

H.R. 2023 - The “Modern Fishing Act of 2017”

Sponsor – Congressman Graves (R-Louisiana)

Introduced on April 6, 2017

Referred to the House Natural Resources Committee

Section 1 – Short Title; Table of Contents.

Section 2 – References to the Magnuson-Stevens Fishery Conservation and Management Act. This section clarifies that any amendment or repeal should be considered to be an amendment or repeal of a section or provision of the Magnuson-Stevens Fishery Conservation and Management Act.

Section 3 – Findings. The bill would add a provision to Section 2(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to add that Congress finds and declares that while both recreational and commercial fishing provide significant cultural and economic benefits to the Nation, the two activities are fundamentally different and therefore require management approaches adapted to the characteristics of each of the sectors.

The bill would also amend an existing Congressional finding to remove the phrase that noted that the economies of many coastal areas “have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade.”

The bill would also remove the following language from the same Congressional finding – “The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.”

TITLE I – CONSERVATION AND MANAGEMENT

Section 101 - Process for Allocation Review for South Atlantic and Gulf of Mexico Mixed-Use Fisheries.

<p>This section would require the Secretary of Commerce, within 60 days after the date of the enactment of this legislation, to enter into an agreement with the National Academy of Sciences to conduct a study of the South Atlantic and Gulf of Mexico mixed-use fisheries. Under the study, the National Academy of Sciences would be required to do the following things: (1) provide guidance to the South Atlantic and Gulf of Mexico Fishery Management Councils on criteria that could be used for allocating fishing privileges in the preparation of a fishery management plan under the MSA. This guidance must include consideration of the conservation and socioeconomic benefits of the commercial, recreational, and charter components of a fishery; (2) identify sources of information that could reasonably support the use of such criteria in</p>	<p>The likely impact of this paragraph is to provide additional guidance to the Council regarding identification of criteria for making allocation decisions, identify sources of pertinent information, and develop procedures useful for making allocation decisions. Item (3) would be the most difficult task as it is relatively easy to develop criteria and to identify sources of information but it is more difficult to develop specific procedures to follow in establishing allocations that would be useful to the Councils.</p>
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allocation decisions; and (3) develop procedures for allocations based on the guidelines and requirements established by this section.	
This section would require the National Academy of Sciences (NAS), within one year of the date an arrangement is entered into between the Secretary of Commerce and the NAS, to submit a report on the study to the Senate Commerce, Science, and Transportation Committee and the House Natural Resources Committee.	This section requires a report to Congress within one year of initiating the allocation procedures analyses.
This section would require both the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, within 2 years of the enactment of this legislation and notwithstanding the NAS report or any other provision of law, to perform an initial review of the allocations to the commercial fishing sector and the recreational fishing sector of all applicable fisheries within each of the respective Council's jurisdiction.	This requirement to review allocations of all mixed use fisheries would place a potentially significant burden on both Council and NMFS staff time to conduct. This would include the many species within the reef fish fishery, the coastal migratory pelagics fisheries of Spanish mackerel, king mackerel and cobia, and the spiny lobster fishery.
The bill would require that both the Gulf of Mexico Council and the South Atlantic Council perform a review of the allocations to the commercial fishing sector and the recreational fishing sector of all applicable fisheries within each of the respective Council's jurisdiction every three years following the initial review.	This requirement to conduct reviews of all allocations every three years would be excessively burdensome. Every five to ten years seems more reasonable.
The bill would require that each of the reviews conducted by the two Councils consider the conservation and socioeconomic benefits of each of the commercial fishing sector and the recreational fishing sector in any allocation decisions.	Overall, It does not appear that this section requires either of the Councils to conduct a reallocation, but it does appear to require that each Council review existing allocations and take conservation and socioeconomic benefits of the two sectors into future allocation decisions. It also appears that the two Councils are not required to take the findings or guidance of the NAS study into account in such allocation reviews.

Section 102 – Alternative Fishery Management.

