

House Committee on Natural Resources

Rob Bishop, Chairman

Markup Memo

April 27, 2015

To: House Committee on Natural Resources Members

From: House Water, Power and Oceans Subcommittee Republican Staff

Hearing: April 29-30, 2015 Markup of H.R. 1335 (Young, AK), “*Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act*;”

To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes.

“Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act”

Bill Summary

H.R. 1335 (Young, AK) reauthorizes the Magnuson-Stevens Fishery Conservation and Management Act, which is the primary law governing fisheries resources and fishing activities in United States federal waters. H.R. 1335 aims to tailor federal fishery management actions in order to give Regional Fishery Management Councils (Councils) the proper tools and flexibility needed to effectively manage their fisheries. The bill specifically: 1) affords flexibility by allowing Councils to base fishery stock rebuilding timeframes on science rather than the one-size-fits-all approach; 2) inserts greater transparency in science and management by including the public more in the development of science and Fishery Management Plans (FMPs); 3) gives stakeholders a voice in the management process and requires the Secretary of Commerce (Secretary) to develop a plan for implementing cooperative research with fishermen and outside groups; and 4) seeks to further improve the science and data that Councils base their management on, including key provisions relating to the collection of data from the recreational saltwater fishing industry.

This bill is nearly identical to H.R. 4247, which the House Natural Resources Committee passed in the 113th Congress following 10 oversight and legislative hearings on May 29, 2014, and includes several amendments approved at the 2014 markup.¹

Cosponsors

Reps. Rob Bishop (R-UT), Bradley Byrne (R-AL) and Aumua Amata Coleman Radewagen (R-AS)

Background

In 2012, the U.S. seafood industry had a sales impact of \$141 billion, \$59 billion in value-added impacts and supported approximately 1.3 million jobs earning \$39 billion in income.² U.S. commercial fishermen directly contributed to these impacts with 9.6 billion pounds of fish and shellfish harvested, earning \$5.1 billion

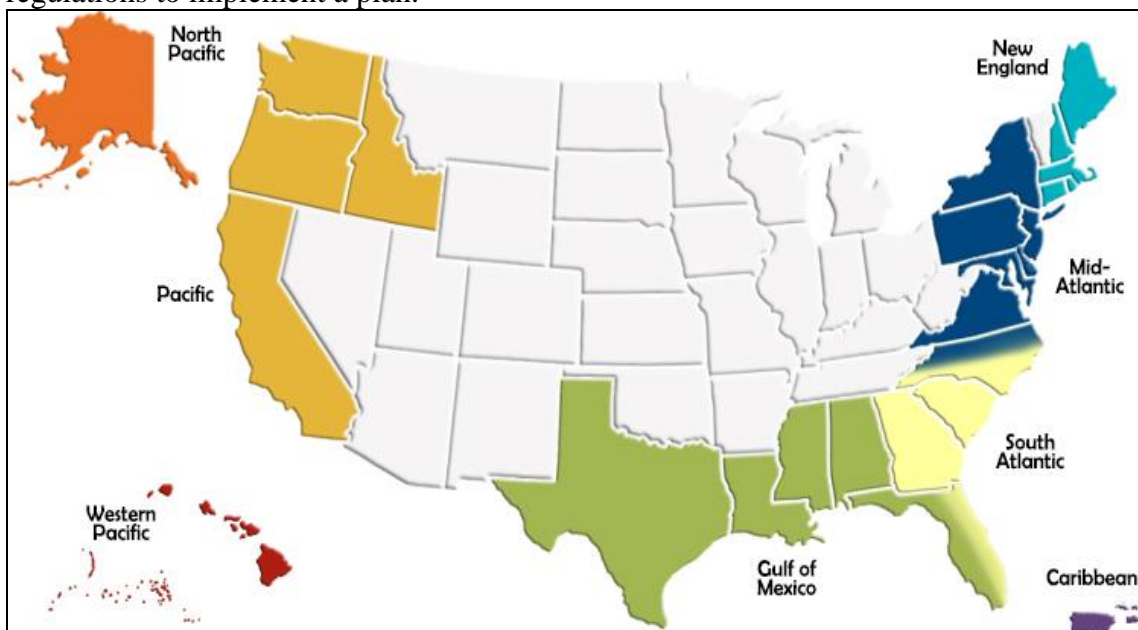
¹ <http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=388602>

