



H.R. 200 — Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act (Rep. Young, R-AK)

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FLOOR SCHEDULE:

Scheduled for consideration on July 11, 2018 under a structured [rule](#). The rule makes in order 11 amendments, which are described below.

TOPLINE SUMMARY:

[H.R. 200](#) would amend and reauthorize the [Magnuson-Stevens Fishery Conservation and Management Act](#) (MSA), authorize the appropriation of a total of \$1.6 billion over the Fiscal Year (FY) 2018 – 2022 period, and would require the Secretary of Commerce through the National Academy of Sciences to conduct a study of certain mixed-use fisheries.

COST:

The Congressional Budget Office (CBO) [estimates](#) that H.R. 200 would authorize the appropriation of \$397 million a year through 2022 to carry out activities under the Magnuson-Stevens Fishery Conservation and Management Act. In 2017, NOAA received appropriations totaling \$538 million to carry out activities under the Magnuson-Stevens Act. Implementing H.R. 200 would cost \$1.4 billion over the 2019-2023 period, subject to appropriation. The bill could increase revenues and direct spending, so paygo would apply, though changes would have a negligible net effect on the deficit.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No, the bill would reauthorize the Magnuson-Stevens Act at the most recently authorized level and would make a number of changes to the Act.
- **Encroach into State or Local Authority?** The bill covers activities in federal waters.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The Magnuson-Stevens Act is the primary law governing marine fisheries management in U.S. federal waters. H.R. 200 would reauthorize appropriations for the Act at \$369.875 million for each Fiscal Year over the FY 2018 – 2022 period. This is the same level that was authorized in FY 2013, when the authorization expired. The Act has continued to receive funding as an unauthorized appropriation. According to [CBO](#), “in

2017, NOAA received appropriations totaling \$538 million to carry out activities under the Magnuson-Stevens Act.”

Changes to Definitions: The bill would replace the term ‘overfished’ with ‘depleted’, and define depleted, with respect to a stock of fish, to mean the stock has a biomass that has declined below the capacity of the stock to produce maximum sustainable yield on a continuing basis. The bill would define subsistence fishing as fishing in which the fish are intended for customary and traditional uses.

Process for Allocation Review for South Atlantic and Gulf of Mexico Mixed-Use Fisheries: The bill would require the Secretary of Commerce to enter into an arrangement with the National Academy of Sciences to conduct a study of the South Atlantic and Gulf of Mexico mixed-use fisheries, and submit a report to Congress. The bill would also require the South Atlantic and Gulf of Mexico fishery management councils to perform periodic reviews of the allocations to the commercial and recreational fishing sectors of all applicable fisheries in its jurisdiction.

Alternative Fishery Management Measures: The bill would provide each regional fishery management council with the authority to use alternative fishery management measures in a recreational fishery.

Modifications to Annual Catch Limit Requirement: The bill would permit regional fishery management councils to consider changes in an ecosystem and the economic needs of the fishing communities. The council would not be required to develop an annual catch limit for an ecosystem component species, a fishery for a species that has a life cycle of approximately 1 year, or a stock for which more than half of a single-year class will complete their life cycle in less than 18 months. Each annual catch limit would be allowed to take into account management measures under international agreements in which the United States participates. If a council develops an annual catch limit, the council would be required to take into account fishing for the species outside the exclusive economic zone and the life-history characteristics for the species that are not in the council’s jurisdiction. If there is no informal transboundary agreement, the council would not be required to establish an annual catch limit for fishery management activities by another country outside the exclusive economic zone that may hinder conservation efforts by United States fishermen. A council would be allowed to establish an annual catch limit for a stock complex, or annual catch limits for each year in any continuous period that is not more than three years in duration.

Limitation on Future Catch Share Programs: The bill would prohibit the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils from submitting a fishery management plan or amendment that creates a catch share program for a fishery unless the final program has been approved, in a referendum by a majority of the permit holders eligible to participate in the fishery. For multispecies permits in the Gulf of Mexico, any permit holder with landings from within the sector of the fishery being considered for the catch share program within the five-year period preceding the date of the referendum and still active in fishing in the fishery would be eligible to participate in such a referendum. At the request of the New England Fishery Management Council, the secretary may allow fishing vessel crewmembers who derive a significant portion of their livelihood from fishing to participate in the referendum.

