Marine Fish Conservation Network's Assessment of Magnuson-Stevens-related Legislation

The Marine Fish Conservation Network (MFCN, or "Network") is a coalition of commercial and recreational fishing associations, regional and national conservation groups, aquaria, and marine science organizations. For the last two decades, we have united commercial fishermen, recreational anglers, conservationists, scientists and citizens around a shared mission: **conserving and revitalizing wild ocean fisheries**. We aim to promote the long-term health of U.S. fisheries and strengthen the myriad of diverse small businesses that make up our fishing communities while ensuring our oceans and those who rely upon them can successfully meet the emerging economic and environmental challenges of the future.

The Network is providing insight into various pieces of legislation related to the reauthorization of the Magnuson-Stevens Act. Specifically, MFCN has assessed the following bills:

- S. 1520 – Modernizing Recreational Fishing Management Act of 2017
- H.R. 200 – Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act
- Rep. Huffman Discussion Draft – Strengthening Fishing Communities Through Improving Science, Increasing Flexibility, and Modernizing Fisheries Management Act
- S. 2991 (113th) - Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2014

Overview

Well-managed, abundant fisheries and strong fishing businesses begin with a strong federal law. The U.S. has taken a leadership role in implementing science-based fisheries management with the Magnuson-Stevens Act, and **this federal fisheries law is working.** We are making steady progress in restoring the health of U.S. fisheries due in great part to Congress' leadership during the last two reauthorizations of the Magnuson-Stevens Act. The law's science-based conservation requirements are essential to improving the long-term health and viability of our nation's marine ecosystems, ocean fisheries, and coastal small fishing businesses and communities.

However, in some cases, the ability of the councils to meet their management goals and objectives has proven challenging. In certain regions, some fish populations have been slow to rebound. Infrequent stock assessments, catch data limitations, and bycatch remain problem areas, affecting the productivity and recovery of fisheries in many regions.

The Network urges Congress to preserve the science and conservation advancements already secured in previous reauthorizations of the Magnuson-Stevens Act. We support greater improvements in the law that promote the long-term health of U.S. fisheries, strengthen the wellbeing of fishing communities, and ensure that our oceans and those who rely on them can successfully meet the emerging challenges of the future.

S. 1520 – Modernizing Recreational Fishing Management Act of 2017

The language of S. 1520 arises out of the premise that recreational fishing is essentially different than commercial fishing, that the Magnuson-Stevens Act was a law intended to manage commercial fisheries and, thus, that Magnuson-Stevens needs to be amended to accommodate the recreational fishery's needs.

The Network disagrees with that underlying premise. Both recreational and commercial fisheries are, at their heart, activities that remove fish from wild populations, and both activities can harm such wild populations if they are not adequately controlled.

While the commercial fishery's total landings are much higher than those of the recreational fishery, much of those landings are attributable to a handful of fisheries for low-value species that are caught in very high volumes, such as walleye pollock (3.4 billion pounds) and menhaden (1.7 billion pounds). In many of the high-value fisheries that attract recreational fishermen, recreational landings can equal, and sometimes far exceed, those of the commercial sector.

Given the recreational fishery's significant impact on the health of many fish populations, S. 1520 could delay the rebuilding of overfished stocks and unreasonably limit fishery managers' ability to develop innovative means to manage commercial fisheries, while potentially leading to confusion regarding the use of certain management measures.

Title I - Conservation and Management

Sec. 101: Process for allocation review for South Atlantic and Gulf of Mexico mixed-use fisheries

- This section lays the groundwork for systematic reallocation of fish between commercial and recreational fishing sectors in mixed-use fisheries of the South Atlantic and Gulf of Mexico. Harvest allocation in any fishery is an issue that should be addressed when, in the discretion of a regional fishery management council, such action is justified by conditions in such fishery. Arbitrarily imposing timelines for repeatedly re-examining allocations wastes council resources and unnecessarily risks controversy between council members representing the affected sectors.

Sec. 102: Fishery management measures

- This section specifically authorizes regional fishery management councils to use recreational management measures in addition to catch limits. This language is unnecessary, as alternative fishery management measures are already permitted by Magnuson-Stevens, so long as such measures do not lead to overfishing and allow the timely rebuilding of overfished stocks; detailed guidelines for the use of such measures can be found in the Guidelines for National Standard 1 published by the National Marine Fisheries Service (NMFS) in the Federal Register.

Sec. 103: Study of limited access privilege programs for mixed-use fisheries

- Requires a study by the Ocean Studies Board of the National Academy of Sciences (NAS) and a subsequent report to Congress on the impacts of limited access privilege programs (LAPPs) with specific study criteria, as opposed to an outright moratorium of LAPPs, but, the bill places a temporary moratorium on any new LAPP development until that report is published, and offers an exemption for any LAPPs under development by the Councils now. Such moratorium unnecessarily limits fishery managers' ability to use LAPPs, a tool which has effectively ended chronic overfishing in some fisheries.