² [Fisheries Economics of the United States 2012 – Department of Commerce, Feb. 2014](#), p.6

in revenue.³ Commercial fishermen support U.S. seafood processors, dealers, wholesalers, distributors, importers and retailers. Recreational saltwater anglers also contributed greatly to the economy in 2012, totaling 11 million anglers.⁴ These recreational anglers spent a total of \$24.6 billion on trips and gear in 2012, generating \$58 billion in sales impacts and supported 381,000 U.S. jobs.⁵

The Magnuson-Stevens Fishery and Conservation Management Act, commonly referred to as the “Magnuson-Stevens Act,” or “MSA,” was enacted in 1976 and since then, has been the primary law governing fisheries resources and fishing activities in federal waters. The Secretary, working through the National Oceanic and Atmospheric Administration (NOAA), enforces the MSA.

The original MSA created eight Councils charged with implementing the goals of MSA, in coordination with NOAA.⁶ This process of managing fisheries is accomplished through Council-based Fisheries Management Plans (FMPs) for each fishery. FMPs require scientific stock assessments of the fishery. Following the Council’s development of an FMP, the Council forwards the plan to the Commerce Secretary for approval. If the plan is approved, the National Marine Fisheries Service (NMFS) within NOAA must then issue regulations to implement a plan.⁷



The eight Fishery Management Councils established by MSA.

Source: NOAA Fisheries

Congress reauthorized MSA in 1996⁸ and 2006.⁹ In implementing the 2006 amendments, NOAA added layers of precaution when dealing with both scientific and management uncertainty, according to some.¹⁰ H.R. 1335 aims to improve the management process by affording regional fisheries managers the flexibility to manage stocks effectively and to better tailor management plans to the needs of their regions.

³ [Id.](#), p.5

⁴ [Id.](#), p.8

⁵ [Id.](#), p.8

⁶ <http://www.nmfs.noaa.gov/sfa/management/councils/>

⁷ <http://www.fisherycouncils.org/>

⁸ [U.S. P.L. 104-297](#)

⁹ [U.S. P.L. 109-479](#)

¹⁰ [Testimony of Mr. Richard Robins, Jr. before the House Committee on Natural Resources, September 11, 2013](#)

Major Provisions/Analysis of H.R. 1335

Section 4. Flexibility in Rebuilding Fish Stocks

This section aims to further improve fisheries science by basing fish stock rebuilding timeframes on such stock's biology rather than on an arbitrary, one-size-fits-all deadline. Section four specifically: 1) removes the language requiring a 10-year time frame for rebuilding overfished/depleted fisheries and replaces 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; 2) allows Councils to phase in rebuilding plans for highly dynamic fisheries over a three-year period to lessen the economic harm to fishing communities; 3) replaces the term 'possible' with 'practicable' in the requirement that rebuilding period 'be as short as possible;' and 4) allows Councils to take into account environmental conditions and predator/prey relationships when developing rebuilding plans.¹¹

Section 5. Modifications to the Annual Catch Limit requirements

This section aims to give Councils the flexibility they need to develop fishery management plans that are tailored to regional needs by allowing Councils to consider changes in the ecosystem and the economic needs of the fishing communities when setting Annual Catch Limits (ACLs).¹² This will allow flexibility but not allow Councils to set ACLs at a level that allows overfishing. This section also adds a new exception to the requirement that Councils set an ACL for 'ecosystem component species' – those species of fish that are not targeted and are caught incidentally as long as that stock of fish is not subject to overfishing and is not likely to become subject to overfishing – and provides an exemption for those short-lived stocks of fish for which a single year class will complete their lifecycle in less than eighteen months as long as fishing mortality will have little impact on the stock.¹³