If a catch share program is not approved by the requisite number of permit holders, it may be revised and submitted for approval in a subsequent referendum. Prior to any such referendum vote, the Secretary of Commerce 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.

Study of Limited Access Privilege Programs for Mixed-Use Fisheries: The bill would require the Secretary of Commerce to enter into an arrangement with the Ocean Studies Board of the National Academies of Sciences, Engineering and Medicine to study the use of limited access privilege programs in mixed-use fisheries. The bill would establish a temporary moratorium on the submission of a limited access privilege program for a mixed-use fishery until policies to address inequities of limited access privilege programs have

been submitted. The secretary may, however, approve a limited access privilege program for a mixed-use fishery that is managed under a limited access system if the program was part of a pending fishery management plan or plan amendment before enactment.

Cooperative Data Collection: The bill would require the secretary to develop a report to Congress on facilitating greater incorporation of data, analysis, stock assessments, and surveys from State agencies and certain nongovernmental sources. The secretary would be required to take into account, and implement, when feasible, the National Academy of Science's Recommendations in the "[Review of the Marine Recreational Information Program \(2017\)](#)" report.

Recreational Fishing Data: The bill would require the Secretary of Commerce 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.

Healthy Fisheries Through Better Science: The bill would require the secretary to develop and publish a plan to conduct stock assessments for all stocks of fish for which a fishery management plan is in effect. The secretary may determine a stock assessment is not necessary, but must justify this determination in the required federal register notice.

Transparency and Public Process: The bill would require the Scientific and Statistical Committees (SSCs) to develop scientific advice provided to the councils in a transparent manner and to allow for public involvement in the process. Any fishery management plan prepared by any council or by the Secretary of Commerce would be mandated to include a fishery impact statement that assesses, specifies and analyzes the likely effects and impact of the proposed action on the quality of the human environment.

Flexibility in Rebuilding Fish Stocks: The bill would change the fish stock requirements by basing fish stock rebuilding timeframes on the biology of the stock of fish, other environmental conditions, or management measures. The section would repeal language requiring a 10-year time frame for rebuilding overfished and depleted fisheries, and would set conditions stipulating that the rebuilding timeframe be the time it would take for the fishery to rebuild without any fishing occurring plus one mean generation time. The section would also allow Regional Fishery Management Councils to terminate the application of certain specified requirements, if the council's scientific and statistical committee determines and the secretary concurs that the original determination that the fishery was depleted was erroneous. The bill would allow a fishery management plan, plan amendment, or proposed regulations to use alternative rebuilding strategies, including harvest control rules and fishing mortality-rate targets.

Exempted Fishing Permits: The bill would require the secretary to direct a joint peer-review of the exempted fishing permit application and certify the council or federal agency with jurisdiction over the fishery has determined: (1) fishing would not have negative impact management measures; (2) the social and economic impacts in dollar amounts and loss of fishing opportunities would be minimal; (3) the collected information would have a positive and direct impact on the conservation, assessment or management of the fishery; and, (4) the governors of affected states that are impacted by the exempted fishing permit have been consulted.

Cooperative Research and Management Program: The bill would direct the Secretary of Commerce to publish a plan for implementing and conducting the cooperative research and management program in order to identify and describe critical regional fishery management and research needs, possible projects that may address those needs, and estimated costs for such projects.

Gulf of Mexico Fisheries Cooperative Research and Red Snapper Management: The bill would require the secretary, when establishing the acceptably biological catch and total allowable catch for red snapper in the Gulf of Mexico, to include certified Gulf State recreational fisheries surveys and data related to red snapper that has been collected by the Gulf States Marine Fisheries Commissions, nongovernmental

organizations, and other nongovernmental sources. The bill would establish a certification process for Gulf states that conduct recreational fisheries surveys for red snapper caught in the state. The secretary would also be mandated to develop a schedule of stock surveys and stock assessments for the Gulf of Mexico Region and the South Atlantic Region for the five-year period.

Estimation of Cost Recovery from Fishery Resource Disaster: The bill would require the secretary to publish the estimated cost of recovery from as fishery resources disaster within 30 days.

Deadline for Determination Regarding Fishery Resource Disaster: Under current law ([16 U.S.C. 1861a](#)) a governor may request the secretary determine whether there is a fishery resource disaster. The bill would require the secretary to make a decision on the request within 90 days of receiving the estimated economic impact.

