


MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: November 19, 1990

SUBJECT: Legislative Update

ACTION REQUIRED

Information only.

Magnuson Act Reauthorization

On October 27, 1990, Congress approved the Fishery Conservation Amendments of 1990 which reauthorized the Magnuson Act for three years. Included in the amendments were many of the House and Senate proposals reported to you previously. An updated summary of the approved amendment package is provided as item C-1(a). The summary presents those proposals of particular interest to the North Pacific Council submitted by the House and Senate and the final conclusion. A copy of the amendment package and transcripts of the House discussion as published in the congressional record is provided as item C-1(b).

The Council had been working closely with representatives of Congress, NMFS, and other Councils in the development of many of these amendments. The North Pacific Fisheries Research Plan which authorizes the establishment of both a comprehensive observer program and a user-fee program will be vital elements of our management plan now and in the foreseeable future. A prohibition of high seas driftnet fishing, and increases in civil penalties were high priority with this Council and approved. Congress's last minute completion of these amendments can only be viewed as a success.

Seafood Inspection

In September I reported that the Senate Committee on Agriculture, Nutrition, and Forestry seafood inspection bill had been completed, approved by the full Senate, and forwarded to the House for review. On October 26 the House approved its own version of the bill, and Congress eventually adjourned before differences could be reconciled. As a result this legislation effort is over, and new bills must be re-introduced in the next Congress if work on this issue is to continue next year.

Review of Magnuson Act Amendments of 1990
as they apply to the North Pacific Region

Magnuson Act Findings

Both the House and Senate proposed adding a new finding that scientific data collection is essential to effective conservation and management. **This amendment was approved.**

Magnuson Act Purposes

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 proposed changing the thrust of this purpose by exempting only tuna from U.S. management, rather than all highly migratory species. **The final amendment eliminated the exemption clause (underlined above) so that all migratory species in the EEZ are now included under the Act.**

The second purpose is to encourage international fishery agreements on highly migratory species. The House proposed changing this purpose by adding swordfish and billfish to the highly migratory species requiring international management programs and agreements. **This change was not included in the final amendment.**

The Senate proposed modifying the purpose of the Councils which stated they were to "prepare, monitor, and revise" FMPs. This wording is to be replaced with "exercise sound judgement in the stewardship of fishery resources through the preparation, monitoring and revision" of FMPs. **This change was approved.**

Magnuson Act Policy

Both House and Senate approved expanding 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. **This change was approved.**

Both House and Senate proposed adding a policy to achieve an international ban on driftnets beyond the EEZ. **The approved policy now only cites the need to secure agreements to regulate fishing by vessels or persons beyond the EEZ of any nation.** However, strong policy statements against driftnet fishing are added under new Section 206: Large-scale Driftnet Fishing.

The Senate proposed adding another policy (#6) [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. **Only the bracketed language was approved.**

Definitions

Both House and Senate proposed definitions of "driftnets" and "waters of a foreign nation". **These definitions were approved.** Both proposed a definition of "migratory range", however the House referred to any species, and the Senate just to anadromous species. **The Senate version was approved.**

The Senate proposed deleting highly migratory species from the term "fish" (**accepted**) and foreign fisheries for tuna from the term "fishing" (**not accepted**). The Senate proposed changing 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. **These definitions were accepted.**

Senate proposed adding 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. **This definition was approved.**

Management of Highly Migratory Species

House proposed repealing 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 proposed dropping the exemption of tuna from U.S. authority but mandating the U.S. to cooperate with other nations in managing highly migratory species both within and beyond the EEZ. **The final amendment now includes tuna under the Act and this section was revised to state that the U.S. shall cooperate with other nations involved in fisheries for highly migratory species (as redefined above) to ensure their conservation both within and beyond the EEZ. This amendment becomes effective on January 1, 1992.**

TALFF

Both houses of Congress proposed replacing the complicated TALFF formulas with simpler language that TALFF shall be that portion of OY in excess of U.S. harvesting needs. **This change was approved.**

International Fishery Agreements

House proposed adding swordfish and billfish to anadromous and highly migratory species for which the Secretary of State will negotiate international conservation and management agreements. **This change was not approved.**

Senate proposed adding a lengthy section directing the Secretary of State to cooperate with the Secretary 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. **This change was approved. In addition, this section was further amended to initiate negotiations for extending the South Pacific Tuna Treaty.**

Foreign Fishing Permits

House and Senate proposed requiring the Secretary to consult with the Secretary of State in setting foreign fees. **The House also required consultation with the Councils in setting fees. The Senate did not propose this requirement. 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. **The final amendment included all of the above changes with the exception of the House proposal requiring Secretarial consultation with the Councils in setting fees.**

International Ban on Large-Scale Driftnet Fishing

House and Senate proposed directing the Secretary of State to secure an international ban or moratorium on driftnets beyond the EEZ. Both required a progress report to Congress. The Senate proposal also required 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.

The final amendment is very comprehensive and contains seven findings and three policy statements. It directs the Secretary of Commerce to seek to secure international agreements for an international ban on large-scale driftnet fishing. The agreement will encompass all driftnet vessels, require transponders, observers, and right to board, catch reporting, time and area restrictions, biodegradable nets, markers on nets, minimization of bycatch and impacts on existing fisheries or the long-term health of living marine resources, and steps to ensure international compliance. A progress report is required no later than January 1, 1991 and every year thereafter. Certification under the Fishermen's Protective Act of 1967 is also included.

Also, please see the new provision on certification of legal origin for anadromous fish products described at the end of this summary.

North Pacific Council Composition

The House proposed adding one new Council member from Oregon and one from Washington. **This change was not approved.**

Council Member Qualifications

Both houses of Congress proposed tightening 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 also required an annual report starting January 31, 1991 on actions taken to ensure fair representation. **All of these changes were approved.**

Council Member Terms

House proposed limiting terms to two consecutive terms for members appointed after January 1, 1986. The Senate proposed limiting terms to three previous terms for appointments or reappointments after January 1, 1991. **The final amendment limits terms to three consecutive terms for members appointed after January 1, 1986. Any term completed before that date does not count toward the limit.**

Council Member Compensation

House proposed reducing daily compensation to \$200 for members appointed or reappointed after January 1, 1991. The Senate did not propose any change. **The approved change will reduce member compensation from the GS-18 to the GS-16 pay level effective January 1, 1992.**

Staff Travel Reimbursement

Both houses of Congress proposed allowing staff members to be reimbursed for actual expenses. **This amendment was approved.**

Council Meeting Location

Both houses of Congress proposed allowing Councils to meet in any of the constituent states. **This amendment was approved.**

Regional Director Minority Statement

The houses of Congress proposed requiring the NMFS Regional Director to submit a minority report if he disagrees with any matter submitted to the Secretary by a Council. **This amendment was approved.**

Advisory Committees

Both houses of Congress proposed limiting decisions and recommendations of advisory committees to being advisory only. The House bill mandated each Council to establish industry advisory panels. **These changes were approved.**

Fishery Habitat Concerns

Both houses of Congress proposed augmenting 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. Both the House and Senate bills compel a Council to comment concerning any such activity. **All of these changes were included in the final amendment.**

Notice Requirements for Closed Meetings

Both houses proposed requirements for Councils to notify newspapers of closed meetings. **This requirement was approved.**

Opportunity for Public Comment on New Information

Both houses proposed mandating 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. **This change was approved.**

Testifying under Oath

The Senate proposed requiring 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. **This change was not included in the final amendment.**

Required Provisions of Plans

The Senate proposed a requirement that FMPs prevent overfishing, and protect, restore, and promote the long-term health and stability of the fishery. It also required that conservation and management measures in plans be consistent with regulations implementing recommendations by international organizations to which the U.S. is party. **These changes were approved.**

Both House and Senate bills mandated that the Councils 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. **This change was approved.**

Both houses proposed requirements that 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. **This change was approved.**

The Senate bill required plans and amendments submitted after January 1, 1992 to include a fishery impact statement on commercial fisheries. **This change was approved with a date change to October 1, 1990, and the addition of an analysis of impacts on participants in fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.**

Discretionary Provisions of Plans

Both houses proposed adding 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. **These changes were approved, however a waiver from carrying an observer is allowed if the vessel has unfit quarters or is unsafe with an observer.**

Confidentiality of Data

Both houses of Congress proposed granting state employees access to confidential data. **This amendment was approved. Also approved is access to confidential data by Council members, if such access is approved by the Secretary and the data collection was required by an FMP provision.**

Restriction on Use of Certain Data

This is a new section included in the final amendment. This section requires the Secretary to restrict the use of observer data in enforcement or criminal proceedings if the placement of the observer on the vessel was voluntary.

