

DRAFT WORKING DOCUMENT

**Comparison between House Bill 4742 and
First and Second Senate Magnuson-Stevens Act Reauthorization Discussion Drafts**

Note: Page numbers refer to the Pacific Fishery Management Council’s current annotated version of Magnuson-Stevens Act. In the third column, points that are essentially the same as in the previous draft are plain text. Items that were removed in the second draft are italicized. Items that are new are underlined.

HOUSE (HR 4742)	FIRST SENATE DISCUSSION DRAFT	SECOND SENATE DISCUSSION DRAFT
Overfished/Depleted/Bycatch		
<ul style="list-style-type: none"> • Replaces “overfished” with “depleted” throughout. • Calls for Report to Congress to distinguish between fish that are depleted due to fishing, and those that are depleted for other reasons • Defines “depleted” as “...with respect to a stock of fish or stock complex, that the stock or stock complex has a biomass that has declined below a level that jeopardizes the capacity of the stock or stock complex to produce maximum sustainable yield on a continuing basis.” 	<ul style="list-style-type: none"> • Uses the terminology “overfished or otherwise depleted.” • Defines “depleted” and “depletion” - “The term ‘depleted’ and ‘depletion’ mean, with respect to a stock of fish in a fishery, that the stock is of a size that jeopardizes the capacity of the fishery to produce the maximum sustainable yield on a continuing basis.” • Redefines/refines definition of bycatch 	<ul style="list-style-type: none"> • Uses the terminology “overfished or otherwise depleted” in certain places but does not formally replace one with the other. • No change to definition of “depleted” and “depletion” in first draft (p 9) • <i>Removes earlier redefinition of bycatch</i>
Ending Overfishing		
<ul style="list-style-type: none"> • The original discussion draft included a provision that would allow phasing of rebuilding plans. This section was removed in the House bill. 	<ul style="list-style-type: none"> • No similar provision 	<ul style="list-style-type: none"> • No similar provision

<p>Rebuilding Timelines</p> <ul style="list-style-type: none"> • Rebuilding may not exceed the time the stock would be rebuilt without fishing, plus one mean generation, with exceptions for biology, environmental conditions, international agreements, cause of depletion outside the jurisdiction of the Council, mixed-stock fisheries, informal transboundary agreements, unusual events. Hastings also sets a schedule for reviewing rebuilding progress. • Councils may end rebuilding program if it is determined that a fishery is not depleted. 	<ul style="list-style-type: none"> • Rebuilding shall be as short as possible, (with current exceptions), and may not exceed the sum of the minimum time required to rebuild an affected stock of fish and the mean generation time of the affected stock of fish, if those time values are scientifically established and widely accepted among fish population biologists; or 10 years, if either of the time values is not scientifically acceptable. 	<ul style="list-style-type: none"> • Rebuilding shall be as short as possible, (with current exceptions), and shall not exceed 10 years, or the sum of the time in which the affected stock of fish is expected to rebuild to its maximum sustainable yield biomass level in the absence of any fishing mortality, and the mean generation of time of the affected stock of fish, if those time values are the best scientific information available. (This basically means the same as the previous version, but is more specific) (p 77)
<p>ACL Exceptions</p> <ul style="list-style-type: none"> • ACLs not required for ecosystem component species, or for species that have life cycles of approximately 1 year (unless subject to overfishing); or for species in which more than half of a single year-class will complete their lifecycle in less than 18 months • In establishing ACLs, Councils may consider ecosystem changes and economic needs of fishing communities • ACLs must take into account management measures under international agreements and informal transboundary agreements • ACLs may be established for stock complexes; ACLs may be set for three years. 	<ul style="list-style-type: none"> • ACLs not required for fish species with a mean lifecycle of 18 months; species where all spawning & recruitment occurs beyond state waters and the EEZ (unless overfishing is occurring). FMPs do not have to specify ACLs for each species of non-target fish in a fishery. 	<ul style="list-style-type: none"> • ACLs not required for fish species with a mean lifecycle of 18 months; species where all spawning & recruitment occurs beyond state waters and the EEZ (unless overfishing is occurring). • <i>Removes previous draft language about not having to specify ACLs for non-target fish. (page 65)</i> • <i>Removes requirements to adjust ACLs of forage fish according to the feeding requirements of dependent fish; to include a control rule for forage fish; and to account for the importance of forage fish throughout their range.</i>
<p>Ecosystem-Based Management</p> <ul style="list-style-type: none"> • In establishing ACLs, Councils may consider ecosystem changes 	<ul style="list-style-type: none"> • Adds wording regarding ecosystems, ocean acidification, human impacts on ecosystems to 	<ul style="list-style-type: none"> • Retains wording regarding ecosystems in “findings” (p 5)