Section 7. Transparency and Public Process

Transparency and public oversight are key to ensuring that the NMFS manages our nation's fisheries to the benefit of the stocks and our fishermen. Section 7 works to improve transparency in NMFS science and management by requiring Scientific and Statistical Committees (SSCs) develop the scientific advice provided to the Councils in a transparent manner and to allow for public involvement in the process.¹⁴ This section also requires that each Council, to the extent practicable, provide a webcast, audio recording, or live broadcast of each Council meeting. This section also requires 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.¹⁵

Section 8. Limitation on Future Catch Share Programs

This section aims to integrate stakeholders into fisheries management by creating a pilot project prohibiting the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils from implementing any new catch share program unless it has been approved by an industry referendum vote. Any federal permit holder who has fished in at least three of the five years preceding the referendum – unless sickness, injury or other unavoidable hardship prevented the permit holder from fishing – would be eligible to vote in the

¹¹ <http://www.gpo.gov/fdsys/pkg/BILLS-114hr1335ih/pdf/BILLS-114hr1335ih.pdf>, Section 4

¹² [Id.](#), Section 6

¹³ [Id.](#), Section 6

¹⁴ [Id.](#), Section 7

¹⁵ [Id.](#), Section 7

referendum. Prior to any such referendum vote, the Secretary of Commerce (Secretary) would be required to 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), and an estimate of the amount of fish or percentage of the quota each permit holder would be allocated.¹⁶ Outside of the four Councils referenced above, this section prevents the Secretary from implementing a catch share program for any federally managed fishery unless first petitioned by a majority of those eligible to participate in the fishery.¹⁷

Section 10. Data Collection and Data Confidentiality

An issue that is plaguing numerous fisheries around the nation is the lack of up-to-date data. Poor data results in regulatory decisions that can devastate fishing communities and further diminish NMFS' credibility. This section works to improve data collection by requiring each Council to identify those fisheries that are considered data-poor in their region and prioritize those fisheries based on the need for up-to-date information. Each Council is required to submit those priorities to the Secretary.¹⁸ The Section also allows the Secretary to obligate up to 80 percent of the fishery fines and penalties collected under any marine resource law enforced by the Secretary to be used by states to survey or assess data-poor fisheries for which a fishery management plan is in place, or for cooperative research activities to improve or enhance fishery independent data used in stock assessments. The funds obligated may only be used in the region where the fines and penalties were collected.¹⁹

With new, innovative technologies to monitor vessels and catch, new concerns have been raised surrounding data confidentiality, and this section takes several steps to address these new technologies while also protecting the privacy of fishermen. This section specifically: 1) requires the Secretary to issue regulations governing the use of newly developed electronic monitoring technology, distinguishing between monitoring for data collection and for enforcement, and instructs the Secretary to provide an opportunity for public comment; 2) updates existing data confidentiality provisions by clarifying that that information submitted to the Secretary, a State fisheries management agency, or a Marine Fisheries Commission may only be used for the purposes of fisheries management, monitoring and enforcement, and that that observer information, information collected by a Vessel Monitoring System or other vessel tracking technology, or other on-board data collection or enforcement programs shall be considered confidential.²⁰

With continued concerns about the Administration's implementation of its National Ocean Policy and marine spatial planning, the section also prohibits the Secretary from providing any vessel-specific or aggregate vessel information from a fishery for the use by any person for coastal and marine spatial planning under Executive Order 13547, unless the Secretary determines that providing such information is important for maintaining or enhancing national security or for ensuring fishermen continued access to fishing grounds.²¹

Section 11. Cooperative Research and Management Program

Cooperative research and management together have the benefits of building trust between fishermen and the government and lowering data collection costs. This section expedites the implementation of cooperative research and management program by requiring the Secretary to publish a plan for implementing and

¹⁶ [Id.](#), Section 8

¹⁷ [Id.](#), Section 8

¹⁸ [Id.](#), Section 10

¹⁹ [Id.](#), Section 10

²⁰ [Id.](#), Section 10

²¹ [Id.](#), Section 10

conducting the program.²² The plan should identify and describe critical regional fishery management and research needs, possible projects to address the identified needs, and the estimated costs for such projects.