Fisheries Research

The Senate proposed a requirement that within one year following enactment of the amendments, and at least every three years thereafter, the Secretary prepare a 5-year strategic plan for fisheries research. The research would be designed to support fishery conservation and management, including biological and economic studies; conservation engineering research, including the study of fish behavior and new gear technology; and information management research. **This amendment was approved.**

Multi-Council Fisheries Management

The Senate bill proposed adding extensive provisions on inter-Council management of highly migratory species. It establishes a 5-Council working group on the east coast. **These changes were included in the final amendment.**

Temporary Moratorium

The Senate proposed a provision whereby the Secretary can establish a temporary moratorium if he determines that overfishing is likely to occur as a result of fishing by vessels in addition to those that have participated substantially in the fishery during the 3-year period immediately preceding such determination. The Secretary may establish a moratorium that prohibits participation in the fishery by vessels during such 3-year period. The effective date would be the date that is 9 months after publication in the Federal Register of such plan or the date the plan is approved by the Council, whichever comes first. The moratorium would expire in 18 months unless extended for an additional 18 months, or earlier by Secretarial action. **This amendment was not approved.**

Judicial Review

Both houses proposed extending 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 houses proposed requiring the Secretary to respond to the petition within 30 days and for the courts to expedite hearings on the matter. **These changes were approved, except that the Secretary's response time was increased to 45 days.**

Regional Directors and Emergency Actions

The House proposed requiring the Secretary to promulgate emergency regulations upon unanimous request of the Council even if the Regional Director voted "no" or abstained. **This change was not approved.**

Foreign Processing in Internal Waters

Both houses proposed requiring the species of interest to be identified in internal joint venture processing permit applications. Both houses required 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. **These changes were approved.**

Prohibited Acts

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

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. **The Senate version was approved.**

Civil Penalties

Both houses proposed increasing maximum civil penalties to \$100,000 (from \$25,000). **This change was approved.**

Permit Sanctions

Both houses of Congress proposed allowing the Secretary to revoke, suspend, deny or condition permits of violators. Transfer of the vessel permit does not extinguish the sanction. The House bill also required the person transferring the permit to disclose the presence and type of sanctions to the person receiving the permit. **The House version was approved.**

Punishment for Criminal Offenses

The Senate proposed increasing 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. **These changes were approved.**

Anadromous Species Rebuttable Presumption

The House proposed 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 proposed similar language but refers to any species, not just anadromous species, and allows for consideration of seasonal changes in the migratory range. **The Senate version was approved.**

Payment of Storage, Care, and Other Costs

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 houses of Congress proposed expanding these provisions to include violations and fines of any other fishery resource law including the Lacey Act amendments. **These changes were approved.**

North Pacific Fisheries Research Plan

The House bill included this new provision for the North Pacific Council to establish an observer program and support it by fees collected from industry. The Senate bill proposed a similar plan. Their version included a cap on the amount of fees authorized for an observer program (1% of the value of fish and shellfish harvested, including halibut) and a requirement that all harvesters and processors participate in the user-fee program regardless of whether an observer is present. The Secretary would also be directed to review the feasibility of establishing a risk-sharing pool for vessels and owners and the availability of commercial insurance to provide coverage against liability from civil suits. **The Senate version was approved.** (The provisions of the plan are detailed in item C-3(b)).

Special Provisions Regarding Observers

Both houses proposed restricting 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. **(These changes were not approved.)** Both houses proposed exempting 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. **This change was approved as noted earlier under new discretionary provisions of an FMP.**

Authorization of Appropriations (\$ millions)

<u>FY</u>	<u>House Proposal</u>	<u>Senate Proposal</u>	<u>Final</u>
1990	75	76	77.2
1991	76	94 (\$6.5 for enforcement, \$5 for research)	94
1992	77	98	98
1993	78	102	102
1994	--	107	---
1995	--	111	---

Other House Items

The House bill had additional items on:

- Atlantic Tuna 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 had additional items on:

- Approval of GIFA with German Democratic Republic
- 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.

The final amendment included the following additional items:

- Incidental Harvest Research in the Gulf of Mexico Shrimp Trawl Fishery
- Atlantic Sea Scallop FMP
- Atlantic Tuna Convention
- Fishermen's Protective Act
- Authorization for Anadromous Fish Conservation Act, Interjurisdictional Fisheries Act of 1986, and Central, Western, and South Pacific Fisheries Development Act
- National Fish and Seafood Promotional Council
- Dolphin Protection Consumer Information Act
- Report on Marine Mammals off the Coast of Washington State
- Approval of commission's revised name, Pacific States Marine Fisheries Commission

Also included is a new Section 801 -- Certificate of Legal Origin for Anadromous Fish Products.

Within 60 days the Secretary of State is directed to commence negotiations with nations that import or export anadromous fish or fish products to implement measures to prohibit international trade of such products unless they are certified as being lawfully harvested. The provisions are detailed on page H12398 of the attached Federal Register notice.

October 27, 1990

H 12390

CONGRESSIONAL RECORD — HOUSE

The family of Terry Anderson, including his sister Peggy Say and brother-in-law David Say, of Cadiz, KY, ask that our Federal Government continue to do all it can to secure the release of Terry Anderson as soon as possible.

Mr. DORNAN of California. Mr. Speaker, will the gentleman yield?

Mr. HUBBARD. I yield to the gentleman from California.

Mr. DORNAN of California. Mr. Speaker, World War II for this country was 3 years and 8 months. This is Terry Anderson's sixth birthday; it is the middle of his sixth year in captivity. He was taken on March 16, and on June 9, 5 years ago, Tom Sutherland was taken. There are still six Americans there. There are several hundred in Iraq. I would hope that the Federal executive branch would do just what the gentleman from Kentucky (Mr. HUBBARD) said. Once Aoun was out of power, and Syria had it all, they were supposed to do something to get the six Americans out.

Mr. Speaker, I thank the gentleman from Kentucky (Mr. HUBBARD) for yielding.

FISHERY CONSERVATION
AMENDMENTS OF 1990

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the House amendment to the Senate amendment to the bill (H.R. 2061) to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1993, and for other purposes.

The Clerk read as follows:

Senate amendment to House amendment to Senate amendment:

In lieu of the matter proposed to be inserted by the House amendment to the Senate amendment to the text of the bill, insert:

SHORT TITLE TABLE OF CONTENTS

SECTION 1. (a) SHORT TITLE.—The Act may be cited as the "Fishery Conservation Amendments of 1990".

(b) TABLE OF CONTENTS.—

SECTION 1. Short title; table of contents.

TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

- Sec. 101. Findings, purposes, and policy.
- Sec. 102. Definitions.
- Sec. 103. Authority with respect to highly migratory species.
- Sec. 104. Foreign fishing.
- Sec. 105. Existing international fishery agreements.
- Sec. 106. Permits for foreign fishing.
- Sec. 107. Driftnet fishing.
- Sec. 108. Regional Councils.
- Sec. 109. Contents of fishery management plans.
- Sec. 110. Action by Secretary on fishery management plans.
- Sec. 111. Implementation of fishery management plans.
- Sec. 112. State jurisdiction.
- Sec. 113. Prohibition of certain acts.
- Sec. 114. Civil penalties and permit sanctions.
- Sec. 115. Criminal offenses and penalties.
- Sec. 116. Criminal forfeitures.
- Sec. 117. Enforcement.

Sec. 118. North Pacific fisheries research plan.

Sec. 119. Authorization of appropriations.

Sec. 120. Miscellaneous technical amendments.

TITLE II—ATLANTIC TUNAS CONVENTION ACT OF 1975

Sec. 201. Limitations on appointments of Commissioners.

Sec. 202. Termination of current terms and completion of pending appointments.

Sec. 203. Travel expenses of Commissioners.

Sec. 204. Travel expenses of advisory committee.

Sec. 205. Species working groups.

Sec. 206. Regulations to carry out Commission recommendations.

Sec. 207. Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish.

Sec. 208. Authorization of appropriations.
TITLE III—FISHERMEN'S PROTECTIVE ACT OF 1967

Sec. 301. Vessel seizure reimbursement authority.

TITLE IV—ANADROMOUS FISH CONSERVATION ACT

Sec. 401. Authorization of appropriations.

TITLE V—INTERJURISDICTIONAL FISHERIES ACT OF 1986

Sec. 501. Clarification of appointment limitation.

Sec. 502. Federal share of activities carried out with additional appropriations.

Sec. 503. Authorization of appropriations.
TITLE VI—CENTRAL WESTERN AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT

Sec. 601. Authorization of appropriations.
TITLE VII—NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL

Sec. 701. Extension of termination date.

Sec. 702. Authorization of appropriations.

Sec. 703. Transfer of Saltonstall-Kennedy funds.

Sec. 704. Continuity of National Council membership.

Sec. 705. Continuity of Council functions, contracts, and personnel.

TITLE VIII—MISCELLANEOUS

Sec. 801. Certificate of legal origin for anadromous fish products.

TITLE IX—DOLPHIN PROTECTION CONSUMER INFORMATION

Sec. 901. Dolphin protection.

TITLE X—FISHERIES COMMISSION

Sec. 1001. Redesignation of Fisheries Commission.

TITLE XI—REPORT ON MARINE MAMMALS

Sec. 1101. Report on certain marine mammal populations.

TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

FINDINGS, PURPOSES, AND POLICY

Sec. 101. (a) FINDINGS.—Section 2(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(a)) is amended by adding at the end the following new paragraph:

"(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States."

(b) PURPOSES.—(1) Section 2(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(1)) is amended by striking "except highly migratory species".