<ul style="list-style-type: none"> • Defines ecosystem component species • Councils do not have to establish ACLs for EC species 	<p>“findings”</p> <ul style="list-style-type: none"> • Discusses importance of forage fish • Adds adoption of EBFM as a purpose of the Act • Adds EBFM as a Council member training topic • Outlines provisions for creating fishery ecosystem plans. 	<ul style="list-style-type: none"> • Retains EBFM as a Council member training topic (p 58) • <i>All wording regarding forage fish removed.</i> • <i>Detailed description of fishery ecosystem plans removed.</i>
<p>Forage Fish</p>		
<ul style="list-style-type: none"> • No similar provisions 	<ul style="list-style-type: none"> • Adds finding that “forage fish are a fundamental component of marine ecosystems” • Defines forage fish • Outlines the responsibilities of the SSC in regard to forage fish and other matters • Sets requirements for determining ACLs for forage species, including a control rule and consideration of the “feeding requirements of dependent fish throughout the range of the dependent fish” 	<ul style="list-style-type: none"> • <i>All wording regarding forage fish removed.</i>
<p>Electronic Monitoring</p>		
<ul style="list-style-type: none"> • Calls for developing objectives, regulations, schedules and performance standards for use of electronic monitoring. • The House bill allows use of electronic monitoring for law enforcement 	<ul style="list-style-type: none"> • The Secretary and Councils shall review FMPs in regard to where electronic monitoring can be used instead of human observers; and each Council shall develop a plan to adopt EM. These plans must be finalized within 4 years. • Defines integrated data collection programs that are required under 303(a)(15). These are essentially cooperative research programs. Emphasizes electronic monitoring; provides for system of fees. 	<ul style="list-style-type: none"> • <u>Councils must develop and implement a plan to use electronic technologies. For more details, see Data Collection and Use below.</u>

<p>NEPA</p> <ul style="list-style-type: none"> • Adds details on fishery impact statement requirement; fulfillment of these stipulations satisfies the requirements of NEPA 	<ul style="list-style-type: none"> • Requires that MSA Section 304(i) (Environmental Review Process) be implemented by NMFS within 90 days of passage. 	<ul style="list-style-type: none"> • Requires that Commerce issue a notice of proposed rulemaking to revise and update agency procedures under MSA Section 304(i) (Environmental Review Process) within 90 days of passage (p 153). [Same outcome, more specific language]
<p>Allocation</p> <ul style="list-style-type: none"> • No similar provisions 	<ul style="list-style-type: none"> • Calls for a regular review of allocation in mixed-use fisheries • Calls upon the National Academy of Sciences to study variables that should be considered when allocating fishing privileges, and what data sources should be used. 	<ul style="list-style-type: none"> • Calls upon the National Academy of Sciences to study variables that should be considered when allocating fishing privileges, and what data sources should be used. (Page 154) • <i>Removes requirement for allocation reviews, except for in Gulf of Mexico and South Atlantic regions</i>
<p>International Fisheries</p> <ul style="list-style-type: none"> • No similar provisions 	<ul style="list-style-type: none"> • Designates a Secretarial Representative for International Fisheries; must be a senior official appointed by the President • Defines IUU to include “fishing activities conducted by foreign vessels in waters under the jurisdiction of a nation without permission of that nation” and “...conducted by foreign vessels in contravention of a nation's laws, including fishing activity that has not been reported or that has been misreported to the relevant national authority of a nation in contravention of that nation's laws.” 	<ul style="list-style-type: none"> • No change from previous version (p 42)
<p>Transparency</p> <ul style="list-style-type: none"> • Calls for each Council to provide a webcast, audio recording, or live broadcast of Council 	<ul style="list-style-type: none"> • Calls for an audio or video webcast of each Council and SSC meeting online within 30 days 	<ul style="list-style-type: none"> • No change from previous version (page 55)

