

112TH CONGRESS
2D SESSION

H. R. 6350

To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide additional flexibility for fishery managers, additional transparency for fishermen, a referendum for catch shares, and additional sources for fishery survey funding, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2012

Mr. RUNYAN (for himself, Mr. SOUTHERLAND, Mr. RIVERA, Mr. LoBIONDO, Ms. ROS-LEHTINEN, and Mr. GUINTA) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide additional flexibility for fishery managers, additional transparency for fishermen, a referendum for catch shares, and additional sources for fishery survey funding, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Transparent and Science-Based Fishery Management
6 Act of 2012”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References.
- Sec. 3. Definitions.
- Sec. 4. Annual catch limits.
- Sec. 5. Catch share referendum requirement.
- Sec. 6. Extension of time period for rebuilding certain overfished fisheries.
- Sec. 7. Authority to suspend annual catch limits.
- Sec. 8. Use of fishery enforcement penalties for fishery independent data collection.
- Sec. 9. Response on disaster assistance requests.
- Sec. 10. SSC and Council transparency.
- Sec. 11. State management.
- Sec. 12. Report to Congress on closures.

3 **SEC. 2. REFERENCES.**

4 Except as otherwise specifically provided, whenever in
 5 this Act an amendment or repeal is expressed in terms
 6 of an amendment to, or repeal of, a provision, the ref-
 7 erence shall be considered to be made to a provision of
 8 the Magnuson-Stevens Fishery Conservation and Manage-
 9 ment Act (16 U.S.C. 1801 et seq.).

10 **SEC. 3. DEFINITIONS.**

11 Section 3 (16 U.S.C. 1802) is amended by adding
 12 at the end the following:

13 “(51) The term ‘catch share’ means any fishery
 14 management program that allocates a specific per-
 15 centage of the total allowable catch for a fishery, or
 16 a specific fishing area, to an individual, cooperative,
 17 community, sector, processor, regional fishery orga-
 18 nization established in accordance with section
 19 303A(c)(4), or other entity.

1 “(52) The term ‘ecosystem component species’
 2 means a stock of fish that is a nontarget, inciden-
 3 tally harvested stock of fish in a fishery, or a non-
 4 target, incidentally harvested stock of fish, that a
 5 Council or the Secretary has determined—

6 “(A) is not subject to overfishing, ap-
 7 proaching an overfished condition, or over-
 8 fished; and

9 “(B) is not be likely to become subject to
 10 overfishing or overfished in the absence of con-
 11 servation and management measures.”.

12 **SEC. 4. ANNUAL CATCH LIMITS.**

13 (a) IMPLEMENTATION OF ANNUAL CATCH LIMIT RE-
 14 QUIREMENT.—Section 302 (16 U.S.C. 1852) is amended
 15 by adding at the end the following:

16 “(m) IMPLEMENTATION OF ANNUAL CATCH LIMIT
 17 REQUIREMENT.—

18 “(1) LIMITATION ON ANNUAL CATCH LIMIT RE-
 19 QUIREMENT.—Notwithstanding subsection (h)(6), a
 20 Council is not required to develop an annual catch
 21 limit for—

22 “(A) an ecosystem component species, or

23 “(B) a species, fishery, or stock, for which
 24 a survey and stock assessment have not been
 25 performed within the preceding 5-year period.

1 “(2) RELATIONSHIP TO INTERNATIONAL EF-
2 FORTS.—Each annual catch limit shall take into ac-
3 count—

4 “(A) management measures under inter-
5 national agreements in which the United States
6 participates; and

7 “(B) informal transboundary agreements
8 under which management activities outside the
9 exclusive economic zone by another country may
10 hinder conservation efforts by United States
11 fishermen for a species for which any of the re-
12 cruitment, distribution, life history, or fishing
13 activities are transboundary.”.

14 (b) STOCK SURVEYS OR PEER-REVIEWED STOCK AS-
15 SESSMENTS.—Section 304 (16 U.S.C. 1854) is amend-
16 ed—

17 (1) by redesignating the second subsection (i)
18 (as added by section 406(a) of Public Law 109–479)
19 as subsection (j); and

20 (2) by adding at the end the following:

21 “(k) STOCK SURVEYS OR PEER-REVIEWED STOCK
22 ASSESSMENTS.—The Secretary shall, on an annual basis
23 and for each region under section 302(a)—

24 “(1) determine which fisheries and stocks of
25 fish have not been the subject of a stock survey or

1 peer-reviewed stock assessment within the previous 5
 2 years;

3 “(2) create—

4 “(A) a priority list, based on input from
 5 the Councils, for determining which fisheries or
 6 stocks of fish of the fisheries identified under
 7 paragraph (1) shall be surveyed in that year;
 8 and

9 “(B) a proposed budget for such surveys;
 10 and

11 “(3) identify opportunities for the use of State
 12 or private vessels for conducting such surveys.”.

