

MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke
Executive Director



DATE: April 19, 1990

SUBJECT: Legislative Update

ACTION REQUIRED

Status reports on current legislation and Magnuson Act Reauthorization

BACKGROUND

Magnuson Act Reauthorization

The current authorization period of the MFCMA expired on September 30, 1989. Since then, the Act has been in effect on a "continuing resolution" basis until Congress can approve a reauthorization/amendment package. On February 6 the House passed their reauthorization package and forwarded it to the Senate. The Senate, which has its own draft legislation, will be working with the House to work out their differences. A summary showing the key differences between the bills will be available by meeting time. Copies of the Act showing the suggested House and Senate amendments also will be available.

Seafood Inspection

Several bills were introduced last session to establish a national seafood inspection program. The House Subcommittee on Fisheries and Wildlife Conservation and the Environment held two hearings on this issue last year. The Subcommittee has developed a draft proposal which would establish a mandatory program involving both the federal government and individual states. Funding of the program would come from Congress and the program would be administered by both the Department of Agriculture and the Department of Commerce. The program would cover both onshore and offshore processors. Fishing vessels and tender vessels would largely be exempt unless it was determined that a critical control point exists involving the vessels, in which case they may become subject to inspection.

Additional Subcommittee hearings have been scheduled for April 25 and May 15. Congressman Young has requested Council comments on the proposed legislation. A copy of the draft bill is provided in your notebooks as item C-1(a).

In addition to this bill, NOAA and the Federal Drug Administration are still pushing a voluntary seafood inspection service proposal to be funded by industry. A summary of this proposal and a copy of the Congressional Research Service Report to Congress entitled "Seafood Inspection: A comparison of Selected Bills" are provided for your information in your supplemental folder.

Fish and Seafood Promotion Act

Provided for your information is a report regarding implementation of the Fish and Seafood Promotion Act. (item C-1(b)). The report describes actions to establish the National Fish and Seafood Promotion Council, along with its accomplishments to date and plans for the future. The Act is intended to strengthen the competitive position of the U.S. fishing industry in the domestic and world markets, encourage fisheries development and promote fish use.

Other Legislative News

Congressional activity on a number of draft bills has been high this session. A synopsis of recent activity is provided in your supplemental folder.

DRAFT-----March 27, 1990

SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Federal Inspection for Seafood Healthfulness Act of 1990".

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SEC. 2. PURPOSES AND DEFINITIONS.

(a) Purposes.--The purposes of this Act are--

(1) to ensure the public's confidence in the wholesomeness and safety of all seafood and seafood products in the United States;

(2) to maximize the health benefits of consuming seafood and seafood products, including those produced through aquacultural operations, by requiring the development of a mandatory, comprehensive seafood and seafood product inspection program, including--

(A) an inspection program based on the Hazard Analysis Critical Control Point method,

1 (B) the establishment and enforcement of standards for
2 chemical and microbiological contaminants, parasites and
3 toxins,

4 (C) the evaluation and monitoring of seafood and seafood
5 product safety and consumer health risks, and

6 (D) the design of consumer education programs;

7 (3) to promote marketing, aid the distribution, and develop new
8 and wider markets for seafood and seafood products through--

9 (A) the establishment of proper standards for labeling,
10 packaging, and marking of seafood and seafood products
11 including those produced through aquaculture, and

12 (B) the prevention of economic fraud.

13 (b) Definitions.--As used in this Act--

14 (1) the term "adulterated" means with respect to any seafood or
15 seafood product that it--

16 (A) bears or contains any poisonous or deleterious
17 substance which may render it injurious to human health, as
18 determined by the Secretary, but in case the substance is
19 not an added substance, such seafood or seafood product
20 shall not be considered adulterated if the quantity of such
21 substance it bears or contains does not ordinarily render it
22 injurious to human health;

23 (B) consists, in whole or part, of any filthy, putrid, or
24 decomposed substance or is for any other reason, unsound,
25 unhealthful, unwholesome, or otherwise unfit for human food;

26 (C) has been processed under unsanitary conditions in

1 which it may have become contaminated with filth or rendered
2 injurious to health;

3 (D) has been made or derived in whole or in part from
4 seafood harvested in a production area that the Secretary
5 determines contains substances that will cause such seafood
6 to be injurious to health;

7 (E) has been imported from a country that does not have a
8 seafood and seafood products safety program that is
9 certified by the Secretary;

10 (F) is or has been contained in a package that is composed
11 in whole or in part of any poisonous or deleterious
12 substance that may render the contents injurious to health;

13 (G) has any valuable constituent in whole or in part
14 omitted or abstracted therefrom; any substance substituted,
15 wholly or in part therefor; damage or inferiority concealed
16 in any manner; or any substance added thereto or mixed or
17 packed therewith so as to increase its bulk or weight,
18 reduce its quality or strength, or make it appear better or
19 of greater value than it is; or

20 (H) has not been processed in accordance with this Act or
21 regulations promulgated pursuant to this Act;

22 (2) the term "capable of use as human food" applies to any
23 seafood or seafood product, unless it is denatured or otherwise
24 identified by regulations prescribed by the Secretary to deter
25 its use as human food, or unless it is naturally inedible by
26 humans;

1 (3) the term "commerce" means commerce between or within any
2 State, any territory of the United States, or the District of
3 Columbia, and any place outside thereof;

4 (4) the term "establishment" means--

5 (A) any premises, including such structures, buildings,
6 vehicles, and equipment as are associated with the premises,
7 used for the processing of seafood or seafood products;

8 (B) a seafood processing vessel; or

9 (C) a vessel identified under section 15(c)(1) of this
10 Act;

11 (5) the term "Hazard Analysis Critical Control Point method"
12 means the system of food inspection described and endorsed by the
13 National Research Council in the article entitled "An Evaluation
14 of the Role of Microbiological Criteria for Foods and Food
15 Ingredients", as published in May, 1985 by the National Academy
16 Press;

17 (6) the term "inspector" means an individual appointed or
18 authorized by the Secretary to make inspections under any
19 authority of this Act;

20 (7) the term "label" means a display of written, printed, or
21 graphic matter upon the immediate package (not including package
22 liners) of any article;

23 (8) the term "labeling" means all labels and other written,
24 printed, or graphic matter upon any article or any of its
25 packages or wrappers, or accompanying such article;

26 (9) the term "misbranded" means with respect to any seafood or

1 seafood product that--

2 (A) its labeling is false or misleading in any particular;

3 (B) it is offered for sale under the name of another food;

4 (C) its package is so made, formed, or filled as to be
5 misleading;

6 (D) any word, statement, or other information required by
7 or under authority of this Act to appear on the label or
8 other labeling is not prominently placed thereon with such
9 conspicuousness (as compared with other words, statements,
10 designs, or devices, in the labeling) and in such terms as
11 to render it likely to be read and understood by the
12 ordinary individual under customary conditions of purchase
13 and use; or

14 (E) purports to be, or is represented as, a food for which
15 a definition and standard of identity or composition has
16 been prescribed by regulation under this Act unless--

17 (i) it conforms to such definition and standard, and

18 (ii) its label bears the name of the food specified

19 in the definition and standard;

20 (10) the term "official mark" means any symbol prescribed by
21 regulations promulgated pursuant to this Act to identify the
22 status of any seafood or seafood product;

23 (11) the term "owner or operator" means any person who owns,
24 operates, leases, charters, or otherwise controls in whole or in
25 part any establishment or vessel;

26 (12) the term "package" includes any box, can, tin, cloth,

1 plastic, or other receptacle, wrapper, or cover;

2 (13) the term "person" means any individual, partnership,
3 corporation, association, or other legal entity;

4 (14) the term "process" means, with respect to seafood or
5 seafood products, handle, store, prepare, produce, manufacture,
6 preserve, pack, transport, or hold such seafood or seafood
7 products in an establishment, but does not include to raise such
8 seafood;

9 (15) the term "program" means the inspection program provided
10 for under section 3 of this Act;

11 (16) the term "seafood" means any aquatic animal, including
12 amphibians, or part thereof, whether from wild or cultured
13 sources, capable of use as human food, that is not subject to the
14 Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or
15 Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

16 (17) the term "seafood harvesting vessel" means a vessel of the
17 United States that engages in the catching, taking, or harvesting
18 of seafood or an activity that can reasonably be expected to
19 result in the catching, taking, or harvesting of seafood;

20 (18) the term "seafood processing vessel" means a vessel of the
21 United States that commercially processes seafood or seafood
22 products other than by gutting, decapitating, gilling, skinning,
23 shucking, icing, freezing, or brine chilling;

24 (19) the term "seafood product" means any product capable of
25 use as human food made in whole or part from any seafood, or
26 portion thereof, including unprocessed seafood, except any

1 product--

2 (A) that contains seafood in a relatively small proportion
3 or historically has not been considered by consumers as a
4 product of the seafood industry, and

5 (B) that is exempted from the definition of seafood
6 product by the Secretary under such conditions as the
7 Secretary may prescribe to assure that the seafood contained
8 in such product is not adulterated and that such product is
9 not represented as a seafood product;

10 (20) the term "seafood tender vessel" means a vessel of the
11 United States that commercially transports seafood or seafood
12 products to or from a seafood harvesting vessel or establishment;

13 (21) the term "Secretary", except where otherwise specified,
14 means the Secretary of Agriculture or the designee of the
15 Secretary of Agriculture;

16 (22) the term "shellfish" means any species of oyster, clam or
17 mussel, either shucked or in the shell, and either fresh or
18 frozen, or otherwise processed, or any part thereof;

19 (23) the term "State" means any State of the United States, the
20 District of Columbia, the Commonwealth of Puerto Rico, the
21 American Virgin Islands, Guam, American Samoa, the Commonwealth
22 of the Mariana Islands, or any other territory or possession of
23 the United States;

24 (24) the term "vessel" means a vessel as defined in title 1,
25 United States Code, section 3; and

26 (25) the term "vessel of the United States" means a vessel as

1 defined in section 3(27) of the Magnuson Fishery Conservation and
2 Management Act (16 U.S.C. 1802(27)).

3 **SEC. 3. FEDERAL INSPECTION PROGRAM.**

4 (a) Development.--The Secretary, in cooperation with the
5 Secretary of Commerce, shall develop a comprehensive and
6 efficient inspection program for seafood and seafood products
7 that protects the consuming public from seafood and seafood
8 products that are adulterated or misbranded and that considers
9 the recommendations of the National Marine Fisheries Service
10 Model Seafood Surveillance Project. Such program shall--

11 (1) be administered by the Secretary, except where
12 otherwise provided;

13 (2) be specifically designed to take into consideration
14 the special characteristics of seafood and seafood products
15 and its processing;

16 (3) be based upon a comprehensive assessment of seafood
17 and seafood products and its processing that identifies the
18 hazards and assesses the severity of the hazards and risks,
19 that determines critical control points required to control
20 the hazards, and that establishes and implements monitoring
21 and verification procedures to determine that each critical
22 control point is under control in accordance with the Hazard
23 Analysis Critical Control Point method;

24 (4) assure that the processing of seafood and seafood
25 products complies with the standards prescribed pursuant to

1 this Act;

2 (5) provide for the periodic registration and the
3 announced and unannounced inspection of establishments; and

4 (6) provide for the inspection of seafood and seafood
5 products and the processing of them at such points, in such
6 manner and with such frequency as the Secretary deems
7 necessary based on the assessment required under paragraph
8 (3), a consideration of the nature and frequency of
9 operations, adequacy of monitoring programs, history of
10 compliance with this Act, and such other factors as the
11 Secretary may deem appropriate.

12 (b) Standards.--(1) The Secretary shall contract with the
13 National Academy of Sciences to study and make recommendations
14 concerning the standards for the inspection program established
15 under this Act.

16 (2) The contract shall require the National Academy of
17 Sciences--

18 (A) to study standards, levels, and priorities, that
19 will protect the consuming public from seafood and seafood
20 products that are adulterated or misbranded and meet the
21 purposes of this Act as specified in sections 2(a);

22 (B) on the basis of its study, to make findings and
23 develop recommendations for consideration by the Secretary
24 in implementing the inspection program established under
25 this section; and

26 (C) to submit to the Secretary a report, within 18

1 months after the date of enactment of this Act, containing
2 the results of its study and recommendations based on such
3 results.

4 (3) The Secretary may enter into additional contracts as
5 necessary with the National Academy of Sciences--

6 (A) to review any established standards, levels, and
7 priorities of the program;

8 (B) to study any additional standards, levels, and
9 priorities, that will protect the consuming public from
10 seafood and seafood products that are adulterated or
11 misbranded;

12 (C) on the basis of such review and study, to make
13 findings and develop recommendations for consideration by
14 the Secretary in implementing the inspection program
15 established under this Act; and

16 (D) to submit to the Secretary a report containing the
17 results of its study and recommendations based on such
18 results.

19 **SEC. 4. REGISTRATION.**

20 (a) **In General.**--No establishment may process any seafood or
21 seafood product unless such establishment is registered under the
22 program. The registration of an establishment shall include the
23 assigning of a unique number to such establishment to identify
24 such establishment.

25 (b) **Applications.**-- Applications for registration under the

1 program shall be made to the Secretary using such forms and
2 containing such matter as the Secretary shall prescribe by
3 regulation.

4 (c) Approval.--The Secretary shall approve an application
5 under this section unless, on the basis of such application and
6 an inspection of such establishment, the Secretary determines
7 that the establishment is unfit to engage in the processing of
8 seafood or seafood products.

9 (d) Disapproval.--(1) If the Secretary does not approve an
10 application for registration, the Secretary shall promptly notify
11 the applicant in writing of the disapproval and the reasons
therefor.

13 (2) Any applicant whose application for registration has
14 not been approved by the Secretary may at any time make another
15 application for registration. The Secretary shall approve such
16 application if the Secretary finds that the establishment is no
17 longer unfit to engage in the processing of seafood or seafood
18 products.

19 (e) Revocation and Suspension.--If an establishment
20 registered under the program fails to comply with any requirement
21 of this Act or regulations promulgated under this Act, the
22 Secretary may, after notice and an opportunity for a hearing--

23 (1) revoke the registration;

24 (2) suspend the registration for a period of time; or

25 (3) impose conditions and restrictions on the registration
26 as the Secretary determines are necessary and appropriate.

1 (f) Reinstatement.--(1) The holder of a registration that
2 has been revoked or suspended may at any time apply for
3 reinstatement thereof. The Secretary shall immediately grant
4 reinstatement of the registration if the Secretary finds that the
5 establishment is no longer unfit to engage in the processing of
6 seafood or seafood products.

7 (2) The holder of a registration that is conditional or
8 restricted may at any time apply for the removal of such
9 conditions or restrictions. The Secretary shall immediately
10 remove such conditions or restrictions if the Secretary finds
11 that adequate measures have been taken to comply with this Act or
12 regulations promulgated under this Act.

13 **SEC. 5. LABELING, PACKAGE, AND MARKING.**

14 (a)(1) Labeling and Package.--The Secretary of Commerce
15 shall, in conjunction with the Secretary, establish standards for
16 labels, labeling, package, and marking. Each owner or operator
17 shall, subject to terms and conditions determined by the
18 Secretary, submit to the Secretary, prior to use, any labeling or
19 package of seafood or seafood products to be used by
20 establishments and vessels registered under the program. The
21 Secretary shall review such labeling and package for compliance
22 with the standards established by the Secretary of Commerce under
23 this Act. No such labeling or package may be used unless it has
24 been approved by the Secretary.

25 (2)(A) The Secretary shall approve any labeling unless the

1 Secretary determines that such labeling is false or misleading.

2 (B) The Secretary shall approve any package unless the
3 Secretary determines that such package does not comply with the
4 standards established under this Act.

5 (3) (A) If the Secretary does not approve any labeling or
6 package, the Secretary shall promptly notify the owner or
7 operator of the establishment proposing such labeling or package
8 in writing of the disapproval and the reasons therefor.

9 (B) Any owner or operator whose labeling or package has not
10 been approved by the Secretary may at any time propose another
11 labeling or package for approval. The Secretary shall approve
12 the revised labeling unless the Secretary determines that such
13 labeling is false or misleading. The Secretary shall approve the
14 revised package unless the Secretary determines that such package
15 does not comply with the standards established under this Act.

16 (b) Marking.--(1) The Secretary shall require the owner or
17 operator of any establishment registered under this Act to cause
18 each package of seafood and seafood product that is processed in
19 such establishment to be marked at the time the package leaves
20 the establishment with--

21 (A) the appropriate registration numbers issued under this

22 Act; and

23 (B) a label that bears or contains an official mark.

24 (2) The Secretary shall ensure that the official mark is
25 available only for seafood and seafood products that are
26 processed in establishments registered under this Act.

1
2 **SEC. 6. RECORDS AND REPORTS.**

3 Establishments registered under the program shall--

4 (1) maintain accurate records regarding--

5 (A) the receipt, delivery, sale, movement, or
6 disposition of seafood or seafood products,

7 (B) matters reasonably related to whether seafood or
8 seafood products are adulterated or misbranded,
9 including the geographic area or fishery from which
10 such seafood was harvested, and

11 (C) other activities relevant to food safety and
12 sanitation;

13 (2) permit the Secretary, upon request, at reasonable
14 times to have access and copy any such records; and

15 (3) make such reports to the Secretary relating to such
16 matters as the Secretary may require.

17
18 **SEC. 7. POWERS OF INSPECTORS.**

19 (a) Inspections.--The Secretary shall be responsible for
20 inspecting establishments, other than those defined under section
21 2(b)(4)(C). The Secretary of Commerce shall be responsible for
22 inspecting seafood harvesting vessels and seafood tender vessels.
23 An inspector may, in administering the provisions of this Act and
24 upon presenting appropriate credentials to the owner or operator--

25 -
26 (1) enter any part of such establishment or vessel

1 registered under the program, at all times, by day or night,
2 and without regard to whether such establishment or vessel
3 is being operated;

4 (2) inspect such establishment or vessel and all pertinent
5 seafood or seafood products, packages, labeling, conditions,
6 and equipment therein or on, and all records required under
7 this Act to be maintained and made available for inspection;

8 (3) sample any seafood or seafood products;

9 (4) detain seafood or seafood products that are
0 adulterated or misbranded; and

1 (5) condemn any seafood or seafood products in accordance
2 with subsection (b).

3 (b) **Condemned Seafood and Seafood Products.**--(1) Subject to
4 paragraph (2), all seafood and seafood products found by the
5 respective Secretary to be adulterated or misbranded shall be
6 immediately segregated and, if objection is not made within 48
7 hours, condemned. If objection is made, such seafood or seafood
8 product that are in perishable form may be processed to the
9 extent necessary to prevent spoilage pending hearing and judicial
0 review.

1 (2) If the respective Secretary determines that an
2 adulterated or misbranded seafood or seafood product can, by
3 relabeling or other action, be brought into compliance with this
4 Act or regulations promulgated under this Act, final
5 determination as to the condemnation of such seafood or seafood
6 product may be deferred pending the performance by the applicant

1 within a time period specified by the respective Secretary of
2 such relabeling or other action as the respective Secretary may
3 authorize. If after such action is performed, the respective
4 Secretary determines that the seafood or seafood product has been
5 brought into compliance with this Act, the respective Secretary
6 shall permit its entry into commerce.

7 (3) Any seafood or seafood product condemned by the
8 respective Secretary without objection, or after hearing and
9 judicial review, shall be destroyed for human food purposes under
10 the supervision of the respective Secretary.

11 (c) Notice.--Upon completion of any inspection and before
12 leaving such establishment or vessel, the respective Secretary
13 shall give to the owner or operator a report in writing
14 describing the results of the inspection.

15 **SEC. 8. SHELLFISH SANITATION PROGRAM.**

16 (a) Development.--Within 12 months after the date of
17 enactment of this Act, the Secretary of Commerce, in consultation
18 with the Secretary, shall develop a national shellfish sanitation
19 program for the purpose of protecting public health and ensuring
20 the safety of shellfish in commerce. The national shellfish
21 sanitation program shall be consistent with the provisions of
22 section 3(a).

23 (b) Standards and Guidelines.--(1) In general, the Secretary
24 of Commerce shall be required to establish standards and
25 procedures for implementation of a national shellfish sanitation

1 program.

2 (2) (A) The Secretary of Commerce, in cooperation with the
3 Secretary, shall establish--

4 (i) standards for the growing, harvesting, handling,
5 processing, and shipment of shellfish,

6 (ii) standards for the water quality of shellfish growing
7 and harvesting areas,

8 (iii) standards for bacterial, viral, and chemical
9 contaminants, and

10 (iv) such other standards as the Secretary of Commerce
11 determines are necessary to carry out the provisions of this
12 section.

13 (B) Such standards shall be consistent, to the extent
14 practicable, with guidelines recommended by the Interstate
15 Shellfish Sanitation Conference and shall be designed to--

16 (i) protect against hazards associated with the human
17 consumption of shellfish, and

18 (ii) assure an adequate supply of safe and high quality
19 domestic shellfish.

20 (3) The Secretary of Commerce, in consultation with the
21 Secretary and the Interstate Shellfish Sanitation Conference,
22 shall prescribe procedures for the closure of shellfish growing
23 and harvesting areas that do not comply with such standards.

24 (c) State Programs.--(1) Each shellfish producing state
25 shall be required to submit to the Secretary of Commerce, within
26 six months of the establishment of the National Shellfish

1 Sanitation program and every year thereafter, a proposed state
2 shellfish sanitation program designed to carry out the purposes
3 of this section in that state.

4 (2) The Secretary of Commerce may provide to a State, in
5 planning and developing a state shellfish sanitation program--

6 (A) advisory assistance;

7 (B) technical and laboratory assistance and training
8 (including necessary materials and equipment); and

9 (C) financial and other assistance.

10 (3) Upon submission of a proposal by a State, the
11 Secretary of Commerce shall have 60 days to review the proposal
12 to determine if the state shellfish sanitation program meets the
13 standards and guidelines established under this section.

14 (4) If the Secretary of Commerce determines that a State
15 shellfish program is in compliance with these standards and
16 procedures, the Secretary shall--

17 (A) certify such State as one in which the production of
18 shellfish for commerce is permitted; and

19 (B) annually grant to each such State 50 percent of the
20 cost of operating such state shellfish sanitation program.

21 (5) Beginning 20 months after the date of enactment of
22 this Act, all shellfish grown and harvested in a State shall be
23 deemed to be adulterated, for the purposes of this Act--

24 (A) during the period of time that such State does not
25 have a certified state shellfish sanitation program, or

26 (B) after a determination by the Secretary of Commerce

1 that a state shellfish sanitation program is no longer in
2 compliance with the standards and procedures established by
3 this section and notification to the Governor of the state
4 of such determination.