This section would repeal section 407(d) of the MSA.	This paragraph is a part of Section 12 in H.R. 200 which eliminates and replaces 407 completely. Removing 407(d) removes the requirement for separate red snapper quotas for the commercial and recreational sectors and the corresponding closure requirement when the ACL of <i>each</i> sector is reached. The Council could reenact these
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	provisions regulatory action. This provision would also allow the Council to establish a separate closure provisions for each component of the recreational sector.
This section would add an additional authority under section 302(h) (Functions of the Councils) to allow Councils to use alternative fishery management measures in a recreational fishery (or the recreational component of a mixed-use fishery) in developing a fishery management plan, plan amendment, or proposed regulations. This authority would include the ability to use extraction rates, fishing mortality targets, harvest control rules, or traditional or cultural practices of native communities.	This paragraph is the same as Section 29 in H.R. 200. This may provide flexibility to the Council in setting harvest limits on the recreational fishery. It will be challenging to establish alternative measures for controlling recreational fishing mortality.
The bill would require that the Secretary of Commerce report to Congress within 180 days of the enactment of this legislation to describe the actions taken to implement this new authority.	NA

Section 103 – Moratorium on Limited Access Privilege Programs for Mixed-Use Fisheries.

This section would impose a moratorium on the development or consideration of any new limited access privilege program for any mixed-use fishery consisting of both commercial and recreational fishing sectors. The moratorium would apply to fisheries under the jurisdiction of the Gulf of Mexico Council and the South Atlantic Council.	This section would prevent the Council from considering limited access systems as a tool for managing Gulf fisheries that have a recreational component. Fisheries that <u>only</u> have a commercial component would appear not to be prevented from moving forward with a limited access privilege program.
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Section 104 – Rebuilding Overfished and Depleted Fisheries.

This section would slightly rewrite the time period requirements for rebuilding overfished fisheries. The bill would maintain the 10-year rebuilding requirement with exceptions for those overfished fisheries where management measures under an international agreement in which the U.S. participates dictate otherwise and exceptions for those cases in which the biology of the stock of fish or other environmental conditions dictate otherwise.	This measure is similar to Section 4 in HR 200. The proposed exceptions provide the Councils with flexibility for rebuilding overfished/depleted stocks. The two exceptions to the 10-year rebuilding requirement are for fisheries under international management or when the biology of the fish or environmental conditions prevent rebuilding within 10 years.
This section would also add an alternative to the 10-year rebuilding requirement requiring that the rebuilding timeframe not exceed the sum of the time in which the affected stock of fish is	This wording allows a rebuilding timeframe to exceed 10 years but not the total time equal to the sum of the mean generation time plus the time it

expected to surpass its maximum sustainable yield biomass level in the absence of fishing mortality and the mean generation of time of the affected stock of fish.	would take for the stock to reach/surpass MSY in the absence of fishing.
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Section 105 – Modifications to the Annual Catch Limit Requirement.

This section would amend section 302 to add a new provision titled “Considerations for Modifications to Annual Catch Limit Requirements.” This new provision would allow Councils, in establishing annual catch limits, to consider changes in an ecosystem and the economic needs of fishing communities as long as the decision was consistent with section 302(h)(6) which requires that annual catch limits not exceed the fishing level recommendations of the scientific and statistical committee or the peer review process.	This is similar to the first paragraph under Section 5 of HR 200 and provides some flexibility to the Councils in setting ACLs. Section 5 said that overfishing could not occur whereas this section says the ACLs cannot exceed the ABCs set by the SSC.
The section would not require a Council to develop annual catch limits for: ecosystem-component species; a fishery for a species that has a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing; a stock of fish for which the fishing mortality is below the fishing mortality target and a peer-reviewed stock survey and stock assessment have not been performed during the preceding 5-year period and the Secretary determines overfishing is not occurring; or for a sector of a fishery that is not monitored by a data collection system determined by the Secretary to be adequate for the development, implementation, and enforcement of annual catch limits specific to that sector (the determination of whether the data collection system is adequate by the Secretary is to be based on the evaluation recommended by the National Academy of Sciences 2017 report titled “Review of Marine Recreational Information Program”).	Similar to Section 5 in HR 200. This would provide the Councils with more flexibility to classify incidentally caught species as ecosystem component species. Additional clarification in the NS1 guidelines of this exemption would be needed.
This section would also allow Councils to establish an annual catch limit for a stock complex or to establish annual catch limits for each year in any continuous period that is not more than three years in duration.	Similar to Section 5 of HR 200. This provision clarifies existing MSA language, ensuring flexibility in setting multi-species ACLs. Thus, no effect. The existing wording in the MSA states, “develop ACLs for each of its managed fisheries,” it does not specify that each species or stock must have its own ACL. The Council currently has single ACLs for multi-species complexes, which are managed together.