(2) Section 2(b)(5) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(5)) is amended by striking "prepare, monitor, and revise" and inserting

in lieu thereof "exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of".

(c) POLICY.—Section 2(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(c)) is amended—

(1) in paragraph (3) by inserting "considers the effects of fishing on immature fish and encourages development of practical measures that avoid unnecessary waste of fish;" immediately after "and enforcement;"

(2) by striking "and" at the end of paragraph (4);

(3) by striking the period at the end of paragraph (5) and inserting in lieu thereof ", and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation; and"; and

(4) by adding at the end the following new paragraph:

"(6) to foster and maintain the diversity of fisheries in the United States."

DEFINITIONS

Sec. 102. (a) GENERAL.—Section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802) is amended—

(1) by redesignating paragraphs (16) as paragraph (17), by redesignating paragraph (17) as paragraph (19), by redesignating paragraphs (18) through (23) as paragraphs (21) through (26), respectively, and by redesignating paragraphs (24) through (27) as paragraphs (28) through (31), respectively;

(2) in paragraph (7), by striking ", birds, and highly migratory species" and inserting in lieu thereof "and birds";

(3) by amending paragraph (14) to read as follows:

"(14) The term 'highly migratory species' means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).";

(4) by inserting immediately after paragraph (15) the following new paragraph:

"(16) The term 'large-scale driftnet fishing' means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, 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.";

(5) by inserting immediately after paragraph (17), as so redesignated, the following new paragraph:

"(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, 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.";

(6) by inserting immediately after paragraph (19), as so redesignated, the following new paragraph:

"(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.";

(7) by inserting immediately after paragraph (26), as so redesignated, the following new paragraph:

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

- "Albacore Tuna—*Thunnus alalunga*;
- "Bigeye Tuna—*Thunnus obesus*;
- "Bluefish Tuna—*Thunnus thynnus*;
- "Skipjack Tuna—*Katsuwonus pelamis*;

"Yellowfin Tuna—*Thunnus albacares*," and

(8) by adding at the end the following new paragraph:

"(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."

(b) **CONFORMING AMENDMENT.**—Section 101(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(b)(1)) is amended by striking "any foreign nation's" and all that follows and inserting in lieu thereof "any waters of a foreign nation."

AUTHORITY WITH RESPECT TO HIGHLY MIGRATORY SPECIES

Sec. 103. (a) GENERAL.—Section 102 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1812) is amended to read as follows:

"**SEC. 102. HIGHLY MIGRATORY 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."

(b) **CONFORMING AMENDMENT.**—The entry for section 102 in the table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"Sec. 102. Highly migratory species."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 1992.

FOREIGN FISHING

Sec. 104. Subsection (d) of section 201 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) is amended to read as follows:

"(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."

INTERNATIONAL FISHERY AGREEMENTS

Sec. 105. (a) HIGHLY MIGRATORY SPECIES AGREEMENTS.—Section 202 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822) is amended by redesignating subsection (e) as subsection (f) and by inserting immediately after subsection (d) the following new subsection:

"(e) **HIGHLY MIGRATORY SPECIES AGREEMENTS.**—

"(1) **EVALUATION.**—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery 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, the catch and bycatch levels in the fishery, 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 (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

"(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) **ACCESS NEGOTIATIONS.**—The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

"(3) **REPORTS.**—The Secretary of State shall report to the Congress—

"(A) within 12 months after the date of enactment of this subsection, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and

"(B) within six months after such date of enactment, on the results of the access negotiations required under paragraph (2).

"(4) **NEGOTIATION.**—The Secretary of State, in consultation with the Secretary, 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).

"(5) **SOUTH PACIFIC TUNA TREATY.**—It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government."

(b) **DETERMINATIONS OF THE SECRETARY OF STATE.**—(1) Section 205(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1825(a)) is amended—

(1) in paragraph (1) by striking "traditional" and by inserting "including fisheries for tuna species," immediately after "authority,"; and

(2) in paragraph (2) by striking "highly migratory" and inserting in lieu thereof "tuna".

(2) The amendments made by this subsection shall take effect on January 1, 1992.

PERMITS FOR FOREIGN FISHING

Sec. 106. (a) FEES.—Section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(10)) is amended to read as follows:

"(10) **FEES.**—

"(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminately to each foreign nation.

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

(b) **SANCTIONS.**—Section 204(b)(12) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(12)) is repealed.

DRIFTNET FISHING

Sec. 107. (a) GENERAL.—Section 206 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1826) is amended to read as follows:

"**SEC. 206. LARGE-SCALE DRIFTNET FISHING.**

"(a) **SHORT TITLE.**—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the 'Driftnet Act Amendments of 1990'."

"(b) **FINDINGS.**—The Congress finds that—

"(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world's oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

"(2) the use of large-scale driftnets is expanding into new regions of the world's oceans, including the Atlantic Ocean and Caribbean Sea;

"(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

"(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

"(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

"(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

"(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

(c) **POLICY.**—It is declared to be the policy of the Congress in this section that the United States should—

"(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

"(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and

"(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(d) **INTERNATIONAL AGREEMENTS.**—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international loan on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agree-

ment which addresses the taking of living marine resources of the United States, provisions to ensure that—

"(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessel that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

"(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

"(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

"(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

"(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

"(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

"(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

"(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

"(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

"(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

"(c) REPORT.—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, 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 carry out the provisions of this section, particularly subsection (c);

"(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

"(3) identifying and evaluating the effectiveness of unilateral measures and multi-

lateral measures, including sanctions, that are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those 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 fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;

"(5) containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

"(6) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

"(f) CERTIFICATION.—If at any time the Secretary, in consultation with the Secretary of State 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 (e)(6), the Secretary 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)).

"(g) EFFECT ON SOVEREIGN RIGHTS.—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this Act or other existing law.

"(h) DEFINITION.—As used in this section, the term 'living marine resources' includes fish, marine mammals, sea turtles, and seabirds and other waterfowl."

(b) CONFORMING AMENDMENT.—The entry for section 206 in the table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"SEC. 206. LARGE-SCALE DRIFTNET FISHING."

REGIONAL COUNCILS

Sec. 108. (a) AUTHORITY OVER CERTAIN FISHERIES.—Section 302(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(a)) is amended by inserting "(except as provided in section 304(f)(3))" immediately before the period at the end of the first sentence in each of paragraphs (1) through (5).

(b) MEMBERS QUALIFICATIONS.—Paragraph (2) of section 302(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(b)) is amended to read as follows:

"(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

"(B) The Secretary, in making appointments under this section, shall, to the

extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the 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 and balanced apportionment 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) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

"(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

"(c) 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 determined that each such individual is qualified under the requirements of subparagraph (A) and 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 and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). 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 such requirements. If the Secretary determines that any individual is not qualified, the Secretary 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).

"(d) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council."

(e) LIMITATION ON TERMS OR VOTING MEMBERS.—Section 302(b)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(b)(3)) is amended by adding at the end the following new sentences: "No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term completed prior to January 1, 1986, shall not be counted in determining the number of consecutive terms served by any Council member."

(d) COMPENSATION AND EXPENSES.—Section 302(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(d)) is amended to read as follows:

"(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, until January 1, 1992, receive compensation at the daily rate for GS-18 of the General Schedule, and after December 31, 1991, at the daily rate for GS-16 of the General Schedule, when engaged in the actual performance of duties for such Council. 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."

(e) **TRANSACTION OF BUSINESS.**—(1) Section 302(e)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(e)(3)) is amended by striking "in the geographical area concerned" and inserting in lieu thereof "at appropriate times and places in any of the constituent States of the Council".

(2) Section 302(e)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(e)(4)) is amended by adding at the end the following new sentence: "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 manner."

(f) **COMMITTEES AND PANELS.**—Section 302(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(g)) is amended by adding at the end the following new paragraph:

"(3)(A) Each Council shall establish and maintain a 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 geographic areas 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."

(g) **COUNCIL FUNCTIONS.**—Paragraphs (1) and (5) of section 302(h) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(h)) are each amended by inserting "(except as provided in section 304(f)(3))" immediately before "within its geographical".

(h) **FISHERY HABITAT CONCERNS.**—Section 392(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(d)) is amended to read as follows:

"(1) **FISHERY HABITAT CONCERNS.**—(1) Each Council—

"(A) may comment on and 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 comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction.

"(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 on such habitat."

(i) **CLOSED MEETINGS.**—Section 302(j)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking the semicolon at the end of clause (ii) and all that follows through "time and place of the meeting;" and inserting in lieu thereof a period; and

(B) by inserting "of paragraph (2)" immediately after "(D) and (F)"; and

(2) by adding at the end the following new subparagraph:

"(B) If any meeting or portion 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."

(j) **CONSIDERATION OF NEW INFORMATION.**—Section 302(j) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)) is amended by adding at the end the following new paragraph:

"(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council 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) **INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.**—Notwithstanding the amendments made by subsections (a) and (g), any fishery management plan or amendment which—

(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act) applies,

(2) was prepared by one or more Regional Fishery Management Councils, and

(3) was in force and effect on January 1, 1990, shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.