- Any LAPP under development now will have to be revised based on the NAS report's recommendations, which will effectively halt any real development of any LAPP, which could perpetuate overfishing in fisheries which have proven resistant to other management measures.

Sec. 104: Rebuilding overfished fisheries

- This section weakens the conservation measures needed to rebuild an overfished species as it introduces uncertainty into the management process by replacing the current 10-year default rebuilding timeline with a new timeline, based on the time it would take to rebuild the stock with no fishing mortality at all plus one mean generation, both of which may be subject to substantial scientific uncertainty.
- This section also adds valuable guidelines that the Secretary of Commerce must use to determine whether a fishery management plan is making adequate progress toward ending overfishing and rebuilding an overfished stock, and requires that any fishery management plan, adopted after a previous management plan has failed to achieve its objective, shall have at least a 75% chance of success.

Sec. 105: Authorization for multispecies complexes and multiyear catch limits

- This section permits a regional fishery management council to establish annual catch limits for a multispecies complex, and to establish annual catch limits for each year within a continuous period that shall not exceed three years.

Sec. 106: Exempted fishing permits

- This section requires NMFS to respond to a state government or fishery management body that objects to the issuance of an exempted fishery permit, and explain why such permit was issued.
- This section also requires that all exempted fisheries permits be reviewed every 12 months after such permit is issued, to determine whether the issuance caused any unintended negative impacts.

Title 2 - Recreation Fishery Information, Research, and Development

Sec. 201: Cooperative data collection

- This section attempts to formalize the inclusion of information from third-parties into fisheries management decisions, particularly from the recreational sector, provided that such data represents "the best available science."
- This section also seeks to implement the recommendations of the recent NAS report, "Review of the Marine Recreational Information Program (2017)," including electronic data collection from smartphone apps and internet websites, which show promise. However, it also calls for evaluating the design of the Marine Recreational Information Program (MRIP) for compatibility with "in-season" management of recreational fisheries. But in almost all recreational fisheries, regulations, including season length, are set before the season begins and remain unchanged until the season's scheduled end; thus, the emphasis on "the needs of in-season management" threatens to unnecessarily limit the use of MRIP while providing no other readily available and equally accurate means of estimating recreational harvest. MRIP was validated by the National Academy of Sciences in 2017.

Sec. 202: Recreational data collection

- This section calls for formal federal-state partnerships to improve angler registry and data collection programs, which is good.
- But the section also calls for further examination of MRIP, despite the fact that a generally favorable review of MRIP was just completed by the National Academy in February 2017.

Title III – Rule of Construction

Sec. 301: Rule of construction

- This section provides that nothing in S. 1520 shall be construed as modifying the requirements of sections 301(a) (National Standard 1, which prohibits overfishing and requires stocks to be managed for optimum yield), 302(h)(6) (which requires the regional fishery management councils develop annual catch limits for each managed fishery, which do not exceed the harvest level recommended by such council's scientific and statistical committee) and 303(a)(15) (which requires that annual catch limits and accountability measures be included in each fishery management plan).

H.R. 200 – Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act

The Magnuson-Stevens Act has proven to be an effective tool for rebuilding, conserving and managing U.S. fisheries largely because of the science-based fishery management measures adopted in the 1996 and 2006 reauthorizations of the law.

H.R. 200 threatens to weaken some of the most important measures adopted during those reauthorizations, and creates exemptions that have the potential to render other management measures meaningless. Thus, many of the provisions of H.R. 200 represent a significant step backward, which will hinder federal fisheries managers' ability to rebuild and maintain sustainable fish stocks.

H.R. 200 also contains provisions that would broaden the categories of data deemed to be "best available science" used in stock assessments and other surveys of fish populations, to include information provided by sources untrained in scientific survey methods and data gathering, while limiting the stock assessors' discretion to choose, based on their scientific judgment, the data that should be included in any assessment or other report. Such provision threatens the scientific integrity of the stock assessment process.

H.R. 200 also unnecessarily promotes the development of state recreational data collection programs at the expense of the federal Marine Recreational Information Program, and calls for another National Academy of Sciences review of MRIP, even though MRIP received a full, and largely favorable, review from the National Academy in February 2017.

On the other hand, H.R. 200 does contain useful provisions relating to the conduct of regional fishery management council meetings, cooperative data-gathering programs, addressing stocks that straddle council boundaries, and other, similar matters.