13 **SEC. 5. CATCH SHARE REFERENDUM REQUIREMENT.**

14 (a) IN GENERAL.—Section 303A(c)(6)(D) (16 U.S.C.
 15 1853a(c)(6)(D)) is amended by redesignating clauses (iii)
 16 through (vi) as clauses (v) through (viii), and by striking
 17 clauses (i) and (ii) and inserting the following:

18 “(i) Except as provided in clause (v)
 19 for the Gulf of Mexico commercial red
 20 snapper fishery, the New England, Mid-At-
 21 lantic, South Atlantic, and Gulf of Mexico
 22 Councils may not submit a fishery manage-
 23 ment plan or amendment that creates a
 24 catch share program for a fishery, and the
 25 Secretary may not approve or implement

1 such a plan or amendment submitted by
2 such a Council or a Secretarial plan or
3 amendment under section 304(c) that cre-
4 ates such a program, unless the final pro-
5 gram has been approved, in a referendum
6 in accordance with this subparagraph, by a
7 majority of the permit holders eligible to
8 participate in the fishery. For multi-species
9 permits in the Gulf of Mexico, any permit
10 holder with landings from the fishery being
11 considered for the catch share program
12 within the 5-year period preceding the date
13 of the referendum and still active in fishing
14 in the fishery shall be eligible to partici-
15 pate in such a referendum. If a catch
16 share program is not approved by the req-
17 uisite number of permit holders, it may be
18 revised and submitted for approval in a
19 subsequent referendum.

20 “(ii) The Secretary shall conduct a
21 referendum under this subparagraph, in-
22 cluding notifying all permit holders eligible
23 to participate in the referendum and mak-
24 ing available to them—

1 “(I) a copy of the proposed pro-
2 gram;

3 “(II) an estimate of the costs of
4 the program, including costs to par-
5 ticipants;

6 “(III) an estimate of the amount
7 of fish or percentage of quota each
8 permit holder would be allocated; and

9 “(IV) information concerning the
10 schedule, procedures, and eligibility
11 requirements for the referendum proc-
12 ess.

13 “(iii) For the purposes of this sub-
14 paragraph, the term ‘permit holder eligible
15 to participate’ does not include the holder
16 of a permit for a fishery under which fish-
17 ing has not occurred in 3 of the 5 years
18 preceding a referendum for the fishery un-
19 less sickness, injury, or other unavoidable
20 hardship prevented the permit holder from
21 engaging in such fishing.

22 “(iv) The Secretary may not imple-
23 ment any catch share program for any
24 fishery managed exclusively by the Sec-
25 retary unless first petitioned by a majority

1 of those eligible to participate in the fish-
 2 ery.”.

3 (b) LIMITATION ON APPLICATION.—The amendment
 4 made by subsection (a) shall not apply to a catch share
 5 program that is submitted to, or proposed by, the Sec-
 6 retary of Commerce before the date of enactment of this
 7 Act.

8 (c) REGULATIONS.—Not later than 3 months after
 9 the date of enactment of this Act, the Secretary of Com-
 10 merce shall issue regulations implementing this section.

11 **SEC. 6. EXTENSION OF TIME PERIOD FOR REBUILDING**
 12 **CERTAIN OVERFISHED FISHERIES.**

13 Section 304(e) of the Magnuson-Stevens Fishery
 14 Conservation and Management Act (16 U.S.C.
 15 1854(e)(4)) is amended—

16 (1) in paragraph (4)(A)—

17 (A) in clause (i) by striking “possible” and
 18 inserting “practicable”; and

19 (B) by amending clause (ii) to read as fol-
 20 lows:

21 “(ii) not exceed 10 years, except in
 22 cases where—

23 “(I) another time period is ap-
 24 propriate because of the biology of the
 25 stock of fish, other environmental con-

1 ditions, management measures under
2 an international agreement in which
3 the United States participates, or an
4 informal transboundary agreement
5 under which management activities
6 outside the exclusive economic zone by
7 another country may hinder conserva-
8 tion efforts by United States fisher-
9 men for a species for which any of the
10 recruitment, distribution, life history,
11 or fishing activities are transbound-
12 ary;

