



FISHING COMMUNITIES COALITION

H.R. 200 Section-By-Section

As Amended by the House Natural Resources Committee

Highlights and Concerns of the Fishing Communities Coalition

April 24, 2018

Members of the **Fishing Communities Coalition (FCC)** are committed to the long-term health of our nation's valuable fisheries, the thousands of jobs that depend on them and the steady supply of high-quality sustainable seafood that feeds America. On behalf of our fishermen members who count on Congress to safeguard the nation's oceans and fisheries, we offer these views and recommended changes to H.R. 200.

Sec. 101-References

- Makes changes in definitions to distinguish differences between “overfishing” and “depleted”; eliminates the term “overfished.”

***FCC Position:** The FCC does not oppose these amendments. Additionally, the FCC recommends a change to the definition of recreational fishing to ensure the term refers **exclusively** to private anglers and does not inadvertently include charter fishing.*

Sec. 201-Definitions

- Defines “mixed-use fisheries” as any fishery in which two of three sectors are engaged (commercial, charter and recreational).

***FCC Position:** The FCC has no objections to adding this new definition, assuming the Committee makes changes to the recreational fishing definition as mentioned above.*

Sec. 202-Allocation Review for South Atlantic and Gulf of Mexico Mixed-Fisheries Uses

- Mandates a National Academy of Sciences (NAS) allocation study of all mixed-use fisheries in the South Atlantic and Gulf regions to provide guidance on allocating fishing privileges in those two regions.
- Mandates an allocation review of mixed-use fisheries in those two regions within two years of enactment and every five years after.
- Review shall be consistent with the NAS report AND shall require the two councils (South Atlantic and Gulf) to review the conservation and socioeconomic benefits of each allocation decision for the commercial and recreational sectors (this section either excludes the charter sector or assumes it will be combined with the recreational sector).

FCC Position: *The FCC does **not** support this “region-specific,” unfunded mandate designed to force councils to reallocate fisheries quota to private anglers. Councils should not be forced to reallocate quota; they have all the authority needed to make changes in quota allocation.*

Sec. 203-Alternative Fishery Management Measures

- Clarifies councils have authority to use extraction rates / fishing mortality targets for recreational fisheries (only).

FCC Position: *The FCC urges the Committee to remove this section because it will eliminate the foundational requirement to establish annual catch limits (ACLs), first for recreational fishermen, but ultimately for all three sectors. Councils already have the authority to prescribe other measures to regulate the private angler sector within their ACL; mandating this change through the Magnuson-Stevens Act (MSA) will only serve to create non-scientific exemptions to ACLs. This language effectively eliminates accountability for one sector of fishermen (private anglers), which will inevitably lead to overfishing and reduction in quotas that hurt all sectors. There is also no payback provision for the recreational sector, making it highly likely that the impacts of their overfishing will be borne by other fishermen.*

Sec. 204-Modifications to Annual Catch Limits

- Provides exemptions to ACLs for data-poor fisheries that are not subject to overfishing. Allows maintaining existing ACLs for those stocks until peer-reviewed stock assessments are conducted.
- Clarifies that councils may consider changes in an ecosystem and the economic needs of fishing communities consistent with Sec. 302(h)(6), which requires councils to develop ACLs for all managed fisheries and may not exceed the level recommended by the Scientific and Statistical Committees (SSCs).
- Exempts from the ACL requirement: (1) ecosystem-component species (see below); (2) fisheries with a life cycle of one year; and (3) fisheries where more than half a single year class will complete their life cycle within 18 months and where fishing mortality will have little impact on the stock. This section also modifies ACLs for certain transboundary stocks where foreign fishing of that stock beyond the U.S. exclusive economic zone (EEZ) hinders our country's conservation efforts.
- Authorizes councils to establish ACLs for an entire multispecies stock complex and allows them to set multiyear ACLs, not to exceed three years.
- Defines ecosystem-component species as a stock of fish that is non-target, incidentally harvested, not subject to overfishing or depletion and not likely to become overfished or depleted in the absence of management (i.e., an ACL). This ecosystem-component species definition appears dangerously close to bycatch, and this exemption could lead to increases in bycatch contrary to National Standard 9, which requires bycatch to be minimized.
- Requires the Secretary of Commerce to conduct a peer-review stock assessment within two years of being requested by a council.

FCC Position: *The FCC does not believe this section is needed, since it appears the goal is to codify current non-scientific practices of some councils (such as no ACLs for ecosystem components). We are concerned about establishing ACLs for an entire multispecies stock complex, as this could lead to overfishing of some stock components. The ecosystem-component*



species exemption from ACLs is also of concern, as this could result in greater bycatch, depending on how it is used.