5 (6) The Secretary of Commerce shall promptly notify the
6 Secretary of the denial to certify any state shellfish sanitation
7 program.

8 (d) Regulations.--The Secretary of Commerce, in consultation
9 with the Secretary, shall promulgate regulations to carry out
10 this section.

11 **SEC. 9. IMPORTS.**

12 (a) Foreign Seafood Inspection Program.--(1) Upon request,
13 the Secretary shall review the seafood inspection program of each
14 country desiring to export seafood or seafood products into the
15 United States to determine if such program is at least equal to
16 the program established under this Act.

17 (2) If the Secretary determines that a country desiring to
18 export seafood or seafood products to the United States has a
19 seafood inspection program for seafood and seafood products
20 intended for export to the United States at least equal to the
21 program established under this Act and that such country will
22 permit the enforcement measures deemed necessary pursuant to
23 paragraph (5), the Secretary shall issue a certificate to such
24 country stating that the country maintains such a program.

25 (3) No seafood or seafood product shall be permitted entry

1 into the United States from a country that does not have such a
2 current, valid certificate.

3 (4) The Secretary shall periodically review such
4 certificates and shall revoke any certificate if the Secretary
5 determines that the country involved is not maintaining a seafood
6 inspection program at least equal to the program established
7 under this Act.

8 (5) The Secretary shall enforce this subsection through
9 the imposition of random inspections, sampling, and testing at
10 such stages in the processing of seafood or seafood products, the
11 inspection of establishments, and such other actions, as the
12 Secretary deems necessary to ensure compliance with this Act.

13 (b) Prohibition.--(1) No seafood or seafood product may be
14 entered, or withdrawn from warehouse, for consumption in the
15 United States unless such seafood or seafood product--

16 (A) is not adulterated or misbranded;

17 (B) complies with all standards applicable to seafood and
18 seafood products in commerce in the United States;

19 (C) is marked and labeled as required by regulations for
20 imported articles; and

21 (D) complies with the requirements of this section.

22 (2) Upon entry into the United States, any seafood or
23 seafood product satisfying the requirements of paragraph (1)
24 shall be deemed and treated as domestic seafood and seafood
25 products for the purposes of this Act.

26 (c) Inspection of Imports.--The Secretary shall enforce this

1 section through random inspections and sampling of seafood and
2 seafood products that are offered for importation or entered, or
3 withdrawn from warehouse, for consumption in the United States,
4 and through any other procedures the Secretary deems necessary to
5 ensure compliance with this Act.

6 (d) Corrective Actions.--All seafood and seafood products
7 that are refused entry pursuant to subsection (b) or that are
8 entered, or withdrawn from warehouse, for consumption in the
9 United States in violation of this section shall, pursuant to
10 regulations, be destroyed unless--

11 (1) such seafood and seafood products are exported within
12 a time fixed therefor by the Secretary, or

13 (2) the Secretary determines that such seafood or seafood
14 product can be brought into compliance with this Act by
15 relabeling or other action. If the Secretary so determines,
16 then the destruction of such seafood or seafood product may
17 be deferred pending filing of a written application by the
18 owner or consignee and the execution by the applicant of a
19 bond within a time period specified by the Secretary. Upon
20 such filing and execution of a bond, the Secretary may
21 authorize the applicant to perform such relabeling or other
22 actions specified by the Secretary. If after such action is
23 performed, the Secretary determines that such seafood or
24 seafood product has been brought into compliance with this
25 Act, the Secretary shall permit its entry into commerce.

26 (e) Costs.--Storage, cartage, labor, and other costs

1 resulting from the denial of entry, or withdrawal from warehouse,
2 of any seafood or seafood product shall be paid by the owner or
3 consignee, and nonpayment of such costs shall constitute a lien
4 against such seafood or seafood product and any other seafood or
5 seafood product thereafter entered, or withdrawn from warehouse,
6 for consumption in the United States by such owner or consignee.

7 **SEC. 10. EXPORTS.**

8 (a) Standards.--Seafood or seafood products intended for
9 export to a foreign country shall be subject to the provisions of
10 this Act unless they--

11 (1) accord to the specifications of the foreign purchaser;

12 (2) are not in conflict with the laws of the country to
13 which they are intended for export;

14 (3) are labeled on the outside of the shipping package
15 that they are intended for export; and

16 (4) are not sold, offered for sale, or otherwise disposed
17 of in commerce within the United States.

18 (b) Inspection.--The Secretary shall inspect seafood or
19 seafood products intended to be exported to foreign countries at
20 such times and places and in such manner as the Secretary deems
21 necessary to ensure compliance with this section.

22 (c) Certificates.--The Secretary shall, upon request,
23 provide a certificate for export stating the condition of seafood
24 or seafood products inspected under this section.

1 SEC. 11. STATE PROGRAMS.

2 (a) In General.--The Secretary shall encourage States to
3 establish seafood inspection programs at least equal to the
4 program established under this Act.

5 (b) Assistance.--The Secretary may provide to a State, in
6 planning and developing such seafood inspection program--

7 (1) advisory assistance;

8 (2) technical and laboratory assistance and training
9 (including necessary materials and equipment); and

10 (3) financial and other aid.

11 (c) Designation of States.--(1) Upon request, the Secretary
12 shall review the seafood inspection program of a State to
13 determine if the State seafood inspection program is at least
14 equal to the program established under this Act.

15 (2) If the Secretary determines that a State seafood
16 inspection program is at least equal to the program established
17 under this Act--

18 (A) such State program shall apply to all seafood and
19 seafood products processed in such State, in lieu of the
20 Federal seafood inspection program established under section
21 3; and

22 (B) the Secretary shall annually grant to each such State
23 50 percent of the cost of operating such State seafood
24 inspection program.

25 (3) If the Secretary determines that a State seafood
26 inspection program is not at least equal to the program

1 established under this Act or that a designated State has failed
2 to maintain or is not enforcing a seafood inspection program at
3 least equal to the program established under this Act, the
4 Secretary shall promptly notify the Governor of the State of such
5 determination.

6 (4) After the notification required by paragraph (3),
7 consultation with the State, and providing any assistance
8 described in subsection (b), if the Secretary determines that a
9 State seafood inspection program does not have standards that are
10 at least equal to those under this Act or that a designated State
11 has failed to maintain or is not enforcing a program having
12 standards at least equal to those under this Act, the Secretary
13 shall--

14 (A) promptly notify the Governor of the State of such
15 determination;

16 (B) designate such State as one in which the Federal
17 inspection program established under this Act shall apply to
18 the processing of seafood or seafood products within such
19 State for shipment in commerce within that State; and

20 (C) cease providing any financial assistance to such State
21 under paragraph (2).

22 **SEC. 12. FEDERAL PRE-EMPTION.**

23 (a) Prohibition.--A State may not--

24 (1) impose requirements within the scope of this Act with
25 respect to any establishment or vessel registered under the

1 program which are in addition to, or different than, those
2 imposed pursuant to this Act; or

3 (2) impose marking, labeling, package, or ingredient
4 requirements for seafood and seafood products processed at
5 any establishment or vessel registered under the program in
6 addition to, or different than, those imposed pursuant to
7 this Act.

8 (b) Authorized Actions.--A State may, consistent with the
9 requirements under this Act--

10 (1) impose recordkeeping and other requirements within the
11 scope of section 6 with respect to any establishment or
12 vessel registered under the program;

13 (2) exercise concurrent jurisdiction with the Secretary
14 over seafood and seafood products for the purpose of
15 preventing the distribution for human food purposes of
16 adulterated or misbranded seafood and seafood products that
17 are outside an establishment or vessel registered under the
18 program; and

19 (3) in the case of imported seafood and seafood products
20 that are not at an establishment or vessel registered under
21 the program, exercise concurrent jurisdiction with the
22 Secretary after their entry, or withdrawal from warehouse,
23 into the United States.

24 (c) No Preclusion.--(1) This Act shall not preclude any
25 State from establishing requirements or taking other action,
26 consistent with this Act, with respect to any other matters

1 regulated under this Act.

2 (2) This Act shall not preclude any State from
3 establishing a voluntary program that exceeds the requirements
4 established under this Act.

5 (d) Closure of Seafood Production Areas.--The Secretary of
6 Commerce, in consultation with the Secretary of Agriculture, may
7 prohibit or restrict the sale or other disposition in commerce or
8 the harvesting of any seafood from any marine waters, if the
9 Secretary of Commerce determines that doing so is necessary to
10 protect the public health.

11 **SEC. 13. PROHIBITED ACTS AND PENALTIES.**

12 (a) Prohibited Acts.--No person shall--

13 (1) process any seafood or seafood product at any
14 establishment or vessel, except in compliance with this Act
15 or any regulations promulgated thereunder;

16 (2) sell, transport, offer for sale or transportation,
17 receive for transportation, or otherwise dispose of, in
18 commerce--

19 (A) any seafood or seafood product that is
20 adulterated or misbranded at the time of such sale,
21 transportation, offer for sale or transportation,
22 receipt for transportation, or disposal; or

23 (B) any seafood or seafood product required to be
24 inspected under this Act unless it has been so
25 inspected;

1 (3) commit any act with respect to any seafood or seafood
2 product which is intended to cause or has the effect of
3 causing such product to be adulterated or misbranded;

4 (4) sell, transport, offer for sale or transportation,
5 receive for transportation, or otherwise dispose of, in
6 commerce any seafood or seafood product that is not
7 processed in accordance with the requirements of this Act or
8 any regulations promulgated thereunder;

9 (5) forge, counterfeit, simulate or falsely represent any
10 official mark or registration;

11 (6) without authorization from the Secretary, use any
12 official mark, or registration, or simulation thereof, or
13 alter, detach, deface, or destroy any official mark or
14 registration;

15 (7) refuse to permit entry or inspection to or on any
16 establishment or vessel, or otherwise interfere with any
17 person in carrying out the duties required under this Act;
18 or

19 (8) create or maintain records that are false either by
20 content or omission, or destroy records containing
21 information required under this Act or any regulations
22 promulgated thereunder.

23 (b) Civil Penalties.--(1) Any person who, after notice and
24 opportunity for a hearing, violates subsection (a) shall be
25 liable to the United States for a civil penalty in an amount not
26 to exceed \$10,000 for each violation. Each day of a continuing

1 violation shall constitute a separate offense. In determining
2 the amount of such penalty, the Secretary shall take into account
3 the gravity of the violations and, with respect to the violator,
4 the degree of culpability, and history of prior violations
5 (including violations resolved by written warnings), and such
6 other matters as justice may require.

7 (2) The Secretary may compromise, modify, or remit, with
8 or without conditions, any civil penalty that is subject to
9 imposition or that has been imposed under this section.

10 (c) Criminal Penalties.--Any person who violates subsection

11 (a) shall--

12 (1) be fined in an amount not to exceed \$1,000, or
13 imprisoned for not more than one year, or both; and

14 (2) if such violation involves intent to defraud, or any
15 distribution of any seafood or seafood product that is
16 adulterated, be fined in an amount not to exceed \$10,000, or
17 imprisoned for not more than 3 years, or both.

18 (d) Carriers.--No carrier shall be subject to penalties
19 under this section for the receipt, carriage, holding, or
20 delivery, in the usual course of business, as a carrier, of any
21 adulterated or misbranded seafood or seafood product owned by
22 another person, unless--

23 (1) the carrier has knowledge, or is in possession of
24 facts that would cause a reasonable person to believe that
25 the seafood or seafood product were adulterated or
26 misbranded or were otherwise not eligible for transportation

1 under this act, or

2 (2) the carrier refuses to furnish on request of the
3 Secretary the name and address of the person from whom the
4 carrier received the adulterated or misbranded seafood or
5 seafood product, and copies of all documents pertaining to
6 the delivery of such seafood or seafood product.

7 (e) Minor Violations.--The Secretary may decline to report
8 for prosecution minor violations of this Act whenever the
9 Secretary believes that the public interest will be adequately
10 served by a suitable written notice of warning. In determining
11 whether the public interest could be adequately served by a
12 written notice of warning, the Secretary shall consider, among
13 other factors--

14 (1) the compliance history of such person;

15 (2) the magnitude of the violation;

16 (3) whether compliance with this Act would likely be
17 obtained as a result of such notice; and

18 (4) whether such violation is of a minor or technical
19 nature.

20 (f) Notice.--Unless the Secretary by regulation provides
21 otherwise, before any violation is reported by the Secretary for
22 prosecution under this Act, the Secretary shall give the person
23 alleged to have committed such violation--

24 (1) reasonable notice that the Secretary intends to report
such violation for prosecution; and

25 (2) an opportunity to present to the Secretary, orally or
26

1 in writing, views with respect to such proceeding.

2 **SEC. 14. HEARINGS AND SUBPOENAS.**

3 (a) Administrative Hearings.--The Secretary shall afford an
4 opportunity for a hearing to any person adversely affected by the
5 action of the Secretary as required under this Act. As soon as
6 practicable after such hearing the Secretary shall take
7 appropriate action.

8 (b) Subpoenas.--(1) For the purposes of any hearing or
9 investigation under this Act, the Secretary may issue subpoenas
10 requiring the attendance and testimony of witnesses and the
11 production of any documentation or other evidence that relates to
12 any matter under investigation or in dispute before the Secretary
13 and to administer oaths or affirmations.

14 (2) The Secretary shall pay witnesses subpoenaed under
15 this subsection customary reasonable fees and mileage.

16 (3) In case of contempt or refusal to obey a subpoena
17 served upon any person pursuant to this subsection, the District
18 Court of the United States for the district in which such person
19 is found, resides, or transacts business, upon application by the
20 Secretary and after notice to such person, shall have
21 jurisdiction to issue an order requiring such person to appear
22 and give testimony before the Secretary or to appear and produce
23 documents before the Secretary or both, and any failure to obey
24 such order of the court may be punished by such court as a
25 contempt thereof.

1 SEC. 15. EXEMPTIONS AND EXCLUSIONS.

2 (a) In General.--This Act shall not apply to--

3 (1) the processing by any person of seafood and seafood
4 products of that person's own raising or harvesting exclusively
5 for use by that person, members of that person's household, that
6 person's nonpaying guests, and employees;

7 (2) operations of types traditionally and usually
8 conducted at retail stores and restaurants, when conducted at any
9 retail store or restaurant or similar retail-type establishment
10 for sale in normal retail quantities of seafood and seafood
11 products to consumers at such establishments, if the Secretary
12 determines that such exemption will have no adverse effect on
13 protecting the consuming public from adulterated or misbranded
14 seafood and seafood products;

15 (3) the custom processing in any establishment or vessel
16 of seafood or seafood products that the owner of such seafood or
17 seafood products will exclusively use, in the household of the
18 owner, for the owner, members of the owner's household, nonpaying
19 guests, and employees, if--

20 (A) such establishment or vessel ensures that such
21 seafood or seafood products are segregated at all times from
22 seafood and seafood products processed for sale,

23 (B) such seafood and seafood products are plainly marked
24 "Not for Sale", and

25 (C) such establishments and vessels are maintained and

1 operated in a sanitary manner;

2 (4) any person engaged in the processing of seafood or
3 seafood products and the seafood or seafood products that are
4 processed by such person for such period of time, if the
5 Secretary determines that it would be impracticable to provide
6 inspection, the exemption will aid in the effective
7 administration of this Act, and the exemption will have no
8 adverse effect on protecting the consuming public from
9 adulterated or misbranded seafood and seafood products;

10 (5) any seafood or seafood product if the Secretary
11 determines that such exemption will have no adverse effect on
12 protecting the consuming public from adulterated or misbranded
13 seafood and seafood products;

14 (6) except as provided in subsection (c) and section 8,
15 seafood harvesting vessels and seafood tender vessels; and

16 (7) the entry, or withdrawal from warehouse, for
17 consumption in the United States of any seafood or seafood
18 product acquired outside the United States for consumption by the
19 person entering or withdrawing it if--

20 (A) the total amount of such seafood or seafood product
21 does not exceed such weight as the Secretary may prescribe
22 by regulation; or

23 (B) it is exempted by regulation because it was caught for
24 other than commercial purposes in waters outside the United
25 States.

26 (b) Industrial Products.--This Act shall not apply to any

1 establishment or vessel solely processing seafood or seafood
2 products not intended for use as human food, but such seafood and
3 seafood products shall, before their offer for sale or other
4 disposition in commerce, not be capable of use as human food.

5 (c) Seafood Harvesting and Seafood Tender Vessels.--(1) If
6 the Secretary of Commerce, in cooperation with the Secretary,
7 determines that a critical control point determined in accordance
8 with the Hazard Analysis Critical Control Point method exists on
9 board seafood harvesting vessels or seafood tender vessels, the
10 Secretary is authorized, after public notice and an opportunity
11 for comment, to promulgate regulations to include such seafood
12 harvesting vessel and seafood tender vessel in the inspection
13 program conducted pursuant to this Act.

14 (2) (A) The Secretary of Commerce shall establish
15 guidelines for seafood harvesting vessels and seafood tender
16 vessels not included in the program under paragraph (1) to
17 protect the consuming public from adulterated or misbranded
18 seafood and seafood products concerning the handling, storage,
19 and transport of seafood and seafood products.

20 (B) The Secretary of Commerce shall develop guidelines
21 under this paragraph--

22 (i) in consultation with the Commercial Fishing
23 Industry Vessel Advisory Committee established under section
24 4508 of title 46, United States Code, to ensure that such
25 guidelines do not affect the safety of seafood harvesting
26 vessels or seafood tender vessels, and

1 (ii) that consider the specialized nature and
2 economics of the operations and the character, design, and
3 construction of seafood harvesting vessels and seafood
4 tender vessels in different fisheries.

5 (C) The Secretary of Commerce may exempt classes or
6 types of seafood harvesting vessels and seafood tender vessels
7 from the guidelines established in this paragraph if the
8 Secretary of Commerce determines, after public notice and an
9 opportunity for comment, that such exemption will have no adverse
10 effect on protecting the consuming public from adulterated or
11 misbranded seafood and seafood products.

12 (3) Regulations promulgated under this subsection shall
13 allow a reasonable amount of time for vessel owners to complete
14 any necessary modifications to their vessels before such
15 regulations are effective.

16 (4) The provisions of this subsection shall be enforced by
17 the Secretary of Commerce and, by agreement, by--

18 (A) the Secretary,

19 (B) the Secretary of Transportation, or

20 (C) any state agency.

21 (5) Any person violating a regulation promulgated under
22 this subsection shall be liable for a civil penalty under section
23 13.

24 **SEC. 16. EMPLOYEE PROTECTION.**

25 No employer may discharge any employee or otherwise

1 discriminate against any employee with respect to the employee's
2 compensation, terms, conditions, or privileges of employment
3 because such employee has assisted or in any way participated in
4 the implementing of the provisions of this Act or who is about to
5 implement any activity protected by this provision.

6 **SEC. 17. RESEARCH, EDUCATION, AND HEALTH RISK MONITORING.**

7 (a) Research.--(1) The Secretary, in consultation with the
8 Secretary of Commerce, shall develop and implement a research
9 program for the purposes of--

10 (A) improving sanitation and quality control practices in
11 the processing of seafood and seafood products;

12 (B) developing efficient, rapid and sensitive methods for
13 determining and detecting the presence of harmful chemical
14 and microbiological contaminants, parasites and toxins in
15 seafood and seafood products;

16 (C) determining the sources of contamination of seafood
17 and seafood products; and

18 (D) developing consumption data for seafood and seafood
19 products.

20 (2) The Secretary of Commerce, in consultation with the
21 Interstate Shellfish Sanitation Conference, shall establish a
22 five-year shellfish indicator research program to develop a
23 system of classification of shellfish growing waters based upon
24 the latest technological advancements in microbiology and
25 epidemiological methods. The research program shall be for the

1 purposes of--

2 (A) assessing the environment of commercial shellfish
3 growing areas in the United States, including evaluation of
4 the relationships between indicators of fecal contamination
5 and human enteric pathogens;

6 (B) evaluating such relationships with respect to
7 potential health hazards associated with human consumption;

8 (C) comparing the current microbiological methods used for
9 evaluation of indicator bacteria and human enteric pathogens
10 in shellfish and shellfish growing waters with new
11 technological methods designed for this purpose;

12 (D) designing epidemiological studies to relate
13 microbiological data, sanitary survey data, and human
14 shellfish consumption data to actual hazards to health
15 associated with such consumption; and

16 (E) making recommendations for revising the standards and
17 guidelines established by section 8.

18 (b) Education.--The Secretary shall design and implement
19 national programs for seafood safety education, including
20 designation of regional and national seafood safety centers which
21 shall conduct, support and foster the research and educational
22 programs required by this Act.

23 (c) Health Risk Monitoring.--The Secretary shall establish
24 and implement a health risk monitoring and reporting program for
25 seafood and seafood products to monitor and report reliable data
26 on seafood-related consumer health risks, including collection

1 and dissemination of data on the number, causes, and geographic
2 location of seafood-related illnesses.

3 **SEC. 18. REGULATIONS.**

4 (a) In General.--The Secretary shall, in consultation with
5 the Secretary of Commerce where appropriate, promulgate
6 regulations to carry out this Act.

7 (b) Required Regulations.--The Secretary shall prescribe
8 regulations after public notice and an opportunity for comment,
9 taking into consideration the recommendations contained in the
10 report under section 3, establishing--

11 (A) good processing practices for establishments;

12 (B) standards for the wholesomeness, nomenclature,
13 quantity, package, and labeling of seafood and seafood
14 products;

15 (C) procedures for the inspections provided for in this
16 Act; and

17 (D) other standards necessary for the implementation of
18 this Act.