Section 4 – Flexibility in rebuilding fish stocks

(a) *General requirements*

- This section would change the requirement that overfished stocks be rebuilt within a time that is "as short as possible" to "as short as practicable," which injects ambiguity into the rebuilding timeline.
- This section also would replace the existing 10-year default deadline for rebuilding overfished stocks to T_{min} +1 (the minimum time to rebuild the stock with no fishing occurring plus one mean generation), which could delay the rebuilding of some stocks.
- This section also would exempt from even that rebuilding deadline stocks that have been overfished as a result of actions outside a regional fishery

management council's jurisdiction (which on its face would include activities occurring in state waters or in waters under the jurisdiction of other councils), and stocks that cannot be rebuilt only by limiting fishing, provisions that are likely to delay or prevent the rebuilding of some overfished stocks.

- This section also would exempt stocks that are overfished, but part of a multi-stock complex, and cannot be rebuilt within the specified timeframe without causing significant economic harm to the fishery, as well as stocks subject to a transboundary agreement under which actions occurring outside U.S. waters could hinder rebuilding efforts by the U.S. Such exemption is likely to delay or prevent the rebuilding of a number of commercially and recreationally important stocks.
- This section also would exempt stocks from the rebuilding deadline if they were affected by unspecified "unusual events" that would make it unlikely to rebuild such stock without causing significant economic harm. Such a vague exemption could arguably apply to many stocks, and frustrate the intent of the rebuilding provisions.
- In addition, the section would needlessly authorize the use of alternative management measures, as such measures are already permitted under current law.
- The section also would allow the council's science and statistical committee, with the concurrence of the agency, terminate a rebuilding plan if it determines that the relevant stock was not overfished when such rebuilding plan went into effect, rather than making current stock status the sole determinant of whether rebuilding is required.

Section 5 – Modifications to the annual catch limit requirement

(1) *Consideration of ecosystem and economic impacts*

- This section would allow ecosystem changes and the economic needs of fishing communities to be considered when setting annual catch limits, which increases the possibility that annual catch limits will not meet the biological needs of the stock.

(2) *Limitations to annual catch limit requirement for special fisheries*

- This section would exempt ecosystem component species, a fishery for a species with a life cycle of "approximately" one year unless overfishing is occurring (but regardless of whether the stock is overfished), and any stock of fish for which more than half of each year class will complete its life cycle within 18 months and is not significantly impacted by fishing mortality from the annual catch limit requirement. Such exemption could make it difficult to properly manage short-lived forage species.

(3) *Relationship to international fishery efforts*

- This section allows a regional fishery management council, when establishing annual catch limits for a species, to consider fishing that occurs outside of U.S. waters, provides that no annual catch limit need be established for any species not subject to a transboundary agreement, if any portion of the fishery or any aspect of such species' life history is transboundary, and further provides that if an annual catch limit is established for such species, it must take fishing outside of U.S. waters into account.

(4) *Authorization for multispecies complexes and multiyear annual catch limits*

- This section allows regional fishery management councils to establish annual catch limits for multispecies complexes, without requiring that all species in such complex exhibit similar life histories and levels of abundance.

- This section also allows annual catch limits to be set for continuous periods of up to three years, without a provision requiring annual review to determine that such annual catch limits remain appropriate.

(5) *Ecosystem component species defined*

- This section defines ecosystem component species as nontargeted species incidentally harvested in a fishery, regardless of stock status, or a nontargeted species that is incidentally harvested and is neither overfished nor subject to overfishing. The distinction that allows incidentally harvested stocks "in a fishery" to be exempt from annual catch limits, even if overfished or subject to overfishing, is cause for concern.

Section 6 – Distinguishing between overfished and depleted

- This section would define the term "depleted," replace the term "overfished" with the term "depleted" wherever it appears, and require the agency to distinguish between fisheries that are depleted as a result of fishing and those that are depleted" for reasons other than fishing in its annual report, even though the use of the term "depleted" rather than "overfished" seems to have no functional impact on the law or the management process.

Section 7 – Transparency and Public Process

(a) *Advice*

- This section creates a reasonable requirement that each regional fishery management council's science and statistical committee develop its advice in a transparent manner, but adds a qualification that it allow public involvement in the process of developing such advice, which is problematic given that such committees deal exclusively with biological and other data, making most forms of public input irrelevant to such committee decisions.

(b) *Meetings*

- This section requires each regional fishery management council to provide a webcast, recording or live broadcast of each meeting on its website
- This section also requires that each such council provide an audio, video or a searchable audio or written transcript of such meeting within 30 days of the meeting's conclusion.
- This section also requires that the agency maintain and make available to the public an archive of such webcasts, recordings, transcripts, etc. All such measures provide the public with additional information about and insight into the management process, and would thus be beneficial.