<p>and CCC meetings; and audio, video, or a searchable audio or written transcript of each Council and SSC meeting online within 30 days of the meeting.</p>	<p>(not live; no transcripts) (page 56)</p>	
<p>Data Collection and Use</p>		
<ul style="list-style-type: none"> • Describes uses of confidential information. Places limits on use of observer information. Vessel information collected for monitoring/enforcement shall not be used for coastal & marine spatial planning under EO 13547. • Encourages use of video and acoustic survey technologies 	<ul style="list-style-type: none"> • Councils must amend FMPs within one year to assess the fishery-dependent data needs of fisheries and establish an integrated data collection program to gather and analyze the data required. • The Secretary, with SSCs, shall develop guidelines for greater use of data from nongovernmental sources, including fishermen, fishing communities, universities, and research institutions. The guidelines should identify types of data that can be used as the best scientific information available, especially in regard to recreational fisheries; includes other requirements. Councils shall describe how these data have been used in management, and if they were not used, why not. 	<ul style="list-style-type: none"> • <u>Requires Councils/Commerce to assess fishery-dependent data needs and develop recommendations for an integrated data collection program, including electronic technologies, to gather data required for fisheries management, within 2 years after implementation of the Act. This includes identifying fisheries where electronic technology and electronic reporting can be useful and specifying which type of electronic technology will work; and outlining a system of fees to support the program. (Page 155)</u> • <u>Within 1 year of this assessment, the Councils/Commerce must develop a plan to adopt the integrated data collection program in each relevant fishery. Within 4 years after the Act is enacted, each Council must amend its FMPs to comply; must implement within one year after that, and review regularly afterward.</u> • <u>The Secretary, with SSCs, shall develop guidelines for facilitating greater use of data from nongovernmental sources, including fishermen, fishing communities, universities, and research institutions. Includes other requirements. (Page 132)</u> • <u>Allows costs of stock assessments to be paid out of fines. (Page 109)</u>

		<ul style="list-style-type: none"> • <i>References to ecosystem plans & forage fish removed in SSC requirements</i> • <i>Removes previous definition of stock assessment</i>
Data-Poor Species		
<ul style="list-style-type: none"> • Councils shall identify data-poor fisheries in their regions, prioritize them, and provide the list to the Secretary 	<ul style="list-style-type: none"> • The Secretary shall develop a plan to conduct stock assessments for all fish under FMPs. Includes detailed requirements for stock assessments and assessment schedule 	<ul style="list-style-type: none"> • Generally the same as in previous draft, except this version calls for consultation with Councils and requires assessments only for economically-important stocks of fish (p 132)
Seafood Labeling and Fraud Prevention		
<ul style="list-style-type: none"> • No similar provisions 	<ul style="list-style-type: none"> • In “findings,” states that U.S. fisheries are now being managed sustainably • Creates a “sustainably caught” label. Producers, processors, etc., MAY place the words “sustainably caught” on fish harvested under the MSA or equivalent state, tribal, or foreign measures, or if it is being effectively rebuilt. Includes cultivated fish. Fish must be labeled through processing, distribution & final sale (p 95-96) • Makes it illegal to falsely identify fish products, or to falsely label them as “sustainably caught” (p 103) 	<ul style="list-style-type: none"> • This version does not create a “sustainably caught” label, but it creates a sustainability standard that includes fish harvested under the MSA and finds that U.S. fish are now sustainably managed (p 5, 92). • Makes it illegal to falsely label fish products (p 99)
Seafood Marketing		
<ul style="list-style-type: none"> • No similar provision 	<ul style="list-style-type: none"> • No similar provision 	<ul style="list-style-type: none"> • <u>Calls for Commerce to consider (within one year) establishing a seafood marketing program. Such a program might include additional investment in seafood marketing; sustainable development; improved safety, traceability, quality, etc. of seafood; coordination of marketing activities; and</u>