Sec. 205-Limitation on Future Catch Share Programs

- Establishes new referendum requirements for the New England, Mid-Atlantic, South Atlantic and Gulf of Mexico Councils. Prohibits the submission of any new catch share program from those councils, unless a majority of permit holders approves the program through a referendum. The Secretary of Commerce must issue regulations on how and who participates in referenda. The referendum requirement excludes the other four councils.
- For the New England Council region only, the Council may request or allow crew members to participate in referendum.

***FCC Position:** These provisions create regional inequities, undermining national policy for U.S. fisheries. This section will halt, if not terminate, future catch share programs in four regions of the country or prevent species from being added to existing successful catch share programs. While labeled a “pilot program,” there is nothing “pilot” about the prohibition. Referenda are already required for new catch share programs in New England and the Gulf of Mexico.*

Sec. 206-Study of Limited Access Privilege Programs (LAPPs) for Mixed-Use Fisheries

- Requires a NAS study on use of LAPPs in mixed-use fisheries.
- The study is supposed to identify inequities caused by the program, recommend policies to address inequities and recommend how LAPPs should be designed for mixed-use fisheries.
- The Secretary is directed to submit recommendations from the study to Congress.
- Imposes a moratorium on LAPPs in mixed-use fisheries until report is submitted.
- The moratorium does not apply to any pending LAPPs, except that any such LAPP must be revised to be consistent with recommendations in report.

***FCC Position:** The FCC opposes this section, since it will ensure that there are no new LAPPs (catch shares) for fisheries in which recreational fishing occurs. Since LAPPs require accountability and catch limits, this is another way the recreational sector wants to avoid both. As there is no deadline or due date for submission of the report, the FCC is concerned that the moratorium could become an indefinite ban if the study is not completed within one year. Further, the NAS study is directed to focus only on the potential negative aspects of LAPPs, without considering benefits. When combined with other sections of H.R. 200, Sec. 206 precludes the adoption of any new catch share program until or unless the recreational sector is guaranteed unregulated access to fisheries.*

Sec. 207-Cooperative Data Collection

- Requires a report from the Secretary of Commerce on facilitating greater incorporation of data, stock assessments, surveys, etc. from state agencies and non-government sources.
- The report must identify types of data, especially for recreational fishing, that can be used for purposes of the MSA, provide recommendations for data collection and analysis to reduce uncertainty and improve accuracy of stock assessments, etc.
- Requires Secretary to issue guidelines on new data collection initiative no later than one year after date of enactment.



- Requires Secretary to implement, to the extent feasible, the recommendations of the NAS report on the Marine Recreational Information Program (MRIP), including evaluating electronic data collection (smartphones, etc.), evaluating whether design of MRIP for stock assessments is compatible with in-season management of ACLs and identifying alternative methods for in-season management.

***FCC Position:** The FCC developed a proposal to modernize and streamline the National Oceanic and Atmospheric Administration's (NOAA's) fishery information systems. This section fails to meet the objectives of the FCC proposal, principally by relying on the Secretary, not an independent entity, to develop recommendations for improving data collection, etc. These provisions in H.R. 200 are weak and not likely to make a significant difference in quantity, accuracy or precision of data, especially recreational data.*

Sec. 208-Recreational Fishing Data

- Requires the Secretary to establish partnerships with states to develop best practices for implementing state programs required under MSA Sec. 401(g).

***FCC Position:** These provisions attempt to improve MRIP and secure more information for state agencies. While they may result in some improvements, regrettably nothing in this section requires greater accountability by the recreational sector or mandatory catch reporting. Without it, accurate assessments of recreational catch and sustainable fisheries management will continue to prove challenging.*

Sec. 209-Miscellaneous Amendments Related to Councils

- Provides that the New England and Mid-Atlantic Council liaisons are voting members of the other council (previously non-voting members).
- Adds subsistence fishing (in addition to commercial and recreational fishing) to the eligibility requirements for council nominations.
- Adds promoting subsistence fishing (in addition to recreational and commercial fishing) to MSA Purposes section (Sec. 2(b)(3)).
- Prohibits the inclusion of red snapper killed during oil rig removals in the Gulf of Mexico to be counted against "catch."
- Prohibits the inclusion of any fish seized from a foreign vessel engaged in illegal, unreported and unregulated (IUU) fishing in the U.S. EEZ in determining "catch."

***FCC Position:** The FCC has no position.*

Sec. 301-Healthy Fisheries through Better Science

- Adds definition of the term "stock assessment."
- Requires the Secretary to develop a stock assessment plan for all MSA managed stocks; the plan is required within two years after the date of enactment.
- The plan must include a schedule for updating stock assessments.
- The plan requires new or updated stock assessments every five years or within some other time period as justified by the Secretary.
- For stocks with no previous assessments, the plan requires completion of an initial assessment within three years after publication.