(c) *Fishery impact statements*

- This section would require a regional fishery management council to prepare a fishery impact statement analyzing the impact of any management plan or plan amendment on the human environment, which statement would include the purpose of the plan or amendment, its environmental impact, any unavoidable adverse environmental impacts, alternatives to the action taken, the relationship between short-term use of the fishery resource and long-term productivity, cumulative conservation and management effects, and the economic and social impacts of the management action. Such statement would have to be available to the public at least 14 days before the management action in question was taken.
- This section also provides that such fishery impact statement would replace the requirement for an environmental impact statement under the National Environmental Policy Act (NEPA), and replace the well-defined NEPA

requirements with the requirements set forth above. Since the information provided in any such fishery impact statement is largely duplicative of what is presently required by NEPA, the fishery impact statement would provide little or no value; having such statement replace the NEPA-mandated environmental impact statement would almost certainly result in extended litigation to establish the legal requirements for the fishery impact statement, requirement that are already settled law under NEPA.

Section 8 – Limitation on Future Catch Share Programs

- This section would extend the current restrictions on a regional fishery management council's ability to create a catch share program, which were previously limited to the New England Fishery Management Council and the Gulf of Mexico Fishery Management Council to the Mid-Atlantic Fishery Management Council and South Atlantic Fishery Management Council, as well as to highly migratory fisheries managed directly by the agency, thus significantly limiting the ability of the latter two councils, and the agency, to adopt new and innovative management measures.
- The section also changes the requirements for any referendum held to approve any catch share program from 2/3 of the permit holders voting to a majority of all permit holders eligible to vote, and clarifies the criteria for permit holders in the Gulf of Mexico who are eligible to vote. In the case of fisheries managed by the agency, no catch share program could be proposed absent a petition supported by at least 50% of all eligible permit holders. Thus, catch share programs with broad support among active fishermen could easily be defeated by the apathy of the holders of inactive permits; the risk of that occurring is greatest in just the sort of fisheries that are most likely to benefit from a catch share program—those that are badly overfished and not producing anything close to maximum sustainable yield, with substantial latent effort waiting to jump back into the fishery once the stock shows any level of recovery.

Section 10 – Cooperative Research and Management Program

- This section seeks to identify critical regional research needs, prioritize them for funding, and expand the use of modern electronic technology to obtain data. It would clearly be beneficial to fishery managers.

Section 11 – Council jurisdiction for overlapping fisheries

- This section would add a member of the Mid-Atlantic Fishery Management Council to the New England Fishery Management Council, and a member of the New England Fishery Management Council to the Mid-Atlantic Fishery Management Council to serve as liaisons capable of representing the interests of fisheries that straddle council boundaries, something that is becoming ever more important as fish stocks shift their centers of abundance in response to climate change.

Section 12 – Gulf of Mexico cooperative fisheries research and red snapper management

(a) *Repeal*

- This section would delete a current section of Magnuson-Stevens which requires the agency to establish separate commercial and recreational quotas, prohibit all retention of Gulf red snapper by a sector once its quota is reached, and set quotas that reflect the decided-upon allocation between the sectors,

and not reflect any excess harvest. This would undermine the sustainable and accountable commercial fishery, and place the successful red snapper rebuilding program at risk.

(b) *Reporting and data collection program*

- This section calls for the states, the Gulf of Mexico Fishery Management Council and the recreational fishing community to work together to develop, using existing technology, a method of reporting recreational red snapper landings in real time. Such development would be made a priority project funded by the Saltonstall-Kennedy program, and would provide valuable support to fishery managers.

(c) *Fisheries cooperative research program*

- This section calls for the states, the South Atlantic Fishery Management Council, the Gulf of Mexico Fisheries Management Council, the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, and representatives from the commercial, charter fishing and recreational sectors to work together to develop a cooperative research program for South Atlantic and Gulf of Mexico fisheries, which would give priority to data-poor fisheries and be funded by the Saltonstall-Kennedy program. The data so developed would probably provide valuable help to fishery managers.

(d) *Stock surveys and stock assessments*

- This section requires the agency to establish a 5-year schedule for the assessment of managed stocks in the South Atlantic and Gulf of Mexico regions, giving priority to recreationally and commercially important stocks, and require such important stocks to be assessed every five years, but takes no account of the human and financial resources needed to carry out such assessments.

(f) *State fisheries management in the Gulf of Mexico with respect to red snapper*

- This section extends state management authority for red snapper in the Gulf of Mexico out to 9 miles from shore, which shifts authority from federal managers in the waters between 3 and 9 miles off the coasts of Alabama, Mississippi and Louisiana. As state management measures inconsistent with those adopted by federal fishery managers are one of the primary factors leading to recreational overfishing, such action would make it more difficult for managers to properly manage and rebuild the fishery.