Section 13. Gulf of Mexico Cooperative Research and Red Snapper Management

The Gulf of Mexico Red Snapper is a stock that has become the poster child for poor data and management by NMFS. H.R. 1335 makes several revisions, in sections 13, 18, and 21, to the research and management of this species in the Gulf. This section requires the Secretary – 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 and 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.²³

The section further improves the data collection of stocks in the Gulf of Mexico by requiring the Secretary to develop a schedule of stock surveys and stock assessments for the five-year period beginning on the date of enactment and for every five-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.²⁴ The section also corrects a discrepancy between management of Red Snapper by the Gulf States by extending state management out to nine nautical miles for the recreational sector of the Gulf of Mexico Red Snapper fishery.²⁵

Section 16. Limitation on Harvest in North Pacific Directed Pollock Fishery

Many of the provisions in H.R. 1335 result in greater flexibility for Councils to manage to the needs of their region. This section allows 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%.²⁶

Section 17. Recreational Fishing Data

According to a recent NOAA report, roughly twelve million recreational anglers took saltwater fishing trips in the U.S. annually from 2003-2012.²⁷ An industry that supported 381,000 American jobs in 2012,²⁸ the recreational saltwater fishing industry is a significant economic player. To address the growth of this industry, H.R. 1335 takes several steps to improve the collection of recreational fishing data to improve management and ensure maximum access to our marine resources by the recreational industry.

This section specifically: 1) requires the Secretary to establish partnerships with states to develop best practices for implementing state recreational fisheries programs and to develop guidance that detail best practices for administering state programs; 2) requires 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; and 3) requires the Secretary to

²² [Id.](#), Section 11

²³ [Id.](#), Section 13

²⁴ [Id.](#), Section 13

²⁵ [Id.](#), Section 13

²⁶ [Id.](#), Section 16

²⁷ [Fisheries Economics of the United States 2012 – Department of Commerce, Feb. 2014](#) , p.10

²⁸ [Id.](#), p. 8

enter into an agreement with the National Research Council (NRC) 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.²⁹

Section 18. Stock Assessments Used for Fisheries Managed under the Gulf of Mexico Council's Reef Fish Management Plan

Currently, the Gulf of Mexico Fishery Management Council has the responsibility of stock assessments and management of reef fish in the Gulf of Mexico. To address concerns surrounding the collection of data by NMFS, data is then passed down to the Council for use in management decisions. H.R. 1335 gives the responsibility of providing this data to the Gulf States. This section requires 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. This section requires 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.³⁰

Section 21. Prohibition on Considering Red Snapper Killed During Removal of Oil Rigs

This section works to ensure that fishermen are not adversely impacted by Red Snapper mortality outside of their control. This section prohibits 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 of that fish and from counting those fish toward the quota for U.S. fishermen for the purposes of closing the fishery when the quota has been reached.³¹

Section 22. Prohibition on considering fish seized from foreign fishing

Illegal, Unreported, and Unregulated fishing is an international problem with significant domestic impacts. This section prohibits the Secretary from counting any fish seized from a foreign vessel engaging in illegal fishing in the U.S. Exclusive Economic Zone against the total allowable catch for U.S. fishermen.³²

Section 23. Subsistence Fishing

This section defines 'subsistence fishing' 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, this section adds the knowledge of subsistence fishing as a qualification that could be required of Council appointees.³³

²⁹ <http://www.gpo.gov/fdsys/pkg/BILLS-114hr1335ih/pdf/BILLS-114hr1335ih.pdf>, Section 17

³⁰ [Id.](#), Section 18

³¹ [Id.](#), Section 21

³² [Id.](#), Section 22

³³ [Id.](#), Section 23

Cost

The Congressional Budget Office (CBO) has not submitted a cost estimate for this bill. However, based on an estimate of a nearly identical measure (H.R. 4742) in the last Congress, the bill would likely cost \$1.5 billion in discretionary funding over five fiscal years.³⁴

Administration Position

Unknown.

Expected Amendments

Although amendments are expected, none had been filed as of the date of this memorandum.

Effect on Current Law (Ramseyer)

http://naturalresources.house.gov/UploadedFiles/Younak_037_ram.pdf

³⁴ <http://www.cbo.gov/publication/45709>