CONTENTS OF FISHERY MANAGEMENT PLANS

SEC. 109. (a) **REQUIRED DATA COLLECTION AND GEAR.**—Section 303(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(a)) is amended—

(1) in paragraph (1)(A) by inserting ", to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery" immediately before the semicolon at the end;

(2) in paragraph (1)(C) by inserting "regulations implementing recommendations by international organizations in which the United States participates (including, but not limited to closed areas, quotas, and size limits)," immediately after "this Act";

(3) by amending paragraph (6) to read as follows:

"(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; except that the adjustment shall not

adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;"

(4) by striking the period at the end of paragraph (7) and inserting in lieu thereof a semicolon; and

(5) by adding at the end the following new paragraph:

"(8) In the case of a fishery management plan that, after January 1, 1992, 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 for effective implementation of the plan; and

"(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on—

"(A) participants in the fisheries affected by the plan or amendment; and

"(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants."

(b) **DISCRETIONARY PROVISIONS.**—(1) Paragraph (1) of section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended to read as follows:

"(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

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

(2) Section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended by redesignating paragraphs (2) and (8) as paragraphs (9) and (10), respectively, and by inserting immediately after paragraph (8) the following new paragraph:

"(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

"(8) require that observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the 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."

(c) **CONFIDENTIALITY OF STATISTICS.**—Section 303(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)) is amended—

(1) in the matter preceding paragraph (1) by striking "subsection (a)(5)" and inserting in lieu thereof "subsections (a) and (b)";

(2) by striking "or" at the end of paragraph (1);

(3) by redesignating paragraph (2) as paragraph (3);

(4) by inserting immediately after paragraph (1) the following new paragraph:

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

(5) by adding at the end the following new sentence: "Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b)."

(d) **USE OF CERTAIN DATA.**—Section 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853) is further amended by adding at the end the following new subsection:

"(f) **RESTRICTION ON USE OF CERTAIN DATA.**—The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), or the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

ACTION BY SECRETARY ON FISHERY MANAGEMENT PLANS

SEC. 110. (a) FISHERIES RESEARCH.

Subsection (e) of section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended to read as follows:

"(e) **FISHERIES RESEARCH.**—(1) Within one year after the date of enactment of the Fishery Conservation Amendments of 1990, and at least every three years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

"(A) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in paragraph (2); and

"(B) indicate the goals and timetables for the program described in subparagraph (A); and

"(C) provide a role for affected commercial fishermen in such research, including involvement in field testing.

"(2) The areas of research referred to in paragraph (1) are as follows:

"(A) Research to support fishery conservation and management, including research on the economics of fisheries and biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

"(B) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize the harvest of nontarget species and promote efficient harvest of target species.

"(C) Information management research, including the development of a fishery information base and an information management system that will permit the full use of data in the support of effective fishery conservation and management.

"(3) In developing the plan required under paragraph (1), the Secretary shall consult with relevant Federal agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment

on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives."

(b) **MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.**—(1) Section 304(f) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(f)) is amended—

(A) by striking "MISCELLANEOUS DUTES" and inserting in lieu thereof "FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL";

(B) in paragraph (1) by striking "If" and inserting in lieu thereof "Except as provided in paragraph (3), if"; and

(C) by adding at the end the following new paragraph:

"(3XA) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

"(B) in accordance with the provisions of this Act and any other applicable law, the Secretary shall—

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

"(ii) prepare and amend fishery management plans with respect to highly migratory species fisheries to which this paragraph applies; and

"(iii) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), international fishery management measures with respect to fishing for highly migratory species.

"(C) In preparing or amending any fishery management plan under this paragraph, the Secretary shall—

"(i) conduct public hearings, at appropriate times and in appropriate locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan;

"(ii) consult with and consider the comments and views of commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species;

"(iii) consult with and consider the comments and views of affected Councils;

"(iv) evaluate the likely effects, if any, of conservation and management measures on participants in the fisheries affected by the plan and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors; and

"(v) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measure included in the plan.

"(D) Conservation and management measures contained in any fishery management plan under this paragraph shall—

"(i) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

"(ii) be fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose; and

"(iii) promote international conservation.

"(E) With respect to a highly migratory species for which the United States is authorized to harvest an allocation or quota under a relevant international fishery agreement, the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota.

"(F) In implementing the provisions of this paragraph, the Secretary shall consult with—

"(i) the Secretary of State;

"(ii) commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

"(iii) appropriate Councils."

(2) Section "305(a)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(a)(3)), as redesignated by section 111(a)(1) of this Act, is amended by inserting "or (f)(3)" immediately after "304(c)".

(c) **INCIDENTAL HARVEST RESEARCH.**—Section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended by adding at the end the following new subsection:

"(g) **INCIDENTAL HARVEST RESEARCH.**—(1) Within 9 months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, after consultation with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, establish by regulation a 3-year program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils.

"(2) The program established pursuant to paragraph (1) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

"(3) For stocks of fish identified pursuant to paragraph (2), with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

"(A) a program to collect and evaluate data on the nature and extent (including the spatial and temporal distribution) or incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

"(B) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

"(C) a program of data collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

"(4) The Secretary shall, in cooperation with affected interests, commence a program to design, and evaluate the efficacy of, technological devices and other changes in fishing technology for the reduction of incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing activity. Such program shall take into account local conditions and include evaluation of any reduction in incidental mortality, as well as any reduction or increase in the retention of shrimp in the course of normal fishing activity.

"(5) The Secretary shall, upon completion of the programs required by this subsection,

submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

"(6XA) Except as provided in this paragraph, the Secretary may not implement any measures under this Act to reduce incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing which shrimp are harvested or would require the use of any technological device or other change in fishing technology.

"(B) The prohibition contained in subparagraph (A) shall cease on January 1, 1994.

"(C) This paragraph does not apply to any law or regulation in effect on the date of enactment of this paragraph, nor does it limit in any way the Secretary's authority to take action, including any limitation on entry permitted by this Act, for the conservation and management of the shrimp fishery resource."

(d) ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN.—(1) The New England Fishery Management Council may submit to the Secretary of Commerce an amendment to the Atlantic Sea Scallop Fishery Management Plan. Any amendment submitted under this section shall—

(A) contain measures providing for the conservation and management of Atlantic sea scallops, that are not based primarily on the scallop meat count by which may include controls on scallop harvesting effort; and

(B) consider the views of fishermen and fish processors involved in the Atlantic sea scallop fishery.

(2) If no amendment is submitted under paragraph (1) before one year after the date of enactment of this Act, the Secretary of Commerce is encouraged to prepare the amendment described in paragraph (1) under section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854).

IMPLEMENTATION OF FISHERY MANAGEMENT PLANS

SEC. 111. (a) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855) is amended—

(A) by redesignating subsections (c), (d), and (e) as subsections (a), (b), and (c), respectively; and

(B) by redesignating subsections (g) and (h) as subsections (d) and (e), respectively.

(2) Section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended—

(A) in subsection (b)(1) by striking "305(c)" in the first sentence and inserting in lieu thereof "305(a)";

(B) in subsection (b)(3)(D) by striking "305(c)" and inserting in lieu thereof "305(a)"; and

(C) in subsection (c)(2)(B) by striking "305(c)" and inserting in lieu thereof "305(a)".

(b) JUDICIAL REVIEW OF CERTAIN IMPLEMENTING ACTIONS.—Section 305(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(b)), as redesignated by subsection (a)(1)(A), is amended to read as follows:

"(b) JUDICIAL REVIEW.—(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—

"(A) section 705 of such title is not applicable, and

"(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 but not limited to 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 45 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."

STATE JURISDICTION

SEC. 112. Section 306(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(c)) is amended—

(1) in paragraph (1)(B) by inserting "and the application specifies the species to be processed" before the period at the end; and

(2) by striking paragraph (2) and inserting in lieu thereof the following:

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

(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 Council and Marine Fisheries Commission, and

"(ii) considering any comment 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."

PROHIBITION OF CERTAIN ACTS

SEC. 113. (a) PROHIBITIONS WITH RESPECT TO THEFT, ASSAULT, AND LARGE-SCALE DRIFTFISHER FISHING.—Section 307(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857(1)) is amended—

(1) by striking "or" at the end of subparagraph (I);

(2) by striking the period at the end of subparagraph (J) and inserting in lieu thereof a semicolon; and

(3) by adding at the end of the following new subparagraph:

"(K) to knowingly steal, or without authorization, to remove, damage, or taper with—

"(i) fishing gear owned by another person, which is located in the exclusive economic zone, or

"(ii) fish contained in such fishing gear, or to attempt to do so;

"(L) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any observer on a vessel under this Act;

"(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation; or

"(N) to strip pollock of its roe and discard the flesh of the pollock."

(b) VIOLATION OF INTERNATIONAL FISHERY AGREEMENT.—Section 307 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

(1) in paragraph (3) by striking "; and" and inserting in lieu thereof a semicolon;

(2) in paragraph (4) by striking the period at the end and inserting in lieu thereof "; and;" and

(3) by adding at the end the following new paragraph:

"(5) for any vessel of the United States, and for the owner or operator of any 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 in the manner described in 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."