13 “(II) the Secretary determines
14 that such 10-year period should be ex-
15 tended because the cause of the fish-
16 ery decline is outside the jurisdiction
17 of the Council or the rebuilding pro-
18 gram cannot be effective only by lim-
19 iting fishing activities;

20 “(III) the Secretary determines
21 that such 10-year period should be ex-
22 tended to provide for the sustained
23 participation of fishing communities
24 or to minimize the economic impacts
25 on such communities, if there is evi-

1 dence that the stock of fish is on a
2 positive rebuilding trend;

3 “(IV) the Secretary determines
4 that such 10-year period should be ex-
5 tended for one or more stocks of fish
6 of a multi-species fishery, provided
7 that there is evidence that those
8 stocks are on a positive rebuilding
9 trend;

10 “(V) the Secretary determines
11 that such 10-year period should be ex-
12 tended because of a substantial
13 change to the biomass rebuilding tar-
14 get for the stock of fish concerned
15 after the rebuilding plan has taken ef-
16 fect; or

17 “(VI) the Secretary determines
18 that such 10-year period should be ex-
19 tended because the biomass rebuilding
20 target exceeds the highest abundance
21 of the stock of fish in the 25-year pe-
22 riod preceding and there is evidence
23 that the stock is on a positive rebuild-
24 ing trend;”;

1 (2) in paragraph (7), in the matter preceding
2 subparagraph (A), by inserting after the first sen-
3 tence the following: “In evaluating progress to end
4 overfishing and to rebuild overfished stocks of fish,
5 the Secretary shall review factors, other than com-
6 mercial fishing and recreational fishing, that may
7 contribute to a stock’s overfished status, such as
8 commercial, residential, and industrial development
9 of, or agricultural activity in, coastal areas and their
10 impact on the marine environment, predator-prey re-
11 lationships of target and related species, and other
12 environmental and ecological changes to the marine
13 conditions.”; and

14 (3) by adding at the end the following:

15 “(8) If the Secretary determines that extended
16 rebuilding time is warranted under subclause (III),
17 (IV), (V), or (VI) of paragraph (4)(A)(ii), the max-
18 imum time allowed for rebuilding the stock of fish
19 concerned may not exceed the sum of the following
20 time periods:

21 “(A) The initial 10-year rebuilding period.

22 “(B) The expected time to rebuild the
23 stock absent any fishing mortality and under
24 prevailing environmental conditions.

1 “(C) The mean generation time of the
2 stock.

3 “(9) In this subsection the term ‘on a positive
4 rebuilding trend’ means that the biomass of the
5 stock of fish has shown a substantial increase in
6 abundance since the implementation of the rebuild-
7 ing plan.”.

8 **SEC. 7. AUTHORITY TO SUSPEND ANNUAL CATCH LIMITS.**

9 Section 304 (16 U.S.C. 1854) is further amended by
10 adding at the end the following:

11 “(1) AUTHORITY TO SUSPEND ANNUAL CATCH LIM-
12 ITS.—The Secretary may suspend the application of an-
13 nual catch limits to a fishery for any period for which the
14 Secretary determines that—

15 “(1) the fishery is not overfished or approach-
16 ing a condition of being overfished;

17 “(2) any stock of fish in the fishery previously
18 affected by overfishing is rebuilt; and

19 “(3) the scientific advice relating to such an-
20 nual catch limits provided by the scientific and sta-
21 tistical committee of the Council with jurisdiction
22 over the fishery is based on a level of uncertainty
23 that is insufficient to ensure that the fishery man-
24 agement plan for the fishery is consistent with the
25 national standard set forth in section 301(a)(8).”.

1 **SEC. 8. USE OF FISHERY ENFORCEMENT PENALTIES FOR**
2 **FISHERY INDEPENDENT DATA COLLECTION.**

3 Section 404 (16 U.S.C. 1881c) is amended by adding
4 at the end the following:

5 “(e) USE OF THE ASSET FORFEITURE FUND FOR
6 FISHERY INDEPENDENT DATA COLLECTION.—

7 “(1) IN GENERAL.—The Secretary, subject to
8 appropriations, may obligate for data collection pur-
9 poses in accordance with prioritizations under para-
10 graph (3) a portion of amounts received by the
11 United States as fisheries enforcement penalties.

12 “(2) INCLUDED PURPOSES.—The purposes re-
13 ferred to in paragraph (1) include—

14 “(A) the use of State personnel and re-
15 sources, including fishery survey vessels owned
16 and maintained by States to survey or assess
17 data-poor fisheries for which fishery manage-
18 ment plans are in effect under this Act; and

19 “(B) cooperative research activities to im-
20 prove or enhance the fishery independent data
21 used in fishery stock assessments.