- The plan must also identify, especially for recreational fishing, data and analysis currently available that could improve accuracy of stock assessments and reduce uncertainty.
- Provides waiver of stock assessment requirement for stocks the Secretary determines / justifies are not in need of assessments.

***FCC Position:** The FCC supports better science and more frequent stock assessments.*

Sec. 302-Transparency and Public Process

- Requires SSCs to develop advice in a transparent manner and allow for “public involvement in the process.”
- Requires councils to make available webcasts, audio recordings or live broadcasts of each meeting of the council and SSCs.
- Requires councils to make available audio, video or searchable written transcripts of council meetings and of the meetings of all SSCs within 30 days of the conclusion of the meetings.
- Requires the Secretary to maintain and make available to the public an archive of council and SSC meetings, audios, videos transcripts, etc.
- Significantly expands the requirements for Fishery Impact Statements, required for all fishery management plans (FMPs) and amendments, and requires councils to integrate them into decision-making.

***FCC Position:** These new requirements will be time consuming and duplicate much of what is already required by the National Environmental Policy Act (NEPA) process. The FCC is unclear as to the need for expanded Fishery Impact Statements and is concerned that these provisions will add delay and cost. The FCC has recommended transparency provisions similar to the ones in H.R. 200, and this provision is a holdover from previous MSA bills. Unfortunately, H.R. 200 has **not** adopted the FCC recommendation of requiring recorded votes at council meetings to provide a permanent and transparent accountability of the council members themselves, who are entrusted with managing our nation’s public resources. Sec. 302 also greatly expands the requirements for Fishery Impact Statements.*

Sec. 303-Flexibility in Rebuilding Fish Stocks

- For overfished (now called depleted) stocks, this section requires rebuilding to be done “as soon as practicable” as opposed to “as soon as possible” in current law.
- Eliminates 10-year rebuilding requirement and substitutes “the time period a stock would be rebuilt without fishing occurring plus one mean generation.”
- Exempts from this new rebuilding requirement: stocks being depleted outside U.S. EEZ; stocks subject to international agreement which dictates otherwise ; stocks for which the Secretary determines one or more components of a mixed-stock fishery (multispecies fishery) are depleted, but cannot be rebuilt within the timeframe without significant economic harm to the fishery or cannot be rebuilt without causing another component of the mixed-stock fishery to approach a depleted status; stocks where the Secretary determines that recruitment, distribution, life-history or fishing activities affected by transboundary agreements under which foreign fishing outside the U.S. EEZ may hinder U.S. conservation and management efforts; stocks where the Secretary determines that the



stock has been affected by unusual events that make rebuilding within the time frame improbable without significant economic harm to fishing communities.

- Provides that a FMP, an amendment or proposed regulation may use alternative rebuilding strategies including harvest control rules and fishing mortality rates.
- Extends duration of emergency regulations and interim measures from 180 days to one year.

***FCC Position:** This section creates multiple exceptions from the mandatory stock rebuilding requirements currently in law, and the FCC is uncertain how many stocks would be impacted by these changes. Substituting the 10-year rebuilding requirement with a new more flexible rebuilding time period could be problematic if it is not based on science. The use of economic harm to extend rebuilding time frames could extend rebuilding beyond an acceptable point. This provision also allows for alternative rebuilding strategies such as harvest control rules and fishing mortality targets. The FCC is uncertain as to the need and impact of this section.*

Sec. 304-Exempted Fishing Permits

- Requires the Secretary to direct a joint peer review of Exempted Fishing Permits (EFPs) by appropriate fisheries science centers and state marine fisheries commissions.
- Requires the Secretary to certify that the council with jurisdiction over the fishery in question has determined that: (1) the EFP won't negatively impact any management measures or conservation objectives included in an existing FMP; (2) that the social and economic impacts on all participants in each sector are minimal; (3) the data collected through the EFP will have a positive and direct impact on the conservation and management of the fishery; and (4) the governor of each impacted coastal state has been consulted.
- Prohibits the Secretary from approving any EFP that establishes a LAPP or catch share program.

***FCC Position:** The changes made by this section to the EFP requirements would make the EFP process burdensome and onerous, adding months or even years of delay and consultation with people wholly unfamiliar with the fisheries. EFPs are one of the most effective tools fishermen have to modernize how fisheries are managed. We are concerned this is an attempt by the recreational sector to prevent innovation and creative management strategies in the commercial and charter sectors.*

Sec. 305-Cooperative Research and Management Program

- Requires the Secretary, within one year, to publish a plan for implementing and conducting the national cooperative research and management plan.
- Adds to research priorities electronic monitoring (EM), acoustics, expanding use of electronic catch reporting programs and technology.