<p>This section would define ecosystem-component species (for this section of the bill) as a stock of fish that is a non-target, incidentally harvested stock of fish in a fishery or is a non-target incidentally harvested stock of fish that a Council or the Secretary has determined is not subject to overfishing, is not approaching a depleted condition, is not depleted, or is not likely to become subject to overfishing or to become depleted in the absence of conservation and management measures.</p>	<p>Similar to Section 5 of HR 200. This would provide the Councils with more flexibility to potentially classify incidentally caught species as ecosystem component species. It is helpful that this bill does not limit species caught incidentally in a fishery from ecosystem component consideration.</p> <p>It should be noted that additional clarification in the NS1 guidelines of this exemption would be helpful.</p>
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Section 106 – Exempted Fishing Permits.

<p>This section would not amend the MSA, but would require that the Secretary of Commerce follow new procedures before approving or issuing any new exempted fishing permits (EFP) under section 600.745 of title 50, Code of Federal Regulations.</p>	
<p>The new procedures would include the requirement for a joint peer review of the proposed EFP by the appropriate regional fisheries science center and the appropriate State marine fisheries commission and a requirement that the Secretary certify that the regional fishery management council or Federal agency with jurisdiction over the affected fishery has determined that: the fishing activity to be conducted under the proposed EFP would be consistent with any conservation and management objectives under the existing fishery management plan or amendments; the social and economic impacts (in both dollar amounts and the loss of fishing opportunities on all participants in each sector of the fishery) expected to occur as a result of the proposed EFP; the information collected through the fishing activities conducted under the proposed EFP will have a positive and direct impact on the conservation, assessment or management of the fishery; and the Governor of each of the States – of which any part of that State is within 100 nautical miles of the proposed activity under the proposed EFP – has been consulted on the proposed EFP.</p>	<p>This provision adds a number of new requirements on the review process of EFPs and would increase the staff time required to analyze and review EFPs. In addition to SERO staff time, this provision requires review by the fisheries commission, fisheries council and state staff.</p>
<p>This section would require that any EFP shall expire at the end of the 12-month period beginning on the date that the permit was issued</p>	<p>This seems to be an unusually stringent requirement that cannot be met in that the above</p>

and that any EFP that is renewed be consistent with the new requirements listed above.	required analytical and review process above could take months to accomplish.
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TITLE II – RECREATIONAL FISHERY INFORMATION, RESEARCH, AND DEVELOPMENT

Section 201 – Cooperative Data Collection.

This section would amend section 404 by adding a new provision at the end. This new provision would require the Secretary of Commerce, in consultation with the science and statistical committees of the Councils and the Marine Fisheries Commissions, to develop and submit a report on facilitating greater incorporation of data, analysis, stock assessments and surveys from State agencies and non-governmental sources. This report is to be submitted to the Senate Commerce, Science, and Transportation Committee and the House Natural Resources Committee and is required to be submitted no later than one year after the date of enactment of this legislation.	This provision addresses a non-existing issue. All known data, analyses and surveys conducted by the states and other sources are already incorporated into the SEDAR stock assessment process.
This section lists the non-governmental sources that are to be used as sources of data to include: fishermen; fishing communities; universities; and research institutions.	Fishermen, academics and researchers are already included in the SEDAR Data Workshops for incorporation into stock assessments.
The report is required to: identify types of data and analysis – especially concerning recreational fishing – that can be reliably used for the purposes of the Act and as the basis for establishing conservation and management measures as required by section 303(a)(1) and to include the setting of standards for the collection and use of that data and analysis in stock assessments and surveys; provide specific recommendations for collecting data and performing analyses which have been identified as necessary to reduce uncertainty and improve the accuracy of future stock assessments and whether data and analyses could be provided by the listed non-governmental sources; consider the extent to which it would be possible to establish a registry of persons who provide such information; and consider the extent to which the acceptance and use of data and analysis identified in the report is practicable in fishery management decisions.	Same as above. The requested report could be very time consuming for NMFS staff.
This section would require the Secretary of Commerce to take into consideration and, to the	This section requirements are confusing in that it requires analyses by NMFS to evaluate whether