19 (c) Issuance.--The Secretary shall promulgate the initial
20 regulations not later than 6 months after the date of receiving
21 the initial report under section 3. Such initial regulations
22 shall be effective on the date prescribed by the Secretary, but
23 not later than 1 year after the date on which such regulations
24 are promulgated. However, if the Secretary finds that additional
25 time, not in excess of 1 year, is necessary to put into effect

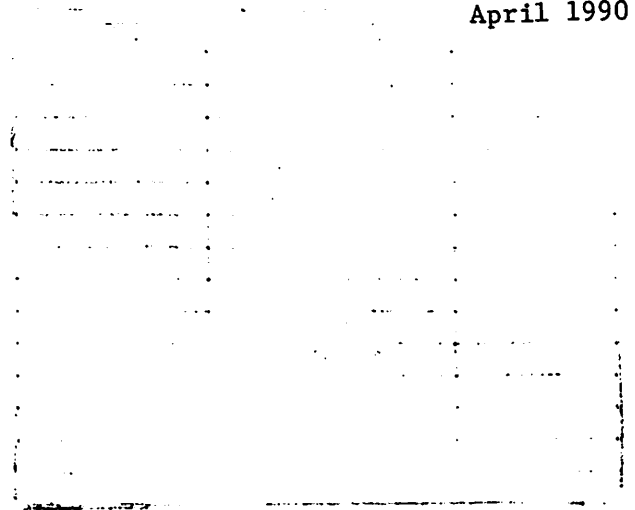
1 all or any part of such regulations, then the Secretary may delay
2 the effective date of such regulations accordingly.

3 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated such sums as are
5 necessary to carry out this Act to remain available without
6 fiscal year limitation.

7
8 **SEC. 20. REPORTS BY THE SECRETARIES.**

9 The Secretary, in cooperation with the Secretary of
10 Commerce, shall submit to the Committee on Agriculture and the
11 Committee on Merchant Marine and Fisheries of the House of
12 Representatives, and the Committee on Agriculture, Nutrition, and
13 Forestry and the Committee on Commerce, Science, and
14 Transportation of the Senate in January of each year a report
15 containing a full and complete description of such Secretary's
16 activities under the Federal Inspection for Seafood Healthfulness
17 Act of 1990 in the preceding fiscal year.



A Report to Congress on the Implementation of the Fish and Seafood Promotion Act of 1986

December 1989

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service





THE SECRETARY OF COMMERCE
Washington, D.C. 20230

JAN 12 1990

President of the Senate
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Sirs:

I am pleased to submit the enclosed report regarding the implementation of the Fish and Seafood Promotion Act of 1986 (FSPA), as required by Section 219 of the Act. The report describes actions to establish the National Fish and Seafood Promotional Council, along with its accomplishments to date and plans for the future.

To assist the industry in establishing species-specific seafood marketing councils under the FSPA, the Department has published a final rule which describes the conditions under which these councils may be established and operated. To date, no applications to establish species-specific councils have been received.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Mosbacher", is written over the typed name.

Robert A. Mosbacher

Enclosure

A REPORT TO CONGRESS ON THE IMPLEMENTATION
OF THE FISH AND SEAFOOD PROMOTION ACT OF 1986

INTRODUCTION

The Fish and Seafood Promotion Act of 1986 (FSPA) (P.L. 99-659), as amended, (16 U.S.C. 4001 et seq.), administered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, was signed into law on November 14, 1986. The purpose of the FSPA is to (1) strengthen the competitive position of the U.S. commercial fishing industry in the domestic and international marketplace; (2) encourage the development and utilization of all species of fish available for harvest by the U.S. fishing industry; (3) encourage the utilization of domestically produced fisheries products through enhancement of markets, promotion, and public relations; (4) help the U.S. fishing industry develop methods to improve quality and efficiency in the marketplace; (5) educate and inform consumers on the use of fish; (6) develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and (7) educate and inform the public about the nutritional value of fish in the diet.

The FSPA authorized establishment of a National Fish and Seafood Promotional Council (Council) to carry out generic marketing programs, including consumer education and research. The Council consists of the Secretary of Commerce (Secretary) or his designee, who is a non-voting member, and 15 voting members appointed by the Secretary for four-year terms. The law provides that the Council will cease to exist on October 1, 1990.

The FSPA established a Fisheries Promotional Fund in the U.S. Treasury to provide funding for the National Council to carry out its annual marketing and promotion plans and administrative operations. The fund is capitalized primarily through monies transferred from the S-K Fund. Authorized and appropriated funding levels are shown below.

<u>Fiscal Year</u>	<u>Authorized</u>	<u>Appropriated</u>
1987	\$ 750,000	\$ 750,000
1988	3,000,000	2,625,000
1989	3,000,000	3,000,000
1990	2,000,000	2,000,000

The FSPA also authorizes the establishment of seafood marketing councils to conduct species-specific marketing and promotion, including consumer education and research. Funding is provided through assessment of segments of the industry represented on each council. The FSPA authorizes species-specific seafood marketing councils to develop quality standards for their fish or seafood products or to request the Secretary to develop such standards. Species-specific seafood marketing councils are established through: (1) application to the Secretary by particular segment(s) of the industry; (2) favorable review of the charter application by the Secretary; and (3) successful conduct of a referendum by the Secretary on the proposed charter. Appointments to species-specific councils will also be made by the Secretary from nominations received from the industry sectors represented on the council.

This report summarizes the progress to date by the Department of Commerce in implementing the FSPA.

THE NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL

The National Council is composed of the Secretary of Commerce or his designee, a non-voting member, and 15 voting members appointed by the Secretary. The FSPA prescribed the following composition of voting members:

1. Three members (a harvester, a receiver or processor, and a marketer) who reside in or do substantial fishing industry business in each of the following regions:

(a) Northeast region (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia);

(b) Southeast region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands);

(c) Pacific region (Idaho, Washington, Oregon, California, Hawaii, the Territories of Guam and America Samoa and the Commonwealth of the Northern Mariana Islands); and

(d) Alaska region (Alaska).

2. Two members-at-large with demonstrated expertise in freshwater and inland commercial fisheries, at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, or Northeast regions.

3. One member-at-large who is either a person professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and seafood products or a person who is a member of an organized labor union with expertise in U.S. fisheries.

Council members serve without compensation, but are reimbursed for reasonable travel costs and expenses incurred while carrying out their responsibilities as members of the National Council.

In the initial appointment process, two notices of requests for Council nominations were published in the Federal Register - the first on February 18, 1987, and a second on April 14, 1987. Eighty-one nominations were received, and on October 23, 1987, the Secretary appointed 14 of the 15 voting members.

On June 27, 1988, the FSPA was amended to modify the restriction that precluded the consideration of those who reside in the States of the Alaska, Pacific, Southeast, or Northeast regions from being considered for the two positions of members-at-large with demonstrated expertise in freshwater and inland commercial fisheries. This amendment stated that only one, rather than both of these members-at-large, was subject to such residency restriction. At that time, one member-at-large from an inland State had been appointed. The remaining member-at-large position could, therefore, be filled by any qualified person without regard to a residency restriction.

On July 22, 1988, a notice reopening nominations for the 15th position was published in the Federal Register and six nominations were received. The Secretary appointed an individual from a coastal State to this position on January 12, 1989.

In November 1988, one of the original Council members resigned. This vacancy was filled on January 11, 1989, from the nominations received in the initial appointment process. At this time, the Council is operating at full strength. A list of members is attached.

Members of the Council elect a Chairperson and Vice Chairperson annually by a majority of those voting if a quorum is present. Kenelm W. Coons and Kathryn Kendrick-Vanderpool were elected as first Chairperson and Vice Chairperson, respectively. At its fifth meeting (March 29-30, 1989), the Council elected Nancy L. Abrams to succeed Mr. Coons as Chairperson. Ms. Vanderpool is serving as Vice Chairperson for a second term.

The Council has hired a three person staff including an Executive Director, a Program Manager and a secretary and established an office in Washington, D.C.

The Council has held seven meetings to date. The dates and locations for these meetings were: December 1-2, 1987, Washington, D.C.; February 15-16, 1988, San Diego, California; May 31-June 2, 1988, Chicago, Illinois; October 5-6, 1988, Seattle, Washington; March 29-30, 1989, Washington, D.C.; June 8-9, 1989, Washington, D.C., and September 19-20, 1989, Anchorage/Homer, Alaska. The Council's next meetings will be held January 10-11, 1990, in Honolulu, Hawaii, and April 10-11, 1990, in New Orleans, Louisiana.

PROGRESS TO DATE

At its first meeting, the Council adopted as its mission statement: "To increase per capita consumption of fish and seafood in the United States while strengthening the position of the U.S. fishing industry."

The Council's first annual Marketing and Promotion Plan was approved by the Secretary on September 30, 1988. Under this plan, the Council adopted an advertising strategy that targets those consumers which it believes would be most responsive to its efforts--those already disposed to eating fish and seafood--with the objective of increasing demand for these products.

To implement this strategy, the Council began the process of procuring advertising and public relations services in April 1988. Eighty-one "requests for proposal" were sent out in September 1988 to prospective contenders. A pre-proposal conference was held in October 1988. Ten proposals were received and reviewed by the Council during November. Those

firms determined to be within the competitive range made oral presentations in December; "best and final" offers were received in January 1989 and the advertising/public relations contract was awarded to W. B. Doner & Company of Baltimore, Maryland and Daniel J. Edelman Public Relations, Washington, D.C., on February 8, 1989.

Under the approved marketing plan, the contractor developed a national generic fish and seafood promotional campaign which was unanimously approved by the full Council in March 1989. The promotion focuses on increasing seafood consumption among those consumers already pre-disposed to eating fish through activities aimed at raising their awareness of the benefits of eating fish and seafood, such as ease of preparation, variety, taste, health, and nutritional value.

The theme line of the Council's \$6.5 million national marketing campaign is "Eat fish and seafood twice a week." Central to the advertising execution is an animated character dubbed "America's Official Spokesfish." The campaign strategy is to focus funds on mass media advertising during select times throughout the year, specifically in August through October 1989 and January through March 1990. The campaign includes: regional network television in key fish consumption areas representing over 60 percent of the population and 80 percent of the fish and seafood consumption; national network and national cable television and national magazines. Public relations will support the "Eat fish twice a week" theme. The Council's strategy is to make certain that all regions of the United States receive effective advertising support.

The Council's television and print campaign kicked off in August and ran through October 1989, which was National Seafood Month. After a November/December hiatus, the advertising will pick up once again in January 1990, to capitalize on awareness previously established and will continue through the important Lenten season.

The public relations component of the campaign commenced in June 1989 and involves six national mailings to newspaper food editors, a broadcast communicators program, a magazine editors program and contact with the retail, foodservice and fishing industry trade press.

During the fall of 1989, the public relations program brought "America's Official Spokesfish" to life (via costume) for several public appearances at key trade shows and other industry events. The Council has scheduled additional appearances at industry events during 1990.

The Council, when developing its program, anticipated the desire of some local fish and seafood retail and restaurant groups to tie into and extend the communication of the national program through regional, state, and local efforts. To fulfill this need, the Council developed merchandising material, including camera-ready clip art of the Spokesfish, T-shirts, a poster, cookbooklets, and television and radio commercials specifically designed to be used at the local level. The Council's program was introduced through 18 regional industry meetings organized in cooperation with the National Fisheries Institute. Approximately 3,500 people attended the meetings.

The program was designed to be reutilized during the Lenten season in 1990. Reminders to the industry will be issued by mail and through the Council's participation at trade shows and other events.

In order to generate enthusiasm and encourage participation, a special Advertising Achievement Awards Program is in progress with judging taking place in January 1990. Any industry group which has used the materials provided in the merchandising kits to promote fish and seafood during October Seafood Month will be eligible to enter. Awards will be made during the Boston Seafood Show in March 1990.

In addition to kicking off its major advertising program, the Council has spearheaded other activities:

A workshop was held in August 1988 in Washington, D.C. for individuals whose position as spokespersons for the industry makes them particularly visible to the media. They were briefed on industry-related issues, e.g., inspection, ocean pollution, and other serious environmental problems. Working through national organizations, the Council plans to continue its efforts to develop positive media spokespersons to help provide to the general public a balanced viewpoint on occasions when negative press coverage occurs.

To determine the direction of the advertising campaign, a Qualitative Market Research Study was conducted for the Council in September 1988 by Foodservice Research & Marketing of New York. This study was designed to provide a broad sampling of attitudes towards purchasing and consuming fish and seafood, both in the home and in commercial establishments. Heavy-to-medium user groups in the age range of 21-55 years were targeted. Two groups each were surveyed in Los Angeles, Memphis, Chicago, and New York.

The Council was a sponsor for the American Seafood Challenge in Charleston, S.C., March 1-4, 1989. The "Challenge" is a national cookoff for professional chefs which began as a regional event in South Carolina in 1984. The 1989 event was national in scope and included chefs from 36 States. The Council's public relations firm ensured that this event received national media coverage. The winning chef, Jean Marie Josselin of Hawaii, was booked on a nine-city media tour designed to promote increased consumer identification with fish and seafood as exciting, diverse, and healthful menu alternatives. In addition, Chef Josselin appeared on the cover of the May/June issue of Seafood Business, one of the more popular trade publications for the seafood industry.

At the Boston Seafood Show, March 7-9, 1989, the Council produced a series of video news releases for distribution nationally to television stations. The video news releases focused on three main ideas:

- innovations in products and technology;
- inspection/pollution/seafood quality and safety; and
- health and nutritional benefits of fish and seafood.

The Council co-sponsored with the National Fisheries Institute, the California Fisheries and Seafood Institute, and the Florida Department of Natural Resources, a media tour for Anne Fletcher, M.S., R.D., to promote the nutritional and health benefits of eating fish and seafood. Ms. Fletcher is a registered dietitian with extensive writing and teaching experience. She was formerly executive editor and chief writer of the Tufts University Diet and Nutrition Letter. Her book, Eat Fish - Live Better, is currently available.

On June 21, 1989, the Council, in cooperation with the National Fisheries Institute, sponsored the "Summer Solstice Seafood Spectacular" in New York City. Over 50 writers and editors attended this event representing such well known magazines as Food and Wine, Good Housekeeping, and Prevention, and newspapers such as the Baltimore Sun and the New York Post. This event featured the three top winners from the '89 American Seafood Challenge grilling seafood dishes. Press kits from this event were later mailed to approximately 800 newspapers nationwide.

SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

On December 21, 1988, NOAA published a proposed rule in the Federal Register to implement the FSPA as it pertains to seafood marketing councils for one or more species of fish or fish products. This rule described the conditions under which seafood marketing councils may be established and operated under the FSPA. The 60-day public comment period for the proposed rule ended February 21, 1989. The Department published the final rule on December 7, 1989.

Unlike the National Council, these councils will be initiated, operated, and funded by segments of the fishing industry wishing to market particular seafood products.

Although no applications to establish species-specific seafood marketing councils have been received to date, sources in the industry have indicated possible interest in establishing such councils. Three studies have been funded under the Saltonstall-Kennedy (S-K) grant program to determine the feasibility of establishing seafood marketing councils. The studies are on Atlantic mackerel, molluscan shellfish, and species included in West Coast fisheries. Final reports have been received for the studies on Atlantic mackerel and molluscan shellfish. The final report on the West Coast fisheries study will be completed shortly.

EFFECTIVENESS OF THE IMPLEMENTATION OF THE FSPA

The National Council has developed a research plan to determine the effectiveness of its "Eat fish and seafood twice a week" campaign in producing a change in consumers' awareness of and attitude and behavior towards eating fish and seafood. Prior to the first wave of television and print advertising, a benchmark survey on consumer attitudes was carried out. Similar surveys are to be carried out after the first and second waves of advertising. The information gathered from these three phases of interviewing will provide the database to assess the effectiveness of the advertising campaign in terms of the degree to which it produced behavioral and attitudinal changes among consumers.

At this time, other measures of the campaign's effectiveness are available. For example, over 3,500 industry representatives attended the Council's 18 regional implementation meetings held during the summer of 1989 in Philadelphia, New York, Baltimore/Washington, Pittsburgh, Cleveland, Detroit, Tampa, Atlanta, San Diego, Minneapolis, Chicago, Los Angeles, Boston, Houston, San Francisco, Dallas, Seattle and Honolulu.

At these meetings and subsequently, 5,000 merchandising kits were distributed to industry representatives. Because orders for the kits were coming in at about 10-15 per day, the Council decided to reprint an additional 5,000, of which 2,000 are already distributed.

Much of the interest in the Council's program is a result of the vast amount of trade press the program is garnering. For example, the Spokesfish and the Council's program were featured on the cover of the September/October issue of Seafood Business.

To date, over 80 companies have ordered items from the kits, and many others are utilizing the camera-ready art contained in the kit. The Spokesfish logo and the "Eat fish and seafood twice a week" slogan have become a common sight in many newspapers and grocery stores around the country.

At this point, it is premature to determine the effectiveness of the FSPA as it pertains to species-specific seafood marketing councils until one or more of these councils has been established. In the meantime, the regulatory framework to establish species-specific seafood marketing councils is being put into place.

Attachment

**NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL
Member/Staff Directory**

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Mr. Michael C. Voisin - Marketer
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Mr. Thomas P. Jones - Executive Director

Ms. Jeanne Grasso - Program Manager

Ms. Mary E. Davis - Secretary

National Fish & Seafood Promotional
Council
1825 Connecticut Avenue, N.W., Room 618
Washington, DC 20235

Comparison of Magnuson Act Amendments
Proposed by H.R. 2061 and S. 1025

Magnuson Act Findings (p. 4 of marked-up Act from Mid-Atlantic Council)

Both bills add a new finding that scientific data collection is essential to effective conservation and management.

Magnuson Act Purposes (p. 4-5)

The first purpose is to immediately act to conserve and manage U.S. fisheries and anadromous species by exercising sovereign rights over all fish except highly migratory species, etc. The Senate changes the thrust of this purpose by exempting only tuna from U.S. management, rather than all highly migratory species.

The second purpose is to encourage international fishery agreements on highly migratory species. The House changes this purpose by adding swordfish and billfish to the highly migratory species requiring international management programs and agreements.

Magnuson Act Policy (p. 5)

Both House and Senate expand policy #3 to assure that the national fishery conservation and management program considers the effects of fishing on immature fish and encourages development of measures that avoid unnecessary waste of fish.

Both House and Senate add a policy to achieve an international ban on driftnets, 1.5 miles or longer, beyond the EEZ.

The Senate adds another policy to foster and maintain the diversity of fisheries in the U.S. and minimize disruptions and dislocations in those fisheries upon which coastal communities are substantially dependent to meet their social and economic needs.

Definitions (p. 7-10)

Both House and Senate add definitions of "driftnets" and "waters of a foreign nation". Both add a definition of "migratory range", however the House refers to any species, and the Senate just to anadromous species.

The Senate deletes highly migratory species from the term "fish" and foreign fisheries for tuna from the term "fishing". The Senate then changes the definition of "highly migratory species" from including just tuna to including tuna species, marlin, oceanic sharks, sailfishes, and swordfish. The Senate goes on to define five species of tuna.

Senate adds a definition of an "observer" as any person required or authorized to be carried on a vessel for conservation and management purposes by regulation or permits under the Act. The Senate also defines a Working Group which is the Inter-Council Working Group on Highly Migratory Species.

Management of Highly Migratory Species (p. 10)

House repeals the tuna exclusion and directs the Secretary of State to renegotiate international agreements that are now inconsistent with U.S. assertion of management of highly migratory species.

Senate maintains exemption of tuna from U.S. authority and mandates the U.S. to cooperate with other nations in managing highly migratory species both within and beyond the EEZ.

TALFF (p. 12 - 14)

Both bills replace the complicated TALFF formulas with simpler language that TALFF shall be that portion of OY in excess of U.S. harvesting needs.

International Fishery Agreements (p. 19-20)

House adds swordfish and billfish to anadromous and highly migratory species for which the Secretary of State will negotiate international conservation and management agreements.

Senate adds a lengthy section directing the Secretary of State to cooperate with the Secretary and the Working Group to evaluate the effectiveness of international agreements in managing highly migratory species, to report within 12 months, and to negotiate international agreements on highly migratory species.

Foreign Fishing Permits (p. 25-28)

House and Senate require the Secretary to consult with the Councils in addition to the Secretary of State in setting foreign fees. Both bills require the fees to go into the general fund of the Treasury. Both delete the methodology for calculating the fees, substituting the term "reasonable" fees. Both delete the two-tier approach for charging higher fees on nations that harvest anadromous fish from the U.S. or fail to take sufficient action to benefit the conservation and development of U.S. fisheries.

Both bills delete the lengthy section on sanctions on foreign fishing vessels.

International Ban on Large-Scale Driftnet Fishing (p. 29-30)

House and Senate direct the Secretary of State to secure an international ban or moratorium on driftnets beyond the EEZ. Both require a progress report to Congress. The Senate requires certification under the Fishermen's Protective Act of any nation that allows their nationals to conduct driftnet operations beyond the nation's EEZ in a manner that diminishes the effectiveness of any bilateral or multilateral agreement governing driftnet fishing to which the U.S. is a party.

North Pacific Council Composition (p. 32)

The House bill adds one new Council member from Oregon and one from Washington.

Council Member Qualifications (p. 32-33)

Both bills tighten qualifications to require occupational or commercial experience, scientific expertise, or academic training in fisheries management or recreational or commercial harvest, and that the Secretary ensure fair representation across the industry. The Senate requires an annual report starting January 31, 1991 on actions taken to ensure fair representation.

Council Member Terms (p. 34)

House limits terms to two consecutive terms for members appointed after January 1, 1986. The Senate limits terms to three previous terms for appointments or reappointments after January 1, 1991.

Council Member Compensation (p. 34)

House bill reduces daily compensation to \$200 for members appointed or reappointed after January 1, 1991. Senate bill does not change the daily compensation.

Staff Travel Reimbursement (p. 34)

Both bills enable staff members to be reimbursed for actual expenses.

Council Meeting Location (p. 35)

Both bills allow Councils to meet in any of the constituent states.

Regional Director Minority Statement (p. 35)

The Senate bill requires the NMFS Regional Director to submit a minority report if he disagrees with any matter submitted to the Secretary by a Council,

Advisory Committees (p. 36)

Both bills limit decisions and recommendations of advisory committees to being advisory only. The Senate bill clarifies SSC reports as being advisory in nature. The House bill mandates each Council to establish industry advisory panels.

Fishery Habitat Concerns (p. 37)

Both bills augment current habitat language by requiring an agency response to include a description of measures being considered to mitigate activities that impact the habitat of anadromous species. The House bill compels a Council to comment concerning any such activity, the Senate does not.

Notice Requirements for Closed Meetings (p. 38)

Both bills require the Council to notify newspapers of closed meetings.

Opportunity for Public Comment on New Information (p. 39)

Both bills mandate Councils to give the public opportunity to comment or submit new information in response to new information submitted by a Federal or State agency or Council advisory body.

Testifying under Oath (p. 40)

The Senate bill requires all members of Councils or the public who present oral or written testimony to the Councils to be administered an oath and be subject to perjury charges. This would take effect 120 days after enactment.

Required Provisions of Plans (p. 40-41)

Senate bill requires conservation and management measures in plans to be consistent with regulations implementing recommendations by international organizations to which the U.S. is party.

Both House and Senate bills mandate the Councils to provide for temporary adjustments in regulations to provide access for vessels that may be disadvantaged by weather conditions, provided that the adjustments do not adversely affect conservation of the stocks.

Both bills require all plans and amendments submitted after January 1, 1991 to assess and specify the nature and extent of scientific data which are needed to ensure the plan's effectiveness in conserving and managing the resource.

The Senate bill requires plans and amendments submitted after January 1, 1992 to include a fishery impact statement on commercial fisheries.

Discretionary Provisions of Plans (p. 42)

Both bills add operators of fishing vessels and processors to the list of those for which permits and fees can be required, allow the Councils to require processors to submit data (other than economic data) which are necessary for conservation and management of the fisheries, and allow the Councils to require observers. The Senate adds a provision that would allow the Councils to prescribe, with respect to foreign fishing for tuna species, measures that are reasonable and necessary for the conservation and management of non-tuna fisheries resources.

Confidentiality of Data (p. 43)

Both bills grant state employees access to confidential data.

Multi-Council Fisheries Management (p. 47-49)

The Senate bill adds extensive provisions on inter-Council management of highly migratory species. It establishes a 5-Council working group on the east coast.

Judicial Review (p. 49-50)

Both bills extend the time for submitting petitions in response to regulations. Now a petition must be filed within 30 days of the regulations being promulgated. The revision would make it 30 days from publication in the federal register if that is longer. Both bills require the Secretary to respond to the petition within 30 days and for the courts to expedite hearings on the matter.

Regional Directors and Emergency Actions (p. 50)

The House bill requires the Secretary to promulgate emergency regulations upon unanimous request of the Council even if the Regional Director voted "no" or abstained.

Foreign Processing in Internal Waters (p. 52)

Both bills require the species of interest to be identified in internal joint venture processing permit applications. Both bills require a Governor to consult with the Council or Commission and consider comments of a Governor of another state, if the species is fished also in the waters of another state.

Prohibited Acts (p. 54-55)

Both bills add to the list of prohibited acts: (1) stealing or tampering with someone else's fishing gear, (2) assaulting or interfering with an observer, and (3) driftnet fishing. The Senate bill also prohibits roe-stripping and discarding flesh of pollock.

Both bills prohibit U.S. vessels fishing in a foreign EEZ from violating international agreements between the country and the U.S. The Senate bill requires the provisions to have been published in the Federal Register.

Civil Penalties (p. 55)

Both bills increase maximum civil penalties to \$100,000 (from \$25,000).

Permit Sanctions (p. 56-57)

Both bills allow the Secretary to revoke, suspend, deny or condition permits of violators. Transfer of the vessel permit does not extinguish the sanction. The House bill requires the person transferring the permit to disclose the presence and type of sanctions to the person receiving the permit.

Punishment for Criminal Offenses (p. 57)

The Senate bill increases the maximum fine for six offenses (refusing boardings, assaulting law officers, resisting arrest, interfering with the arrest of another person, submitting false data, or obstructing an observer) to \$100,000 (from \$50,000). If there is harm or threat of harm to an observer or law enforcement officer, the fine can be increased to \$200,000. Maximum fines are increased to \$200,000 for foreign vessels operating illegally in State waters, the EEZ, or beyond the EEZ on salmon.

Anadromous Species Rebuttable Presumption (p. 58)

The House states that it shall be a rebuttable presumption that an anadromous fish found on board a vessel is a U.S. fish if the vessel was in the migratory range of that species. The Senate uses similar language but refers to any species, not just anadromous species, and allows for consideration of seasonal changes in the migratory range.

Payment of Storage, Care, and Other Costs (p. 60)

The Act now allows properties and fish seized under Magnuson Act violations to be stored and maintained using proceeds from fines and seizures made under the auspices of the Act. Both bills expand these provisions to include violations and fines of any other fishery resource law including the Lacey Act amendments.

North Pacific Council Research Plan (p. 61-62)

The House bill includes this new provision for the North Pacific Council to establish an observer program and support it by fees collected from industry. The Senate bill does not contain this plan.

Special Provisions Regarding Observers (p. 62-63)

Both bills restrict observers from bringing civil action for illness, injury or death against a vessel or owner unless it is the owner's willful misconduct. This restriction does not apply if the observer was engaged in any duties in service of the vessel. Both bills exempt a vessel from carrying an observer if quarters for observers or facilities for carrying out observer functions are unsafe or inadequate so that the health of the observer or the safe operation of the vessel is at risk.

Authorization of Appropriations (\$ millions) (p. 64-65)

	<u>House</u>	<u>Senate</u>	
1990	75	77	
1991	76	88	(\$6.5 for enforcement, \$5 for research)
1992	77	92	
1993	78	96	

Other House Items

The House bill has additional items on:

- Atlantic Tunal Convention
- Fishermen's Protective Act
- Report on Kodiak NMFS Lab
- Completion of pending appointments to Councils
- Atlantic Sea Scallop FMP
- Atlantic Bluefish FMP
- Atlantic Swordfish FMP
- Atlantic Mackerels

The House expresses the sense of Congress on Coastal Communities in North Pacific:

Finds that (1) U.S. has unique obligations to Pribilofs under Fur Seal Act of 1966, (2) the government and Pribilof residents have made significant financial investments to create a non-sealing economy, (3) the commercial fishing industry is important to the economy of coastal communities in Alaska including the numerous small villages on the coast of Alaska adjacent the Bering Sea, and (4) residents of a number of different states participate in the Alaska fisheries.

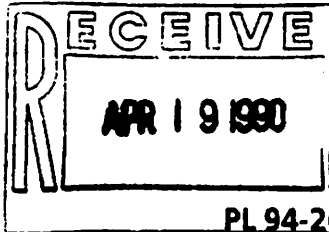
Therefore it is the sense of Congress that the North Pacific Fishery Management Council should include in fishery management plans such measures as may be necessary to meet the economic needs of all individuals and communities which are dependent on the living marine resources in the EEZ of Alaska.

Other Senate Items

The Senate bill has additional items on:

- Atlantic Tuna Convention
- Fishermen's Protective Act
- Authorization for NOAA Marine Fisheries Program Act, Anadromous Fish Conservation Act, Interjurisdictional Fisheries Act of 1986, and Central, Western, and South Pacific Fishery Development Act.
- Capital Construction Fund
- Coast Guard authority to ensure fishing vessel safety.

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976



PL 94-265, AS AMENDED THROUGH JANUARY 11, 1988 AND BY PL 95-354 (1978),
PL 96-61 (1979), PL 96-561 (1980), PL 97-191 (1982), PL 97-453 (1983),
PL 98-364 (1984), PL 98-623 (1984), PL 99-272 (1986), PL 99-509 (1986),
PL 99-659 (1986) AND PL 100-239 (1988)

9 AUGUST 1988

Revised 23 March 1989 to match NMFS 11 January 1988 update.

Revised 5 April 1990 to match H.R. 2061 as it passed the House and 28 March 1990 staff working draft of S. 1025.

Note that HR 2061 (Section 104) would repeal MFCMA Section 102. The repeal section includes the following which is not an amendment to the MFCMA: "The Secretary of State shall promptly seek negotiations with foreign nations for the purpose of revising existing international agreements entered into by the United States that are inconsistent with the assertion by the United States of fishery management authority over highly migratory species." ... "In this section the term 'highly migratory species' has the meaning that term has in section 3(14) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1982(14))."

HR 2061 changes Council member qualification requirements [109(b) of 2061]. That section provided that the revised qualification requirements "... shall apply to an individual appointed or reappointed as a member off a Regional Fishery Management Council after the date of the enactment of this Act."

Changes made by H.R. 2061 overstruck with a - for deletions and double underlined for additions. Changes made by S. 1025 are printed in bolded italics for deletions and single underlined for additions. Changes common to both H.R. 2061 and S. 1025 are marked as H.R. 2061 changes, with margin notes identifying the commonality.

Mid-Atlantic Fishery Management Council
Room 2115, Federal Building
Dover, Delaware 19901
(302) 674-2331

April 18, 1990 10:58 AM

**AN ACT TO PROVIDE FOR THE CONSERVATION AND MANAGEMENT OF THE FISHERIES,
AND FOR OTHER PURPOSES**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act with the following table of contents, may be cited as the "Magnuson Fishery Conservation and Management Act of 1976."

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SEC. 2. FINDINGS, PURPOSES AND POLICY

(a) **FINDINGS.** The Congress finds and declares the following:

16 USC 1801

- (1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.
- (2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.
- (3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. 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 fishing gear of United States fishermen.

- (4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified and implemented.
- (5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.
- (6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.
- (7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

Amended by 95-354, 1978

- (8) The collection of statistically reliable scientific data is essential to the effective conservation and management of the fishery resources of the United States. In both HR 2061 & S 1025

(b) **PURPOSES.** It is therefore declared to be the purposes of the Congress in this Act

- (1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish except *highly migratory tuna* species, within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources;
- (2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, as well as swordfish and billfish, and to encourage the negotiation and implementation of additional such agreements as necessary;
- (3) to promote domestic commercial and recreational fishing under sound conservation and management principles;
- (4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;
- (5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and
- (6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United

Amended by 99-659, 1986

Amended by 95-354, 1978
and 96-561, 1980

States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development.

(c) **POLICY.** It is further declared to be the policy of the Congress in this Act

- (1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;
- (2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;
- (3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of measures that avoid unnecessary waste of fish; and is workable and effective; In both HR 2061 & S 1025
- (4) to permit foreign fishing consistent with the provisions of this Act; and
- (5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources; and Amended by 99-659, 1986
- ~~(6) to achieve international agreement on banning large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation as soon as possible, including support for the Tarawa Declaration and other international efforts to achieve such a ban.~~
- ~~(6) to foster and maintain the diversity of fisheries in the United States, and to minimize disruptions and dislocations in those fisheries upon which coastal communities are substantially dependent to meet their social and economic needs; and~~
- ~~(7) to achieve international agreement on a moratorium on driftnet fishing on the high seas beyond the exclusive economic zone of any nation as soon as possible, including support for the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific and other international efforts to achieve such a moratorium.~~

SECTION 3. DEFINITIONS. As used in this Act, unless the context otherwise requires

16 USC 1802

- (1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.
- (2) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that
 - (i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;
 - (ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

- (iii) there will be a multiplicity of options available with respect to future uses of these resources.
- (3) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.
- (4) The term "Continental Shelf fishery resources" means the following:

COLEENTERATA

Bamboo Coral --- *Acanella* spp.;
 Black Coral --- *Antipathes* spp.;
 Gold Coral --- *Callogorgia* spp.;
 Precious Red Coral --- *Corallium* spp.;
 Bamboo Coral --- *Keratoisis* spp.; and
 Gold Coral --- *Parazoanthus* spp.

CRUSTACEA

Tanner Crab --- *Chionoecetes tanneri*;
 Tanner Crab --- *Chionoecetes opilio*;
 Tanner Crab --- *Chionoecetes angulatus*;
 Tanner Crab --- *Chionoecetes bairdi*;
 King Crab --- *Paralithodes camtschatica*;
 King Crab --- *Paralithodes platypus*;
 King Crab --- *Paralithodes brevipes*;
 Lobster --- *Homarus americanus*;
 Dungeness Crab --- *Cancer magister*;
 California King Crab --- *Paralithodes californiensis*;
 California King Crab --- *Paralithodes rathbuni*;
 Golden King Crab --- *Lithodes aequispinus*;
 Northern Stone Crab --- *Lithodes maja*;
 Stone Crab --- *Menippe mercenaria*; and
 Deep-sea Red Crab --- *Geryon quinquedens*.

MOLLUSKS

Red Abalone --- *Haliotis rufescens*;
 Pink Abalone --- *Haliotis corrugata*;
 Japanese Abalone --- *Haliotis kamtschatkana*;
 Queen Conch --- *Strombus gigas*;
 Surf Clam --- *Spisula solidissima*; and
 Ocean Quahog --- *Arctica islandica*.

SPONGES

Glove Sponge --- *Spongia cheiris*
 Sheepswool Sponge --- *Hippiospongia lachne*;
 Grass Sponge --- *Spongia graminea*; and
 Yellow Sponge --- *Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either

- (A) immobile on or under the seabed, or
- (B) unable to move except in constant physical contact with the seabed or subsoil;

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

- (5) The term "Council" means any Regional Fishery Management Council established under section 302.
- ~~(6)~~ (6) The term 'driftnet fishing' means a method of fishing in which a gillnet composed of a panel or panels of webbing with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.
- ~~(6)~~(7) The term "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States. Amended by 99-659, 1986
- ~~(7)~~(8) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, *birds, and highly migratory species and birds*. Amended by 99-659, 1986
- ~~(8)~~(9) The term "fishery" means Amended by 99-659, 1986
- (A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and
- (B) any fishing for such stocks.
- ~~(9)~~(10) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.
- ~~(10)~~(11) The term "fishing" means
- (A) the catching, taking, or harvesting of fish;
- (B) the attempted catching, taking, or harvesting of fish;
- (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
- (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).
- Such term does not include any scientific research activity which is conducted by a scientific research vessel and does not include any catching, taking, or harvesting, or attempted catching, taking, or harvesting, of tuna species by a vessel that is not a vessel of the United States.
- ~~(11)~~(12) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for
- (A) fishing; or
- (B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.
- ~~(12)~~(13) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

- (13)(14) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.
- (14)(15) *The term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean. The term 'highly migratory species' means tuna species, marlin (Tetrapturus spp. and Makaira spp.), oceanic sharks, sailfishes (istiophorus spp.), and swordfish (Xiphias gladius).*
- (15)(16) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.
- (16)(17) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.
-
- (18) The term 'migratory range' means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found in numbers that indicate regular occurrence of that species or stock, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.
- (17)(19) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.
-
- (20) The term 'observer' means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.
- (18)(21) The term "optimum", with respect to the yield from a fishery, means the amount of fish
- (A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and
 - (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.
- (19)(22) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.
- (20)(23) The term "Secretary" means the Secretary of Commerce or his designee.
- (21)(24) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.
- (22)(25) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

~~(23)~~(26) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

~~(27)~~ The term 'tuna species' means the following:

Albacore Tuna -- Thunnus alaluga;

Bigeve Tuna -- Thunnus obesus;

Bluefin Tuna -- Thunnus thynnus;

Skipjack Tuna -- Katsuwonus pelamis; and

Yellowfin Tuna -- Thunnus albacares.

~~(24)~~(28) The term "United States", when used in a geographical context, means all the States thereof.

~~(25)~~(29) The term "United States fish processors" means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

Added by 95-354, 1978

~~(26)~~(30) The term "United States harvested fish" means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented.

~~(27)~~(31) The term "vessel of the United States" means

Amended by 97-453, 1983 and 100-239, 1988

(A) any vessel documented under chapter 121 of title 46, United States Code;

(B) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

~~(28)~~ The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

~~(29)~~ The term "migratory range" means the maximum area within which fish of a particular species can be found in numbers that indicate regular occurrence of that species during any part of a year, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

~~(30)~~ The term "waters of a foreign nation" means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

~~(32)~~ The term 'waters of a foreign nation' means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

(33) The term 'Working Group' means the Inter-Council Working Group on Highly Migratory Species established under section 304(f)(3).

TITLE I. UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

SEC. 101. United States Sovereign Rights to Fish and Fishery Management Authority.

16 USC 1811

(a) In The Exclusive Economic Zone. Except as provided in section 102, the United States claims, and will exercise in the manner provided for in this Act, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone.

Amended by 99-659, 1986

(b) Beyond the Exclusive Economic Zone. The United States claims, and will exercise in the manner provided for in this Act, exclusive fishery management authority over the following:

Amended by 99-659, 1986

(1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to any such species during the time they are found within ~~any foreign nation's territorial sea or exclusive economic zone (or the equivalent), to the extent that that sea or zone is recognized by the United States;~~ any waters of a foreign nation.

In both HR 2061 & S 1025

(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

~~SEC. 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES.~~

~~16 USC 1812~~

~~The sovereign rights and exclusive fishery management authority asserted by the United States under section 101 over fish do not include, and may not be construed to extend to, highly migratory species of fish.~~

~~Amended by 99-659, 1986~~

SEC. 102. TUNA AND OTHER HIGHLY MIGRATORY SPECIES.

The sovereign rights and exclusive fishery management authority asserted by the United States under section 101 over fish do not include, and may not be construed to extend to, tuna species. The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout their range, both within and beyond the exclusive economic zone.

SEC 103. OMITTED (by Congress) 16 USC 1813.

Omitted by 99-659, 1986

TITLE II. FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

SEC. 201. FOREIGN FISHING.

16 USC 1821

(a) **IN GENERAL.** After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone, unless such foreign fishing

Amended by 99-659, 1986

(1) is authorized under subsection (b) or (c);

(2) is not prohibited by subsection (g); and

Amended by 95-354, 1978

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

(b) **EXISTING INTERNATIONAL FISHERY AGREEMENTS.** Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202(b) or (c)), if such agreement

- (1) was in effect on the date of enactment of this Act; and ["This Act" refers to 94-265, enacted April 13, 1976]
- (2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) **GOVERNING INTERNATIONAL FISHERY AGREEMENTS.** Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

- (1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.
- (2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that
 - (A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted
 - (i) to board, and search or inspect, any such vessel at any time,
 - (ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and
 - (iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;
 - (B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;
 - (C) transponders, or such other appropriate position fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;
 - (D) United States observers required under subsection (i) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;
 - (E) any fees required under section 204(b)(10) be paid in advance;
 - (F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

Amended by 97-453, 1983

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

Amended by 95-354, 1978

(4) The foreign nation will

Amended by 97-453, 1983

(A) apply, pursuant to section 204, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with section 204(a) and the applicable conditions and restrictions established under section 204(b)(7); and

(D) take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

Added by 97-453, 1983

~~(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.~~

~~Amended by 96-561, 1980~~

~~(1) As used in this subsection~~

201(d) changes in HR 2061 & S 1025

~~(A) The term "base harvest" means, with respect to any United States fishery, the total allowable level of foreign fishing during the 1979 harvesting season:~~

~~(B) The term "harvesting season" means the period established under this Act by the Secretary during which foreign fishing is permitted within a United States fishery. For purposes of this subsection, a harvesting season is designated by the calendar year in which the last day of the harvesting season occurs, regardless whether fishing is not permitted on that day due to emergency or other closure of the fishery:~~

~~(C) The term "calculation factor" means, with respect to each United States fishery, 15 percent of the base harvest:~~

~~(D) The term "reduction factor amount" means, with respect to each United States fishery, for any harvesting season after the 1980 harvesting season~~

~~(i) an amount equal to 15 percent of the base harvest for that fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 75 percent of the calculation factor;~~

~~(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting~~

~~seasons, not less than 50 percent, but less than 75 percent, of the calculation factor; or~~

~~201(d) changes in HR 2061 & S 1025~~

- ~~(iii) an amount equal to 5 percent of the base harvest for the fishery; if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons; not less than 25 percent, but less than 50 percent, of the calculation factor.~~

~~For purposes of this paragraph, the term "designated preceding harvesting season" means~~

- ~~(i) until a reduction factor amount is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season; and~~

- ~~(ii) after such amount is first achieved, the most recent harvesting season in which a reduction factor amount was achieved:~~

- ~~(E) the term "annual fishing level" for any United States fishery during any harvesting season after the 1980 harvesting season is the base harvest for the fishery reduced by~~

- ~~(i) an amount equal to the reduction factor amount for that harvesting season; and~~

- ~~(ii) an amount equal to the increased level of harvest by vessels of the United States over the level achieved by such vessels in the 1979 harvesting season for the fishery.~~

- ~~(F) The term "United States fishery" means any fishery subject to the exclusive fishery management authority of the United States.~~

- ~~(2) The total allowable level of foreign fishing, if any, with respect to any United States fishery for each harvesting season after the 1980 harvesting season shall be~~

~~Amended by 96-561, 1980~~

- ~~(A) the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with the provisions of this Act (other than those relating to the determination of annual fishing levels); or~~

- ~~(B) the annual fishing level determined pursuant to paragraph (3) for the harvesting season:~~

- ~~(3) For each United States fishery, the appropriate fishery management council, on a timely basis, may determine and certify to the Secretary of State and the Secretary the annual fishing level for that fishery for each harvesting season after the 1980 harvesting season:~~

~~Added by 96-561, 1980~~

- ~~(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State, approves the determination by any appropriate fishery management council that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (c), may allocate such portion for use during that harvesting season by foreign fishing vessels; except that if~~

~~Added by 96-561, 1980~~

~~and Amended by 97-453,~~

~~1983 and 98-623, 1984~~

201(d) changes in HR 2061 & S 1025

~~(A) the making available of such portion (or any part thereof) during that harvesting season is determined to be detrimental to the development of the United States fishing industry; and~~

~~(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information;~~

~~then such portion or part may be allocated for use by foreign fishing vessels in such succeeding harvesting season. The determinations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and on the basis of any recommendation of any appropriate fishery management council.~~ Amended by 97-453, 1983

201(d) changes in HR 2061 & S 1025

(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING. The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this Act.

(e) ALLOCATION OF ALLOWABLE LEVEL.

- (1) (A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States. Amended by 96-61, 1979, 97-453, 1983, and 98-623, 1984
- (B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation. Added by 97-453, 1983
- (C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State. Added by 97-453, 1983
- (D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made Added by 97-453, 1983
- (i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and
- (ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (1) the remainder of such

allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

- (E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on
- (i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation; Amended by 96-561, 1979
 - (ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries-exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation; Amended by 98-623, 1984
 - (iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations; Amended by 98-623, 1984
 - (iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone for its domestic consumption; Amended by 99-659, 1986
 - (v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;
 - (vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;
 - (vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and
 - (viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.
- (2) (A) For the purposes of this paragraph Added by 96-61, 1979
- (i) The term "certification" means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978 (a)).
 - (ii) The term "remedial period" means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

- (B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that
- (i) is in effect for that foreign country on the date of issuance; or
 - (ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period;

shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

- (C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:
- (i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.
 - (ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.
 - (iii) If the certification is terminated under such section 8(d) during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this Act.
 - (iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 204.
- (D) If the certification of a foreign country is not terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the last day of the remedial period, the Secretary of State
- (i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and
 - (ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

Amended by 96-118

- (f) **FOREIGN ALLOCATION REPORT.** The Secretary and the Secretary of State shall prepare and submit a report to the Congress and the President, not later than July 1 of each year, setting forth
- (1) a list of species of all allocations made to foreign nations pursuant to subsection (e) and all permits issued pursuant to section 204(b)(6)(B); and
 - (2) all tariff and nontariff trade barriers imposed by such nations on the importation of such species from the United States.

Added by 95-354, 1978
and Amended by 99-386

- (g) **RECIPROCITY.** Foreign fishing shall not be authorized for the fishing vessels of

Amended by 95-354, 1978

any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

- (h) **PRELIMINARY FISHERY MANAGEMENT PLANS.** The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan

Amended by 95-354, 1978

- (1) shall contain a preliminary description of the fishery and a preliminary determination as to
 - (A) the optimum yield from such fishery;
 - (B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and
 - (C) the total allowable level of foreign fishing with respect to such fishery;
- (2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;
- (3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and
- (4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which
 - (A) are determined to be necessary and appropriate for the conservation and management of such fishery,
 - (B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and
 - (C) are described in section 303(b)(2), (3), (4), (5), and (7).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305.

- (i) **FULL OBSERVER COVERAGE PROGRAM.**

Amended by 96-561, 1980 and by 99-659, 1986

- (1) (A) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone.
 - (B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers; and
- (2) The requirement in paragraph (1) that a United States observer be placed

Amended by 99-659, 1986

aboard each foreign fishing vessel may be waived by the Secretary if he finds that

- (A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;
 - (B) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or
 - (C) for reasons beyond the control of the Secretary, an observer is not available.
- Amended by 99-659, 1986
- (3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.
- Amended by 97-453, 1983
- (4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).
 - (5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriations Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.
 - (6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:
 - (A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);
 - (B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;
- Added by 97-453, 1983

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer-services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this Act.

(j) **Recreational Fishing.** Notwithstanding any other provision of this title, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 305. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

Amended by 97-453, 1983
and 99-659, 1986

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS.

16 USC 1822

(a) **NEGOTIATIONS.** The Secretary of State

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 201(c);

(3) may negotiate boundary agreements as provided for in subsection (d);

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and, highly migratory species, swordfish and billfish; and

(5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy and provisions of this Act.

(b) **TREATY RENEGOTIATION.** The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.

Amended by 99-659, 1986
["This Act" refers to 94-265,
enacted April 13, 1976]

(c) **INTERNATIONAL FISHERY AGREEMENTS.** No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February

Amended by 99-659, 1986

28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area

- (1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or
- (2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 201(c).

- (d) **BOUNDARY NEGOTIATIONS.** The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone of the United States in relation to any such nation.

Amended by 99-659, 1986

(e) HIGHLY MIGRATORY SPECIES AGREEMENTS.

- (1) EVALUATION.** -- The Secretary of State, in cooperation with the Secretary and the Working Group, shall evaluate the effectiveness of each existing international fishing agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for --

(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, and the present and probable future condition of any stock of fish involved;

(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

(C) equitable arrangements which provide fishing vessels of the United States with access to the highly migratory species that are the subject of the agreement;

(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

- (2) REPORT.** -- The Secretary of State shall, within twelve months after the date of enactment of this subsection, report to the Congress on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified.

- (3) NEGOTIATION.** -- The Secretary of State, in consultation with the Secretary and the Working Group, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

- (e)(f) NONRECOGNITION.** It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation

Amended by 99-659, 1986

- (1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

- (2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or
- (3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

SEC. 203. CONGRESSIONAL OVERSIGHT OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

16 USC 1823

- (a) **IN GENERAL.** No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.
- (b) **REFERRAL TO COMMITTEES.** Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.
- (c) **COMPUTATION OF 60-DAY PERIOD.** For purposes of subsection (a)
 - (1) continuity of session is broken only by an adjournment of Congress sine die; and
 - (2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.
- (d) **CONGRESSIONAL PROCEDURES.**
 - (1) **Rules of the House of Representatives and Senate.** The provisions of this section are enacted by the Congress
 - (A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and
 - (B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.
 - (2) **Definition.** For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress
 - (A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and
 - (B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in

subsection (a) relating to that agreement is transmitted to the Congress.

- (3) **Placement on Calendar.** Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.
- (4) **Floor Consideration in the House.**
 - (A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.
 - (B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.
 - (C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.
 - (D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.
 - (E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.
- (5) **Floor Consideration in the Senate.**
 - (A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.
 - (B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.
 - (C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

- (D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

SEC. 204. PERMITS FOR FOREIGN FISHING.

16 USC 1824

- (a) **IN GENERAL.** After February 28, 1977, no foreign fishing vessel shall engage in fishing within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel. Amended by 99-659, 1986
- (b) **APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.**
- (1) **Eligibility.** Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a). No permit issued under this section may be valid for longer than a year; and section 558(c) of title 5, United States Code, does not apply to the renewal of any such permit. Amended by 99-659, 1986
- (2) **Forms.** The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.
- (3) **Contents.** Any application made under this subsection shall specify Amended by 97-453, 1983 & 99-659, 1986
- (A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;
- (B) the tonnage, hold capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require; Amended by 97-453, 1983
- (C) each fishery in which each such vessel wishes to fish;
- (D) the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force; Amended by 95-354, 1978
- (E) the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States; Amended by 95-354, 1978
- (F) the ocean area in which, and the season or period during which, such fishing will be conducted; and
- (G) all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards; Amended by 99-659, 1986
- and shall include any other pertinent information and material which the Secretary may require.
- (4) **Transmittal for Action.** Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3). The Secretary of State shall promptly transmit Amended by 95-354, 1978 & 97-453, 1983

- (A) such application, together with his comments and recommendations thereon, to the Secretary;
- (B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and
- (C) a copy or a summary of the application to the appropriate Council. Amended by 96-470 & 99-959, 1986
- (5) Action by Council. After receiving a copy or summary of an application under paragraph (4)(C), the Council may prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary. Amended by 97-453 1983
- (6) Approval.
- (A) After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve subject to subparagraph (B) the application, if he determines that the fishing described in the application will meet the requirements of this Act, or he may disapprove all or any portion of the application. Amended by 95-354, 1978 and 99-659, 1986
- (B) (i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned. Amended by 95-354, 1978
- (ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by United States fish processors.
- (iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.
- (7) Establishment of Conditions and Restrictions. The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following: Amended by 95-354, 1978

- (A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.
- (B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.
- (C) The requirements described in section 201(c)(1), (2), and (3).
- (D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States. Added by 95-354, 1978
- (E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States. Added by 95-354, 1978
- (F) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.
- (8) Notice of Approval. The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to Amended by 96-470
- (A) the Secretary of State for transmittal to the foreign nation involved;
- (B) the Secretary of the department in which the Coast Guard is operating; and
- (C) any Council which has authority over any fishery specified in such application.
- (9) Disapproval of Applications. If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefore. Such foreign nation, after taking into consideration the reasons for the disapproval, may submit a revised application under this subsection.
- (10) FEES Amended by 96-561, 1980 & 99-272, 1986
- (A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is has been issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State and appropriate regional fishery management council, shall establish a schedule of such of reasonable fees which that shall apply nondiscriminatorily to each foreign nation. In both HR 2061 & S 1025
- ~~(B) Unless subparagraph (C) applies, the fees imposed under subparagraph (A) shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this chapter during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the exclusive economic zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year.~~

~~(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury~~

~~(C) If the Secretary, in consultation with the Secretary of State, finds that any foreign nation receiving an allocation under section 201(e) (C) - (F) struck in HR 2061 & S 1025~~ Added by 99-272, 1986

- ~~(i) is harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary; or~~
- ~~(ii) is failing to take sufficient action to benefit the conservation and development of United States fisheries;~~

~~the fees imposed under subparagraph (A) for the next fiscal year shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act during that fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the exclusive economic zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone during such preceding year. If the Secretary, in consultation with the Secretary of State, finds, at any time during a fiscal year in which fees calculated under this subparagraph are in effect with respect to a foreign nation, that the conditions requiring that calculation no longer exist, the fees imposed under this paragraph with respect to that nation for the remainder of the fiscal year shall be calculated under subparagraph (B):~~

~~(D) Before the end of each fiscal year, the Secretary, in consultation with the Secretary of State, shall review, based on the criteria established in subparagraph (C)(i) and (ii), the performance of every nation receiving an allocation under section 201(e) of this Act and provide written notice to the Congress of his findings and reasons therefore before the end of the fiscal year.~~ Amended by 99-272, 1986

~~(E) For purposes of this paragraph, the total cost of carrying out the provisions of this chapter includes, but is not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excludes costs for observers covered by surcharges under section 201(i)(4).~~ Added by 99-272, 1986

~~(f) (i) *The amounts collected by the Secretary under this paragraph (except the amounts referred to in clause (iii)) shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 USC 742(c)) for so long as such fund exists and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.~~ Amended by 99-272, 1986

~~(ii) The Secretary shall deposit into the general fund of the United States Treasury the difference between the amounts collected under subparagraph (E) and the amounts that would have been collected had that subparagraph not been enacted.~~

(11) Issuance of Permits. If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a

statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

~~(12) Sanctions.~~

Amended by 99-659, 1986

This section deleted in both HR 2061 & S 1025

~~(A) If any foreign fishing vessel has been used in the commission of any act prohibited by section 307, or if the owner or operator of the vessel has committed such an act, the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue, the Secretary shall~~

- ~~(i) revoke such permit, if any, issued for the vessel under this subsection, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;~~
- ~~(ii) suspend such permit for the period of time deemed appropriate;~~
- ~~(iii) deny a permit under this subsection to the vessel; or~~
- ~~(iv) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under that application~~

~~Any permit which is suspended under this subparagraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate:~~

~~(B) The Secretary may temporarily deny or suspend the permit of any foreign fishing vessel pending the outcome of any administrative proceeding respecting a violation of section 307 of this Act if the Secretary determines that~~

- ~~(i) based upon information available to the Secretary, there are reasonable grounds to believe that the vessel has been used in the commission of such violation;~~
- ~~(ii) immediate suspension of fishing privileges would serve the purposes of this Act; and~~
- ~~(iii) either~~
 - ~~(I) the violation presents a serious threat to the public interest;~~
 - ~~(II) the violation presents a serious threat to the achievement of any purpose or policy of this Act; or~~
 - ~~(III) the owner or operator of the vessel has been involved in a prior violation of this Act:~~

~~In applying this subparagraph~~

- ~~(i) the Secretary must notify the vessel owner of the proposed denial or suspension and give the owner a reasonable opportunity, not longer than 10 days from service of notice, to respond in writing or otherwise;~~
- ~~(ii) if a permit is denied or suspended under this subparagraph, any administrative proceeding respecting the violation at issue must be held as promptly as possible; and~~
- ~~(iii) if another permit application is pending for such vessel on or after the date of the violation, the Secretary need not act~~

~~on that application before deciding whether or not to deny or suspend temporarily a permit under this subparagraph.~~

*[Note: Sec. 409 of PL 99-659 directs that funds received in the Fisheries Loan Fund after September 30, 1986, shall be deposited in the Treasury as miscellaneous receipts.]

- (c) **REGISTRATION PERMITS.** The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

SEC. 205. IMPORT PROHIBITIONS.

16 USC 1825

- (a) **DETERMINATIONS BY SECRETARY OF STATE.** If the Secretary of State determines that
- (1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 201(c) and (d) and 204(b)(7) and (10), because such nation has
 - (A) refused to commence negotiations, or
 - (B) failed to negotiate in good faith;
 - (2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;
 - (3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or
 - (4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation
 - (A) in violation of an applicable international fishery agreement;
 - (B) without authorization under an agreement between the United States and such nation; or
 - (C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

- (b) **PROHIBITIONS.** Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States
- (1) of all fish and fish products from the fishery involved, if any; and
 - (2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.
- (c) **REMOVAL OF PROHIBITIONS.** If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.
- (d) **DEFINITIONS.** As used in this section
- (1) The term "fish" includes any highly migratory species.
 - (2) The term "fish products" means any article which is produced from or composed of (in whole or in part) any fish.

SEC. 206. TRANSITIONAL PROVISIONS. [Omitted by NMFS GCF]

16 USC 1826

SEC. 206. INTERNATIONAL BAN ON LARGE-SCALE DRIFTNET FISHING

- (a) **NEGOTIATIONS.** The Secretary of State shall seek to secure, as soon as possible after the date of the enactment of the Fishery Conservation Amendments of 1989, an international ban on large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation.
- (b) **REPORT.** Not later than 18 months after the date of the enactment of the Fishery Conservation Amendments of 1989 and every year thereafter until such a ban is secured, the Secretary of State shall transmit to the Congress a report
- (1) describing the steps the Secretary has taken to initiate and complete negotiations pursuant to subsection (a);
 - (2) detailing the progress of those negotiations;
 - (3) listing those nations which have refused to enter into those negotiations and which engage in large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation; and
 - (4) making recommendations for legislative action which could be taken to encourage the nations listed pursuant to paragraph (3) to cease large-scale driftnet fishing.

SEC. 206. INTERNATIONAL MORATORIUM ON DRIFTNET FISHING

- (a) **NEGOTIATIONS.** -- The Secretary of State shall commence negotiations to secure international agreement to a moratorium on driftnet fishing beyond the exclusive economic zone of any nation until such time as it is agreed that the adverse effects of such fishing can be prevented and the conservation of the world's living marine resources affected by such fishing can be ensured.
- (b) **REPORT.** -- Not later than January 1, 1991, and every year thereafter until an international moratorium is secured, the Secretary of State, after consultation with the Secretary, the Secretary of the department in which

the Coast Guard is operating, and other affected agencies, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report--

- (1) describing the steps taken to secure agreement to a moratorium on driftnet fishing pursuant to subsection (a);
- (2) detailing and evaluating the progress of those efforts and plans for further action;
- (3) identifying and evaluating the effectiveness of unilateral and multilateral measures, including sanctions, that are available to encourage nations to agree to and comply with a moratorium, and recommendations for legislation to authorize any additional measures that are needed if those available are considered ineffective;
- (4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against foreign fishing vessels engaged in fishing beyond the exclusive economic zone of any nation; and
- (5) a list of the nations that conduct, or authorize their nationals to conduct, driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any bilateral or multilateral agreement governing driftnet fishing to which the United States is a party or otherwise subscribes.

- (c) CERTIFICATION FOR PURPOSES OF FISHERMEN'S PROTECTIVE ACT OF 1967. -- If at the time the Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (b)(5), the Secretary of State shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

TITLE III. NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.

16 USC 1851

- (a) **IN GENERAL.** Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:
- (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
 - (2) Conservation and management measures shall be based upon the best scientific information available.
 - (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
 - (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign

Amended by 98-623, 1984

fishing privileges among various United States fishermen, such allocation shall be

- (A) fair and equitable to all such fishermen;
 - (B) reasonably calculated to promote conservation; and
 - (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
- (5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
 - (6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.
 - (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.
- (b) **GUIDELINES.** The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

Amended by 97-453, 1983

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

16 USC 1852

- (a) **ESTABLISHMENT.** There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

Amended by 97-453, 1983
[This Act refers to 94-265,
which was enacted April 13, 1976]

- (1) **NEW ENGLAND COUNCIL.** The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in section 304(f)(3)). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).
- (2) **MID-ATLANTIC COUNCIL.** The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in section 304(f)(3)). The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).
- (3) **SOUTH ATLANTIC COUNCIL.** The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in section 304(f)(3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).
- (4) **CARIBBEAN COUNCIL.** The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States (except as provided in section 304(f)(3)). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

- (5) **GULF COUNCIL.** The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in section 304(f)(3)). The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).
- (6) **PACIFIC COUNCIL.** The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).
- (7) **NORTH PACIFIC COUNCIL.** The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have ~~11~~ 13 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) (5 of whom shall be appointed from the State of Alaska ~~and 2 of whom, 3 of whom shall be appointed from the State of Washington, and 1 of whom shall be appointed from the State of Oregon~~).
- (8) **WESTERN PACIFIC COUNCIL.** The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(b) **VOTING MEMBERS.**

- (1) The voting members of each Council shall be:

- (A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.
- (B) The Regional Director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.
- (C) The members required to be appointed by the Secretary in accordance with subsection (b)(2).

Amended by 97-453, 1983

- (2) (A) ~~*The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable and experienced with regard to the conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned. The members of each Council required to be appointed by the Secretary must be individuals who, by reason~~ Added by 97-453, 1983, and amended by 99-659, 1986 In both HR 2061 & S 1025

of their occupational or commercial experience, scientific expertise, or academic training, are knowledgeable regarding the conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned. The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair apportionment, on a rotating or other basis, of the active participants (or their representatives) involved in the fisheries under Council jurisdiction. The Secretary, in making appointments under this section, shall, to the maximum extent practicable, ensure a fair representation on each Council of the active participants (or their representatives) in the commercial fisheries under the jurisdiction of that Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair representation is achieved. The report shall --

- (i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;
- (ii) identify the members of each Council who represent the active participants in each such fishery;
- (iii) list the fisheries or segments thereof identified in clause (i) that are not represented on each Council;
- (iv) explain why any such fishery or segment thereof identified in clause (i) is not represented; and
- (v) state the Secretary's plans and schedule for action to ensure that the participants in any such fishery will be represented on the Council.

(B) *The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the state regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy. The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the required knowledge and experience required by subparagraph (A). If the Secretary determines that any individual is not qualified, he shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

(C) Whenever the Secretary makes an appointment to a Council, he shall make a public announcement of such appointment not less than 45

Added by 99-659, 1986

days before the first day on which the individual is to take office as a member of the Council.

- (3) *Each voting member appointed to a Council by the Secretary in accordance with subsection (b)(2) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve for more than 2 consecutive terms. After January 1, 1991, the Secretary shall not appoint or reappoint a member who has served three or more previous terms.

Amended by 97-453, 1983
and 99-659, 1986

- (4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

- (5) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) if the Council concerned first recommends removal by not less than two-thirds of the members who are voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

Added by 97-453, 1983.

*(Note: The amendments to subsection (b), paragraphs 2(A), (B), and (3) made by 99-659 shall apply with respect to voting members of regional fishery management councils who are appointed, and to individuals who are nominated for appointment as voting members on or after the date of the enactment of 99-659. (November 14, 1986)]

(c) **NONVOTING MEMBERS.**

- (1) The nonvoting members of each Council shall be:
- (A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.
 - (B) The Commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.
 - (C) The Executive Director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.
 - (D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.
- (2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

- (d) **COMPENSATION AND EXPENSES.** The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council if appointed before January 1, 1990, and at the daily rate of \$200 if appointed or reappointed after that date. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

Amended by 96-561, 1980
In both HR 2061 & S 1025

(e) TRANSACTION OF BUSINESS.

- (1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.
- (2) The voting members of each Council shall select a Chairman for such Council from among the voting members.
- (3) Each Council shall meet ~~in the geographical area concerned~~ at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.
- (4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.

(f) STAFF AND ADMINISTRATION.

- (1) Each Council may appoint, and assign duties to, an Executive Director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.
- (2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.
- (3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.
- (4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.
- (5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.
- (6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g), must be consistent with the procedural guidelines set forth in subsection (i)(2). Each Council shall publish and make available to the public a statement of its organization, practices and procedures.
- (7) The Secretary shall pay
 - (A) the compensation and expenses provided for in subsection (d);
 - (B) appropriate compensation to employees appointed under paragraph (1);
 - (C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

Amended by 97-453, 1983

- (D) the actual expenses of the members of the committees and panels established under subsection (g); and
- (E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) **COMMITTEES AND PANELS.**

- (1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan. Decisions and recommendations made by such committee shall be considered to be advisory in nature.

- (2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

- (3) (A) Each Council shall establish and maintain a United States fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

- (B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

- (4) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

(h) **FUNCTIONS.** Each Council shall, in accordance with the provisions of this Act

Amended by 97-453, 1983

- (1) prepare and submit to the Secretary a fishery management plan with respect to each fishery (except as provided in section 304(f)(3)) within its geographical area of authority that requires conservation and management and, from time to time, such amendments to each such plan as are necessary;
- (2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(C), and any fishery management plan or amendment transmitted to it under section 304(c)(2);
- (3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act (and for purposes of this paragraph, the term "geographical area concerned" may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area);
- (4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;
- (5) review on a continuing basis, and revise as appropriate, the assessments

Amended by 95-354, 1978

and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery (except as provided in section 304(f)(3)) within its geographical area of authority; *and*

(6) annually select, if so required under section 304(f)(3), two Council members who are knowledgeable regarding highly migratory species fisheries, to represent the Council on the Working Group as voting members; and

(6)(7) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

~~(i) **FISHERY HABITAT CONCERNS.** Each Council may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction. Within 45 days after receiving such a comment or recommendation from a Council, a Federal agency must provide a detailed response, in writing, to the Council regarding the matter.~~ Added by 99-659, 1986

(i) **FISHERY HABITAT CONCERNS.**

(1) Each Council

(A) may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

(B) shall, in a timely manner, comment on and make recommendations concerning any such activity that, in the view of the Council, may affect the habitat of an anadromous fishery resource under its jurisdiction. Not in S 1025

(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity concerned on the habitat of the anadromous fishery resource.

(j) **PROCEDURAL MATTERS.** Added by 97-453, 1983 and Amended by 99-659, 1986

(1) The Federal Advisory Committee Act (5 U.S.C. App. 1) shall not apply to the Councils, to the Working Group, or to the scientific and statistical committees or advisory panels of the Councils.

(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, to the Working Group, and of the scientific and statistical committee and advisory panels of a Council:

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct

interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting shall also be published in the Federal Register.

- (D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings.
 - (E) Minutes of each meeting shall be kept and shall contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.
 - (F) Subject to the procedures established by the Council under paragraph (4), and the guidelines prescribed by the Secretary under section 303(d), relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council.
- (3) (A) Each Council, scientific and statistical committee, and advisory panel
- (i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and
 - (ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested;

~~and if any meeting or portion is closed, the Council, committee, or panel concerned shall publish notice of the closure in local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting. Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.~~

- (B) If any meeting or portion thereof is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment matters or other internal administrative matters.

In both HR 2061 & S 1025

- (4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 303(d), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.
- (5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans.

Amended by 99-659, 1986

Added by 99-659, 1986

- (6) At any time when a Council considers it appropriate to consider new information from a State or Federal agency or from a Council advisory body, it shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

(k) DISCLOSURE OF FINANCIAL INTEREST

Added by 99-659, 1986

- (1) For purposes of this subsection, the term "affected individual" means an individual who
- (A) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2);
 - (B) is a voting member of a Council appointed under subsection (b)(2); *or*
 - (C) is a voting member of the Working Group described in section 304(f)(3)(C)(i) or (iii); or
 - ~~(C)(D)~~ is the executive director of a Council.
- (2) Each affected individual must disclose any financial interest held by
- (A) that individual;
 - (B) the spouse, minor child, or partner of that individual; and
 - (C) any organization (other than the Council) or the Working Group in which that individual is serving as an officer, director, trustee, partner, or employee;
- in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned or the Working Group has jurisdiction.
- (3) The disclosure required under paragraph (2) shall be made
- (A) in the case of an affected individual referred to in paragraph (1)(A), before appointment by the Secretary; and
 - (B) in the case of an affected individual referred to in paragraph (1)(B) or (C), (C), or (D) within 45 days of taking office.
- (4) An affected individual referred to in paragraph (1)(B) or (C) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C), (C), or (D).
- (5) The financial interest disclosures required by this subsection shall
- (A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe; and
 - (B) be kept on file, and made available for public inspection at reasonable hours, at the Council offices.
- (6) The participation by an affected individual referred to in paragraph (1)(B) or (C), (C), or (D) in an action by the Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.
- (7) Section 208 of Title 18, United States Code, does not apply to an affected individual referred to in paragraph (1)(B) or (C), (C), or (D) during any time

in which that individual is in compliance with the regulations prescribed under paragraph (5).

*[Note: For purposes of applying subsection (k) of section 302 of the Act (as added by paragraph (1)) to voting members and executive directors of regional fishery management councils who are serving in those capacities on the date on which the regulations prescribed to carry out that subsection first take effect, each such member or director must file a disclosure form under that subsection within 45 days after that date.]

*[Note: Notwithstanding Section 302 of the Act and effective on and after the date of the enactment of this Act (99-659), the Secretary shall take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries within the respective jurisdictions of the Regional Fishery Management Councils are fairly represented as voting members of the Councils.)

(I) PRESENTATION OF FALSE INFORMATION. --

- (1) Members of the Councils and all other persons who present oral or written statements to any Council or to the Working Group regarding any matters before such Council or the Working Group for decisions shall be subject to the provision of section 1001 of title 18, United States Code.**
- (2) The Secretary is authorized and directed to administer, to members of each Council and of the Working Group and to other persons presenting oral statements to meetings of such Council or Working Group, an oath that such members and other persons will testify, declare, depose, or certificate truly. All persons presenting such oral statements shall be subject to the provisions and penalties of section 1621 of title 18m United States Code. (note that 108(m) of S 1025 makes this section effective 120 days after enactment.)**

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

16 USC 1853

- (a) REQUIRED PROVISIONS.** Any fishery management plan which is prepared by any Council, by the Working Group, or by the Secretary, with respect to any fishery, shall
- (1) *contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are**
 - (A) necessary and appropriate for the conservation and management of the fishery;**
 - (B) described in this subsection or subsection (b), or both; and**
 - (C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;**
 - (2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;**
 - (3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;**

(4) assess and specify

Amended by 99-659, 1986

- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),
- (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and
- (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

Added by 95-354, 1978

- (5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by United States fish processors,

Amended by 95-354, 1978
and 99-659, 1986

- ~~(6) consider, and may provide for, temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels, and~~

Amended by 99-659, 1986

- (6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; *Provided, That* the adjustments shall not adversely affect the conservation efforts in other fisheries;

In both HR 2061 & S 1025

- (7) include readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery; and

Amended by 99-659, 1986

- (8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary assess and specify the nature and extent of scientific data which is needed to ensure the effectiveness of the plan in conserving and managing the fishery resources covered by the plan.

In both HR 2061 & S 1025

- (9) include a fishery impact statement, which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on the participants in the commercial fisheries affected by the plan or any amendments to the plan, if the plan or amendments are submitted to, or prepared by, the Secretary after January 1, 1992.

(Note: These amendments made by subsection (a), paragraph (1) apply to each fishery management plan that (A) is submitted to the Secretary of Commerce for review under section 304(a) of the Act, or that is prepared by the Secretary, after January 1, 1987; or (B) is in effect on that date, but compliance with those amendments is not required except in conjunction with the amendment to the plan next occurring after that date.]

- (b) **DISCRETIONARY PROVISIONS.** Any fishery management plan which is prepared by any Council, by the Working Group, or by the Secretary, with respect to any fishery, may

Amended by 99-659, 1986

(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

(B) the operator of any such vessel; or

In both HR 2061 & S 1025

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(4) prohibit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery, and

(F) any other relevant considerations;

Added by 97-453, 1983

(7) require fish processors to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

In both HR 2061 & S 1025

(8) require that observers be carried on board a vessel of the United States engaged in fishing in the exclusive economic zone for the purpose of collecting data necessary for the conservation and management of the fishery;

(9) prescribe, with respect to foreign fishing for tuna species, measures which are reasonable and necessary for the conservation and management of fishery resources which are not tuna species;

~~(7)~~(9)(10) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region; and

~~(8)~~(10)(11) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

Amended by 97-453, 1983

Amended by 97-453, 1983

(c) **PROPOSED REGULATIONS.** The proposed regulations which the Council deems necessary or appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 304 and 305.

(d) **CONFIDENTIALITY OF STATISTICS.** Any statistic submitted to the Secretary by any person in compliance with any requirement under ~~subsection (a)(5)~~ subsections (a) and (b) shall be confidential and shall not be disclosed; except

Amended by 99-659, 1986

(1) to Federal employees and Council employees who are responsible for management plan development and monitoring; or

(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or

In both HR 2061 & S 1025

~~(2)~~(3) when required by court order.

The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Council, the Working Group, or the Secretary of any statistic submitted in compliance with a requirement under subsection (a) or (b).

(e) **DATA COLLECTION PROGRAMS.** If a Council determines that additional information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for the purposes of

Added by 97-453, 1983

(1) determining whether a fishery management plan is needed for a fishery; or

(2) preparing a fishery management plan;

the Council may request that the Secretary implement a data collection program for the fishery which would provide the types of information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall approve such a data collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for a data collection program is not justified, he shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after he receives that request.

SEC. 304. ACTION BY THE SECRETARY.

16 USC 1854

(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.

(1) *After the Secretary receives a fishery management plan, or amendment to a plan, which was prepared by a Council or the Working Group the Secretary shall

Amended by 97-453, 1983
and 99-659, 1986

(A) immediately make a preliminary evaluation of the management plan or amendment for purposes of deciding if it is consistent with the national standards and sufficient in scope and substance to warrant review under this subsection and

Added by 99-659, 1986

(i) if that decision is affirmative, implement subparagraphs (B), (C), and (D) with respect to the plan or amendment, or

- (ii) if that decision is negative
 - (I) disapprove the plan or amendment, and
 - (II) notify the Council, in writing, of the disapproval and of those matters specified in subsection (b)(2)(A), (B) and (C) as they relate to the plan or amendment;
- (B) immediately commence a review of the management plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law;
- (C) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the receipt date; and
- (D) by the 15th day after the receipt date
 - (i) make such changes in the proposed regulations submitted for the plan or amendment under section 303 (c) as may be necessary for the implementation of the plan, and
 - (ii) publish such proposed regulations, including any changes made thereto under clause (i), in the Federal Register together with an explanation of those changes which are substantive.

(2) *In undertaking the review required under paragraph (1)(B), the Secretary shall

Amended by 99-659, 1986

- (A) take into account the data, views, and comments received from interested persons;
- (B) consult with the Secretary of State with respect to foreign fishing; and
- (C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

*[Note: The amendment made by subsection (a) paragraph (1) and (2) shall apply with respect to fishery management plans and amendments thereto that are initially submitted to the Secretary of Commerce on or after the date of the enactment of this Act (97-453) for action under section 304.]

- (3) (A) The Secretary shall take action under this section on any fishery management plan or amendment to a plan which the Council characterizes as being a final plan or amendment.
- (B) For purposes of this section, the term "receipt date" means the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, or an amendment to a plan, that it characterizes as a final plan or amendment.

Added by 99-659, 1986

(b) Review by the Secretary

Amended by 97-453, 1983 and 99-659, 1986

- (1) A plan or amendment shall take effect and be implemented in accordance with section ~~305(e)~~ 305(a) if
 - (A) the Secretary does not notify the Council in writing of
 - (i) his disapproval under subsection (a)(1)(A)(ii), or

- (ii) his disapproval, or partial disapproval, under paragraph (2), of the plan or amendment before the close of the 95th day after the receipt date; or
 - (B) at any time subsequent to the 60th day after the receipt date and before such 95th day, the Secretary notifies the Council in writing that he does not intend to disapprove, or partially disapprove, the plan or amendment.
- (2) If after review under subsection (a) the Secretary determines that the plan or amendment is not consistent with the criteria set forth in paragraph (1)(B) of that subsection, the Secretary shall notify the Council in writing of his disapproval or partial disapproval of the plan or amendment. Such notice shall specify
 - (A) the applicable law with which the plan or amendment is inconsistent;
 - (B) the nature of such inconsistencies; and
 - (C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.
- (3) (A) If the Secretary disapproves a proposed plan or amendment under subsection (a)(1)(A)(ii), or partially disapproves, a proposed plan or amendment under paragraph (2), the Council may submit a revised plan or amendment, accompanied by appropriately revised proposed regulations, to the Secretary.
 - (B) After the Secretary receives a revised plan or amendment under subparagraph (A) or (C)(ii), the Secretary shall immediately
 - (i) commence a review of the plan or amendment to determine whether it complies with the criteria set forth in subsection (a)(1)(B);
 - (ii) publish in the Federal Register a notice stating that the revised plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 30-day period beginning on the date (hereinafter in this paragraph referred to as the "revised receipt date") the plan or amendment was submitted to the Secretary under subparagraph (A) or (C)(ii); and
 - (iii) review the revised proposed regulations, if any, submitted by the Council and make such changes to them as may be necessary for the implementation of the plan, and thereafter publish such revised proposed regulations (as so changed) in the Federal Register together with an explanation of each of such changes that is substantive.
 - (C) (i) Before the close of the 60th day after the revised receipt date, the Secretary, after taking into account any data, views, or comments received under subparagraph (B)(ii), shall complete the review required under subparagraph (B)(i) and determine whether the plan or amendment complies with the criteria set forth in subsection (a)(1)(B). If the Secretary determines that a plan or amendment is not in compliance with such criteria, he shall immediately notify the Council of his disapproval of the plan or amendment.

Amended by 97-453, 1983
and 99-659, 1986

Amended by 99-659, 1986

- (ii) After notifying a Council of disapproval under clause (i), the Secretary shall promptly provide to the Council a written statement of the reasons on which the disapproval was based and advise the Council that it may submit a further revised plan or amendment, together with appropriately revised proposed regulations, for review and determination under this paragraph.
- (D) A revised plan or amendment shall take effect and be implemented in accordance with section ~~305(c)~~ 305(a) if the Secretary does not notify the Council, in writing, by the close of the 60th day after the revised receipt date of his disapproval of the plan or amendment.

(c) PREPARATION BY THE SECRETARY.

Amended by 97-453, 1983

- (1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if
 - (A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such plan, if such fishery requires conservation and management; or
 - (B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment, as the case may be.

Amended by 97-453, 1983

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

- (2) (A) Whenever, under paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall immediately
 - (i) submit such plan or amendment, and proposed regulations to implement such plan or amendment, to the appropriate Council for consideration and comment;
 - (ii) publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the plan or amendment was submitted under clause (i); and
 - (iii) by the 15th day after the date of submission under clause (i), submit for publication in the Federal Register the proposed regulations to implement the plan or amendment.
- (B) The appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in subparagraph (A)(ii). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, data, or comments submitted

Amended by 97-453, 1983
and 99-659, 1986

under subparagraph (A)(ii), may implement such plan or amendment under section 305(c).

- (3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system described in section 303(b)(6), unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

- (d) **ESTABLISHMENT OF FEES.** The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

Amended by 97-453, 1983

- (e) **FISHERIES RESEARCH.** The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish. The Secretary shall annually review and update the comprehensive program and make the results of the review and update available to the Councils.

Amended by 99-659, 1986

- (f) **MISCELLANEOUS DUTIES. FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.**

- (1) If Except as provided in paragraph (3), if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may
- (A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or
 - (B) require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

- (2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

- (3) (A) For the purposes of this paragraph, the term 'fishing for highly migratory species' means fishing for any highly migratory species that occurs in the exclusive economic zone and beyond and is the subject of a significant fishery within the exclusive economic zone.

(B) There shall be established, within 120 days after the date of enactment of this paragraph, an Inter-Council Working Group on Highly Migratory Species. The Working Group shall have authority over --

- (i) fishing for highly migratory species by vessels of the United States, and

(ii) foreign fishing for highly migratory species other than tuna species within the exclusive economic zone,

to the extent that such fishing and foreign fishing is conducted in a highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: the New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

(C) The voting members of the Working Group shall be --

(i) the Council members selected annually under section 302(h)(6) by each Council with authority over a part of the geographical area in which the fishery occurs;

(ii) the Assistant Administrator or Fisheries of the National Oceanic and Atmospheric Administration or the Assistant Administrator's designee; and

(iii) up to four additional individuals, who may be appointed by the Secretary for terms of up to three years in duration if necessary to ensure fair representation for the active commercial participants in the fishery concerned, who shall be knowledgeable regarding highly migratory species fisheries, and who shall not be Federal officers or employees.

(D) The nonvoting members of the Working Group shall be (i) the Commandant of the Coast Guard or the Commandant's designee and (ii) a representative of the Department of State designated for that purpose by the Secretary of State or the Secretary of State's designee.

(E) Any vacancy on the Working Group shall be filled in the same manner in which the original appointment or selection was made. A member appointed or selected to fill such a vacancy shall be appointed only for the remainder of the term for which his or her predecessor was appointed or selected.

(F) The Working Group, in accordance with the provisions of this Act and any other applicable law --

(i) shall identify research and information priorities, including observer requirements and necessary data collection and analysis for the conservation and management of highly migratory species;

(ii) may prepare and amend fishery management plans with respect to highly migratory species fisheries within the authority of the Working Group;

(iii) shall serve as the advisory committee to the United States Commissioners to the International Commission for the Conservation of Atlantic Tunas with functions outlined in section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b); and

(iv) may consult, through the Secretary of State, with international entities, such as the International Commission for the Conservation of Atlantic Tunas, for the purpose of encouraging other foreign nations to adopt fishery management measures similar to those of the United States with respect to fishing for highly migratory species.

- (G) The provisions of section 302(d) regarding compensation and reimbursement of expenses for voting members of each Council shall apply to voting and nonvoting members of the Working Group in connection with the Actual performance of their duties on the Working Group.
- (H) The Secretary of the Councils that have selected members on the Working Group shall provide necessary administrative and technical support for the Working Group, including assistance of scientific and statistical committees, advisory panels, and staff of such Councils. The Secretary may designate one of such Councils as administrative lead Council to coordinate such support.
- (I) The Working Group shall elect a Chairman and Vice Chairman from among its voting members and shall transact business in a manner determined by the voting members of the Working Group, consistent with the policies of this Act.
- (b) After the date that is 120 days following the date of enactment of this Act, any fishery management plan or amendment, prepared by a Council under section 303 of the Magnuson Fishery Conservation and Management Act, which addresses a highly migratory species fishery to which section 304 (f)(3) of the Magnuson Fishery Conservation and Management Act, as added by this section, applies and any regulations implementing such plan or amendment shall remain in effect until superseded by a fishery management plan, and associated implementing regulations, prepared by the Working Group.

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

16 USC 1855

- ~~(a) Repealed.~~ ~~Repealed by 97-453, 1983~~
- ~~(b) Repealed.~~ ~~Repealed by 97-453, 1983~~
- ~~(c)(a) IMPLEMENTATION.~~ ~~Amended by 97-453, 1983~~ The Secretary shall promulgate each regulation that is necessary to carry out a plan or amendment
- (1) within 110 days after the plan or amendment was received by him for action under section 304(a), if such plan or amendment takes effect under section 304(b)(1);
 - (2) within 75 days after a revised plan or amendment was received by him under section 304(b), if such plan or amendment takes effect under paragraph (3)(D) of such section; or
 - (3) within such time as he deems appropriate in case of a plan or amendment prepared by him under section 304(c).
- ~~(d)(b) JUDICIAL REVIEW. Regulations promulgated by the Secretary under this Act-~~
- (1) Regulations promulgated by the Secretary under this Act and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that
 - ~~(1)~~ (A) section 705 of such title is not applicable, and
 - ~~(2)~~ (B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2)(A), (B), (C), or (D) of such title.

(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including actions that establish the date of closure of a fishery to commercial or recreational fishing.

(3) (A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1), not later than 30 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.

In both HR 2061 & 1025

(e)(c) EMERGENCY ACTIONS.

(1) If the Secretary finds that an emergency exists involving any fishery, he may promulgate emergency regulations necessary to address the emergency, without regard to whether a fishery management plan exists for such fishery.

Amended by 97-453, 1983

(2) If a Council finds that an emergency exists involving any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery

(A) the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members (other than the voting member appointed under section 302(b)(1)(B)), requests the taking of such actions; and

(B) the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, requests the taking of such action.

(3) Any emergency regulation which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection

(A) shall be published in the Federal Register together with the reasons therefor;

(B) shall remain in effect for not more than 90 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council, be promulgated for one additional period of not more than 90 days; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

~~(f) Repealed.~~

~~Repealed by 97-453, 1983~~

~~(g)~~(d) **RESPONSIBILITY OF THE SECRETARY.** The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

~~(h)~~(e) **EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.** The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12291, dated February 17, 1981, shall be complied with within the time limitations specified in subsection (c) or section 304(a) and (b) as they apply to the functions of the Secretary under such provisions.

Added by 97-453, 1983

SEC. 306. STATE JURISDICTION.

16 USC 1856

(a) IN GENERAL.

(1) Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

Amended by 98-623, 1984

(2) For purposes of this Act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

Added by 97-453, 1983

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

Added by 97-453, 1983

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are

Added by 98-623, 1984

(i) north of a line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude, and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island), or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

(3) except as otherwise provided by paragraph (2), a State may not directly or indirectly regulate any fishing vessel outside its boundaries, unless such vessel is registered under the laws of that State.

(b) EXCEPTION.

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that

Amended by 99-659, 1986

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the exclusive economic zone and beyond such zone; and

- (B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

- (2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(c) **EXCEPTION REGARDING FOREIGN FISH PROCESSING IN INTERNAL WATERS.**

Added by 97-191, 1982

- (1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if

- (A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C); and
- (B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing and the application specifies the species to be processed

In both HR 2061 & 1025

- ~~(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)(B) if he determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.~~

- (2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)

In both HR 2061 & 1025

- (A) for a fishery which occurs in the waters of more than one state or in the exclusive economic zone, except after

- (i) consulting with the appropriate Regional Fishery Management Council and Marine Fisheries Commission, and

- (ii) considering any comments received from the Governor of any other State where the fishery occurs; and

- (B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

- (3) Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the internal waters of a State incident to permission obtained under paragraph (1)(B).

- (4) For purposes of this subsection

- (A) The term "fish processing" includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.

- (B) *The phrase "internal waters of a State" means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured
- (C) A foreign fishing vessel shall be treated as qualified for purposes of paragraph
 - (1) if the foreign nation under which it is flagged will be a party to
 - (i) a governing international fishery agreement or
 - (ii) a treaty described in section 201(b) of this Act (16 U.S.C. 1821(b)) during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).

[Note: P.L. 99-509, 1986, SEC. 5004 FOREIGN FISH PROCESSING IN NORTON SOUND. For purposes of processing pink salmon within the internal waters of the State of Alaska, the geographic area bounded on the north by a parallel of latitude of 64 degrees, 23 minutes, on the south by a parallel of latitude of 63 degrees, 51 minutes, on the east by the baseline from which the territorial sea is measured, and on the west by the outer limit of the territorial sea, shall be considered to be internal waters of the State of Alaska for the purposes of Section 306(c)(4)(B) of the Fishery Conservation and Management Act (16 U.S.C. 1856(c)(4)(B)) until September 30, 1993.]

SEC. 307. PROHIBITED ACTS. It is unlawful

16 USC 1857

Amended by 99-659, 1986

- (1) for any person
 - (A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;
 - (B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;
 - (C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);
 - (D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for the purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);
 - (E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);
 - (F) to resist a lawful arrest for any act prohibited by this section;
 - (G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);
 - (H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; or
 - (I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United

Added by 99-659, 1986

States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States)-regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act;

- (J) to knowingly and without authorization steal, remove, damage, or tamper with
- (i) fishing gear owned by another person and which is located in the exclusive economic zone; or
- (ii) fish contained in such fishing gear; or to attempt to do so;
- (K)(L) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer or a supplementary observer on a vessel under this Act; or
- (K) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer or a supplementary observer on a vessel under this Act; or
- (L) to engage in large-scale driftnet fishing.
- (M) to engage in driftnet fishing; or
- (N) to strip pollock of its roe and discard the flesh of the pollock.
- (2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage Amended by 97-191, 1982
- (A) in fishing within the boundaries of any State, except recreational fishing permitted under section 201(j); Amended by 97-453, 1983
- (B) in fishing, except recreational fishing permitted under section 201(j), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b) or (c); or Amended by 97-453, 1983
- (C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section); Added by 97-191, 1982
- (3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer directly or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone, unless the foreign fishing vessel has been issued a permit under section 204 which authorizes the receipt by such vessel of United States harvested fish of the species concerned; ~~and~~ Added by 95-354, 1978
- (4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone, if
- (A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or
- (B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;
- unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and
- (5) for any vessel of the United States, and for the owner or operator of any In both HR 2061 & S 1025

vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight under section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

SEC. 308. CIVIL PENALTIES AND PERMIT SANCTIONS.

16 USC 1858

In both HR 2061 & S 1025

- (a) **ASSESSMENT OF PENALTY.** Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed ~~\$25,000~~ \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.
- (b) **REVIEW OF CIVIL PENALTY.** Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary, the Attorney General and the appropriate United States Attorney. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.
- (c) **ACTION UPON FAILURE TO PAY ASSESSMENT.** If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.
- (d) **IN REM JURISDICTION.** A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 307 shall be liable in rem for any civil penalty assessed for such violation under section 308 and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.
- (e) **COMPROMISE OR OTHER ACTION BY SECRETARY.** The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.
- (f) **SUBPOENAS.** For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this

Amended by 99-659, 1986

Added by 99-659, 1986

Amended by 99-659, 1986

Added by 97-453, 1983 and amended by 99-659, 1986

subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) PERMIT SANCTIONS.

Changes to 308(g) in both HR 2061 & S 1025

- (1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, (C) or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel under any fishery resource law or statute enforced by the Secretary has not been paid and is overdue, the Secretary may
- (A)(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;
- (B)(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;
- (C)(iii) deny such permit; or
- (D)(iv) impose additional conditions and restrictions on any permit issued to, or applied for by, that owner, operator, or vessel under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application
- (2) In imposing a sanction under this subsection, the Secretary shall take into account
- (A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and
- (B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.
- (3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer. In HR 2061 only
- (3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. In S 1025 only
- (4) The Secretary shall reinstate any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine upon payment of the penalty or fine and interest thereon at the prevailing rate. In HR 2061 only
- (4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate any permit upon payment of the penalty or fine and interest thereon at the prevailing rate. In S 1025 only
- (5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for

which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

SEC. 309. CRIMINAL OFFENSES.

16 USC 1859

(a) **OFFENSES.** A person is guilty of an offense if he commits any act prohibited by

(1) section 307(1)(D), (E), (F), (H), ~~(I)~~, or ~~(J)~~ (K)(L); or

Amended by 99-659, 1986
and 100-066, 1987

(2) *section 307(2).

*[Note: The amendment made by subsection (a) deleting imprisonment for any offense described in section 309(a)(2) applies with respect to offenses committed under section 309 on or after the date of the enactment of this Act (P.L. 97-453) January 12, 1983]

(b) **PUNISHMENT.** Any offense described in subsection (a)(1) is punishable by a fine of not more than ~~\$50,000~~ ~~\$100,000~~, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any observer described in section 307(1)(L) or any officer authorized to enforce the

Amended by 97-453, 1983

provisions of this Act (as provided for in section 311), or places any such observer or officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than ~~\$100,000~~ ~~\$200,000~~, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than ~~\$100,000~~ ~~\$200,000~~.

(c) **JURISDICTION.** There is Federal jurisdiction over any offense described in this section.

SEC. 310. CIVIL FORFEITURES

16 USC 1866

(a) **IN GENERAL.** Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 (other than any act for which the issuance of a citation under section 311(c) is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

Amended by 97-453, 1983

(b) **JURISDICTION OF COURTS.** Any district court of the United States which has jurisdiction under section 311(d) shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) **JUDGMENT.** If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to

Amended by 99-659, 1986

- (1) the seizure, forfeiture, and condemnation of property for violation of the customs law;
- (2) the disposition of such property or the proceeds from the sale thereof; and
- (3) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter.

(d) **PROCEDURE.**

- (1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 311(d) shall

Amended by 99-659 1986

- (A) stay the execution of such process; or
(B) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person

(i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or

(ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

Nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 311(d), to release on bond any seized fish or other property or the proceeds from the sale thereof.

- (2) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) **REBUTTABLE PRESUMPTION.**

In both HR 2061 & S 1025

- (1) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken and retained in violation of this Act.

- (2) For purposes of this Act, it shall be a rebuttable presumption that any fish that is a member of an anadromous species and is found on board a fishing vessel within the migratory range of that species is of United States origin.

- (2) For purposes of this Act, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a fishing vessel is of United States origin if the vessel is within the migratory range of that species during that part of the year to which the migratory range applies.

SEC. 311. ENFORCEMENT.

16 USC 1861

- (a) **RESPONSIBILITY.** The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties.

Amended by 96-470 and 97-453, 1983

(b) **POWERS OF AUTHORIZED OFFICERS.**

- (1) Any officer who is authorized (by the Secretary, the Secretary of the

Amended by 97-453, 1983

department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may

- (A) with or without a warrant or other process
 - (i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307;
 - (ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;
 - (iii) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;
 - (iv) seize any fish (wherever found) taken or retained in violation of any provision of this Act; and
 - (v) seize any other evidence related to any violation of any provision of this Act;
- (B) execute any warrant or other process issued by any court of competent jurisdiction; and
- (C) exercise any other lawful authority.

- (2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. The arrest authority described in the preceding sentence may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations within the exclusive economic zone, the Secretary of the department in which the Coast Guard is operating.

Added by 97-453, 1983

- (c) **ISSUANCE OF CITATIONS.** If any officer authorized to enforce the provisions of this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this Act, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.
- (d) **JURISDICTION OF COURTS.** The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time
 - (1) enter restraining orders or prohibitions;

- (2) issue warrants, process in rem, or other process;
- (3) prescribe and accept satisfactory bonds or other security; and
- (4) take such other actions as are in the interest of justice.

(e) **PAYMENT OF STORAGE, CARE, AND OTHER COSTS.**

In both HR 2061 & S 1025

- (1) Notwithstanding any other provision of law, after September 30, 1986, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provision of this Act or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)
 - (+) (A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other fishery resource law enforced by the Secretary with respect to that fish or other property; and
 - (2) (B) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary;
 - (C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for
 - (i) equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings; or
 - (ii) equipping for law enforcement purposes any vessel, vehicle, or aircraft available for official use by the Secretary;
 - (C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;
 - (D) any valid liens or mortgages against any property that has been forfeited;
 - (E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)) or under other provisions of the customs laws, as made applicable by section 310(c) of this Act to seizures under this Act, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and
 - (F) for the reimbursement of any Federal or State agency, including the United States Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.
- (2) Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation.

Not in S 1025

(f) **DEFINITIONS.** For purposes of this section

Amended by 99-659, 1986

- (1) The term "provisions of this Act" includes
 - (A) any regulation or permit issued pursuant to this Act, and

- (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201(b) or (c), with respect to fishing subject to the exclusive fishery management authority of the United States.
- (2) The term "violation of any provision of this Act" includes
 - (A) the commission of any act prohibited by section 307, and
 - (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

SEC. 312. EFFECTIVE DATE OF CERTAIN PROVISIONS. Sections 307, 308, 309, 310, and 311 shall take effect March 1, 1977.

SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

- (a) **IN GENERAL.** The North Pacific Fishery Management Council may prepare and submit to the Secretary a fisheries research plan which
 - (1) **requires that observers be stationed on board vessels of the United States engaged in fishing in that part of the exclusive economic zone which is within the geographical area of authority of the Council, for the purpose of collecting data necessary for the conservation and management of any fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery; and**
 - (2) **established a system of fees to pay the costs of implementing the plan.**
- (b) **STANDARDS.**
 - (1) **Any plan prepared and submitted under this section shall be reasonably calculated**
 - (A) **to promote conservation and scientific understanding of the fisheries covered by the plan,**
 - (B) **to be fair and equitable to all fishermen and fish processors affected by the plan, and**
 - (C) **to be consistent with applicable provisions of law.**
 - (2) **Any system of fees established by a fisheries research plan under this section shall**
 - (A) **provide that the total amount of fees collected may not exceed**
 - (i) **the cost of stationing observers on board fishing vessels pursuant to the plan, less**
 - (ii) **any amount received for such purpose from any other source;**
 - (B) **by fair and equitable to all participants in the fishery covered by the plan;**
 - (C) **provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan; and**
 - (D) **not to be used to offset amounts authorized under other provisions of law.**
- (c) **RECEIPT OF PLAN BY THE SECRETARY.** Not later than 60 days after the Secretary receives a research plan under subsection (a) from the Council, the Secretary shall

- (1) review the plan to determine whether it meets the requirements of subsection (b), and
- (2) (A) reject the plan if it does not meet those requirements; or
(B) conduct 2 public hearings to obtain comments on the plan, one of which shall be held in the State of Alaska and one of which shall be held in the State of Washington.
- (d) ACTION BY THE SECRETARY. After analyzing comments received regarding a research plan under subsection (a), the Secretary shall, within 45 days after the last public hearing on the plan
- (1) request the Council to respond within 45 days to the comments; and
(2) implement the plan with any additional modifications provided by the Council which are consistent with subsection (b).
- (e) RESUBMISSION OF PLAN. Any research plan rejected by the Secretary under subsection (c)(2) may be resubmitted by the Council with changes, and upon such resubmission shall be treated as an original plan.
- (f) USE OF FEES. Amounts received by the United States in the form of fees established by a research plan under this section shall, after deducting an amount under subsection (g)(2), be available to the Secretary only for use for implementing the plan.
- (g) AUTHORIZATION OF APPROPRIATIONS.
- (1) To carry out this section, including for the establishment of an observer program pursuant to this section, there are authorized to be appropriate to the Secretary (in addition to amounts made available by subsection (f)) \$100,000 for each of fiscal years 1990 and 1991.
- (2) Amounts appropriated under this subsection shall be reimbursed to the Treasury from fees collected pursuant to this section.

TITLE IV. MISCELLANEOUS PROVISIONS

SEC. 401. [Repealed]

16 USC 1881 Repealed by 99-659, 1986

SEC. 401. SPECIAL PROVISIONS REGARDING OBSERVERS.

In both HR 2061 & S 1025

(a) CIVIL ACTION.

- (1) An observer on a vessel (or the observer's personal representative) under the requirements of this Act that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.
- (2) This subsection does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

(b) PLACEMENT OF OBSERVERS ON U.S. VESSELS. A vessel of the United States shall not be required under this Act to carry an observer on board if the facilities of the vessel for quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

SEC. 402. REPEALS.

- (a) The Act of October 14, 1966 (16 U.S.C. 1091-1094), is repealed as of March 1, 1977.

(b) The Act of May 20, 1964 (16 U.S.C. 1081-1086), is repealed as of March 1, 1977.

SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

(a) **AMENDMENTS.** The Act of August 27, 1954 (22 U.S.C. 1972), is amended

(1) by amending section 2 thereof to read as follows: "Sec. 2. If

Amended by 98-364, 1984

"(1) any vessel of the United States is seized by a foreign country on the basis of claims to jurisdiction that are not recognized by the United States, or on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the United States; or

"(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions

"(A) are unrelated to fishery conservation and management,

"(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

"(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976), or

"(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

"and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State unless there is clear and convincing credible evidence that the seizure did not meet the requirements under paragraph (1) or (2), as the case may be, shall immediately take such steps as are necessary

Amended by 98-364, 1984

"(i) for the protection of such vessel and for the health and welfare of its crew;

"(ii) to secure the release of such vessel and its crew; and

"(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act."; and

(2) by amending section 3(a) thereof by inserting immediately before the last sentence thereof the following new sentence: "For purposes of this section, the term "other direct charge" means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee."

(b) **EFFECTIVE DATE.** The amendment made by subsection (a)(1) shall take effect March 1, 1977. The amendment made by subsection (a)(2) shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.

SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

- (a) **AMENDMENT.** Section 3(15)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)(B)) is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966," and inserting in lieu thereof "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured."
- (b) **EFFECTIVE DATE.** The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

- (a) **AMENDMENT.** Section 2(4) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(4)) is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094)," and inserting in lieu thereof "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured."
- (b) **EFFECTIVE DATE.** The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

16 USC 1882

- ~~(1) \$5,000,000 for the fiscal year ending June 30, 1976.~~
- ~~(2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.~~
- ~~(3) \$25,000,000 for the fiscal year ending September 30, 1977.~~
- ~~(4) \$30,000,000 for the fiscal year ending September 30, 1978.~~
- ~~(5) \$30,000,000 for the fiscal year ending September 30, 1979. Amended by 95-354, 1978~~
- ~~(6) \$33,000,000 for the fiscal year ending September 30, 1980. Amended by 96-61, 1979~~
- ~~(7) \$40,000,000 for the fiscal year ending September 30, 1981.~~
- ~~(8) \$47,000,000 for the fiscal year ending September 30, 1982.~~
- ~~(9) \$59,000,000 for the fiscal year ending September 30, 1983. Amended by 97-453, 1983~~
- ~~(10) \$64,000,000 for the fiscal year ending September 30, 1984.~~
- ~~(11) \$69,000,000 for the fiscal year ending September 30, 1985.~~
- ~~(12) \$69,000,000 for fiscal year ending September 30, 1986. Amended by 99-659, 1986~~
- ~~(13) \$70,800,000 for fiscal year ending September 30, 1987.~~
- ~~(14) \$72,900,000 for fiscal year ending September 30, 1988.~~
- (15)(1) \$75,000,000 for fiscal year ending September 30, 1989.
- (2) \$75,000,000 for fiscal year 1990.
- (3) \$76,000,000 for fiscal year 1991.
- (4) \$77,000,000 for fiscal year 1992.
- (5) \$78,000,000 for fiscal year 1993.

- (16) \$77,000,000 for the fiscal year ending September 30, 1990
- (17) \$88,000,000 for the fiscal year ending September 30, 1991, of which \$6,500,000 shall be used for enforcement and \$5,000,000 shall be used to increase research and assessment efforts.
- (18) \$92,000,000 for the fiscal year ending September 30, 1992.
- (19) \$96,000,000 for the fiscal year ending September 30, 1993.

February 5, 1990

DEVELOPMENT OF A NOAA/FDA VOLUNTARY SEAFOOD INSPECTION SERVICE
A CONCEPT PAPER AND IMPLEMENTATION STRATEGY

BACKGROUND

There continues to be widespread interest by the Congress, industry and consumers in improving the current system for inspecting seafood. For the past year, segments of the industry and several consumer groups have been actively working with the Congress to establish a new mandatory seafood inspection program. During this period nine bills were introduced and six hearings were held on this issue.

After two meetings of the Domestic Policy Council attended by representatives of OMB, USDA, FDA and NOAA, the Administration decided in May 1989 not to support enactment of any new mandatory seafood inspection legislation, a position maintained for all hearings on seafood inspection. This position was modified in the FY 91 budget passbacks to FDA and NOAA which directed that the two agencies strengthen voluntary approaches to seafood inspection. In response, the two agencies have begun drafting a plan to jointly develop a new voluntary seafood inspection service. Authority for such a program exists under the Food, Drug, and Cosmetic Act and the Agricultural Marketing Act for FDA and NOAA respectively.

Presently NOAA offers a voluntary fee-for-service program to industry and conducts that program in accordance with a Memorandum of Understanding with the FDA. As part of that MOU, NOAA ensures that its clients' operations and products meet the requirements of the Food, Drug, and Cosmetic Act as well as those quality and identify requirements issued for the program under its own regulations (50 CFR). FDA inspects seafood plants, and products, examines seafood imports, and administers both the National Shellfish Sanitation and Retail Food Protection Programs.

GOAL

To address public concern about the current Federal inspection approach and level of coverage, NOAA and FDA have set a goal of establishing a voluntary, Hazards Analysis Critical Control Point (HACCP) based, fee for service inspection program that will cover those products in domestic commerce as well as those intended for export. The agencies hope to reach a 50% level of coverage in each category within two years.

The first step in achieving this goal is the development of a plan and draft regulations which NOAA and FDA will complete by March 20, 1990. This concept paper lays out a conceptual

framework, the timetable for completion of the plan and draft regulations, as well as progress to date and outstanding issues.

CONCEPTUAL APPROACH

The new inspection service will be based on the concept of HACCP which focuses on the critical steps from the water to the consumer. This system emphasizes prevention of problems rather than relying solely on traditional analysis of end product samples. In applying HACCP, NOAA and FDA will follow the recommendations of a 1985 National Academy of Sciences (NAS) report and consider recommendations of the present National Advisory Committee on Microbiological Criteria for Foods (NACMF) which collectively have defined the operation of HACCP based programs and provided guidance for implementation of a HACCP program designed specifically for seafoods.

The 1985 NAS report indicated that, for HACCP to work, there must be an understanding of the differentiation of roles between a regulatory agency and the industry being regulated. It recommended that industry commodity groups should take the lead to define each operational step of a processing operation, indicate the hazard and relative importance of each step, identify the critical control points for the significant hazards, define preventative measures to minimize the hazard, and detail

the monitoring procedures--either by observation or measurement-- which can be used to control the safety hazards and for regulatory compliance purposes. The NACMF has proposed a scheme for government efforts to implement the HACCP concept in the 1985 NAS report.

After models are developed by industry, the regulatory authorities will select critical control points and monitoring procedures and establish regulatory requirements. The regulatory authorities will also have the prerogative to review the corrective actions taken when in-plant monitoring results indicate the need. In addition the regulatory agencies and industry must agree on the necessary records that will be made available by participants.

PROGRESS TO DATE

NOAA and FDA are designing this program based on the experience obtained through the conduct of the congressionally mandated study over the past three years to design an improved system of certification and surveillance for the inspection of fishery products based on HACCP. NOAA is required to report the results of this study known as the Model Seafood Surveillance Project (MSSP) to Congress together with estimates of public and private costs to implement such a program by December, 1990.

The objectives of the MSSP is to design a fishery products surveillance system which will provide consumers with reasonable protection against health risks and economic fraud as well as to ensure that production is conducted under acceptable conditions of hygiene. This HACCP-based system will provide equitable treatment of domestic, imported and exported products.

A series of workshops have been conducted with various portions of the seafood industry to develop general HACCP plans which taken together, provide for coverage of harvesting, processing and marketing functions. The scope of this coverage, and the involvement of industry are two of the key elements required to establish a successful HACCP program, as noted in the NAS 1985 recommendations and from FDA's own experiences in instituting a successful HACCP program for low-acid canned foods.

To date, 30 MSSP workshops have been held covering 22 commodities, imports, vessels, and sampling procedures. Further, in excess of 100 in-plant tests have been conducted. When testing is finished, 99% of seafood products will have been covered. Regulatory HACCP models are completed for breaded, cooked, and raw shrimp as well as for imports. In addition, the implementation recommendations of NACMF have been completed for cooked crab meat and cooked shrimp. These will be reviewed concurrently with MSSP models.

TIMETABLE FOR DEVELOPMENT OF IMPLEMENTATION PLAN AND DRAFT
REGULATIONS

NOAA and FDA are working under a self imposed deadline to present the plan and draft regulations on how the voluntary HACCP based inspection will be implemented and operated at a major seafood industry trade show in Boston on March 20, 1990.

Work groups with representatives from both agencies are focused on accomplishing the tasks described below by the dates indicated.

- | | |
|---|--------------|
| I Obtain input from and support of major food industry and consumer groups | 2/15/90 |
| II Define specific organizational roles and responsibilities for FDA and NOAA | 2/15/90 |
| III Develop implementation plan
<i>Advance rulemaking</i> | 3/15
3/20 |
| IV Develop draft implementing regulations | 5/1 |
| V Secure FDA/NOAA approval of plan and draft regulations | 3/10/90 |

OUTSTANDING ISSUES

- I Relationship of new inspection service to current NOAA/FDA programs.

- II The extent to which the jointly administered program can operate under current statutory authority and regulations of either agency, and to what extent new regulations will have to be developed or old regulations rescinded.

- III Setting of program fees and collection and sharing of revenues.

- IV Roles of States and foreign governments.

CRS Report for Congress

Seafood Inspection: A Comparison of Selected Bills

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Environment and Natural Resources Policy Division

December 18, 1989



SEAFOOD INSPECTION: A COMPARISON OF SELECTED BILLS

SUMMARY

Seven bills were introduced into the first session of the 101st Congress to require the Federal Government to conduct more aggressive inspection of seafood. A number of House and Senate committees have conducted hearings on the need for new fish inspection authority. Legislation could be marked up in the second session.

Unlike meat and poultry, its main flesh food competitors, seafood is not subject to mandatory, continuous inspection for safety and wholesomeness. Is a more aggressive program warranted, as consumer advocates and seafood industry leaders contend? If so, how should it be designed, who should administer it, and who should pay for it? These are among the many questions that the proposed bills attempt to address.

Generally, the proposed bills would impose new inspection requirements on all fish sold in interstate commerce for human consumption. However, none would require the level of intensive, continuous surveillance now in place for meat and poultry. Most of the bills assign the lead agency role to the U.S. Department of Agriculture (USDA), which already inspects meat and poultry. One bill assigns it to the HHS Department; another leaves the decision to the President.

A number of the proposed bills would require that vessels as well as processing plants be certified and registered by Federal authorities. The various bills generally require the Administration to develop and issue specific standards for chemical and biological contamination, processing and sanitation, and labeling. Most also subject imports to the same inspection requirements, address Federal-State relationships, and provide various types of enforcement language.

Several--but not all--of the proposals authorize annual appropriations to pay the cost of the new seafood inspection program.

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SEAFOOD INSPECTION: A COMPARISON OF SELECTED BILLS¹

INTRODUCTION

Seven bills were introduced into the first session of the 101st Congress to require the Federal Government to conduct more aggressive inspection of seafood. A number of committees have conducted hearings on the need for new inspection authority; legislation could be marked up in the second session.

Unlike meat and poultry, seafood is not subject to mandatory, continuous inspection for safety and wholesomeness. Is a more aggressive program needed, as consumer advocates and seafood industry leaders contend? If so, how should it be designed, who should run it, and who should pay for it? These are among the many questions that policy makers are now debating.

Congress has been asked to consider these questions at a time when U.S. consumption of fish and shellfish is on the rise. And, while recent research has tied fish consumption to some health and nutritional benefits, seafoods, including some shellfish, also have been associated with a number of human illnesses caused by chemical or biological contaminants. This report compares the major provisions of these bills:

- **Mandatory Fish Inspection Act of 1989 (H.R. 1387), introduced March 14 by Representative Dorgan;**
- **Consumer Seafood Safety Act of 1989 (H.R. 2511), introduced May 25 by Representative Studds;**
- **Fish and Fish Products Safety Act of 1989 (H.R. 3155), introduced August 4 by Representative Dingell;**
- **Consumer Seafood Safety Act of 1989 (H.R. 3481), introduced October 17 by Representative Glickman;**
- **Federal Inspection for Seafood Healthfulness Act of 1989 (H.R. 3508), introduced October 23 by Representative de la Garza;**
- **Federal Fish Inspection Act (S. 1245), introduced June 22 by Senator Mitchell;**
- **Consumer Seafood Safety Act of 1989 (S. 1983), introduced November 21 by Senator Leahy.**

¹This report is based in part on materials prepared by staff of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment. For additional information, including recent developments, see CRS Issue Brief 89126 -- Seafood Inspection Programs, updated regularly.

FEDERAL AGENCY RESPONSIBILITY

Several Federal agencies currently have varying responsibilities for seafood safety and quality under a number of laws. These include the Health and Human Services (HHS) Department's Food and Drug Administration (FDA), the Commerce Department's National Marine Fisheries Service (NMFS), and the Environmental Protection Agency (EPA). At issue is which agency or agencies should be given new responsibilities if a more aggressive program is approved.