		<u>consumer education. Would also look at awarding funds through a competitive process to seafood growers, harvesters, processors, etc. Commerce must look at feasibility of different funding mechanisms. (Page 157)</u>
Dungeness Crab Authority		
<ul style="list-style-type: none"> No similar provision 	<ul style="list-style-type: none"> Strikes subsection (i) in Section 203 of Public Law 105 (State Authority for Dungeness Crab), which sunsets state authority on September 30, 2016. (Date extended indefinitely). 	<ul style="list-style-type: none"> No change from previous version (p 97)
National Marine Sanctuaries Act & Endangered Species Act		
<ul style="list-style-type: none"> Notes that in case of conflict between MSA & NMSA, MSA shall control. Also notes that restriction on fisheries that are necessary to implement a recovery plan under ESA shall be done under the authority of the MSA 	<ul style="list-style-type: none"> No similar provision 	<ul style="list-style-type: none"> No similar provision
North Pacific Issues		
<ul style="list-style-type: none"> Limitations on harvest in North Pacific Pollock fishery. No entity may harvest, through a fishery cooperative or otherwise, more than 24% of the pollock available to be harvested in the directed pollock fishery. 	<ul style="list-style-type: none"> The NPFMC must set aside at least 10% of TAC as a community development quota for coastal villages. 	<ul style="list-style-type: none"> The NPFMC must set aside at least 10% of TAC as a community development quota for coastal villages, <u>but only under certain circumstances</u> (p 116) <u>Adds requirement for bycatch report for North Pacific stocks</u> (p 120)
Enforcement penalties		
<ul style="list-style-type: none"> In Sec. 404(e), says the Secretary may allocate a percentage of fishery enforcement penalties for data collection (only for the region in which they are 	<ul style="list-style-type: none"> Establishes a fisheries enforcement fund, in which fines are deposited for use by the Secretary in enforcement Raises civil penalty to not more than \$180,000 	<ul style="list-style-type: none"> Same as previous draft, except <u>raises fine for violent crimes to \$360,000 (from \$200,000)</u> (p 106, 102)

collected). Funds may be used for data-poor fisheries and cooperative research	(from \$100,000)	
Other changes		
	<ul style="list-style-type: none"> • Makes fisheries facilities (such as processors) and aquaculture facilities eligible for capital construction funds. 	<ul style="list-style-type: none"> • No change (p 157)
	<ul style="list-style-type: none"> • Gives Councils the authority to use alternative fishery management measures in recreational fisheries. 	<ul style="list-style-type: none"> • No change (p 54)
	<ul style="list-style-type: none"> • Includes subsistence fisheries as a sector and refers to subsistence and tribal fisheries throughout. 	<ul style="list-style-type: none"> • No change.
	<ul style="list-style-type: none"> • Calls for the Secretary to submit annual reports on several special funds such as the Limited Access System Administration Fund. 	<ul style="list-style-type: none"> • No change (p 81)
	<ul style="list-style-type: none"> • Allows NOAA to use agencies other than the Coast Guard for administrative adjudications involving marine resources. 	<ul style="list-style-type: none"> • No change (p 104)
	<ul style="list-style-type: none"> • Reauthorizes Anadromous Fish Conservation Act, Pacific Salmon Treaty Act, South Pacific Tuna Act 	<ul style="list-style-type: none"> • Reauthorizes these Acts <u>and others</u> (p 153)
	<ul style="list-style-type: none"> • The Secretary and Councils shall report on monitoring and enforcement plans, costs, and methods. 	<ul style="list-style-type: none"> • Deleted, but <u>new section on monitoring technologies added (see above)</u>
	<ul style="list-style-type: none"> • Addresses concerns that Saltonstall-Kennedy Act funds have been going to NOAA's 	<ul style="list-style-type: none"> • No change (p 157)

	<p>Operations, Research and Facilities account for general use rather than going to fisheries promotion and development. Includes language that would establish a budget point of order that could be used during House or Senate consideration of an appropriations bill that authorizes transfer of S-K funds to NOAA's Operations account.</p>	
<ul style="list-style-type: none"> • Incorporates the Revitalizing the Economy of Fisheries in the Pacific (REFI) Act, which refinances the groundfish buyback program • Councils may use alternative rebuilding strategies, including harvest control rules and fishing mortality targets • Emergency actions shall remain in effect for one year (as opposed to 180 days) • Requires the Secretary of Commerce to publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after making a disaster determination • Requires Federal-state partnerships to develop best practices for implementing recreational fishery data collection programs, and create a grant program to States to improve these programs, and require a National Research Council study of recreational fisheries data survey methods. 		