<p>extent feasible, implement that recommendations of the National Academy of Sciences in the 2017 report titled “Review of the Marine Recreational Information Program”. Included in the requirement to consider and implement the NAS recommendations would be to: prioritize the evaluation of electronic data collection of the Fishing Effort Survey including smartphone apps, electronic diaries, and an internet website option; evaluate whether the design of the Marine Recreational Information Program for the purposes of stock assessment and the determination of stock management reference points is compatible with the needs of in-season management of annual catch limits and, if the program is not compatible with such needs, determine an alternative for in-season management.</p>	<p>MRIP is appropriate for two different unrelated purposes: 1) for stock assessments and to develop stock status reference points; and, 2) that MRIP is also useful for recreational in-season monitoring of ACLs. For item 2), if MRIP is not suitable NMFS is to determine an alternative for in-season management.</p>
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Section 202 – Recreational Data Collection.

<p>This section would amend section 401(g) to add a new provision. The new provision would require the Secretary of Commerce to establish partnerships with States to develop best practices for the implementation of State registry programs.</p>	<p>Similar to Section 16 of HR 200. Currently working to improve collaborations on collecting recreational fisheries data and other research needs.</p>
<p>The provision would require the Secretary, in cooperation with the States, to develop guidance that details the best practices for administering State registry programs and to provide the guidance to the States.</p>	<p>Similar to Section 16 of HR 200. No impact on the Council</p>
<p>The provision would require the Secretary to submit biennial reports to Congress that include: the estimated accuracy of the Federal registry program and the existing State registry programs; priorities for improving recreational fishing data collection; and an explanation of any use of information collected by State registry programs and by the Secretary including a description of the consideration given to the information collected by the Federal program.</p>	<p>Similar to Section 16 of HR 200. May continue to improve collaborations on collecting recreational fisheries data and other research needs.</p>
<p>This section would require the Secretary of Commerce to make grants to States to improve the implementation of State registry programs and requires the Secretary to prioritize the grants based on the ability of the grant to improve the quality and accuracy of the programs.</p>	<p>Similar to Section 16 of HR 200. May continue to improve collaborations on collecting recreational fisheries data.</p>

<p>This section would require that a portion of the funds appropriated to the Marine Recreational Information Program (MRIP) be used for the grant program to States.</p>	<p>This provision is not in HR 200. In addition to grants to the States, this provision takes funds from MRIP directly to be used to partially (or fully) fund the state grants.</p>
<p>This section would require the Secretary of Commerce, within 90 days of the enactment of this legislation, to enter into an agreement with the National Academy of Sciences to evaluate whether the design of MRIP, for the purposes of stock assessment and the determination of stock management reference points, is compatible with the needs of in-season management of annual catch limits and whether in-season management of annual catch limits is appropriate for all recreational fisheries. The NAS would be required to report back to the Secretary.</p>	<p>Differs from Section 16 of HR 200 which focused on evaluation all existing recreational survey methods, whereas, this provision focuses on the utility of MRIP for in-season management of ACLs, for stock assessments and the determination of management reference points. (This requirement is similar to that in Section 201, above.)</p>
<p>The Secretary would then be required, within 6 months of receiving the report from the NAS, to submit to Congress recommendations for changes that could be made to MRIP to make the program more compatible with in-season management of annual catch limits and other requirements under the MSA for recreational fisheries for which in-season management of annual catch limits is appropriate.</p>	<p>Similar to HR 200 except requires a report in 6 months rather than 1 year and requires changes to MRIP to make it better for in-season management.</p>