CIVIL PENALTIES AND PERMIT SANCTIONS

SEC. 114. (a) INCREASED PENALTY; PERMIT SANCTIONS.—Section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858) is amended—

(1) in the section heading by inserting "AND PERMIT SANCTIONS" immediately after "CIVIL PENALTIES";

(2) in subsection (a) by striking "\$25,000" in the second sentence and inserting in lieu thereof "\$100,000"; and

(3) by adding at the end the following:

"(g) PERMIT SANCTIONS.—(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, or (C) any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any fishery resource law statute enforced by the Secretary has not been paid and is overdue, the Secretary may—

"(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

"(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(iii) deny such permit;

"(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person 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 of ownership. 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.

"(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 the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

"(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."

(b) **CONFORMING AMENDMENT.**—The entry for section 308 in the table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended to read as follows:

"Sec. 308. Civil penalties and permit sanctions."

CRIMINAL OFFENSES AND PENALTIES

Sec. 115. (a) **OFFENSES.**—Paragraph (1) of section 309(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1859(a)) is amended to read as follows:

"(1) section 307(1) (D), (E), (F), (H), (I), or (L); or"

(b) **PUNISHMENT.**—Section 309(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1859(b)) is amended—

(1) by striking "\$50,000" and inserting in lieu thereof "100,000";

(2) by striking "\$100,000" each place it appears and inserting in lieu thereof "\$200,000";

(3) by inserting "any observer described in section 307(1)(L) or" immediately after "injury to"; and

(4) by inserting "observer or" immediately before "officer in fear".

CIVIL FORFEITURES

Sec. 116. Section 310(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1860(e)) is amended—

(1) by inserting "(1)" immediately before "For purposes"; and

(2) by adding at the end the following: "(2) For purposes of this Act, it shall be 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 vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies."

ENFORCEMENT

Sec. 117. Section 311(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(e)) is amended to read as follows:

"(e) **PAYMENT OF STORAGE, CARE, AND OTHER COSTS.**—(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provisions 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 viola-

tion of any provision of this Act or any other fishery resource law enforced by the Secretary with respect to that fish or other property;

"(B) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property or any other 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 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(e) of this Act to seizures made by the Secretary under this Act, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

"(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), of 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."

NORTH PACIFIC FISHERIES RESEARCH PLAN

Sec. 118. (a) Title III of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended by adding at the end the following new section:

"SEC. 312. NORTH PACIFIC FISHERIES RESEARCH PLAN.

"(a) **IN GENERAL.**—The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which—

"(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

"(2) establishes a system of fees to pay for the costs of implementing the plan.

"(b) **STANDARDS.**—(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

"(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

"(B) be fair and equitable to all vessels and processors;

"(C) be consistent with applicable provisions of law; and

"(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

"(2) Any system of fees established under this section shall—

"(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

"(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(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;

"(D) not be used to offset amounts authorized under other provisions of law;

"(E) be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

"(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

"(H) provide that fees collected will only be used for implementing the plan established under this section; and

"(I) meet the requirements of section 9701(b) of title 31, United States Code.

"(c) **ACTION BY SECRETARY.**—(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

"(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

"(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

"(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

"(d) **FISHERY OBSERVER FUND.**—There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the

purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(e) SPECIAL PROVISIONS REGARDING OBSERVERS.—(1) The Secretary shall review—

"(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

"(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

"(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

"(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

"(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant."

"(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by inserting immediately after the entry for section 312 the following new entry:

"Sec. 313. North Pacific fisheries research plan."

AUTHORIZATION OF APPROPRIATIONS

Sec. 118. Section 406 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1882) is amended by adding at the end the following new paragraphs:

"(16) \$77,200,000 for the fiscal year ending September 30, 1990.

"(17) \$94,000,000 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) \$98,000,000 for the fiscal year ending September 30, 1992.

"(19) \$102,000,000 for the fiscal year ending September 30, 1993."

MISCELLANEOUS TECHNICAL AMENDMENTS

Sec. 120. (a) INTERNATIONAL FISHERY AGREEMENTS.—Section 202(f) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822(f)), as so redesignated by section 105 of this Act, is amended by striking "a exclusive economic zone" and inserting in lieu thereof "an exclusive economic zone".

"(b) FOREIGN FISHING PERMITS.—Section 204(b)(4)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(4)(C)) is amended by striking "council" and inserting in lieu thereof "Council".

(c) COUNCIL PROCEDURAL MATTERS.—Section 302(j)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(j)(4)) is amended by striking "council employee" and inserting in lieu thereof "Council employee".

(d) ACTION BY SECRETARY.—Section 304(c)(2)(B) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(c)(2)(B)) is amended by striking "appropriate council" and inserting in lieu thereof "appropriate Council".

TITLE II—ATLANTIC TUNAS CONVENTION ACT OF 1975 LIMITATIONS ON APPOINTMENTS OF COMMISSIONERS

Sec. 201. (a) IN GENERAL.—Section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end the following:

"(2) Of the Commissioners appointed under paragraph (1) who are not governmental employees—

"(A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

"(B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

"(3) The term of a Commissioner shall be three years.

"(B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner."

(b) APPLICATION TO CURRENT COMMISSIONERS.—(1) Paragraph (2) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(a)), as added by this section, shall not apply to reappointment of an individual as a United States Commissioner of the International Commission for the Conservation of Atlantic Tunas (hereinafter in this title referred to as a "Commissioner") if that individual is serving in that position on the date of enactment of this Act.

(2) An individual serving a term as a Commissioner on the date of enactment of this Act shall not, by reason of that term of service, be ineligible under paragraph (3)(B) of section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(a)), as added by this section, for reappointment as a Commissioner.

TERMINATION OF CURRENT TERMS AND COMPLETION OF PENDING APPOINTMENTS

Sec. 202. The term as Commissioner of each individual serving in that position on the date of enactment of this Act shall terminate March 1, 1991. Not later than that date, the President shall complete appointment (or reappointment) of individuals to serve as Commissioners on and after that date.

TRAVEL EXPENSES OF COMMISSIONERS

Sec. 203. Section 3 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a) is amended by adding at the end the following new subsection:

"(d)(1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

"(2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection."

TRAVEL EXPENSES OF ADVISORY COMMITTEE

Sec. 204. Section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) is amended by striking "On approval" and all that follows and inserting in lieu thereof the following: "The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code."

SPECIES WORKING GROUPS

Sec. 205. The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.) is amended by inserting immediately after section 4 the following new section:

"SPECIES WORKING GROUPS

"Sec. 4A. The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations" to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working group shall consist of no more than 7 members of the advisory committee and no more than 4 scientific or technical personnel, as considered necessary by the Commissioner."

REGULATIONS TO CARRY OUT COMMISSION RECOMMENDATIONS

Sec. 206. (a) Section 6(c)(1) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(1)) is amended by redesignating the existing text as subparagraph (A) and by adding at the end the following new subparagraphs:

"(B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

"(C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)."

(b) Section 6(c)(3) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(3)) is amended—

(1) in subparagraph (H) by striking "and" and inserting in lieu thereof a semicolon; and

(2) by striking subparagraph (I) and inserting in lieu thereof the following:

"(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

"(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

"(K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission."

RECOMMENDED COMMISSION ACTIONS REGARDING LARGE-SCALE DRIFTNET FISHING AND CONSERVATION OF ATLANTIC SWORDFISH

Sec. 207. Section 6(d) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(d)) is amended to read as follows:

"(d)(1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(16) of the Magnuson Fishery Conservation and Management Act) in the Convention area.

"(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to

the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary within 3 months after each annual meeting of the Commission shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock."

AUTHORIZATION OF APPROPRIATIONS

Sec. 208. Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in article X of the Convention, not more than \$2,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993."

TITLE III—FISHERMEN'S PROTECTIVE ACT OF 1967

VESSEL SEIZURE REIMBURSEMENT AUTHORITY

Sec. 301. Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended by striking "October 1, 1989" and inserting in lieu thereof "October 1, 1993".

TITLE IV—ANADROMOUS FISH CONSERVATION ACT

AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Section 4(a) of the Anadromous Fish Conservation Act (16 U.S.C. 757d(a)) is amended—

(1) by striking paragraphs (1), (2), (3), (4), (5), and (6);

(2) by redesignating paragraph (7) as paragraph (1); and

(3) by adding at the end the following new paragraph:

"(2) \$8,000,000 for each of the fiscal years 1990, 1991, 1992, 1993, 1994, and 1995."

TITLE V—INTERJURISDICTIONAL FISHERIES ACT OF 1986

CLARIFICATION OF APPOINTMENT LIMITATION

Sec. 501. Section 304(c)(3)(B) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4103(c)(3)(B)) is amended by inserting "which are managed under an interstate fishery management plan" immediately after "fishery resources".

FEDERAL SHARE OF ACTIVITIES CARRIED OUT WITH ADDITIONAL APPROPRIATIONS

Sec. 502. Section 308(b) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(b)) is amended—

(1) in paragraph (1) by striking "and" at the end;

(2) in paragraph (2) by striking the period at the end and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (2) the following new paragraph:

"(3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity."

