairs" page on the Council's website (<http://www.mafmc.org/legislative>) provides an archive of Congressional hearings, testimonies, and documents related to MSA reauthorization.

Executive Committee Tasks

- Review and discuss H.R. MSA Reauthorization Bill Discussion Draft
- Develop a draft Council position on MSA Reauthorization for full Council consideration

Enclosed Reference Materials

- Summary of H.R. MSA Bill Discussion Draft

Supplemental Information

- [House MSA Reauthorization Bill Discussion Draft](#)
- [Testimony of Rick Robins before House Natural Resource Committee on Discussion Draft](#)

MAGNUSON-STEVENS ACT REAUTHORIZATION

SUMMARY OF H.R. MSA REAUTHORIZATION BILL DISCUSSION DRAFT

Please note: This informational document provides an overview of the structure and key provisions of the House Natural Resource Committee's Draft MSA Reauthorization Bill. The purpose of this summary is to identify key issues of potential interest to Mid-Atlantic Council members and to promote discussion during the April 2014 Council meeting. For specific language and additional details about the provisions listed below, please refer to the full document: "H.R. ____ 'Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.'"

Section 3: Flexibility in rebuilding fish stocks.

- Allows Councils to phase-in rebuilding plans for "highly dynamic fisheries" over a three-year period to lessen economic harm to fishing communities.
- Replaces the 10-year rebuilding timeframe with a rule that rebuilding "may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation" with exceptions...
 - i. When the biology of the stock, environmental conditions, or management under international agreements dictate otherwise;
 - ii. When the cause of depletion is outside the jurisdiction of the Council;
 - iii. If the overfished fishery(s) is part of a mixed-stock fishery and cannot be rebuilt without significant economic harm;
 - iv. If the recruitment, distribution, or life history of the stock are affected by informal transboundary agreements under which activities outside of the U.S. EEZ hinder rebuilding;
 - v. If the stock has been affected by unusual events that make rebuilding impossible without significant economic harm.
- Requires development of a schedule for review of rebuilding targets, rebuilding progress, and environmental impacts on rebuilding progress.
- Allows for the termination of a rebuilding plan if it determined that a fishery is not, in fact, depleted. This can occur either after 2 years or completion of the next stock assessment.
- Extends the time limit for emergency actions from 185 days to 1 year (with a maximum possible extension of one year).
- Allows councils to phase in rebuilding restrictions over a period of up to three years if the fishery is not subject to overfishing and where an immediate end to overfishing would cause significant adverse impacts to fishing communities.

Section 4: Modifications to the annual catch limit requirement.

- Allows Councils to consider ecosystem changes and economic needs of fishing communities when setting ACLs.
- Establishes several exemptions from ACL requirements:
 - i. Ecosystem component species (*non-targeted, incidentally taken stock of fish in a fishery or a non-targeted, incidentally taken stock of fish not subject to overfishing and not depleted*)
 - ii. Species with a life cycle of 1 year, unless that fishery is subject to overfishing; or
 - iii. Stocks where fishing mortality has little impact on the stock because more than half of a year's recruitment will complete their life cycle in less than 18 months.

- Requires councils to take international agreements into account when setting ACLs, including both formal international agreements (in which the U.S. participates) and Informal transboundary agreements under which management activities by another country outside the EEZ may hinder conservation efforts for transboundary stocks
- Allows Councils to set an ACLs for a stock complex (rather than for each of its component species)
- Authorizes the use of multi-year specifications for up to three years.
- Proposes the following revision: (b) ANNUAL CATCH LIMIT CAP.—Section 302(h)(6) (16 U.S.C. 1852(h)(6)) is amended by striking “fishing” and inserting “overfishing”. *This change would move the Council’s ceiling on setting ABCs from the SSC’s recommended ABC to the overfishing limit.*

Section 5: Distinguishing between overfished and depleted.