Limitation on Harvest in North Pacific Directed Pollock Fishery: The bill would prohibit any entity or individual from harvesting a percentage of Pollock in a directed Pollock fishery that is greater than the limit established by the North Pacific Fishery Management Council. The percentage established by the North Pacific Fishery Management Council may not exceed 24 percent.

Arctic Community Development Quota: The bill would mandate that if the North Pacific Fishery Management Council issues a fishery management plan for the exclusive economic zone in the Arctic Ocean, or an amendment to the Fishery Management Plan for Fish Resources of the Arctic Management Area that makes available to commercial fishing, and establishes a sustainable harvest level, for any part of such zone, the council shall set aside not less than 10 percent of the total allowable catch therein as a community development quota for coastal villages located north and east of the Bering Strait.

Reallocation of Certain Unused Harvest Allocation: According to the committee report, the Aleut Corporation has been unable to harvest its pollock allocation as a result of regulatory hurdles. The bill would require the Aleut Corporation to retain control of the allocation, whether or not they are able to harvest it. The bill would also require the North Pacific Fishery Management Council to modify all applicable regulations and management plans to allow the Aleut Corporation to harvest its pollock allocation in the Bering Sea subarea as soon as practicable.

Prohibition on Shark Feeding Off Coast of Florida: The bill would prohibit divers from feeding sharks off the coast of Florida and prohibit any person to operate a vessel for hire if the person knew or should have known that the customer intended to feed sharks or watch a shark feeding off the coast of Florida. The bill would allow for shark feeding for research purposes by certain entities or for the purpose of harvesting sharks.

Restoration of Historically Freshwater Environment: The bill would remove certain areas that were previously covered by land or a fresh water environment from the definition of 'essential fish habitat'.

The report accompanying H.R. 200 (H. Rept. 115-758) can be found [here](#).

H.R. 200 contains similar language to H.R. 1335, which passed the House in the 114th Congress by a vote of [225-152](#) on June 1, 2015. The RSC's legislative bulletin for H.R. 3839 can be found [here](#).

AMENDMENTS MADE IN ORDER:

1. [Young \(R-AK\)](#) – The manager's amendment would strike the provision that would enable the secretary, at the request of the New England Fishery Management Council, to allow fishing vessel crewmembers who derive a significant portion of their livelihood from fishing to participate in the referendum required by section 205.

The amendment would require the Secretary of Commerce to publish the report on facilitating greater incorporation of data under section 207 on NOAA's website within a year.

The amendment would remove section 304, on exempted fishing permits, and replace it with a provision that would require the National Marine Fisheries Service to respond to a relevant council, the Interstate Marine Fisheries Commission, or the fish and wild life agency of an affected state, if the entity objects to the approval of an exempted fishing permit.

The amendment would require the council that prepared the fishery management plan, or the secretary, as relevant, to review the exempted fishing permit and determine whether any unintended negative impacts have occurred that would warrant the discontinuation of the permit, 12 months after the permit is issued.

The amendment would remove the requirement for the secretary, when establishing the acceptably biological catch and total allowable catch for red snapper in the Gulf of Mexico, to include certified Gulf State recreational fisheries surveys and data related to red snapper that has been collected by the Gulf States Marine Fisheries Commissions, nongovernmental organizations, and other nongovernmental sources.

The amendment would remove the requirement that the secretary provide the Gulf states with certification standards for marine recreational fisheries statistical surveys. The amendment would remove the requirement that the secretary begin evaluation upon receipt of all necessary information.

The amendment would strike the section on ensuring consistent management for fisheries throughout their range.

The amendment would amend the section on the reallocation of certain unused harvest allocation. The amendment would require the notice be sent to the Secretary of Commerce, instead of the regional administrator. The amendment would require unused portions to be reallocated to an eligible vessel. The amendment would prohibit the reallocation from being used in the calculation of harvesting or processing excessive shares. Allocation holders would be allowed to establish agreements with owners of eligible vessels. Agreements must specify the amount of reallocation the eligible vessels may receive, and may contain other certain requirements. Should a reallocation be inconsistent with the reallocation authorized by the secretary, it will be considered a violation subject to penalties, sanctions, and forfeiture of harvested fish.

The amendment would allow the western Alaska community development quota program panel to act with the affirmative vote of five members. Current law requires six votes and for there to be no vacancies on the panel.