AUTHORIZATION OF APPROPRIATIONS

Sec. 503. Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) in subsection (a) by striking "fiscal years 1987, 1988, and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995";

(2) in subsection (b) by striking "fiscal years 1988 and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995"; and

(3) in subsection (c) by striking "fiscal years 1988 and 1989" and inserting in lieu thereof "the fiscal years 1989, 1990, 1991, 1992, and 1993".

TITLE VI—CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT

AUTHORIZATION OF APPROPRIATIONS

Sec. 601. Section 7 of the Central, Western, and South Pacific Fisheries Development Act (16 U.S.C. 758e-5) is amended by striking "and 1988" and inserting in lieu thereof "1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995".

TITLE VII—NATIONAL FISH AND SEAFOOD PROMOTIONAL COUNCIL

EXTENSION OF TERMINATION DATE

Sec. 701. Section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)) is amended by striking "October 1, 1990" and inserting in lieu thereof "December 31, 1991".

AUTHORIZATION OF APPROPRIATIONS

Sec. 702. Section 209(d) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4008(d)) is amended by striking "1990" and inserting in lieu thereof "1991".

TRANSFER OF SALTONSTALL-KENNEDY FUNDS

Sec. 703. Section 2(b)(2) of the Act of August 11, 1939 (commonly known as the Saltonstall-Kennedy Act; 15 U.S.C. 713c-3(b)(2)), is amended by striking "fiscal year 1990" and inserting in lieu thereof "each of fiscal years 1990 and 1991".

CONTINUITY OF NATIONAL COUNCIL MEMBERSHIP

Sec. 704.(a) UNINTERRUPTED SERVICE.—Individuals serving on September 30, 1990, as members of the National Fish and Seafood Promotional Council shall be deemed to continue as members in uninterrupted service since the date of their initial appointment.

(b) FILLING OF VACANCIES.—Notwithstanding section 206(e) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(e)), any vacancy on the National Fish and Seafood Promotion Act not filled as of September 30, 1990, shall be filled within 60 days after the date of enactment of this Act.

(c) TECHNICAL AMENDMENT.—Section 207(a)(5) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4006(a)(5)) is amended by inserting "initial" immediately before "appointments".

CONTINUITY OF COUNCIL FUNCTIONS, CONTRACTS, AND PERSONNEL

Sec. 705. All current functions, contracts in force, and existing personnel of the National Fish and Seafood Promotional Council as of September 30, 1990, are reauthorized and extended, and shall continue as if uninterrupted, notwithstanding section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)) as in effect on September 30, 1990.

TITLE VIII—MISCELLANEOUS CERTIFICATE OF LEGAL ORIGIN FOR ANADROMOUS FISH PRODUCTS

Sec. 801.(a) NEGOTIATIONS.—Within 60 days after the date of enactment of this Act, the Secretary of State shall commence negotiations with nations which import or export anadromous fish or anadromous fish products for the purpose of securing general agreement among such nations to implement effective measures to prohibit international trade in anadromous fish or anadromous fish products unless such fish or fish products are accompanied by a valid certificate of legal origin attesting that the fish product was lawfully harvested—

(1) within the jurisdiction of a nation having naturally occurring or artificially es-

tablished anadromous fish populations of the same species as the imported or exported product; or

(2) on the high seas according to an international agreement among nations with jurisdiction over more than 1 percent of the stocks of anadromous fish being so harvested.

(b) ISSUANCE OF CERTIFICATES.—For the purposes of subsection (a), a valid certificate of legal origin may be issued only by a nation which—

(1) is the nation having jurisdiction over the vessel or other means by which the fish or fish product was harvested; and

(2) maintains regular harvests of anadromous fish in a manner consistent with the criteria for lawful harvests set out in subsection (a).

(c) BILATERAL OR MULTILATERAL AGREEMENTS.—Efforts undertaken by the Secretary of State pursuant to subsection (a) may, at the discretion of the Secretary, be directed toward achieving either bilateral or multilateral agreements, including trade agreements, whichever the Secretary determines to be most likely to result in the earliest possible date or dates of agreement by those nations which individually have in excess of \$1,000,000, or the equivalent, in import or export trade in anadromous fish and anadromous fish products.

(d) REGULATIONS.—The Secretary of Commerce shall, within 180 days after the date of enactment of this Act, promulgate regulations provide for—

(1) the issuance of certificates of legal origin pursuant to agreements under subsection (a) for anadromous fish and anadromous fish products legally harvested by vessels of the United States;

(2) the delegation of the authority to issue certificates of legal origin to States, territories, or possessions of the United States which the Secretary of Commerce determines to have implemented a program which is sufficient to accomplish the purposes of subsection (a); and

(3) an orderly transition to such regulations, sufficient to ensure that United States commerce in anadromous fish and anadromous fish products is not unduly disrupted.

(e) REPORT REQUIRED.—The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall, within 180 days after the date of enactment of this Act, submit to the Congress a report—

(1) making recommendations as to the need for the adoption of United States import and export restrictions on anadromous fish and anadromous fish products consistent with subsection (a); and

(2) identifying, evaluating, and making recommendations regarding any specific statutory or regulatory changes that may be necessary for the adoption of such restrictions.

(f) CERTIFICATION.—If, at any time following the promulgation of the regulations required by subsection (d), the Secretary of Commerce finds that any nation is engaging in trade in unlawfully taken anadromous fish or anadromous fish products, the Secretary shall certify that fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a)(1) of the Fishermen's Protective Act of 1967 (22 U.S.C. 978(a)(1)).

TITLE IX—DOLPHIN PROTECTION CONSUMER INFORMATION

DOLPHIN PROTECTION

Sec. 901.(a) SHORT TITLE.—This section may be cited as the "Dolphin Protection Consumer Information Act".

(b) FINDINGS.—The Congress finds that—

States and inform him that the two Houses have completed their business of the session and are ready to adjourn, unless the President has some other communication to make to them.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER. The Chair appoints as members of the committee on the part of the House to join a committee on the part of the Senate to notify the President that the two Houses have completed their business of the session, unless the President has some other communication to make to them, the gentleman from Missouri [Mr. GEPHARDT] and the gentleman from Illinois [Mr. MICHEL].

Mr. STUDDS. Mr. Speaker, the version of H.R. 2061 before us is virtually identical to the bill approved by the House last week.

Very briefly the bill:

Reauthorizes the 200-mile limit law for an additional 3 years;

Calls for a worldwide ban on the use of deadly large-scale drift nets;

Increases the penalties for those who violate our conservation laws;

Extends U.S. fisheries jurisdiction over tuna;

Calls on the Secretary of Commerce to initiate strong international efforts to prevent overfishing of highly migratory species like swordfish; and

Tuna labeling provisions that will help consumers determine whether tuna products they purchase are "dolphin safe."

The changes made by the other body are mostly technical, although two provisions are worth noting.

First, the amendments make it clear that when sea samplers or observers are voluntarily invited on board a fishing vessel by its owner or captain, the information they gather cannot be used to prosecute a fisherman. In New England we have a very successful voluntary observer program and the bill will preserve the integrity of that data gathering system.

Second, the other body made a modification in provisions that exempts shrimp fishermen in the Gulf of Mexico and South Atlantic area from conservation requirements necessary to preserve bycatch species until January 1, 1994.

Mr. Speaker, I strongly object to these provisions and if it were not for that fact that the bill contains so many other good provisions, I would not support the bill. The language originally added by the other body sets a terrible precedent and is a giant step backwards for conservation. I intend to investigate this terrible bycatch problem next year and if necessary seek legislation to correct the problem.

I urge Members to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 2061 and urge its adoption by the House.

Mr. Speaker, I yield 1 minute to the gentleman from Washington [Mr. MILLER].

(Mr. MILLER of Washington asked and was given permission to revise and extend his remarks.)

Mr. MILLER of Washington. Mr. Speaker, at long last, we complete the tasks of reauthorizing the Magnuson Fisheries Conservation and Management.

There were times when I feared we would not complete work on this bill because of intractable positions on the part of the Senate.

Mr. Speaker, this bill will help us protect our fisheries. It will help us and the use of large scale driftnets. We will establish a new observer program to help us better manage the fisheries. We will let consumers know if the tuna they buy is "dolphin safe." And, we will help our fishermen move toward a new era when we fully utilize all our fisheries.

This bill, Mr. Speaker, is not perfect. It does not contain some crucial changes I wanted to protect the interests of fishermen, processors, scientists, environmentalists, consumers and others from Washington state concerned about fisheries in the north Pacific. This bill does not reform the capital construction program. I hoped we would have permitted those with CCF accounts to use them for improving fishing vessel safety, protecting the environment, and improving the wholesomeness of the fish they catch. Unfortunately, the Senate did not make these changes. And, we were forced to compromise.

At the same time, Mr. Speaker, some provisions which were cause of concern to some of my constituents were removed. So, we won a little too.

Mr. Speaker, this law is named in honor of my State's late great Senator, Warren Magnuson. He envisioned Americans catching, processing, selling and enjoying the vast riches of our oceans. This reauthorization act does not change those national goals. Senator Magnuson's dream has been realized. My district has emerged as the capital of this Nation's seafood industry. Fishermen from my State catch half the edible seafood caught in our exclusive economic zone. Processors located in my State, process and sell seafood across our country and around the world.