Section 14 – Ensuring consistent fisheries management for fisheries throughout their range

- This section provides that the provisions of Magnuson-Stevens shall control in the event of any conflict between that law and either the National Marine Sanctuaries Act or the Antiquities Act of 1906.
- This section also provides that, should any restriction be placed on the management of fish in order to implement a recovery plan under the Endangered Species Act, such restrictions shall be implemented under the authority of Magnuson-Stevens, and in accordance with Magnuson-Stevens' processes and time schedules. In all cases, the provision would make it very difficult, if not impossible, to carry out the intent of the other laws and protect valuable public resources.

Section 16 – Recreational fishing data

- This section would promote the development of state programs to gather recreational fisheries data and instruct the agency to have the Marine

Recreational Information Program reviewed by the National Academy of Sciences, despite the fact that such state programs would be redundant with MRIP, and that MRIP was just comprehensively, and for the most part favorably, reviewed by the National Academy less than one year ago.

Section 17 – Stock assessments for fisheries managed under Gulf of Mexico Council's Reef Fish Management Plan

(a) *In General*

- This section requires that all assessments of fish stocks included in the Reef Fish Management Plan be conducted by the Gulf States Marine Fisheries Commission, instead of continuing the current process of such stocks being assessed through the peer-reviewed SEDAR process employed by the Southeast Fisheries Science Center, despite the fact that management measures have largely been responsible for rebuilding and successfully managing fish stocks in the Gulf, and there is no certainty that the Commission has the resources and staff capabilities to conduct all needed assessment.

(b) *Use of other information and research*

- This section would require all assessments of fish stocks included in the Reef Fish Management Plan incorporate information provided by university researchers, and further require that fisheries surveys employ state, university and private assets, instead of allowing scientists at the Southeast Fisheries Science Center to make a determination of whether such university research represents the best available science and employing Science Center assets to conduct fishery surveys. There is no rational basis for prohibiting the Science Center from performing such research, and no assurance that private or state scientists have the personnel and resources to perform all such work now being done by the Science Center.
- This section would also require all stock assessments to incorporate surveys and other data collected in the vicinity of artificial reefs, rather than allowing the scientists conducting the assessment to make a professional determination of what data should be used in such assessment.

(c) *Constituent and stakeholder participation.*

- This section would require constituent and stakeholder participation in stock assessments, without regard to the scientific credentials of such stakeholders, and thus threatens the quality of the science incorporated into such assessments.
- This section would also require all raw data, and a description of the methods used to collect such data, to be included in an assessment, something that is already typically done in the SEDAR process.
- This section would also require the assessment process to include a rigorous scientific peer review, which is already incorporated in the SEDAR process, and have a separate panel of "independent experts," that are not explicitly required to be scientists, review the data and assessment and make recommendations on "the most appropriate values of critical population and management quantities,' although it is not clear what such panel could add that was not already addressed in the peer review.

Section 20 – Prohibition on considering red snapper killed during removal of oil rigs

- This section would prohibit the agency from considering red snapper removals attributable to the removal of oil rigs when deciding whether the annual catch

limit has been reached, although it does not prevent considering such removals for other purposes. Since removals of red snapper from all sources, including mortality attributable to rig removal, will have an impact on the stock, the proper application of removal data should be left up to the biologists responsible for setting the Allowable Biological Catch and performing the stock assessment.

Section 21 – Prohibition on considering fish seized from foreign fishing

- This section would prohibit the agency from considering fish removals attributable to illegal foreign fishing in U.S. waters when deciding whether the annual catch limit has been reached, although it does not prevent considering such removals for other purposes. Since a fish illegally caught by illegal foreign fishing have the same impact on the stock as a fish legally or illegally caught by domestic fishermen, there is no biological justification for this provision.

Section 23 – Inter-sector trading of commercial catch share allocations in the Gulf of Mexico

- This section prohibits commercial catch shares in Gulf of Mexico fisheries from being traded to anyone outside of the commercial sector, limiting the Gulf of Mexico Fishery Management Council's ability to craft innovative fishery management approaches and restricting the catch share owners' ability to sell or lease their shares, while providing no biological benefits to fish stocks.

Section 27 – Healthy fisheries through better science

(b) *Stock assessment plan*

- This section expands on the concept presented in Section 12(d), and would require the agency to assess all currently-assessed stocks at 5-year intervals, or at such other times reasonably determined by the agency, and to assess all unassessed stocks within 3 years or some other period reasonably determined by the agency, contingent on funding and the agency's belief that such assessments are necessary, but takes no account of the human and other physical resources that would be needed to properly complete and peer-review the large number of stock assessments that would have to be performed.
- This section also requires the agency to identify data and analysis that might serve to reduce uncertainty in a stock assessment, and determine whether such data and analysis could be provided by fishermen, fishing communities, universities or research institutions, without establishing scientific qualifications for the persons gathering such data or performing such analysis.

(c) *Improving science*

- This section would also require the agency to identify data and analysis that might serve to reduce uncertainty in a stock assessment, and determine whether such data and analysis could be provided by fishermen, fishing communities, universities or research institutions, without establishing scientific qualifications for the persons gathering such data or performing such analysis.
- Furthermore, this section would require the agency and the regional fishery management councils to treat such data and analysis as the best available science, unless determined otherwise by a council's science and statistical committee, rather than allowing fishery scientists to make an independent

professional evaluation of what science constitutes the best available science to be used in assessing fish stocks.

Section 29 – Authority to use alternative fishery management measures

- This section would specifically authorize regional fishery management councils to employ alternate fishery management councils to manage recreational, but not commercial, fisheries, despite the fact that current law already permits the use of such measures in both recreational and commercial fisheries.

Rep. Huffman Discussion Draft – Strengthening Fishing Communities Through Improving Science, Increasing Flexibility, and Modernizing Fisheries Management Act

Rep. Huffman's discussion draft represents a realistic effort to address needed improvements to the Magnuson-Stevens Act while maintaining the science-based management provisions that have made the law a success over the past twenty years.

The Network strongly supports the discussion draft's efforts to promote ecosystem-based management, the protection of important fish habitat and the protection of forage species. We also support its proposed improvements to the data collection and storage process, to the council process and to the regional fishery management councils themselves.

We do, however, have concerns about some language in the discussion draft that eliminates the 10-year default rebuilding period for overfished stocks, and places undue emphasis on the use of alternative management measures in recreational fisheries. We also believe that the section supporting development of state recreational data collection programs, and further formal review of MRIP, is unnecessary, given that MRIP received a full and largely favorable review less than one year ago.

Title I – MSA Amendments and Reauthorization

Section 103 – Amendments to findings and purpose

- This section would include a finding that recreational and commercial fishing are different activities, despite the fact that both are essentially extractive activities that, if not prudently managed, can adversely impact fish stocks.
- However, this section properly acknowledges that overfishing has caused serious harm to coastal communities, and that sustainable fishery management is essential to such communities' wellbeing.
- This section also properly acknowledges the need for management programs that adequately protect marine ecosystems.

Section 104 – Amendments to definitions

- This section separates and clarifies the definitions of "overfished" and "overfishing."
- This section also defines "marine aquaculture" and makes it clear that marine aquaculture is not a component of "fishing."
- This section also adds definitions of "habitat area of particular concern" and a definition of "adverse effect" to such habitat.
- This section also adds a definition of "forage fish."
- However, this section also replaces "overfished" with "overfished or otherwise depleted" everywhere that it appears in the law, although such change appears unnecessary as it does not have any functional impact on the fishery management process.

Title II – Fisheries management flexibility and modernization

Section 201 – Authority to use alternative fishery management measures

- This section specifically authorizes the use of alternative management measures to manage fisheries, even though the use of such measures is already permitted by current law.

Section 202 – Modifications to the annual catch limit requirement

- This section exempts ecosystem component species, defined as a species which does not require conservation and management, but is listed in a fishery management plan to achieve ecosystem management objectives, from the requirement that annual catch limits be established.
- This section also exempts fisheries for species with a life cycle of approximately one year, provided that such fishery is neither overfished nor subject to overfishing, and not likely to become so in the absence of conservation and management measures.
- This section also properly permits the agency and the regional fishery management councils to consider management measures under international agreements, and to consider fishing for a species outside U.S. waters so that fishing by U.S. vessels does not contribute to overfishing of such stock.
- The section also properly allows annual catch limits for a multispecies complex, provided that such annual catch limits prevent overfishing for all species in such complex, and allows the establishment of annual catch limits for a multi-year period not to exceed three years.

Section 203 – Council transparency and public process

- This section requires each regional fishery management council to provide a webcast, recording or live broadcast of each meeting on its website.
- This section also requires that each such council provide an audio, video or a searchable audio or written transcript of such meeting within 30 days of the meeting's conclusion.
- This section also requires that the agency maintain and make available to the public an archive of such webcasts, recordings, transcripts, etc.
- This section also requires regional fishery management councils to hold roll-call votes on all nonprocedural motions. All such measure will serve to add transparency to and help inform the public about the fishery management process.

Section 204 – Additional amendments relating to fishery management councils

- This section would add a member of the Mid-Atlantic Fishery Management Council to the New England Fishery Management Council, a member of the New England Fishery Management Council to the Mid-Atlantic Fishery Management Council, and a member of the Mid-Atlantic Fishery Management Council to the South Atlantic Fishery Management Council, to serve as liaisons capable of representing the interests of fisheries that straddle council boundaries. Such working together of council members is becoming increasingly important as oceans warm and fish stocks shift their centers of abundance in response.
- This section would also require each regional fishery management council to develop and implement a plan to recover essential fish habitat.
- This section would also require each regional fishery management council to develop a plan to reduce bycatch.

Section 206 – Flexibility and accountability in rebuilding fish stocks

- This section would adopt the use of $T_{min} + 1$, that is, the time it would take to rebuild a stock in the absence of all fishing, plus one mean generation, to be used

as the rebuilding time, instead of the current 10 years. This could delay the recovery of stocks which might otherwise be rebuilt within 10 years, and the data needed to accurately calculate such rebuilding time may not be available for all species.

- However, this section also adds a valuable provision that would require the agency to review all rebuilding plans on a two-year basis, and employ a clear set of criteria to determine if the stock's rebuilding is on track. In the case of fisheries that are not making adequate rebuilding progress, the relevant rebuilding plans must be revised; in the case of fisheries that failed to rebuild in the time period allotted by the relevant fishery management plan, any new rebuilding plan adopted must have at least a 75% likelihood of achieving success.
- This section would also allow a regional fishery management council, with the concurrence of the agency, to terminate a rebuilding plan if its science and statistical committee determines that the stock was erroneously deemed overfished in the year the plan was initiated and has not been overfished in any year since.

Section 207 – Protecting fish stocks and habitat

- This section provides that, if an action taken, or proposed to be taken by any state or federal agency would adversely impact essential fish habitat or a stock of fish, the Secretary shall advise the relevant agency on measures that would avoid or mitigate such adverse effects. In the event that a federal agency is taking or proposing the adverse action, such agency would have to respond to the Secretary's advice, describing the actions to be taken to avoid or mitigate the adverse effects or explaining why such actions will not be taken. Such requirement will help to protect fish stocks from harm caused by government actions over which NMFS has no direct control.

Section 208 – Sense of Congress on ecosystem-based fisheries management

- This section expresses Congress' support for developing ecosystem-based management measures.

Title III – Healthy fisheries through better science

Section 301 – Healthy fisheries through better science

- This section would require the agency to report annually to Congress on the process of prioritizing and improving stock assessments.
- This section also directs the science and statistical committees of each regional fishery management council to consider information from sources without formal scientific training or experience, including fishermen, fishing communities, etc. However, there is a real danger that such lack of scientific training and/or experience could result in biased or otherwise inaccurate data being incorporated into stock assessments, to the detriment of both fish stocks and the fishermen who depend upon them.

Section 302 – Cooperative research and management program

- This section requires the agency to identify critical regional research needs as well as projects that might address such needs, create a program to perform the needed research and regularly update such program.
- This section would also create a mechanism for collecting fishery-dependent data electronically.

Section 303 – Recreational data collection

- This section would promote the development of state programs to gather recreational fisheries data and instruct the agency to have the Marine

Recreational Information Program reviewed by the National Academy of Sciences, despite the fact that such state programs would be redundant with MRIP, and that MRIP was just comprehensively, and for the most part favorably, reviewed by the National Academy less than one year ago.

Section 304 – Modernizing fisheries data collection and storage

- This section calls for the expanded development and use of video and audio survey technologies.
- This section also calls for the modernization and the streamlining of the agency's fisheries data collection, processing, analysis and storage systems. Both measures should improve the quality of and access to the data needed by fisheries managers.

Section 305 – Gulf of Mexico cooperative research and red snapper management

- This section calls for the states, the Gulf of Mexico Fishery Management Council and the recreational fishing community to work together to develop, using existing technology, a method of reporting recreational red snapper landings in real time. Such development would be made a priority project funded by the Saltonstall-Kennedy program, and would help prevent recreational overharvest of the red snapper resource.
- This section calls for the states, the South Atlantic Fishery Management Council, the Gulf of Mexico Fisheries Management Council, the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, and representatives from the commercial, charter fishing and recreational sectors to work together to develop a cooperative research program for South Atlantic and Gulf of Mexico fisheries, which would give priority to data-poor fisheries and be funded by the Saltonstall-Kennedy program.
- This section also directs the agency to make use of information developed by such cooperative research programs into stock assessments, but fails to require that such information meet scientific standards established by the fisheries professionals performing the assessment, and thus raises the likelihood that the quality of the data used in the assessment will be compromised.

Section 306 – Science and management for shifting stocks

- This section would require the Atlantic States Marine Fisheries Commission to consider impacts of climate change, including to fish abundance and distribution, when establishing quotas among the states.
- This section would also prohibit the development of any new fishery until the ecosystem impacts of such fishery can be determined.
- This section also requires that each regional fishery management council periodically review its list of permitted fisheries, to ensure that only active fisheries and new fisheries intended for Secretarial review are included.

S. 2991 (113th) Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2014

S. 2991 was a reasonable effort to correct the few shortcomings of the Magnuson-Stevens Act, which placed greater emphasis on managing marine ecosystems, improved the council appointment process and updated penalties for fisheries law violations.