- Replaces "overfished" with "depleted" throughout the document.
 - i. **Definition of Depleted:** With respect to a stock of fish, that the stock is of a size that is below the natural range of fluctuation associated with the production of maximum sustainable yield.
- Requires the Secretary's annual report to distinguish between fisheries that are depleted as a result of fishing and fisheries that are depleted because of non-fishing factors. If fishing is the cause, the report must also identify whether the cause was directed fishing.

Section 6: Transparency and public process for scientific and management actions.

- Requires SSCs to develop advice in a transparent manner that allows for public involvement.
- Each Council shall make available on its website a live broadcast of each Council and CCC meeting.
- Councils must provide audio, video, and a complete transcript of each Council and SSC meeting
- Adds a new section: “Compliance with National Environmental Policy Act of 1969”: Any fishery management plan, amendment, or management measure that is prepared in accordance with applicable provisions of the MSA shall be considered to satisfy NEPA requirements.

Section 7: Limitation on future catch share programs.

- Establishes a definition for Catch Share programs: “Any fishery management program that allocates a specific percentage of the total allowable catch for a fishery, or a specific fishing area, to an individual, cooperative, community, sector, processor, or regional fishery organization established in accordance with 16 USC 1853a(c)(4), or other entity.”
- Requires the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils to hold a referendum among eligible permit holders and achieve a majority approval before *new* catch share programs can be established.
 - i. Excludes permit holders who haven’t fished in 3 of the 5 years preceding a referendum.

Section 8: Data collection and data confidentiality.

- Within 6 months, the Secretary of Commerce, in conjunction with the Councils and Commission and with industry input, must develop objectives, performance standards, and regulations governing the use of electronic monitoring for data collection and monitoring. *This does not apply to the use of electronic monitoring for law enforcement purposes.*
 - i. If the Secretary fails to do this, each Council may issue such regulations for its managed fisheries. These regulations may include provisions to replace electronic monitoring for law enforcement if it can provide the same level of coverage.

- Mandates the development and implementation of video survey technologies and the expanded use of acoustic survey technologies.
- Confidentiality of Information—this section proposes many changes to the existing confidentiality requirements. For complete details, please refer to Section 8 of the discussion Draft.
 - i. In general, confidential information would be exempt from disclosure under section 552(b)(3) of title 5, except under circumstances delineated in Section 8, page 18-19.
 - ii. Confidential information may only be used for purposes of management and enforcement.
 - iii. Observer and VMS data shall not be disclosed, with exceptions.
 - iv. Prohibits the disclosure of vessel specific or aggregate vessel information from a fishery for the purposes of coastal and marine spatial planning under Executive Order 13547.
- Allows the Secretary to use funds received as fisheries enforcement penalties for data collection purposes.
 - i. These funds may only be used in the management region where they are collected.
 - ii. Funds may only be used for the following activities:
 - 1. Surveys and assessments for data-poor fisheries managed under the MSA; and
 - 2. Cooperative research activities
- Requires each Council to submit a prioritized list of data-poor fisheries.

Section 9: Council jurisdiction for overlapping fisheries.

- Adds an additional member to both the Mid-Atlantic and New England Fishery Management Councils (essentially gives voting rights to the existing liaisons)

Please note: Sections 10 and 11 pertain specifically to the Gulf of Mexico and North Pacific, respectively, and were not included in this summary for discussion at the Mid-Atlantic Council's meeting.

Section 10: Gulf of Mexico cooperative research and red snapper management

Section 11: North Pacific Fishery Management Clarification

Section 13: Ensuring Consistent Management for Fisheries Throughout their Range.

- "In any case of a conflict between this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or the Antiquities Act of 1906 (16 U.S.C. 431 et seq.), this Act shall control."
- "To ensure transparency and consistent management of fisheries throughout their range, any restriction on the management of fishery re-sources that is necessary to implement a recovery plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be implemented—(1) using authority under this Act; and (2) in accordance with processes and time schedules required under this Act."