Now, Mr. Speaker, we turn to a more difficult challenge—keeping the boom going. Our challenge in the coming years will be to help manage growth. This must be done fairly. NOAA and the councils must be consistent in administering the national standards of this act. The tough issues coming before us now require us to recognize that the fisheries we are managing are national resources. The bounty of the sea can serve all our citizens.

I urge my colleagues to support this compromise bill.

Mr. YOUNG of Alaska. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. SAXTON].

(Mr. SAXTON asked and was given permission to revise and extend his remarks.)

Mr. SAXTON. Mr. Speaker, I, too, rise in strong support of this bill and note that it is the major effort on the part of this House to protect, preserve,

and conserve the various fisheries on the east and west coasts and on the gulf.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Speaker, I rise in strong support of H.R. 2061 and urge its adoption by the House.

This legislation is the subject of 2 years of work by the Committee on Merchant Marine and Fisheries. Our committee held hearings throughout the country and received testimony from hundreds of witnesses. Although the final bill reflects changes made by the other body and therefore does not contain every provision that the House wanted, it is still a good bill and will go a long way toward conserving and managing the marine resources found off our shores.

Mr. Speaker, this is an important piece of legislation and in the last few weeks we have heard from hundreds of individuals in the fishing industry and the environmental community requesting that we approve the bill. I urge my colleagues to support its passage.

I now wish to direct the House's attention to various provisions that are contained in the bill before us and explain the intent of these provisions. References to the "act" are references to the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

The amendments to section 2(c)(3) of the act are designed to address the wasteful practice of catching fish solely for removal of their eggs without utilizing the whole carcass of the fish. We recognize that in every fishery there are fish other than the target species which can be accidentally harvested. It is not the intent of this section to prevent such incidental catch such as occurs in the shrimp fishery in the Gulf of Mexico.

The amendments to section 202 of the act include a requirement for the Secretary of State, in cooperation with the Secretary of Commerce, to initiate negotiations to allow U.S. fishing vessels to obtain access to the Exclusive Economic Zones of other nations. This language should be noted particularly in regard to Mexico. The House and the Senate have received requests to alleviate the embargo on tuna products from Mexico now imposed under the Marine Mammal Protection Act. We wish to make it clear that lifting the embargo should be tied to access to Mexican waters by U.S. tuna fishermen.

The amendments to section 204(b)(10) of the act are identical to those contained in the bill originally approved by the House. The language in House Report 101-393 regarding section 107 of the House bill should be

viewed as the intent of Congress in regard to these amendments.

The amendments to section 206 of the act regarding driftnet fishing also deserve special attention. It is clear that the policy of the United States under this bill is to seek a permanent international ban on large-scale driftnet fishing. However, it should also be noted that the United States currently has interim bilateral arrangements with three nations which require monitoring and enforcement of large-scale driftnet fisheries. The provisions of this amendment make clear that those bilateral agreements, if extended, shall include, at a minimum, the requirements of this section.

It should also be noted that the policy provisions of this section speak of securing a permanent ban on the use of destructive fishing practices. Since all fishing is by nature destructive, the intent of this amendment should be construed as seeking an end on those fishing practices which are highly wasteful. Further, it is clear that the use of certain types of fishing gear may not be wasteful and destructive, depending on how the gear is used. A good example is in the trawl fisheries of Alaska. Trawl vessels, which use appropriate-sized nets and fish in a manner that avoids excessive incidental catch, should not be considered destructive.

The amendments to section 302(b) of the act discuss the need for qualified individuals to be appointed to the Regional Fishery Management Councils. As was noted in House Report 101-393, there is a need for knowledge and experience on the part of Council members. We expect Governors to adhere to this requirement when making nominations. Further, we intend that the Secretary also apply this criteria strictly against Council nominees. If a nominee fails to meet the criteria, we expect the Secretary to reject the nominee, regardless of political or other considerations.

We do not intend to preclude the appointment of an individual who has gained knowledge or experience in fisheries conservation and management through direct participation in, and contribution to, fisheries conservation and management. Thus, an individual should be considered qualified for Council membership as a result of an active leadership role in a fisheries organization whose members participate in a fishery under that Council's jurisdiction.

The bill further amends section 302(b) of the act by establishing a limit on the number of consecutive terms that any Council member can serve. We believe that the Secretary of Commerce has often acted arbitrarily in determining the number of terms that can be served by a particular individual. For example, in the last round of Council appointments, the Secretary's designee applied a two-term limit rule. However, this rule was not applied to every Council or every

nominee for every Council. By including this language on Council terms, the Committee expects to standardize the nomination and appointment process so that arbitrary political decisions by a political appointee cannot be made.

The amendment to section 302(e)(3) of the act allows a Council to meet in any of the constituent States of the Council. Among other things, this language is designed to allow the North Pacific Fishery Management Council to meet in the States of Oregon and Washington in order to accommodate the views of fishermen from those States who fish in the Exclusive Economic Zone off Alaska. However, as noted in House Report 101-393, various subcommittees of the North Pacific Council currently meet most of the time in Washington State. It is our expectation that the Council will show equity and fairness to fishermen by having more of its subcommittee meetings in Alaska.

The amendment to section 302(g) of the act requires each Council to establish and maintain a fishing industry advisory committee. This language is identical to section 109(f) of the bill passed by the House, and the language in House Report 101-393 in regard to this section should be used to identify the intent of the Congress.

The amendments to section 302(j)(3) of the act allow a Council to conduct closed meetings if prior public notice is given. These changes are made in recognition of the need for efficiency in operations, not as an endorsement of secrecy in Council work. The intent of the Congress is that the Council process continue to be an open one and that closed meetings be held only when absolutely necessary.

The amendments to section 303(b) of the act include authority for the Council to require that observers be carried on board a fishing vessel for data collection purposes. The amendment also makes clear that such a requirement cannot be imposed if the vessel is too small to carry an observer without physical displacement of one of the vessel crew members.

The amendment to section 303(d) of the act tries to strike a balance between the need for maintaining confidentiality and the need to have appropriate data to effectively conserve and manage a fishery. We have allowed State employees to receive confidential data under certain circumstances. We have also allowed the Council, rather than just the Council staff, to receive data if such receipt is approved by the Secretary.

We expect the Secretary to be extremely cautious in granting approval in order to avoid revealing confidential business or personal data to another individual who can use it for their own advantage. Further, under no circumstances should data of this nature which is transmitted to the Council be available to the general public. Release of the data to Council members

is strictly for the purpose of making wise decisions in the conservation and management of fisheries. A Council member who uses that data for personal gain or reveals it to the public should be subject to the penalties that apply to those who reveal confidential data.

The amendment to section 304(f) of the act regarding management of highly migratory species fisheries is a complete reversal of the longstanding U.S. juridical position in regard to management of such species. This language was insisted upon by the other body and the House is constrained to accept it, no matter how reluctantly. We do wish to make clear that this language should not be construed to give an advantage to one group of fishermen over another, nor to provide an advantage to one type of fishing gear over another.

While fisheries need to be conserved and managed, management plans should not be used as a backdoor attempt to resolve political conflicts nor to put American citizens out of work simply because they use a particular type of fishing gear or engage in a particular type of fishing activity. Actions by the Councils and by the Secretary will be closely monitored and if we find that action is being taken to discriminate against a group of fishermen on the basis of the type of fishing gear they use, the law will be amended accordingly.

The amendment to section 306(c) is identical to language contained in the original House-passed measure and the language in House Report 101-393, discussing section 112 of the House bill, should be considered the intent of Congress. Furthermore, we note that the Coast Guard has raised questions about coordination between the Governors of States which allow foreign processing vessels access to State waters and the Coast Guard in regard to national security considerations. It is our intent that the Coast Guard work out equitable arrangements with coastal State Governors to resolve these concerns.

The amendment to section 307(1) of the act which adds new paragraphs (K), (L), and (M) are nearly identical to the provisions in section 113 of the House-passed bill. The language in House Report 101-393 regarding that section of the House bill should be considered as the intent of Congress in regard to this amendment.

The amendment to section 308 of the act is also identical to the provisions in the House-passed bill, and the discussion in House Report 101-393 regarding section 114 of the House bill should be considered the intent of Congress in regard to this section.

Title VII of the bill extends the existence of the National Fish and Seafood Promotional Council through December 31, 1991. Included in this title is language specifically requiring that members of the Council who were

...on the Council on September 30, 1990, be continued in their positions without interruption. This does not preclude removal of a member for cause, or replacement of a member who resigns, retires, or dies. This title also specifically provides that all Council acts entered into by the Council prior to September 30, 1990, shall remain in effect and not have to be subject to further bidding.

This language was included in record-keeping of the fact that the Council is engaged in a multiyear promotional effort and that effort should not be interrupted due to a temporary lapse of Council authority.