However, the Network was concerned that certain provisions, which provided for the use of alternate management measures and an alternative to the 10-year default rebuilding period,

could weaken the effectiveness of the law. We also opposed other provisions which threatened to dilute the quality of the science used in stock assessments and fishery surveys by including data provided by untrained observers employing untested methodologies, which created overly-broad exemptions to the annual catch limit requirement and which removed important requirements for the management of red snapper in the Gulf of Mexico.

Section 3 - Changes in Findings, Purposes and Policy

(a) Findings

- This section amends certain findings, including but not limited to amendments that recognize the need for the long-term protection of marine ecosystems, acknowledge the role that annual catch limits and accountability, and recognize the critical importance of preventing overfishing and rebuilding overfished stocks.

Section 4 - Definitions

(a) In General

- This section creates a number of new definitions, including definitions of "depleted" and "depletion," which cannot be functionally distinguished from the definitions of "overfished" and "overfishing."

Title I - Conservation and Management

Section 101 – Regional Fishery Management Councils

(a) *Voting members*

- This section would, among other things, restore the requirement that governors nominating persons for the Gulf of Mexico Fishery Management Council must name one person from each of the recreational, commercial and charter fishing sectors, as well as a fourth person familiar with the conservation and management of fisheries resources, and would extend such requirement to all nominations to the South Atlantic Fishery Management Council. In doing so, it would better assure that the council would have a more balanced membership, representing all of the relevant stakeholders.

(d) Functions

- This section would add a new paragraph allowing fishery managers to use alternative fishery management measures in a recreational fishery "to the extent they are in accordance with the requirements of this Act," but is not needed, as nothing in current law prohibits the use of such alternative measures today.

Section 102 – Contents of Fishery Management Plans

(d) Limitations

- This section exempts species in a fishery "with a mean life cycle of 18 months or less," or "with respect to which all spawning and recruitment occurs beyond State waters and the exclusive economic zone" from annual catch limits and accountability measures, unless such species is subject to overfishing. It could make it difficult to properly manage forage species, as well as other species that may be overfished, but not currently subject to overfishing.

Section 103 – Action by the Secretary

(c) Rebuilding overfished and depleted fisheries

- This section employs the new defined terms "depleted" and "depletion" with respect to rebuilding fisheries, although such terms seem to be functionally identical to "overfished" and "overfishing."
- This section will permit the use of T_{min} + 1, that is, the time it would take to rebuild a stock in the absence of all fishing, plus one mean generation, to be used as an alternate rebuilding time to the current 10 years, provided that T_{min} + 1 represents the best scientific information available, which could delay the recovery of stocks which might otherwise be rebuilt within 10 years.

Section 106 – Penalties

- This section would increase the maximum civil penalty for violations of fishery regulations from $100,000 to $180,000.
- This section would also increase the maximum criminal penalty from the current $100,000 ($200,000 if violence is threatened or employed) to $180,000 ($360,000 in violence is involved). As demonstrated by the recent prosecution of the "Codfather" in New England, current penalties are not severe enough to deter large-scale violations of fishery law.

Section 107 – Enforcement

(b) *Payment of storage, care and other costs*

- This section would explicitly allow funds received as fines and penalties, and from civil forfeitures, to be used to fund stock assessments, surveys and other data collection. As it is difficult to obtain adequate funding for fisheries science, this provision could funnel valuable funding to needed research.
- This section would also establish a permanent "Fisheries Enforcement Fund" that could be used by the agency to finance all activities outlined in the "Payment of storage, care and other costs" section, including the stock assessments and other data gathering described above, which funding would not be subject to appropriation or expire at the end of any fiscal year.

Title II – Fishery Information, Research, and Development

Section 201 – Integrated Data Collection Program and Electronic Technologies

- This section would create a mechanism for collecting fishery-dependent data electronically.

Section 203 – Fisheries Research

- This section requires the agency to establish a schedule for the assessment of all managed stocks, contingent on funding and the agency's belief that such assessments are necessary, but takes no account of the human and other physical resources that would be needed to properly complete and peer-review the large number of stock assessments that would have to be performed.

Section 204 – Improving Science

- This section would seek to incorporate data from nongovernmental sources, including non-scientific sources such as fishermen and fishing communities, into stock assessments and other fishery decisions, raising a substantial likelihood that the quality of fishery science would be degraded by the inclusion of anecdotal information, substandard sampling procedures and other data collected without the necessary scientific rigor.

Title V - Miscellaneous

Section 503 - Repeal of Gulf of Mexico red snapper catch limits

- This section would delete a current section of Magnuson-Stevens which requires the agency to establish separate commercial and recreational quotas, prohibit all retention of Gulf red snapper by a sector once its quota is reached, and set quotas that reflect the decided-upon allocation between the sectors, and not reflect any excess harvest.