Most of the proposed bills assign the lead role to the U.S. Department of Agriculture (USDA), which already inspects meat and poultry. The Dingell bill assigns it to HHS; the Studds bill leaves the decision to the President.

H.R. 1387 (Dorgan)

Requires Agriculture Secretary to design program.

H.R. 2511 (Studds)

Requires the President to design program; no lead agency designated.

H.R. 3155 (Dingell)

Requires HHS Secretary to establish program, presumably under FDA.

H.R. 3481 (Glickman)

Requires Secretary of Agriculture to establish program, based on chemical and microbiological standards established by HHS in consultation with the National Academy of Sciences (NAS).

H.R. 3508 (de la Garza)

Requires Secretary of Agriculture to develop and operate program.

S. 1245 (Mitchell)

Requires Secretary of Agriculture to establish program.

S. 1983 (Leahy)

Similar to Glickman bill.

COVERAGE

Unlike meat and poultry, its flesh food competitors, seafood is harvested mainly in the wild, and often by sport anglers whose harvest is seldom commercially marketed. Similar to the recreational fish harvest, the commercial seafood industry is diverse and seasonal. How widely should the Government cast its regulatory net? Should certain types of operations be exempted from more stringent requirements? Should certain species of fish be exempted from regulation? Generally, the bills would apply to all fish sold in interstate commerce for human consumption and to most steps in the marketing chain. The de la Garza bill specifies exempted activities.

H.R. 1387 (Dorgan)

"...the commercial processing of all freshwater and saltwater fish, shellfish, and their products..." intended for U.S. human consumption.

H.R. 2511 (Studds)

"...all fish products [including human foods derived from shellfish as well as finfish] sold in interstate commerce..." and intended for U.S. human consumption. Specifically encompasses their "harvesting, processing, storing, transportation, and marketing..."

H.R. 3155 (Dingell)

Fish and fish products [including shellfish]; covers (and requires registration of) all processing facilities, including those that handle, store, prepare, package, or transport fish.

H.R. 3481 (Glickman)

Fish and fishery products in interstate commerce and intended for U.S. human consumption. Fish defined as "any aquatic plant life or animal life, including amphibians, or part thereof, whether from wild or cultured sources..." Covers (and requires certifications at) each stage of processing, including harvest, storage, preparation, and transportation.

H.R. 3508 (de la Garza)

Seafood and seafood products capable for use as human food. Seafood definition similar to fish definition in Glickman bill. Covers (and requires registration of) all establishments, defined as any premise, building, structure, facility, or equipment that processes (including harvesting, handling, storing, transporting--but not raising--seafood). Lists a series of exemptions, including processors of seafood for household or nonpaying guest use; operations traditionally conducted at retail stores and restaurants, at the Secretary's

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discretion; in cases where the Secretary determines inspection would be impractical; and certain vessels, including those processing seafood solely for foreign shipment.

S. 1245 (Mitchell)

All fish products (freshwater and marine, and including shellfish) intended for U.S. human consumption. Covers processing, storage and handling, including registration of facilities.

S. 1983 (Leahy)

Similar to Glickman bill.

METHOD/INTENSITY OF INSPECTION

Under the Federal meat and poultry inspection system, all slaughter and processing operations are required to meet USDA-prescribed sanitary standards and undergo continuous inspection (generally organoleptic examination of all animals and virtually all products made from them). USDA also samples and tests products for chemical and biological contaminants.

However, the consensus is that this system, first conceived and implemented in the early 1900s, may not be the most appropriate for seafood. Among other things, the industry handles hundreds of species, many of them demanding very different safety and wholesomeness standards.

A mandatory program does not necessarily mean a continuous program. Although all of the proposed bills do mandate more aggressive surveillance, most favor a more "surgical" approach like the Hazard Analysis Critical Control Point (HACCP). HACCP, now under development by NMFS and the industry, attempts to identify particular species and steps in the marketing chain where health and safety problems are most likely to occur, and then to focus resources there to correct them.

H.R. 1387 (Dorgan)

"...comprehensive and statistically representative inspection...similar, to the extent practical" to the current meat and poultry inspection system. Design details left to the Agriculture Secretary. No requirement for monitoring production (harvesting) areas.

H.R. 2511 (Studds)

Based on the HACCP method as specifically designed for each fish product, taking into account the recommendations of NMFS's Model Seafood Surveillance Project. Must include establishment of sampling program to monitor and regulate contaminant levels in fish. No requirement for monitoring production areas.

H.R. 3155 (Dingell)

"...periodic announced and unannounced inspections of facilities..." and periodic monitoring and sampling of fish and products to determine their compliance with Federal standards. Other design details left to HHS Secretary. States responsible for monitoring shellfish areas; however, Secretary must designate fish adulteration areas (unsafe waters) if detected through any monitoring activities.

H.R. 3481 (Glickman)

Conducted as determined by Agriculture Secretary, taking into account among other things the likelihood of a fish product affecting public health, a firm's history of compliance with fish inspection requirements, its production volume, and the complexity of its operation; program must include intensive sampling for microbial and chemical contamination. No requirement for monitoring production areas, although Commerce Secretary must identify shellfish waters containing health-threatening substances.

H.R. 3508 (de la Garza)

Based on a system that identifies severity of hazards and risks and determines critical points to control them; in designing program, Agriculture Secretary must consider nature and frequency of a firm's operations, and its compliance history. Requires (in cooperation with Commerce Secretary) comprehensive sampling/testing system and monitoring of production areas.

S. 1245 (Mitchell)

Based on the HACCP method. General requirement for a monitoring and surveillance system to assure compliance with standards. No specific requirement for monitoring production areas.

S. 1983 (Leahy)

Similar to Glickman bill.

VESSEL REGISTRATION AND INSPECTION

Should vessels be subject to some level of monitoring and surveillance? On the one hand, fishing boats are the first line of defense. They must guard against spoilage (e.g., through immediate icing or refrigeration) and not take fish from polluted waters. Moreover, many seafood products are now processed at sea. On the other hand, there are roughly 100,000 vessels harvesting the domestic catch, many small and based in remote ports. Monitoring all of them could prove difficult and costly; focusing on facilities that receive and process the catch might be less complex.

A number of the proposed bills would require at least that vessels be certified and registered by Federal authorities; periodic inspections also would be authorized.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Sanitary and good harvesting/manufacturing practices standards apply.

H.R. 3155 (Dingell)

Not specific; unclear whether handlers include vessels.

H.R. 3481 (Glickman)

Certification and inspection (frequency determined by Secretary) required.

H.R. 3508 (de la Garza)

Periodic registration and inspection (frequency/type unspecified) required.

S. 1245 (Mitchell)

Registration and inspection (frequency/type unspecified) of vessels that process fish products required.

S. 1983 (Leahy)

Certification and inspection required.

STANDARDS--PROCESSING AND SANITATION

Closely related to the method and intensity of inspection are the mandatory minimum standards against which those subject to inspection will be judged. How stringent must they be to protect consumers while at the same time allow the industry to operate efficiently and competitively? Who will determine them? Many of these standards--plant construction, proper equipment, and sanitary operating procedures are examples--will evolve from the ongoing HACCP work (see page 6). The various bills generally require the Administration to develop and issue specific processing and sanitation standards.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Requires establishment of standards for sanitary and good harvesting and manufacturing practices on vessels and in processing plants.

H.R. 3155 (Dingell)

Requires HHS Secretary to establish standards of sanitation and quality control for processing.

H.R. 3481 (Glickman)

Requires Agriculture Secretary to prescribe standards of sanitation and other good processing, storage and handling practices for each stage of production.

H.R. 3508 (de la Garza)

Requires Agriculture Secretary to prescribe good processing practices for establishments and vessels.

S. 1245 (Mitchell)

Requires Agriculture Secretary to establish standards governing sanitary conditions and good processing, storage, and handling practices.

S. 1983 (Leahy)

Similar to Glickman bill.

STANDARDS--CHEMICAL AND MICROBIAL CONTAMINANTS

One of the most difficult problems in designing an effective seafood safety program is determining the maximum permissible levels of contaminants in fish and shellfish, both biological contaminants that tend to present more acute health risks, and chemical contaminants whose effects are generally chronic in nature. According to FDA, "Tolerance setting is, in essence, the product of risk assessment, which in turn requires both a toxicological and a consumption 'profile.'" Each of these tasks is a complicated one, exacerbated among other things by the diversity of seafood and its sources and by the lack of adequate data on fish-borne illnesses.

Even if scientists succeed in defining such standards, other large questions loom. For example, do the capability and resources exist to monitor and detect contamination on a broad scale? What will the industry have to do to control undesirable substances? (These problems are not unique to seafood; they have long been challenges for the food industry generally and its regulators, primarily at FDA, USDA, and the Environmental Protection Agency.) Most of the proposed bills again leave these difficult tasks to Government regulators.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Requires establishment of standards for "acceptable levels of contaminants in fish products." Contaminants defined as "any substance which is hazardous to human health when ingested, and includes (A) such chemicals as heavy metals, pesticides and polychlorinated biphenyls; (B) such parasitic organisms as bacteria and viruses; and (C) such natural microbiological toxins as ciguatoxin and scombrototoxin..."

H.R. 3155 (Dingell)

Requires HHS Secretary to issue regulations on NAS-determined standards for "chemical and microbiological contaminants, parasites, and toxins...most likely to be found in fish and fish products and which are most likely to cause [them] to be unsafe for human consumption." Fish products could not exceed such limits, contain unsafe contaminants for which no standard has been established, or be harvested from a so-called "fish adulteration area" (essentially unsafe water).

H.R. 3481 (Glickman)

Similar to Dingell Bill (H.R. 3155).

H.R. 3508 (de la Garza)

No standards specifically required. However, bill includes definitions for "adulterated" to include any seafood product that "...bears any poisonous or deleterious substance which may render it injurious to human health, as determined by the [Agriculture] Secretary...consists in whole or part, of any filthy, putrid, or decomposed substance or is for any other reason, unsound, unhealthful, unwholesome, or otherwise unfit for human food;" or has been harvested from unsafe waters, among other language.

S. 1245 (Mitchell)

Not specified, except that Agriculture Secretary must establish standards governing "the safety and wholesomeness of meat from fish and fish products."

S. 1983 (Leahy)

Similar to Dingell and Glickman bills.

STANDARDS--LABELING AND PACKAGING

Labeling standards are aimed at achieving a number of objectives. Among them are enabling regulators to trace any problem back through the marketing chain to its source, providing consumers and others with information about the product and assuring them of its wholesomeness, and guarding against economic fraud. Whether these are necessary, and how extensive they ought to be, are among the questions being debated.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Requires establishment of minimum standards for wholesomeness, grading, packaging, and labeling, including the use of designated common names for fish products.

H.R. 3155 (Dingell)

Permits HHS Secretary (after consultation with Commerce Secretary) to issue regulations on labeling standards.

H.R. 3481 (Glickman)

Requires Agriculture Secretary to prescribe standards for identifying and officially marking fish products subject to Federal inspection. Includes conditions for using, withholding, etc., official mark.

H.R. 3508 (de la Garza)

Requires Agriculture Secretary to issue regulations on wholesomeness, nomenclature, quantity, package, and labeling standards. Products of registered establishments and vessels must bear official mark. Secretary must approve any labeling and packages used by registered establishments and vessels. Bill includes definitions of "labeling" and "misbranded."

S. 1245 (Mitchell)

Requires Agriculture Secretary to establish standards governing packaging and labeling of fish products, including use of common names.

S. 1983 (Leahy)

Similar to Glickman bill.

IMPORTS/EXPORTS

Since foreign sources account for about half of all seafood consumed in the United States, any mandatory program would have to pay significant attention to imports, which most of the proposed bills recommend. (Some countries already have stricter safety requirements than the United States; others have virtually none.) Conversely, since the United States is the world's largest fishery exporter, trade-enhancing provisions might be a consideration in designing a new inspection program, some believe. Only one bill (de la Garza) includes export provisions.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Subjects imports to same standards as domestic products. Requires encouragement of "appropriate technical arrangements with foreign nations to ensure mutual acceptance of seafood standards and inspection services." No specific export provisions.

H.R. 3155 (Dingell)

Requires facilities where imported fish products are processed to be inspected at least at the same rate as other facilities. Subjects importers and facilities processing imports to registration requirements. Requires country-of-origin labeling of imported fish and products. No specific export provisions.

H.R. 3481 (Glickman)

Subjects imports to same standards as domestic products. Provides for inspection of foreign facilities and requires certification of foreign inspection programs. No specific export provisions.

H.R. 3508 (de la Garza)

Subjects imports to same standards and requirements as domestic products. Requires Agriculture Secretary to conduct random inspections and sampling of imported seafood products. Requires certification of foreign inspection programs. Includes specific language on compliance and enforcement. Provides for standards for and inspection of U.S. seafood exports.

S. 1245 (Mitchell)

Requires that imports and domestic products be subject to equal inspection requirements, as well as (to the extent practical) arrangements with foreign nations for mutual inspection standards and programs. No specific export provisions.

S. 1983 (Leahy)

Similar to Glickman bill.

FEDERAL-STATE RELATIONSHIPS

Should the U.S. Government have the chief responsibility and authority for seafood inspection, overriding State efforts? Or should State programs, take precedence? How can Federal-State roles be coordinated? Should Federal financial, technical, or other assistance be available to States?

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Requires that new program be consistent with existing State as well as Federal seafood safety programs; specific language discourages Federal preemption. Incorporates existing State systems into fish product monitoring system. No Federal funding/assistance for States.

H.R. 3155 (Dingell)

States generally have responsibility for regulation of shellfish waters. States can be authorized to conduct inspections, with up to 50 percent of cost matched by Federal Government. HHS Secretary also can enter into registration, inspection, and monitoring service agreements, on a reimbursable basis, with States as well as other Federal agencies.

H.R. 3481 (Glickman)

Not specified.

H.R. 3508 (de la Garza)

Requires Secretary to encourage States to establish intrastate programs at least equal to Federal program, making them eligible for Federal funding of up to 50 percent of costs. Federal program would be imposed if State failed to adopt its own program at least equal to Federal program. Permits Secretary to provide technical and financial aid to States developing programs.

S. 1245 (Mitchell)

New inspection program must avoid duplicating existing State as well as Federal efforts. Requires Federal technical, advisory and financial assistance to States that maintain programs consistent with Federal program.

S. 1983 (Leahy)

Similar to de la Garza bill.

ENFORCEMENT/PENALTIES

At issue are what powers Government regulators should be granted to enforce a new program in order for it to be effective. What actions will they be able to take in order to keep unsafe products off the market? What penalties are needed to deter and/or punish violators? The proposed bills take a variety of approaches.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

New program must include enforcement procedures, including product detention and embargo, and enforcement officers with authority to enter and inspect any facility. No specific penalties prescribed.

H.R. 3155 (Dingell)

Authorizes announced and unannounced inspections of facilities. Subjects violators to criminal penalties and to a civil penalty of \$10,000.

H.R. 3481 (Glickman)

Gives inspectors access at all times to every part of an establishment or vessel. Such visits can be unannounced and at random. Adulterated products can be detained and ultimately condemned. Spells out circumstances where an establishment's or vessel's official certificate can be suspended. Authorizes fines of up to \$10,000 for violations, with an automatic 5 percent increase for each subsequent violation, and requires publication of violator's name in Federal Register. Subjects those who intentionally adulterate fish products (a felony) to up to 2 years' imprisonment. Details hearing/appeal procedures for those subjected to adverse actions.

H.R. 3508 (de la Garza)

Inspector powers, including product detention/condemnation, similar to those in Glickman bill. Provides for either revocation or conditional approval of registration where establishments/vessels fail to comply with requirements. Specifies civil penalties of up to \$10,000 per violation and criminal penalties of up to \$10,000, 3 years' imprisonment, or both. Details hearing/appeal procedures for those subjected to adverse actions. Also separately details enforcement procedures for import inspections.

S. 1245 (Mitchell)

Provides for enforcement through unspecified civil and criminal penalties.

S. 1983 (Leahy)

Similar to Glickman bill.

RECORDKEEPING REQUIREMENTS

Adequate records will facilitate efforts to locate sources of any seafood-related health problems. Policy makers will seek to balance the need for such recordkeeping against the additional administrative burdens it might place upon industry and government agencies.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Federal fish product monitoring system must provide "reliable" records including documentation of product origin, transportation and processing; sampling system must include adequate reporting and recordkeeping to trace contamination sources.

H.R. 3155 (Dingell)

Registration procedures contain certain recordkeeping requirements; HHS Secretary given wide discretion in determining additional ones. In addition, Secretary's inspection procedures must include a system for tracing contaminated fish products.

H.R. 3481 (Glickman)

Requires regulations governing the preparation and maintenance of records, which shall be available for public inspection and Secretary's review and copying.

H.R. 3508 (de la Garza)

Establishments and vessels must maintain accurate records covering the receipt, handling, and disposition of seafood, and other relevant matters, and permit the Secretary to review and copy them.

S. 1245 (Mitchell)

Secretary's monitoring and surveillance program must include reporting and recordkeeping requirements that assist in locating sources of contaminated products.

S. 1983 (Leahy)

Similar to Glickman bill.

SEAFOOD HEALTH RISK MONITORING

Curiously, interest in a more aggressive seafood inspection program has outpaced knowledge about the actual risks that fish and shellfish pose. There apparently is considerable disagreement over seafood safety, perhaps in large part due to inadequate statistics on seafood-borne illnesses. Current NAS research might provide a better picture of the problem. Two of the proposed bills would require the establishment of ongoing seafood-specific risk monitoring.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Requires establishment of a Federal monitoring system to provide data on seafood-related health risks.

H.R. 3155 (Dingell)

Requires HHS's Centers for Disease Control to establish an active system for monitoring seafood-related diseases.

H.R. 3481 (Glickman)

No specific provisions.

H.R. 3508 (de la Garza)

No specific provisions.

S. 1245 (Mitchell)

No specific provisions.

S. 1983 (Leahy)

No specific provisions.

RESEARCH AND EDUCATION

Many officials have noted the need for more research on chemical and microbial contaminants, among other questions. Others have cited the need for more consumer education at a time when demand for seafood products is increasing. Public awareness efforts might focus on the risks of eating raw or undercooked shellfish, and how to properly handle and prepare fish and shellfish, which can spoil more readily than other flesh foods, among other things.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Requires establishment of priorities for seafood safety research; design and implementation of national seafood safety education programs.

H.R. 3155 (Dingell)

Permits the HHS Secretary to conduct or fund research and demonstration projects related to seafood safety. Requires Secretary to establish "comprehensive" public education program on proper fish handling and preparation.

H.R. 3481 (Glickman)

Requires Agriculture Secretary to establish priorities for seafood safety research and to design and implement national seafood safety education program.

H.R. 3508 (de la Garza)

No research provisions specified. Requires Agriculture Secretary to design and implement national seafood safety education program.

S. 1245 (Mitchell)

Requires Agriculture Secretary to conduct and support research relating to contaminant testing, fish inspection techniques, and sanitary handling practices. Requires a public education program.

S. 1983 (Leahy)

Similar to Glickman bill.

FUNDING

A more aggressive inspection program would increase the cost of bringing seafood to the consumer. Exact needs are uncertain and will depend upon the ultimate design of the program. Another question is whether taxpayers should bear most of the cost, as they do for meat and poultry inspection, or whether, in light of Federal budget problems, the industry should pay through user fees.

H.R. 1387 (Dorgan)

Not specified.

H.R. 2511 (Studds)

Authorizes \$90 million annually for fiscal years 1990 to 1993.

H.R. 3155 (Dingell)

Not specified.

H.R. 3481 (Glickman)

Authorizes \$75 million annually for fiscal years 1990 to 1993.

H.R. 3508 (de la Garza)

Authorizes "such sums as are necessary...without fiscal year limitation."

S. 1245 (Mitchell)

Authorizes "such sums as are necessary."

S. 1983 (Leahy)

Authorizes \$75 million annually for fiscal years 1990 to 1993.

The Honorable Slade Gorton
United States Senate
730 Hart Senate Office Building
Washington, D.C. 20510

Re: Re-Authorization of the Magnuson Act

April 13, 1990

Dear Senator Gorton:

During the 1989 and early 1990 Magnuson Act re-authorization effort, you were approached with specific recommendations from a fishing industry coalition that included the Alaska Factory Trawlers Association (AFTA), the Fishing Vessel Owners Association (FVOA), the Midwater Trawlers Cooperative (MTC), the Highliners Association, and the North Pacific Fishing Vessel Owners' Association (NPFVOA).

The Alaska Factory Trawlers Association is no longer a member of our Coalition, which now includes the following Associations:

American High Seas Fisheries Association (AHSFA)

Fishing Vessel Owners Association (FVOA)

~~Highliners Association~~

Midwater Trawlers Cooperative (MTC)

~~North Pacific Fishing Vessel Owners' Association (NPFVOA)~~

Pacific Seafood Processors Association (PSPA)

Our new Coalition unanimously supports the following specific concepts:

--- National Standards currently embodied in the Magnuson Act have served the Nation well and must not be changed, modified, or eliminated.

--- Observer programs are unanimously supported by our Coalition and should be funded and operated by the Federal Government; however, if it is deemed necessary that industry must share in the funding, Congress must provide that industry funding requirements be shared equitably by all segments operating in the Exclusive Economic Zone (EEZ).


--- When a Regional Fishery Management Council determines that the status of a fishery requires an allocation, such allocations must be initiated, implemented, and managed by that Management Council and must adhere to the requirements of National Standard (4) of the Act.


If such allocations are determined necessary by the North Pacific Fishery Management Council, we support In-Shore/Off-Shore allocations to the seafood industry at the harvesting segment level and recommend that Congress direct the North Pacific Council to prepare and submit to the Secretary pollock and cod allocations by Fishery Plan Amendment prior to December 31, 1990.


Plan amendments for other groundfish species determined by the North Pacific Council to require In-Shore/Off-Shore allocations must be prepared and submitted to the Secretary prior to December 31, 1991.


--- Our individual organizational preferences for the specific membership structure of the North Pacific Council range from support for the status quo of the current structure to supporting two additional Washington seats and one Oregon seat.

With warm personal regards


American High Seas
Fisheries Assn.


Fishing Vessel Owners
Association


Midwater Trawlers
Cooperative


Pacific Seafood
Processors Assn.