22 “(3) DATA-POOR FISHERIES PRIORITY LISTS.—
23 Each Council shall—

24 “(A) identify those fisheries in its region
25 considered to be data-poor fisheries;

1 “(B) prioritize those fisheries based on the
2 need of each fishery for up-to-date information;
3 and

4 “(C) provide those priorities to the Sec-
5 retary.

6 “(4) DEFINITIONS.—In this subsection:

7 “(A) DATA-POOR FISHERIES.—The term
8 ‘data-poor fishery’ means a fishery—

9 “(i) that has not been surveyed in the
10 preceding 5-year period;

11 “(ii) for which a fishery stock assess-
12 ment has not been performed within the
13 preceding 5-year period; or

14 “(iii) for which limited information on
15 the status of the fishery is available for
16 management purposes.

17 “(B) FISHERIES ENFORCEMENT PEN-
18 ALTIES.—The term ‘fisheries enforcement pen-
19 alties’ means any fine or penalty imposed, or
20 proceeds of any property seized, for a violation
21 of this Act or of any other marine resource law
22 enforced by the Secretary, including the Lacey
23 Act Amendments of 1981 (16 U.S.C. 3371 et
24 seq.).

1 “(5) AUTHORIZATION OF APPROPRIATIONS.—

2 There is authorized to be appropriated to the Sec-
 3 retary for each fiscal year to carry out this sub-
 4 section up to 80 percent of the fisheries enforcement
 5 penalties collected during the preceding fiscal year.”.

6 **SEC. 9. RESPONSE ON DISASTER ASSISTANCE REQUESTS.**

7 Section 312(a)(1) (16 U.S.C. 1861a(1)) is amend-
 8 ed—

9 (1) by inserting “(A)” after “(1)”;

10 (2) by redesignating subparagraphs (A) through
 11 (C) as clauses (i) through (iii), respectively; and

12 (3) by adding at the end the following:

13 “(B) When acting under this paragraph at the re-
 14 quest of the Governor of an affected State or a fishing
 15 community, the Secretary shall make the determination
 16 not later than 60 days after the date on which the Sec-
 17 retary receives the request.”.

18 **SEC. 10. SSC AND COUNCIL TRANSPARENCY.**

19 Section 302(i)(2) (16 U.S.C. 1852(i)(2)) is amended
 20 by adding at the end the following:

21 “(G) Each Council shall make available, to
 22 the extent practicable, on the Internet website
 23 of the Council—

24 “(i) a live broadcast of each meeting
 25 of the Council, and of the Council Coordi-

1 nation Committee established under sub-
 2 section (l), that is not closed in accordance
 3 with paragraph (3); and

4 “(ii) audio, video (if the meeting was
 5 in person or by video conference), and a
 6 complete transcript of each meeting of the
 7 Council and the Scientific and Statistical
 8 Committee of the Council—

9 “(I) by not later than 30 days
 10 after the conclusion of the meeting;
 11 and

12 “(II) for 3 years after the conclu-
 13 sion of the meeting.”.

14 **SEC. 11. STATE MANAGEMENT.**

15 Section 306(a)(3)(C) (16 U.S.C. 1856(C)) is amend-
 16 ed to read as follows:

17 “(C) The fishing vessel is not registered
 18 under the law of the State of Alaska and is op-
 19 erating in a fishery in the exclusive economic
 20 zone off Alaska for which there is no fishery
 21 management plan in place, and the Secretary
 22 and the North Pacific Council find that there is
 23 a legitimate interest of the State of Alaska in
 24 the conservation and management of such fish-
 25 ery. The authority provided under this subpara-

1 graph shall terminate when a fishery manage-
2 ment plan under this Act is approved and im-
3 plemented for such fishery.”.

4 **SEC. 12. REPORT TO CONGRESS ON CLOSURES.**

5 The Secretary of Commerce shall—

6 (1) review each fishery closure under Federal
7 law for which notice was published in the Federal
8 Register that was not a normal and expected occur-
9 rence under the fishery management plan for the
10 fishery concerned and was therefore considered dis-
11 ruptive to sport, charter, or commercial fishing oper-
12 ations, and that was in effect for more than 120
13 days within the 5-year period preceding the date of
14 enactment of this Act; and

15 (2) report to Congress regarding each such clo-
16 sure, including the reason for the closure, the dura-
17 tion of the closure, the estimated loss of income by
18 those directly affected by the closure, the impact of
19 the closure on coastal communities, and when the
20 most recent fishery survey and stock assessment for
21 each stock of fish to which the closure applied were
22 completed.

○