***FCC Position:** FCC proposed very strong EM mandates all geared toward implementation. H.R. 200 delays implementation by requiring NOAA to develop a research plan that would include EM. Instead of moving forward on the implementation of EM as quickly as possible, this section would likely delay it even further.*



Sec. 306-Gulf of Mexico Cooperative Research and Red Snapper Management

- In establishing catch limits for red snapper in the Gulf, this section directs the Secretary to use certified state recreational surveys, data from Gulf States Commission and other non-government sources.
- Includes procedures for certifying state recreational surveys and resubmission of surveys denied certification and mandates that state surveys will be deemed certified if the Secretary does not approve within six months.
- Directs the Secretary to develop a schedule of stock surveys and assessments for both the Gulf of Mexico region and the South Atlantic region for the five-year period beginning on date of enactment and every five years thereafter.
- Requires the Secretary to direct the Southeast Fisheries Science Center to implement the schedule.
- Gives priority to stocks that are commercially and recreationally important and requires that these stocks be surveyed at least every five years.
- Directs the Southeast Fisheries Science Center to incorporate any fisheries information made available through Katrina funding to be incorporated into any fisheries stock assessment conducted after date of enactment.
- Extends Gulf state jurisdiction out to nine miles for purposes of managing the recreational red snapper sector.

***FCC Position:** The FCC strongly opposes this attempt by Congress to directly manage a single fishery. While the FCC supports improved regional cooperation and improvements to recreational red snapper data collection, this section would put Congress squarely in the business of directly managing red snapper. While the FCC recognizes problems with the management of the recreational red snapper sector, H.R. 200 is a prime example of government overreach and does not represent a lasting and meaningful solution. The FCC recommends that all red snapper provisions be stripped from H.R. 200 and that these management challenges be addressed through the existing public, transparent and representative stakeholder process of the Gulf Council.*

Sec. 307-Ensuring Consistent Management

- Clarifies that in the event of any conflict between MSA and either the *Antiquities Act* or the *National Marine Sanctuaries Act*, MSA is the controlling law and councils will manage fish.
- Specifies that any fisheries restrictions necessary to implement a recovery plan under the *Endangered Species Act* must be done through the MSA and council process.

***FCC Position:** The FCC has not taken a position on these controversial provisions, but understands they could be poison pills and add a significant burden to council workloads.*

Sec. 401-Strengthening Fishing Communities

- Requires the Secretary to publish the estimated cost of recovery from a fishery disaster no later than 30 days after disaster determination.

***FCC Position:** The FCC has no position.*



Sec. 402-Deadline for Action on Disaster Declaration Request

- Requires the Secretary to make a disaster determination within 90 days after receipt of economic impact estimate.

FCC Position: The FCC has no position.

Sec. 403-The North Pacific Fishery Management Council (NPFMC)

- Allows the state of Alaska to regulate vessels not registered in Alaska but operating in the EEZ off of Alaska in a fishery for which there is no FMP.

FCC Position: The FCC has no position.

Sec. 404-North Pacific Pollock Fishery

- Increases from 17.5 percent to 24 percent the amount that may be harvested in the directed pollock fishery by any one entity, individual or corporation.

FCC Position: The FCC opposes further consolidation in the pollock fishery and believes this provision is contrary to National Standard 4. It appears this provision is designed to help a single corporation.

Sec. 405-Arctic Community Development Quota

- Establishes a 10 percent Arctic Community Development Quota program for coastal villages north and east of the Bering Strait, in the event that the NPFMC develops a management plan for fisheries in the Arctic Ocean.

FCC Position: The FCC has no position.

Sec. 406-Reallocation of Unused Aleutian Islands Directed Pollock Quota

- Directs the Secretary, after receiving notice that some or all of the quota for the Aleutian Islands directed pollock fishery will not be harvested, to reallocate quota to the Aleut Corporation for economic development purposes in Adak, Alaska.
- Directs that NMFS shall manage the Aleutian Islands directed pollock fishery.

FCC Position: The FCC has no position on these provisions.

Finally, we note that the FCC submitted legislative proposals to both the House and Senate. Several of the issues addressed in that package are addressed (mostly unsatisfactorily) by H.R. 200. Major issues not addressed in H.R. 200 include:

- Forage fish protections
- Financing of fisheries monitoring programs
- Strengthening fishing communities participation in LAPPs
- Mandatory catch reporting for recreational vessels
- EM storage requirements