The amendment would exempt areas that were previously covered by land or a freshwater environment, if the areas are in a state where the average land loss within the last 20 years is over 20 square miles, from the definition of 'essential fish habitat'. It also does not apply to a project taken by a local government with the purpose of restoration or protection of one of those areas.

2. [Courtney \(D-CT\)](#) – The amendment would require the Secretary of Commerce to develop a regional pilot research trawl survey, within a year, to enhance current NOAA vessel trawl surveys, in coordination with the relevant councils and the Northeast Area Monitoring and Assessment Program. Once the survey and study is completed, a report must be submitted to Congress.

3. [Langewin \(D-RI\)](#) – The amendment would add Rhode Island to the Mid-Atlantic Fishery Management Council.
4. [Huffman \(D-CA\)](#) – The amendment would strike the provision of the underlying bill that allows the time period to rebuild overfished fisheries to be as short as practicable, instead of as short as possible. The amendment would also require a new plan, amendment, or regulation to have a 75 percent chance of rebuilding an overfished fishery within the time limit proposed by the council.
5. [Frankel \(D-FL\)](#) – The amendment would waive the requirements to conserve or provide compensatory mitigation for impacts to submerged aquatic vegetation when a non-federal entity conducts maintenance dredging for certain federal navigation projects on an inland waterway, inlet, or harbor, located within the states of North Carolina, South Carolina, Georgia or Florida.
6. [Graves \(R-LA\)](#) – The amendment would require the GAO to submit to Congress a report on: (1) the resource rent of limited access privilege programs on the Gulf of Mexico, and the South Atlantic Ocean; (2) how to reclaim resource rent in these areas as revenue; and, (3) the fiduciary conflicts of interest in the fishery management councils of these areas and how to eliminate conflicts.
7. [Keating \(D-MA\)](#) – The amendment would require the secretary, through NOAA, to submit a plan to Congress within 180 days of enactment to establish fully operational electronic monitoring and reporting procedures for the Northeast Multispecies Fishery by September 30, 2021.
8. [Poliquin \(R-ME\)](#) – The amendment would require the Secretary of Commerce, through NOAA, to study and submit a report to Congress on all fees imposed by NOAA on the lobster fishing industry.
9. [Zeldin \(R-NY\)](#) – The amendment would waive the prohibition on Atlantic striped bass fishing in the Block Island sound transit zone, between Montauk, NY and Block Island, RI.
10. [Keating \(D-MA\)](#) – The amendment would require the secretary to use funds collected from fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan to be used for monitoring activities, in addition to traditional enforcement activities, as required under [current law](#).

Some conservatives may be concerned this amendment would increase the scope of activities that could be conducted by the Executive Branch using funds without appropriation by Congress. Some conservatives may be concerned this amendment could weaken the Article I Power of the Purse. The [RSC Budget](#) would require explicit Congressional authority for the Executive Branch to spend funds from fees, fines, penalties, and proceeds from settlements.

11. [Gaetz \(R-FL\)](#) – The amendment would add H.R. 2560, the Reef Assassin Act, to the underlying bill. H.R. 2560 would require the secretary to issue regulations allowing for a state to issue a tag to an individual that has taken a lionfish in federal waters. The tag would authorize the taking of a red snapper, gag grouper, triggerfish, or amberjack (granted the species is not an endangered or threatened) in federal water, and any other fish that individual is already authorized to take in federal waters. Regulations must require: (1) an individual to submit 100 lionfish for each tag; and, (2) the individual must hold a valid license to engage in such fishing under state law. There is no limit to the amount of tags an individual may be issued. The tags must: (1) be valid for at least five years; (2) authorize only the recreational or commercial taking of a fish that complies with applicable size limits; (3) authorize the taking without regard to season limitations; (4) authorize the transfer of tags to another person; and, (5) require the fish taken outside any seasonal limitation to have the tag fastened before being placed in a cooler. States must designate a repository for lionfish in order to be approved to issue tags. The secretary must provide freezers to participating states at a cost of no

more than \$500 per freezer. Fish taken under this section will not be considered in fishing levels, quotas, or allocations.

COMMITTEE ACTION:

H.R. 200 was introduced on January 3, 2017, and referred to the committee on Natural Resources. The committee held a mark-up on December 12, 2017, and the bill was reported by a vote of 23-17.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the bill's sponsor: "Article I, Section 8, Clause 3. The Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

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