Title IX of the bill provides for consumer information in regard to dolphins. Section 901(d) of that title provides specific standards in regard to labels on cans of tuna that are identified as "Dolphin Safe." The language in this section should not be construed as preventing a processor from labeling his product as being caught in compliance with the Marine Mammal Protection Act if in fact that label can be honestly applied. Further, the prohibition on false claims regarding methods of fishing not harmful to dolphins cannot be applied across the board to any particular type of fishing gear. For example, purse seines which are used to harvest tuna can be deployed in such a manner that the tuna could be considered "Dolphin Safe" or not be considered caught in compliance with the Marine Mammal Protection Act. The use of a purse seine does not in itself result in a violation of section 901(d).

Mr. Speaker, I believe that this address in regard to the provisions of the bill, and I urge again that it be adopted.

Mr. JONES of North Carolina, Mr. Speaker, I use today in support of H.R. 2061, Fishery Conservation Amendments of 1990.

H.R. 2061 in large part reauthorizes and amends the Magnuson Fishery Conservation Act of 1976. The important statute established a comprehensive system to conserve and manage the Nation's marine fishery resources. Under the system, the volume and value of the fisheries of the United States has increased dramatically with corresponding benefits to the national economy and the consumer.

The Magnuson Act is a complicated statute, and I will not discuss the many intricate details and I would like to describe the purpose of several amendments to the act that have important implications for our national fish management program.

Under existing provisions of the Magnuson Fishery Conservation and Management Act, U.S. 200-mile Exclusive Economic Zone—in-cluding those for species such as marlin, swordfish, saffron, and sharks—lies with the eight Regional Fishery Management Councils. When the Congress created the Regional Fishery Management Councils in 1976, we fully intended that they serve as the primary fishery managers in the U.S. Exclusive Economic Zone. In House Report 101-793 and

comparing H.R. 2061 we reemphasized this policy as follows:

The Regional Councils have the primary responsibility for the management of fisheries found within the U.S. exclusive economic zone. Only if it can be established that the Council has acted in a manner that is in clear disregard of the National Standard contained in section 301, or (b) a clear violation of law, may the Secretary of Commerce disapprove a fishery management plan or amendment proposed by the Council. The Secretary may not substitute his judgment for that of the Council on a policy issue.

Until this amendment today, the Magnuson Act has treated tuna species differently from other fishery resources because tuna species range widely among the jurisdictions of various States and nations. Because of the highly migratory nature of tuna, the act has excluded tuna from the Council's authority and given the management authority for these species to the Secretary of Commerce.

After several hearings and extensive discussion during the Congress, the Committee on Merchant Marine and Fisheries included in H.R. 2061 a major change with regard to tuna. This change would have included tuna species within the authority of the Magnuson Act and the Fishery Management Councils. H.R. 2061 would not have changed existing Fishery Management Council authority to manage any other species.

H.R. 2061 as subsequently passed by the Senate, and as under House consideration today, takes a quite different approach. It not only gives management authority for tuna to the Secretary of Commerce but also takes jurisdiction of the requirement that "the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota" that the United States is authorized to harvest under a relevant international fishery agreement. Section 110(b)(3)(E) does not preclude the Secretary from taking additional management measures such as time and area closures in the interest of true conservation needs of the affected species, but the Secretary must also assure that U.S. fishermen are given a reasonable opportunity to harvest the U.S. allocation or quota established through the international fishery agreement. U.S. industry should not be subjected to management standards that are inequitable or unreasonable when compared to those that are required of fishermen from other fishing nations that are harvesting the same stock or stocks of highly migratory species under an international fisheries agreement.

Mr. Speaker, H.R. 2061 is an important step toward more effective conservation and management of our Nation's fishery resources, and I urge my colleagues to support it.

Mr. YOUNG of Alaska, Mr. Speaker, I yield back the balance of my time.

Mr. STUBBS, Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Massachusetts (Mr. STUBBS) that the House suspend the rules and concur in the amendment to the Senate amendment to the bill, H.R. 2061.

The question was taken; and (two-thirds having voted in favor thereof,

criteria that are familiar to and accepted by the fishing industry and others who have worked with the Magnuson Act since it came into effect in 1977.

Section 110(b)—Management of Highly Migratory Species Fisheries—requires that the Secretary "shall consult with and consider" the views of interested parties. The committee feels very strongly that this provision must be followed to the maximum extent it is the fundamental principle upon which the success or failure of this section of the bill will depend.

This should be done in part through holding an adequate number of public hearings in all areas that will be affected by a Secretarial management plan or amendment. Indeed, the Secretary should hold at least one set of hearings in appropriate geographical areas to assist him in formulating and gathering comment on the basic assumptions that will underlie a management plan for a highly migratory species, and an additional series of hearings on a proposed management regime before he actually proceeds with a fishery management plan or amendment. These hearings would then be followed by existing requirements for public review and comment on a proposed fishery management plan and implementing regulations.

This process should include the active participation of appropriate groups such as the Regional Fishery Management Councils and the ICCAT Advisory Panel and Commission-ers, as well as interested industry groups.

The Secretary should take particular note of public comment when considering any international fishery agreement. Section 110(b)(3)(E) does not preclude the Secretary from taking additional management measures such as time and area closures in the interest of true conservation needs of the affected species, but the Secretary must also assure that U.S. fishermen are given a reasonable opportunity to harvest the U.S. allocation or quota established through the international fishery agreement. U.S. industry should not be subjected to management standards that are inequitable or unreasonable when compared to those that are required of fishermen from other fishing nations that are harvesting the same stock or stocks of highly migratory species under an international fisheries agreement.

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Mr. YOUNG of Alaska, Mr. Speaker, I yield back the balance of my time.

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The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Massachusetts (Mr. STUBBS) that the House suspend the rules and concur in the amendment to the Senate amendment to the bill, H.R. 2061.

The question was taken; and (two-thirds having voted in favor thereof,

the rules were suspended and the Senate amendment to the House amendment to the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

EXPANDING POWERS OF THE INDIAN ARTS AND CRAFTS BOARD

Mr. CAMPBELL of Colorado. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2006) to expand the powers of the Indian Arts and Crafts Board, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendment and the House amendments to the Senate amendment, as follows:

Senate amendment:
Strike out all after the enacting clause and insert:

TITLE I—INDIAN ARTS AND CRAFTS

SEC. 101. SHORT TITLE.

This title may be cited as the "Indian Arts and Crafts Act of 1990".

SEC. 102. POWERS OF INDIAN ARTS AND CRAFTS BOARD.

Section 2 of the Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305a) is amended—

(1) in the first sentence—

(A) by striking "the Board" and inserting "the Secretary of the Interior through the Board"; and

(B) by striking "the Indian wards of the Government" and inserting "Indian individuals";

(2) by amending clause (g) to read as follows: "(g)(1) to create for the Board, or for an individual Indian or Indian tribe or Indian arts and crafts organization, trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or Indian arts and crafts organization; (2) to establish standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; (3) to register any such trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge; and (4) to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office"; and

(3) by adding at the end the following new sentence: "For the purposes of this section, the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes."

SEC. 103. REFERRAL FOR CRIMINAL AND CIVIL VIOLATIONS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) is amended by adding at the end of the following:

"Sec. 5. (a) The Board may receive complaints of violations of section 1159 of title 18, United States Code, and refer complaints of such violations to the Federal Bureau of Investigation for appropriate in-

vestigation. After reviewing the investigation report, the Board may recommend to the Attorney General of the United States that criminal proceedings be instituted under that section.

"(b) The Board may recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 6."

SEC. 104. CRIMINAL PENALTY FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

(a) IN GENERAL.—Section 1159 of title 18, United States Code, is amended to read as follows:

"§ 1159. Misrepresentation of Indian produced goods and products

"(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.

"(b) Whoever knowingly violates subsection (a) shall—

"(1) in the case of a first violation, if an individual, be fined not more than \$250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than \$1,000,000; and

"(2) in the case of subsequent violations, if an individual, be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than \$5,000,000.

"(c) As used in this section—

"(1) the term 'Indian' means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

"(2) the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

"(3) the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

"(4) the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

"(d) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect."

(b) CONFORMING AMENDMENT.—The item relating to section 1159 in the table of sections for chapter 53 of title 18, United States Code, is amended to read as follows:

"1159. Misrepresentation of Indian produced goods and products."

SEC. 105. CAUSE OF ACTION FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) (as amended by section 3) is further amended by adding at the end of the following:

"Sec. 6. (a) A person specified in subsection (c) may, in a civil action in a court of competent jurisdiction, bring an action against a person who offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to—

"(1) obtain injunctive or other equitable relief; and

"(2) recover the greater of—

"(A) treble damages; or

"(B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than \$1,000 for each day on which the offer or display for sale or sale continues.

"(b) In addition to the relief specified in subsection (a), the court may award punitive damages and the costs of suit and a reasonable attorney's fee.

"(c)(1) A civil action under subsection (a) may be commenced—

"(A) by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or Indian arts and crafts organization; or

"(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization.

"(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe, or Indian arts and crafts organization, except that—

"(A) in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) and deposit the amount of such costs and fees as reimbursement credited to appropriation currently available to the Attorney General at the time of receipt of the amount recovered; and

"(B) in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney's fees pursuant to subsection (b) may be deducted from the total amount awarded under subsection (a)(2).

"(d) As used in this section—

"(1) the term 'Indian' means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

"(2) the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

"(3) the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

"(4) the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

"(e) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect."