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(Original Signature of Member)

107TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

M. introduced the following bill; which was referred to the Committee on

A BILL

To reauthorize the Magnuson-Stevens Fishery Conservation
and Management Act, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Magnuson-Stevens Act
5 Amendments of 2002".



1 **SEC. 2. AMENDMENT OF MAGNUSON-STEVENSON FISHERY**
2 **CONSERVATION AND MANAGEMENT ACT.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of Magnuson-Stevens Fishery
8 Conservation and Management Act (16 U.S.C. 1801 et
9 seq.).

10 **SEC. 3. REPORT ON OVER CAPITALIZATION.**

11 (a) IN GENERAL.—The Secretary shall, within 12
12 months after the date of the enactment of this Act, submit
13 to the Congress a report—

14 (1) identifying and describing the 20 fisheries
15 in United States waters with the most severe exam-
16 ples of excess harvesting capacity in the fisheries,
17 based on value of each fishery and the amount of ex-
18 cess harvesting capacity as determined by the Sec-
19 retary;

20 (2) recommending measures for reducing such
21 excess harvesting capacity, including the retirement
22 of any latent fishing permits that could contribute to
23 further excess harvesting capacity in those fisheries;
24 and

25 (3) potential sources of funding for such meas-
26 ures.



1 (b) BASIS FOR RECOMMENDATIONS.—The Secretary
2 shall base the recommendations made with respect to a
3 fishery on—

4 (1) the most cost effective means of achieving
5 voluntary reduction in capacity for the fishery using
6 the potential for industry financing; and

7 (2) including measures to prevent the capacity
8 that is being removed from the fishery from moving
9 to other fisheries in the United States, in the waters
10 of a foreign nation, or in the high seas.

11 **SEC. 4. BUYOUT PROVISIONS.** *ERIC SMITH - monitor*

12 (a) DISCRETION OF SECRETARY TO CONDUCT FISH-
13 ING CAPACITY REDUCTION PROGRAM.—Section 312(b)
14 (16 U.S.C. 1861a(b)) is amended—

15 (1) in paragraph (1) by striking “, at the re-
16 quest of the appropriate Council for fisheries under
17 the authority of such Council, or the Governor of a
18 State for fisheries under State authority,”;

19 (2) in paragraph (1), by inserting “that is man-
20 aged under a limited access system authorized by
21 section 303(b)(6),” after “in a fishery”; and

22 (3) by redesignating paragraph (4) as para-
23 graph (5), and by inserting after paragraph (3) the
24 following:



1 “(4) The Council, or the Governor of a State, having
2 authority over a fishery may request the Secretary to con-
3 duct a fishing capacity reduction program in the fishery
4 under this subsection.”.

5 (b) REQUIREMENT TO SURRENDER ALL PERMITS.—
6 Section 312(b)(2) (16 U.S.C. 1861a(b)(2)) is amended to
7 read as follows:

8 “(2)(A) The objective of the program shall be to ob-
9 tain the maximum sustained reduction in fishing capacity
10 at the least cost and in a minimum period of time.

11 “(B) To achieve that objective, the Secretary is au-
12 thorized to pay an amount to the owner of a fishing vessel,
13 if—

14 “(i) such vessel is scrapped, or through the Sec-
15 retary of the department in which the Coast Guard
16 is operating, subjected to title restrictions that per-
17 manently prohibit and effectively prevent its use in
18 fishing;

19 “(ii) all permits authorizing the participation of
20 the vessel in any fishery under the jurisdiction of the
21 United States are surrendered for permanent revoca-
22 tion; and

23 “(iii) the owner of the vessel and such permits
24 relinquishes any claim associated with the vessel and
25 such permits that could qualify such owner for any



1 present or future limited access system permit in the
2 fishery for which the program is established.”.

3 (c) ENSURING VESSELS DO NOT ENTER FOREIGN
4 OR HIGH SEAS FISHERIES.—Section 312(b) (16 U.S.C.
5 1861a(b)) is further amended by adding at the end the
6 following:

7 “(5) The Secretary may not make a payment under
8 paragraph (2) with respect to a vessel that will not be
9 scrapped, unless the Secretary certifies that the vessel will
10 not be used for any fishing, including fishing in the waters
11 of a foreign nation and fishing on the high seas.”.

12 **SEC. 5. DATA COLLECTION.**

13 (a) COLLECTION OF RECREATIONAL CATCH DATA.—
14 Section 402 (16 U.S.C. 1881a) is amended by adding at
15 the end the following:

16 (f) COLLECTION OF RECREATIONAL CATCH
17 DATA.—(1) The Secretary shall develop and implement a
18 program for the sharing of recreational catch data for all
19 federally managed fisheries through the use of information
20 gathered from State-licensed recreational fishermen.

21 “(2) The Secretary shall conduct the program in con-
22 sultation with the principle State officials having marine
23 fishery management responsibility and expertise.

*not interested
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states to
require licenses
in states that
don't want
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men*



1 “(3) The Secretary shall report to the Congress with-
2 in three years after the effective date of this subsection,
3 on—

4 “(A) the progress made in developing such a
5 program; and

6 “(B) whether the program has resulted in sig-
7 nificantly better data collection for the recreational
8 fishing sector.”.

9 (b) REPORT.—Not later than 6 months after the date
10 of the enactment of this Act, the Secretary of Commerce
11 shall submit to the Congress a report describing the fol-
12 lowing:

13 (1) Economic data from United States proc-
14 essors that is necessary to conduct fishing commu-
15 nity and economic analysis determinations required
16 under chapter 6 of title 5, United States Code, pop-
17 ularly known as the Regulatory Flexibility Act.

18 (2) The reasons why such information is not
19 available through other sources such as tax returns,
20 the Bureau of Labor Statistics, and State labor de-
21 partments.

22 (3) The steps the Secretary would take under
23 section 402 of the Magnuson-Stevens Fishery Con-
24 servation and Management Act (16 U.S.C. 1881a)
25 to ensure the confidentiality of such information (es-



1 pecially proprietary information), if the information
2 were obtained by the Secretary.

3 **SEC. 6. ECOSYSTEM-BASED MANAGEMENT.**

4 (a) **POLICY.**—Section 2(c) (16 U.S.C. 1851(c)) by
5 striking “and” after the semicolon at the end of paragraph
6 (6), by striking the period at the end of paragraph (7)
7 and inserting “; and”, and by adding at the end the fol-
8 lowing:

9 “(8) to support and encourage efforts to under-
10 stand the interactions of species in the marine envi-
11 ronment and the development of ecosystem-based
12 approaches to fisheries conservation and manage-
13 ment that will lead to better stewardship and sus-
14 tainability of the Nation’s coastal fishery resources
15 and fishing communities.”.

16 (b) **AUTHORIZATION OF RESEARCH.**—Section 404(c)
17 (16 U.S.C. 1881c(c)) is amended by adding at the end
18 the following:

19 “(5) The interaction of species in the marine
20 environment, and the development of ecosystem-
21 based approaches to fishery conservation and man-
22 agement that will lead to better stewardship and
23 sustainability of coastal fishery resources.”.

24 (c) **DEFINITIONS AND CRITERIA FOR MANAGEMENT**
25 **PLANS.**—



1 (1) IN GENERAL.—The Secretary shall, in con-
2 junction with the Councils—

3 (A) create a definition for “ecosystem” and
4 for “marine ecosystem”; and

5 (B) establish criteria for the development
6 of ecosystem-based management plans by each
7 regional fishery management council based on
8 the recommendations of the Ecosystems Prin-
9 ciples Advisory Panel.

10 (2) REPORT.—The Secretary shall report to the
11 Congress within 2 years after the date of the enact-
12 ment of this Act on the criteria, including an identi-
13 fication and description of those criteria for which
14 sufficient data is not available.

15 (d) IDENTIFICATION OF MARINE ECOSYSTEMS; RE-
16 SEARCH PLAN.—

17 (1) IN GENERAL.—Within one year after the
18 date of the submission of the report under sub-
19 section (c)(2) to the Congress, the Secretary, in con-
20 junction with the regional science centers and the re-
21 gional fishery management councils, shall—

22 (A) identify specific marine ecosystems
23 within each region; and



1 (B) also develop and begin to implement
2 regional research plans to meet the information
3 deficit identified in the report.

4 (2) RESEARCH PLANS.—The research plans
5 shall suggest reasonable timelines and cost estimates
6 for the collection of the required information.

7 (3) REPORTS.—The Secretary shall report to
8 the Congress annually on the progress of the re-
9 gional research plans.

10 (e) ECOSYSTEM-BASED FISHERY MANAGEMENT
11 PLAN PILOT PROGRAM.—

12 (1) IN GENERAL.—Upon the completion of de-
13 velopment of regional research plans under sub-
14 section (d)(1), the Secretary of Commerce shall es-
15 tablish and begin implementing a pilot program for
16 the management of one fishery on the east coast of
17 the United States and one fishery on the west coast
18 of the United States under an ecosystem-based fish-
19 ery management plan under the Magnuson-Stevens
20 Fishery Conservation and Management Act.

21 (2) CONSULTATION.—The Secretary shall de-
22 velop and implement ecosystem-based fishery man-
23 agement plans under this subsection in consultation
24 with the appropriate Regional Fishery Management
25 Councils.



1 (f) DISCRETIONARY PROVISION IN FISHERY MAN-
2 AGEMENT PLANS.—Section 303(b)(12) (16 U.S.C.
3 1853(b)(12)) is amended by inserting before the period
4 the following: “or for the health or stability of the marine
5 ecosystem”.

6 **SEC. 7. OBSERVERS.**

7 (a) IN GENERAL.—Not later than one year after the
8 date of the enactment of this Act, the Secretary shall re-
9 port to the Congress on the needs for a national observer
10 program.

11 (b) RECOMMENDATIONS.—The report shall make rec-
12 ommendations on observation options, including electronic
13 data collection technologies and on-board observers.

14 (c) The Secretary, in the report, shall include the fol-
15 lowing:

16 (1) A determination of whether the data collec-
17 tion needs are for management or enforcement pur-
18 poses.

19 (2) A statement of the level of observer cov-
20 erage necessary in various types of fisheries to pro-
21 vide statistically reliable information.

22 (3) Cost estimates for various levels of observer
23 coverage.

24 (4) Options for the funding of observer cov-
25 erage.



1 (5) The types of vessels and fisheries for which
2 observer coverage cannot be required due to safety
3 concerns.

4 (6) Recommendations for the use of the data
5 gathered by the observing systems.

6 (7) Recommendations for the confidentiality of
7 proprietary information collected through the pro-
8 gram.

9 **SEC. 8. OVERFISHING.**

10 (a) CLARIFICATION OF DEFINITION.—Section 3(29)
11 (16 U.S.C. 1802(29)) is amended to read as follows:

12 “(29)(A) The term ‘overfished’ means, with re-
13 spect to a stock of fish, that the stock is of a size
14 that is below the natural range of fluctuation associ-
15 ated with the production of maximum sustainable
16 yield.

17 “(B) The term ‘overfishing’ means a rate or
18 level of fishing mortality that jeopardizes the capac-
19 ity of a fishery to produce the maximum sustainable
20 yield on a continuing basis.”.

21 (b) DISTINGUISHING IN REPORTS.—Section
22 304(e)(1) (16 U.S.C. 1854(e)(1)) is amended by inserting
23 after paragraph (1) the following: “The report shall distin-
24 guish between fisheries that are overfished (or approach-
25 ing that condition) as a result of fishing and fisheries that



1 are overfished (or approaching that condition) as a result
2 of factors other than fishing. The report shall state, for
3 each fishery identified as overfished or approaching that
4 condition, whether the fishery is the target of directed
5 fishing.”.

6 **SEC. 9. BYCATCH.**

7 (a) **DEFINITION.**—Section 3(2) (16 U.S.C. 1802(2))
8 is amended in the first sentence by inserting “and
9 seabirds” after “regulatory discards”.

10 (b) **REPORTING METHODOLOGY.**—Section
11 303(a)(11) is amended—

12 (1) by striking “establish a standardized” and
13 inserting “within one year after the date of the en-
14 actment of the Magnuson-Stevens Act Amendments
15 of 2002, establish and begin implementing a stand-
16 ardized”; and

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

18 “except that if such a methodology cannot be estab-
19 lished or implemented within such one-year period,
20 the Council or the Secretary shall publish a report
21 explaining the reasons why, and the Secretary shall
22 take appropriate action to address those reasons;”.

23 (c) **CHARITABLE DONATION OF BYCATCH.**—Section
24 303(b) (16 U.S.C. 1853(b)) is amended by striking “and”
25 after the semicolon at the end of paragraph (11), by strik-



1 ing the period at the end of paragraph (12) and inserting
2 “; and”, and by adding at the end the following:

3 “(13) allow the retention and donation for char-
4 itable purposes of all dead bycatch that cannot oth-
5 erwise be avoided under terms that ensure, through
6 the use of onboard fishery observers or other means,
7 that such retention and donation do not allow the
8 evasion of vessel trip limits, total allowable catch lev-
9 els, or other conservation and management meas-
10 ures.”.

11 (d) BYCATCH REDUCTION GEAR DEVELOPMENT.—

12 (1) IN GENERAL.—Title IV (1 U.S.C. 1881 et
13 seq.) is amended by adding at the end the following:

14 “SEC. 408. GEAR DEVELOPMENT.

15 “(a) IDENTIFICATION OF FISHERIES WITH SIGNIFI-
16 CANT BYCATCH PROBLEMS.—(1) The Secretary, in con-
17 junction with the Councils, shall identify and publish in
18 the Federal Register a list of fisheries with significant by-
19 catch problems, as determined under criteria developed by
20 the Secretary.

21 “(2) The list shall contain, for each fishery identified,
22 information on—

23 “(A) the number of participants in the fishery;

24 “(B) the types of gears used in the fishery;

25 “(C) the bycatch species;



1 “(D) the amount of bycatch, and the percent-
2 age of total catch that is bycatch; and

3 “(E) any other relevant information.

4 “(3) The Secretary shall solicit comments on each list
5 published under this subsection.

6 “(b) IDENTIFICATION OF FISHERIES WITH MOST
7 URGENT BYCATCH PROBLEMS.—The Secretary shall—

8 “(1) identify those fisheries included in a list
9 under paragraph (1) that have the most urgent by-
10 catch problems, based on comments received regard-
11 ing the list; and

12 “(2) work in conjunction with the Councils and
13 fishing industry participants to develop new fishing
14 gear, or modifications to existing fishing gear, that
15 will help minimize bycatch to the extent practicable.

16 “(c) GRANT AUTHORITY.—The Secretary shall, sub-
17 ject to the availability of appropriations, make grants for
18 the development of fishing gear and modifications to exist-
19 ing fishing gear that will help—

20 “(1) minimize bycatch; and

21 “(2) minimize adverse fishing gear impacts on
22 habitat areas of particular concern.

23 “(d) REPORT.—The Secretary shall report to the
24 Congress annually on—



1 “(1) the amount expended to implement this
2 section in the preceding year;

3 “(2) developments in gear technology achieved
4 under this section;

5 “(3) the reductions in bycatch associated with
6 implementation of this section; and

7 “(4) any other relevant information.

8 “(e) AUTHORIZATION OF APPROPRIATIONS.—To
9 carry out this section there is authorized to be appro-
10 priated to the Secretary \$10,000,000 for each of fiscal
11 years 2003 through 2007.”.

12 (2) CLERICAL AMENDMENT.—The table of con-
13 tents in the first section is amended by add at the
14 end of the items relating to title IV the following:

“Sec. 408. Gear development.”.

15 **SEC. 10. FISH HABITAT RESEARCH AND PROTECTION.**

16 (a) PRIORITY RESEARCH.—Section 404 (16 U.S.C.
17 1881c) is amended by adding at the end the following:

18 “(e) PRIORITY FOR RESEARCH REGARDING OVER-
19 FISHED FISHERIES.—In carrying out or funding fisheries
20 research under this and other laws regarding essential fish
21 habitat, the Secretary shall give priority to research to
22 identify such habitat for fisheries that are overfished or
23 approaching an overfished condition.”.



1 (b) REQUIRED PROVISION IN FISHERY MANAGE-
2 MENT PLANS.—Section 303(a)(7) (16 U.S.C. 1853(a)(7))
3 is amended to read as follows:

4 “(7)(A) describe and identify essential fish
5 habitat for the fishery based on the guidelines estab-
6 lished by the Secretary under section 305(b)(1)(A);

7 “(B) minimize to the extent practicable adverse
8 effects on such habitat caused by fishing for those
9 fisheries identified by the Council as having available
10 information on the growth, reproduction, or survival
11 rates within habitats or production rates by habitat,
12 or for those fisheries that the Council determines the
13 specific fishing activity effects on the essential fish
14 habitat jeopardize the ability of the fishery to
15 produce maximum sustained yield on a continuing
16 basis;

17 “(C) minimize to the extent practicable adverse
18 effects on habitat areas of particular concern caused
19 by fishing; and

20 “(D) identify other actions to encourage the
21 conservation and enhancement of such habitat;”.

22 (c) DISCRETIONARY PROVISION IN FISHERY MAN-
23 AGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b))
24 is amended by striking “and” after the semicolon at the
25 end of paragraph (11), by striking the period at the end



1 of paragraph (12) and inserting a semicolon, and by add-
2 ing at the end the following:

3 “(13) minimize to the extent practicable ad-
4 verse effects caused by fishing, on essential fish
5 habitat described and identified under section
6 303(a)(7)(A); and”.

7 (d) HABITAT AREA OF PARTICULAR CONCERN.—
8 Section 3 (16 U.S.C. 1802) is amended by adding at the
9 end the following:

10 “(46) The term ‘habitat area of particular con-
11 cern’ means any discrete habitat area that is essen-
12 tial fish habitat and that—

13 “(A) provides important ecological func-
14 tions;

15 “(B) is sensitive to human-induced envi-
16 ronmental degradation; or

17 “(C) is a rare habitat type.”.

18 **SEC. 11. DEMONSTRATION PROGRAM FOR OYSTER SANC-**
19 **TUARIES AND RESERVES.**

20 (a) IN GENERAL.—The Secretary of Commerce,
21 through the National Oceanic and Atmospheric Adminis-
22 tration Chesapeake Bay Office, shall develop a program
23 for the design, construction, and placement of oyster sanc-
24 tuaries or reserves consistent with the agreement known
25 as the Chesapeake 2000 Agreement. The program shall



1 be developed in conjunction with the Corps of Engineers,
2 the Coast Guard, the Environmental Protection Agency,
3 the State of Maryland, the Commonwealth of Virginia, the
4 Oyster Recovery Partnership, the Chesapeake Bay Foun-
5 dation, the Oyster Heritage Foundation, local commercial
6 and recreational fishing organizations, the Port of Balti-
7 more, the University of Maryland, the Virginia Institute
8 of Marine Sciences, and other users of the waters of the
9 Chesapeake Bay, as appropriate.

10 (b) ARTIFICIAL STRUCTURES OR REEFS.—The pro-
11 gram shall include the design, construction, and placement
12 of artificial structures or reefs to act as beds for oyster
13 production. The placement of these structures and reefs
14 should be designed to maximize the production of oysters
15 while minimizing conflicts with existing uses such as fish-
16 ing or navigation. The structures and reefs shall be placed
17 in areas which will not be hazards to navigation. The Sec-
18 retary shall work with interested parties to ensure that
19 all sites are adequately marked on navigation charts as
20 appropriate.

21 (c) RESEARCH PLAN.—The Secretary shall develop
22 a research plan for the placement of artificial structures
23 and reefs under the program, including measurable goals
24 and a monitoring program to determine the effectiveness



1 of the structures and reefs in recovering native oyster pop-
2 ulations.

3 (d) NO FISHING REGULATIONS.—The Secretary shall
4 recommend State regulations prohibiting fishing in the
5 waters surrounding artificial structures or reefs placed
6 under this section as necessary to ensure the reproduction
7 of oysters on the structures and reefs. The restrictions
8 may be seasonal in nature, and shall not apply in any area
9 that is located more than 100 meters from such a struc-
10 ture or reef.

11 (e) RESTORATION OF NATIVE OYSTERS.—The pro-
12 gram shall use only native oyster species.

13 (f) REPORT.—The Secretary of Commerce shall sub-
14 mit to the Congress annual reports on the program under
15 this section.

16 (g) AUTHORIZATION OF APPROPRIATIONS.—

17 (1) IN GENERAL.—To carry out this section
18 there is authorized to be appropriated to the Sec-
19 retary \$5,000,000 for each of fiscal years 2004
20 through 2009.

21 (2) LIMITATION.—Not more than 5 percent of
22 amounts appropriated under this section may be
23 available for administrative expenses.



1 **SEC. 12. INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS.**

2 (a) **AUTHORITY TO ESTABLISH INDIVIDUAL QUOTA**
3 **SYSTEMS.**—Section 303(b)(6) (16 U.S.C. 1853(b)(6)) is
4 amended to read as follows:

5 “(6) establish a limited access system for the
6 fishery in order to achieve optimum yields, if—

7 “(A) in developing such system, the Coun-
8 cils and the Secretary take into account—

9 “(i) the need to promote conservation,

10 “(ii) present participation in the fish-
11 ery,

12 “(iii) historical fishing practices in,
13 and dependence on, the fishery,

14 “(iv) the economics of the fishery,

15 “(v) the capability of fishing vessels
16 used in the fishery to engage in other fish-
17 eries,

18 “(vi) the cultural and social frame-
19 work relevant to the fishery and fishing
20 communities, and

21 “(vii) any other relevant consider-
22 ations; and

23 “(B) in the case of such a system that pro-
24 vides for the allocation and issuance of indi-
25 vidual quotas (as that term is defined in sub-



1 section (d)), the system complies with sub-
2 section (d).”.

3 (b) REQUIREMENTS.—Section 303(d) (16 U.S.C.
4 1853(d)) is amended—

5 (1) by redesignating paragraphs (2), (3), (4),
6 and (5) in order as paragraphs (11), (12), (13), and
7 (14);

8 (2) in paragraph (12)(B), as so redesignated,
9 by inserting “, including as a result of a violation of
10 this Act or any regulation prescribed under this
11 Act” before the semicolon;

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

13 “(15) As used in this subsection:

14 “(A) The term ‘individual quota system’ means
15 a system that limits access to a fishery in order to
16 achieve optimum yields, through the allocation and
17 issuance of individual quotas.

18 “(B) The term ‘individual quota’ means a grant
19 of permission to harvest or process a quantity of fish
20 in a fishery, during each fishing season for which
21 the permission is granted, equal to a stated percent-
22 age of the total allowable catch for the fishery.”; and

23 (4) by striking so much as precedes paragraph
24 (11), as so designated, and inserting the following:



1 “(d) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA
2 SYSTEMS.—(1) A fishery management plan for a fishery
3 that is managed under a limited access system authorized
4 by subsection (b)(6) may establish an individual quota sys-
5 tem for the fishery in accordance with this subsection.

6 “(2) A fishery management plan that establishes an
7 individual quota system for a fishery—

8 “(A) shall provide for administration of the sys-
9 tem by the Secretary in accordance with the terms
10 of the plan;

11 “(B) shall include provisions that establish pro-
12 cedures and requirements for each Council having
13 authority over the fishery, for—

14 “(i) reviewing and revising the terms of
15 the plan that establish the system; and

16 “(ii) renewing, reallocating, and reissuing
17 individual quotas if determined appropriate by
18 each Council;

19 “(C) shall include provisions to—

20 “(i) provide for fair and equitable alloca-
21 tion of individual quotas under the system, and
22 minimize negative social and economic impacts
23 of the system on fishing communities;



1 “(ii) ensure adequate enforcement of the
2 system, including the use of observers where
3 appropriate; and

4 “(iii) provide for monitoring the temporary
5 or permanent transfer of individual quotas
6 under the system;

7 “(D) shall include provisions that prevent any
8 person from acquiring an excessive share of indi-
9 vidual quotas issued for a fishery; and

10 “(E) shall include measurable conservation
11 goals.

12 “(3) An individual quota issued under an individual
13 quota system established by a fishery management plan
14 may be received, held, or transferred in accordance with
15 regulations prescribed by the Secretary under this Act.

16 “(4)(A) Except as otherwise provided in this para-
17 graph, any fishery management plan that establishes an
18 individual quota system for a fishery may authorize indi-
19 vidual quotas to be held by or issued under the system
20 to fishing vessel owners, fishermen, crew members, fishing
21 communities, other persons as specified by the Council,
22 and United States fish processors.

23 “(B) An individual who is not a citizen of the United
24 States may not hold an individual quota issued under a
25 fishery management plan.



1 “(C) A Federal agency or official may not hold, ad-
2 minister, or reallocate an individual quota issued under
3 a fishery management plan, other than the Secretary and
4 the Council having authority over the fishery for which
5 the individual quota is issued.

6 “(D)(i) A fishing community may not hold individual
7 quotas under an individual quota system established under
8 this subsection for a fishery that authorize harvest of more
9 than the lesser of—

10 “(I) 1 percent of the total authorized harvest in
11 the fishery; or

12 “(II) a percentage of such total authorized har-
13 vest established by the Council having jurisdiction
14 over the fishery.

15 “(ii) This subparagraph does not apply to a commu-
16 nity that is eligible to participate in the western Alaska
17 community development program or the western Pacific
18 community development program, under section 305(i).

19 “(5) Any fishery management plan that establishes
20 an individual quota system for a fishery may include provi-
21 sions that—

22 “(A) allocate individual quotas under the sys-
23 tem among categories of vessels; and

24 “(B) provide a portion of the annual harvest in
25 the fishery for entry-level fishermen, small vessel



1 owners, or crew members who do not hold or qualify
2 for individual quotas.

3 “(6) An individual quota system established for a
4 fishery may be limited or terminated at any time by the
5 Secretary or through a fishery management plan or
6 amendment developed by the Council having authority
7 over the fishery for which it is established, if necessary
8 for the conservation and management of the fishery.

9 “(7)(A) A fishery management plan that establishes
10 an individual quota system for a fishery—

11 “(i) must include measurable conservation
12 goals; and

13 “(ii) to monitor achievement of such goals, may
14 require greater observer coverage or electronic data
15 collection technology on any vessel fishing under an
16 individual quota issued under the system.

17 “(B) Not later than 5 years after the date of the es-
18 tablishment of an individual quota system for a fishery
19 under this section by a Council or the Secretary, and every
20 5 years thereafter, the Council or Secretary, respectively,
21 shall review the effectiveness of the system in achieving
22 the conservation goals required under this paragraph.

23 “(8)(A) The Secretary or a Council—

24 “(i) may not develop a proposal to establish an
25 individual quota system for a fishery, unless develop-

1 ment of the proposal has been approved by a ref-
2 erendum conducted in accordance with this para-
3 graph; and

4 “(ii) may not issue a proposed fishery manage-
5 ment plan or amendment to such a plan to establish
6 such a system unless the proposed plan or amend-
7 ment, respectively, has been approved by a ref-
8 erendum conducted in accordance with this para-
9 graph.

10 “(B) The Secretary, at the request of a Council, shall
11 conduct the referenda required by subparagraph (A). Each
12 referendum with respect to a fishery shall be decided by
13 a 60-percent majority of the votes cast by persons who
14 are determined by the Council, based on guidelines devel-
15 oped by the Secretary, to be eligible to vote in the ref-
16 erendum.

17 “(C) The Secretary shall develop guidelines to deter-
18 mine procedures and voting eligibility requirements for
19 referenda and to conduct such referenda in a fair and eq-
20 uitable manner.

21 “(9) Any individual quota system established under
22 section 303(b)(6) after the date of enactment of the Mag-
23 nuson-Stevens Act Amendments of 2002, and any indi-
24 vidual quota issued under such a system, shall not apply
25 after the end of the 10-year period beginning on the date



1 the system is established, or after the end of any 10-year
2 period thereafter, unless the Council has reviewed and
3 taken affirmative action to continue the system before the
4 end of each such 10-year period.”.

5 (c) FEES.—Section 304(d) is amended—

6 (1) in paragraph (2)(A) by striking “any” and
7 all that follows through “(ii)” and inserting “any”;
8 and

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

10 “(3)(A) Notwithstanding paragraph (1), the Sec-
11 retary shall collect from a person that holds or transfers
12 an individual quota issued under a limited access system
13 established under section 303(b)(6) fees established by the
14 Secretary in accordance with this section and section
15 9701(b) of title 31, United States Code.

16 “(B) The fees required to be established and collected
17 by the Secretary under this paragraph are the following:

18 “(i) With respect to any initial allocation under
19 a limited access system established after the date of
20 the enactment of the Magnuson-Stevens Act Amend-
21 ments of 2002, an initial allocation fee in an
22 amount, determined by the Secretary, equal to 1
23 percent of the ex-vessel value of fish authorized in
24 one year under an individual quota, that shall be col-



1 lected from the person to whom the individual quota
2 is first issued.

3 “(ii) An annual fee in an amount, determined
4 by the Secretary, not to exceed 3 percent of the ex-
5 vessel value of fish authorized each year under an
6 individual quota share, that shall be collected from
7 the holder of the individual quota share.

8 “(iii) A transfer fee in an amount, determined
9 by the Secretary, equal to 1 percent of the ex-vessel
10 value of fish authorized each year under an indi-
11 vidual quota share, that shall be collected from a
12 person who permanently transfers the individual
13 quota share to another person.

14 “(C) In determining the amount of a fee under this
15 paragraph, the Secretary shall ensure that the amount is
16 commensurate with the cost of managing the fishery with
17 respect to which the fee is collected, including reasonable
18 costs for salaries, data analysis, and other costs directly
19 related to fishery management and enforcement.

20 “(D) The Secretary, in consultation with the Coun-
21 cils, shall promulgate regulations prescribing the method
22 of determining under this paragraph the ex-vessel value
23 of fish authorized under an individual quota share, the
24 amount of fees, and the method of collecting fees.



1 “(E) Fees collected under this paragraph from hold-
2 ers of individual quotas in a fishery shall be an offsetting
3 collection and shall be available to the Secretary only for
4 the purposes of administering and implementing this Act
5 with respect to that fishery.”.

6 (d) APPROVAL OF FISHERY MANAGEMENT PLANS
7 ESTABLISHING INDIVIDUAL QUOTA SYSTEMS.—Section
8 304 (16 U.S.C. 1854) is amended by adding at the end
9 the following:

10 “(i) ACTION ON LIMITED ACCESS SYSTEMS.—(1) In
11 addition to the other requirements of this Act, after the
12 date of the enactment of the Magnuson-Stevens Act
13 Amendments of 2002 the Secretary may not approve a
14 fishery management plan that establishes a limited access
15 system that provides for the allocation of individual quotas
16 (in this subsection referred to as an ‘individual quota sys-
17 tem’) unless the plan complies with section 303(d).

18 “(2) The Secretary shall issue regulations that estab-
19 lish requirements for establishing an individual quota sys-
20 tem. The regulations shall—

21 “(A) specify factors that shall be considered by
22 a Council in determining whether a fishery should be
23 managed under an individual quota system;

24 “(B) ensure that any individual quota system is
25 consistent with the requirements of sections 303(a)

1 and 303(d), and require the collection of fees in ac-
2 cordance with subsection (d)(3) of this section;

3 “(C) provide for appropriate penalties for viola-
4 tions of individual quotas systems, including the sus-
5 pension or revocation of individual quotas for such
6 violations;

7 “(D) include recommendations for potential
8 management options related to individual quotas, in-
9 cluding the authorization of individual quotas that
10 may not be transferred by the holder, and the use
11 of leases or auctions by the Federal Government in
12 the establishment or allocation of individual quotas;
13 and

14 “(E) establish a central lien registry system for
15 the identification, perfection, and determination of
16 lien priorities, and nonjudicial foreclosure of encum-
17 brances, on individual quotas.”.

18 (e) RESTRICTION ON NEW INDIVIDUAL QUOTA SYS-
19 TEMS PENDING REGULATIONS.—

20 (1) RESTRICTION.—The Secretary of Commerce
21 may not approve any covered quota system plan, and
22 no covered quota system plan shall take effect,
23 under title III of the Magnuson-Stevens Fishery
24 Conservation and Management Act, before the effec-
25 tive date of regulations issued by the Secretary



1 under section 304(i) of that Act, as added by sub-
2 section (d) of this section.

3 (2) COVERED QUOTA SYSTEM PLAN DE-
4 FINED.—In this subsection, the term “covered quota
5 system plan” means a fishery management plan or
6 amendment to a fishery management plan, that—

7 (A) proposes establishment of an individual
8 quota system (as that term is used in section
9 303(d) of the Magnuson-Stevens Fishery Con-
10 servation and Management Act, as amended by
11 this section); and

12 (B) is not approved by the Secretary be-
13 fore May 1, 2002.

14 (f) EXISTING QUOTA PLANS.—Nothing in this Act
15 or the amendments made by this Act shall be construed
16 to require a reallocation of individual fishing quotas under
17 any individual fishing quota program approved by the Sec-
18 retary of Commerce before May 1, 2002.

19 **SEC. 13. COOPERATIVE EDUCATION AND RESEARCH.**

20 (a) DISCRETIONARY PROVISIONS IN FISHERY MAN-
21 AGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b))
22 is further amended by striking “and” after the semicolon
23 at the end of paragraph (11), by striking the period at
24 the end of paragraph (12) and inserting a semicolon, and
25 by adding at the end the following:



1 “(14) include provisions to create a cooperative
2 research component including the use of commercial
3 or charter vessels for the gathering of data on stock
4 abundance, composition, distribution, or other rel-
5 evant information important for the implementation
6 of the plan.”.

7 (b) BLACK SEA BASS.—Section 404 (16 U.S.C.
8 1881c) is amended by adding at the end the following:

9 “(f) BLACK SEA BASS COOPERATIVE RESEARCH
10 PROGRAM.—The Secretary, through the New England
11 Fisheries Science Center, shall develop and implement a
12 cooperative stock assessment program, using vessels from
13 the commercial black sea bass fishing industry if appro-
14 priate and available. This cooperative program shall in-
15 clude research on the range of the stock, a determination
16 as to whether there is more than one stock, and a black
17 sea bass genetic study to determine whether there is more
18 than one stock of such species requiring different manage-
19 ment regimes.”.

20 **SEC. 14. REPORT ON HIGHLY MIGRATORY SPECIES.**

21 Section 102 (16 U.S.C. 1812) is amended—

22 (1) by inserting “(a) IN GENERAL.—” before
23 “The United States”; and

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



1 “(b) ANNUAL REPORT.—The Secretary shall, within
2 one year after the date of the enactment of this subsection
3 and annually thereafter, report to the Congress on—

4 “(1) any nation that is fishing for Atlantic
5 highly migratory species and is not in compliance
6 with the fishery conservation and management provi-
7 sions or any rebuilding recommendations or provi-
8 sions enacted by the international body charged with
9 developing such measures; and

10 “(2) any recommendations for addressing those
11 nations identified under paragraph (1) and actions
12 the United States might take to ensure such compli-
13 ance by such nations.”.

14 **SEC. 15. PROHIBITED ACTS.**

15 Section 307 (16 U.S.C. 1857) is amended by striking
16 “and” after the semicolon at the end of paragraph (4),
17 by striking the period at the end of paragraph (5) and
18 inserting “; and”, and by adding at the end the following:

19 “(6) to sell or purchase any fish caught in rec-
20 reational fishing.”.

21 **SEC. 16. MEMBERSHIP OF FISHERY MANAGEMENT COUN-**
22 **CILS.**

23 (a) NEW ENGLAND COUNCIL.—Section 302(a)(1)(A)
24 (16 U.S.C. 1852(a)(1)(A)) is amended by—



1 (1) inserting "New York," after "Massachu-
2 setts,"; and

3 (2) striking "18" and inserting "19".

4 (b) ADDITIONAL MEMBER OF EACH COUNCIL.—Sec-
5 tion 302 (16 U.S.C. 1852) is further amended as follows:

6 (1) In subsection (a)(1)(A)—

7 (A) by striking "19" and inserting "20";

8 (B) by striking "12" and inserting "13";

9 and

10 (C) by inserting before the period the fol-
11 lowing: "and including one appointed by the
12 Secretary in accordance with subsection
13 (b)(6)".

14 (2) In subsection (a)(1)(B)—

15 (A) by striking "21" and inserting "22";

16 (B) by striking "13" and inserting "14";

17 and

18 (C) by inserting before the period the fol-
19 lowing: "and including one appointed by the
20 Secretary in accordance with subsection
21 (b)(6)".

22 (3) In subsection (a)(1)(C)—

23 (A) by striking "13" and inserting "14";

24 (B) by striking "8" and inserting "9"; and



1 (C) by inserting before the period the fol-
2 lowing: “and including one appointed by the
3 Secretary in accordance with subsection
4 (b)(6)”.

5 (4) In subsection (a)(1)(D)—

6 (A) by striking “7” and inserting “8”;

7 (B) by striking “4” and inserting “5”; and

8 (C) by inserting before the period the fol-
9 lowing: “and including one appointed by the
10 Secretary in accordance with subsection
11 (b)(6)”.

12 (5) In subsection (a)(1)(E)—

13 (A) by striking “17” and inserting “18”;

14 (B) by striking “11” and inserting “12”;

15 and

16 (C) by inserting before the period the fol-
17 lowing: “and including one appointed by the
18 Secretary in accordance with subsection
19 (b)(6)”.

20 (6) In subsection (a)(1)(F)—

21 (A) by striking “14” and inserting “15”;

22 (B) by striking “8” and inserting “9”;

23 (C) by inserting “by the Secretary” after
24 “including one appointed”; and



1 (D) by inserting before the period the fol-
2 lowing: “and one appointed by the Secretary in
3 accordance with subsection (b)(6)”.

4 (7) In subsection (a)(1)(G)—

5 (A) by striking “11” and inserting “12”;

6 (B) by striking “7” and inserting “8”; and

7 (C) by inserting before the period the fol-
8 lowing: “and including one appointed by the
9 Secretary in accordance with subsection
10 (b)(6)”.

11 (8) In subsection (a)(1)(H)—

12 (A) by striking “13” and inserting “14”;

13 (B) by striking “8” and inserting “9”; and

14 (C) by inserting before the period the fol-
15 lowing: “and including one appointed by the
16 Secretary in accordance with subsection
17 (b)(6)”.

18 (9) In subsection (b)—

19 (A) by redesignating paragraph (6) as
20 paragraph (7);

21 (B) in paragraph (7), as so redesignated,
22 by striking “paragraphs (2) or (5)” and insert-
23 ing “paragraph (2), (5), or (6)”;

24 (C) by inserting after paragraph (5) the
25 following:



1 “(6) The member of each Council who is required to
2 be appointed in accordance with this paragraph—

3 “(A) shall not be an individual who is directly
4 employed by, or receives a majority of his or her
5 livelihood from, the commercial, charter, or rec-
6 reational fishing community; and

7 “(B) shall be appointed without regard to sub-
8 sections (B) and (C) of paragraph (2).”.

9 **SEC. 17. MISCELLANEOUS AMENDMENTS TO PURPOSES**
10 **AND POLICY.**

11 Section 2 (16 U.S.C. 1801) is amended—

12 (1) in subsection (b)(6) by inserting “eco-
13 logically sound” after “to encourage the”; and

14 (2) in subsection (c)(6) by inserting “restore,”
15 after “to foster”.

16 **SEC. 18. FOREIGN FISHING.**

17 Section 201(e)(1)(E) (16 U.S.C. 1821(e)(1)(E)) is
18 amended—

19 (1) in clause (iii) by inserting “and compliance
20 with and enforcement of international fishing agree-
21 ments and treaties” after “fishing regulations”; and

22 (2) in clause (vii) by inserting “, conservation,”
23 after “fishery research”.



1 **SEC. 19. DRIFTNETS.**

2 Section 206(c)(1) (16 U.S.C. 1826(c)(1)) is amended
3 by inserting before the semicolon at the end the following:
4 “and comply with any further action or resolution adopted
5 by the United Nations on large-scale driftnet fishing to
6 which the United States is a signatory.”.

7 **SEC. 20. SOURCES FOR DATA IN FISHERIES RESEARCH.**

8 Section 404(a) (16 U.S.C. 1881c(a)) is amended by
9 adding at the end the following: “The program shall ac-
10 quire such knowledge and data using both fishery-depend-
11 ent and fishery-independent data sources.”.

12 **SEC. 21. MISCELLANEOUS FISHERY PROTECTIONS IN FISHERY**
13 **MANAGEMENT PLANS.**

14 Section 303(b) (16 U.S.C. 1853(b)) is amended by
15 striking “and” after the semicolon at the end of paragraph
16 (11), by striking the period at the end of paragraph (12)
17 and inserting a semicolon, and by adding at the end the
18 following:

19 “(13) designate closed areas, seasonal closures,
20 time closures, gear restrictions, or other methods for
21 limiting impacts on habitat, limiting bycatch impacts
22 of gear, or limiting fishing impact on spawning con-
23 gregations in specific geographic areas.”.



1 **SEC. 22. COOPERATIVE MARINE EDUCATION AND RE-**
2 **SEARCH PROGRAM.**

3 (a) PROGRAM.—The Secretary of Commerce may
4 enter into cooperative agreements with universities and in-
5 stitutions of higher learning in order to conduct research
6 in areas that support conservation and management of liv-
7 ing marine resources.

8 (b) INCLUDED RESEARCH.—Research conducted
9 under the program may include biological research
10 concerning—

11 (1) the abundance and life history parameters
12 of stocks of fish;

13 (2) the interdependence of fisheries or stocks of
14 fish and other ecosystem components; and

15 (3) the linkages between fish habitat and fish
16 production and abundance.

17 **SEC. 23. AUTHORIZATION OF APPROPRIATIONS.**

18 Section 4 (16 U.S.C. 1893) is amended to read as
19 follows:

20 **“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

21 “There are authorized to be appropriated to the Sec-
22 retary for the purposes of carrying out the provisions of
23 this Act, not to exceed the following sums:

24 “(1) \$200,500,000 for fiscal year 2003;

25 “(2) \$214,000,000 for fiscal year 2004;

26 “(3) \$222,000,000 for fiscal year 2005;

- 1 “(4) \$230,000,000 for fiscal year 2006; and
- 2 “(5) \$238,000,000 for fiscal year 2007.”.



.....
(Original Signature of Member)

107TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. TAUZIN introduced the following bill; which was referred to the Committee
on _____

A BILL

To reauthorize and amend the Magnuson-Stevens Fishery
Conservation and Management Act.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Fisheries Science Im-
5 provement Act of 2002".



1 **SEC. 2. AMENDMENT OF MAGNUSON-STEVENS FISHERY**
2 **CONSERVATION AND MANAGEMENT ACT.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Magnuson-Stevens Fish-
8 ery Conservation and Management Act (16 U.S.C. 1801
9 et seq.).

10 **SEC. 3. ENSURING USE OF BEST SCIENTIFIC INFORMATION**
11 **AVAILABLE.**

12 (a) **TERM DEFINED.**—Section 3 (16 U.S.C. 1802) is
13 amended by adding at the end the following:

14 “(47) The term ‘best scientific information
15 available’ means information that—

16 “(A) can be determined to be directly re-
17 lated to the specific issue under consideration;

18 “(B) is based on a statistically valid sam-
19 ple such that any conclusions drawn are reason-
20 ably supported and not mere speculation;

21 “(C) has been independently peer-reviewed;

22 “(D) has been collected within a time
23 frame that is reasonably related to the specific
24 issue under consideration;

25 “(E) is consistent with information that is
26 available from other reliable sources; and



1 “(F) may include, but may not be limited
2 to, anecdotal information collected from the
3 harvesting and processing of fish.”.

4 (b) PROHIBITION ON USE OF OTHER INFORMATION
5 IN FISHERY MANAGEMENT DECISIONS.—Section
6 301(a)(2) (16 U.S.C. 1851(a)(2)) is amended by inserting
7 “only” after “shall be based upon”.

8 **SEC. 4. PEER REVIEW OF STOCK ASSESSMENTS.**

9 (a) SCIENTIFIC REVIEW COMMITTEES.—Section
10 302(g) (16 U.S.C. 1852(g)) is amended by adding the fol-
11 lowing:

12 “(6)(A) Each Council may establish one or
13 more scientific review committees to conduct peer re-
14 views of all stock assessments prepared for fisheries
15 under the Council’s jurisdiction.

16 “(B) A committee established under this para-
17 graph by a Council shall, at a minimum, consist of
18 at least one member from each of the committees es-
19 tablished under paragraphs (1) and (3) by the Coun-
20 cil, one member who is not affiliated with the au-
21 thors of the stock assessments under review, and
22 such other members as the Council considers appro-
23 priate, excluding the authors of the stock assessment
24 reviewed by the committee.”.



1 (b) REQUIREMENT TO CONDUCT REVIEWS.—Section
2 404 (16 U.S.C. 1881e) is amended by adding at the end
3 the following:

4 “(e) INDEPENDENT PEER REVIEW.—The Secretary
5 shall conduct an independent and confidential peer review
6 of any stock assessment conducted under this section prior
7 to its use to further the purposes, policy, and provisions
8 of this Act. The review shall consider the recommenda-
9 tions of any scientific review committee established under
10 section 302(g)(6) with respect to the fishery that is the
11 subject of the stock assessment.”.

12 **SEC. 5. ESSENTIAL FISH HABITAT.**

13 (a) HABITAT AREAS OF PARTICULAR CONCERN DE-
14 FINED.—Section 3 (16 U.S.C. 1802) is further amended
15 by adding at the end the following:

16 “(48) The term ‘habitat area of particular con-
17 cern’ means any area that—

18 “(A) is a discrete, vulnerable subunit of es-
19 sential fish habitat that is required for a stock
20 to sustain itself; and

21 “(B) is designated in a fishery manage-
22 ment plan under the national criteria issued by
23 the Secretary under section 305(b)(1)(E).”.



1 (b) SPECIFICATION OF NATIONAL CRITERIA.—Sec-
2 tion 305(b)(1) (16 U.S.C. 1855(b)(1)) is amended by add-
3 ing at the end the following:

4 “(E)(i) The Secretary shall issue national criteria for
5 designating habitat areas of particular concern, by not
6 later than 1 year after the date of the enactment of the
7 Fisheries Science Improvement Act of 2002.

8 “(ii) The national criteria shall, at a minimum, in-
9 clude a requirement that such designation be based on in-
10 formation regarding habitat-specific density of a fish
11 stock, and growth, reproduction, and survival rates of that
12 stock within the designated area.”.

13 (c) DESCRIPTION IN FISHERY MANAGEMENT
14 PLANS.—Section 303(a)(7) (16 U.S.C. 1853(a)(7)) is
15 amended to read as follows:

16 “(7)(A) describe and identify essential fish
17 habitat and habitat areas of particular concern for
18 the fishery based on the guidelines established by
19 the Secretary under section 305(b)(1)(A);

20 “(B) minimize to the extent practicable adverse
21 effects on habitat areas of particular concern caused
22 by fishing that prevent a stock of fish from sus-
23 taining itself on a continuing basis; and

24 “(C) identify other actions to encourage the
25 conservation and enhancement of such habitat.”.



1 (d) GUIDELINES, RECOMMENDATIONS, AND INFOR-
2 MATION OF SECRETARY.—Section 305(b)(1) (16 U.S.C.
3 1855(b)(1)) is amended in subparagraphs (A) and (B) by
4 striking “essential fish habitat” each place it appears and
5 inserting “habitat areas of particular concern”.

6 (e) CONSIDERATION IN CONSULTATIONS.—Section
7 305(b)(2) (16 U.S.C. 1855(b)(2)) is amended by inserting
8 before the period at the end the following: “, taking into
9 consideration, for activities that may have an impact on
10 the Nation’s energy needs, the energy needs of the Nation
11 and the ability of the energy resources on State and Fed-
12 eral lands to contribute to those needs”.

13 (f) CONSIDERATION IN RESPONSE TO RECOMMENDA-
14 TIONS.—Section 305(b)(4)(B) (16 U.S.C. 1855(b)(4)(B))
15 is amended by adding at the end the following: “In either
16 case, the Federal agency shall, for activities that may have
17 an impact on the Nation’s energy needs, give full consider-
18 ation to the energy needs of the Nation and of the ability
19 of the energy resources on State and Federal lands to con-
20 tribute to those needs.”.

21 **SEC. 6. DETERMINING AND REBUILDING OVERFISHED**
22 **FISHERIES.**

23 (a) DEFINITIONS.—Section 3 (16 U.S.C. 1802) is
24 further amended—



1 (1) by amending paragraph (29) to read as fol-
2 lows:

3 “(29)(A) The term ‘overfished’ refers to a stock
4 of fish that, as a result of fishing, is at a population
5 level beneath that necessary to produce 50 percent
6 of the Maximum Sustainable Yield.

7 “(B) The term ‘overfishing’ means a rate or
8 level of harvest by commercial and recreational fish-
9 ing that results in a reduction in the population level
10 of the fish stock beneath that necessary to produce
11 50 percent of the Maximum Sustainable Yield.”;

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

13 “(49) The term ‘carrying capacity’ means the
14 maximum population level of a stock of fish that the
15 current state of the environment will support and
16 which changes as the state of the environment
17 changes.

18 “(50) The term ‘Maximum Sustainable Yield’
19 means the long-term average maximum amount of
20 surplus production that can be removed on an an-
21 nual basis by both commercial and recreational fish-
22 ermen that could be continuously taken from a stock
23 of fish under the existing carry capacity, and which
24 is adjusted as the carrying capacity changes.



1 “(51) The term ‘surplus production’ means any
2 quantity of fish that can be removed from a stock
3 of fish where the quantity of fish removed when
4 combined with natural mortality is no greater than
5 (equal to or less than) the quantity of fish the stock
6 of fish is capable of reproducing through growth and
7 reproduction.”.

8 (b) DETERMINATION AND REBUILDING PROCESS.—
9 Section 304(e) (16 U.S.C. 1854(e)) is amended—

10 (1) in paragraph (1)—

11 (A) by striking “(1)” and inserting
12 “(1)(A)”;

13 (B) by striking “fisheries” each place it
14 appears and inserting “stocks of fish”;

15 (C) by amending the last sentence to read
16 as follows: “A stock of fish shall be classified as
17 approaching a condition of being overfished if,
18 based on the best scientific information avail-
19 able and other appropriate factors, the Sec-
20 retary estimates that the stock of fish will be-
21 come overfished within two years.”; and

22 (D) by adding at the end the following:

23 “(B) If the Secretary determines that insufficient in-
24 formation is available on which to conclude that a stock
25 of fish is approaching a condition of being overfished, the



1 Secretary shall immediately notify the appropriate Council
2 and within one year after such notification implement a
3 cooperative research program designed to provide the in-
4 formation needed to determine whether or not the stock
5 of fish is approaching a condition of being overfished.”;

6 (2) by amending paragraph (2) to read as fol-
7 lows:

8 “(2) If the Secretary determines at any time that a
9 stock of fish is overfished, the Secretary shall immediately
10 notify the appropriate Council and request that action be
11 taken to end overfishing and to implement conservation
12 and management measures to rebuild the stock of fish.
13 In the case of a multi-species fishery, such conservation
14 and management measures shall not require that fishing
15 be reduced for those stocks of fish that are not overfished.
16 The Secretary shall publish each notice under this para-
17 graph in the Federal Register.”;

18 (3) in paragraph (3)—

19 (A) by striking “Within one year” and in-
20 sserting “Within three years”; and

21 (B) in subparagraph (A) by striking “to
22 end overfishing” and inserting “to address over-
23 fishing”;

24 (4) in paragraph (4)—



1 (A) by striking “For a fishery that is over-
2 fished” and inserting “For a fishery involving a
3 stock of fish that is overfished”; and

4 (B) by amending subparagraph (A) to read
5 as follows:

6 “(A) specify a time period for addressing
7 overfishing and rebuilding the overfished stock
8 or stocks in the fishery that is as short a time
9 period as practical, taking into account the sta-
10 tus, biology, and carrying capacity of any over-
11 fished stocks, the best scientific information
12 available, the cumulative social and economic
13 impacts, recommendations by international or-
14 ganizations in which the United States partici-
15 pates, and the interaction of the overfished
16 stock or stocks within the marine ecosystem;”;
17 (5) in paragraph (5)—

18 (A) by striking “within the one-year pe-
19 riod” and inserting “within the three-year pe-
20 riod”;

21 (B) by striking “that a fishery is over-
22 fished” and inserting “that one or more stocks
23 of fish in a fishery are overfished”; and



1 (C) by striking “regulations to stop over-
2 fishing” and inserting “regulations to address
3 overfishing”;

4 (6) in the second sentence of paragraph (6), by
5 striking “to stop overfishing of a fishery” and in-
6 sserting “to address overfishing of a stock or stocks
7 of fish in a fishery”; and

8 (7) in paragraph (7)—

9 (A) in the first sentence by inserting “and
10 the best scientific information available related
11 to the fishery management plan, plan amend-
12 ment, or regulations” before “at routine inter-
13 vals”;

14 (B) in the second sentence by striking
15 “ending overfishing” and inserting “addressing
16 overfishing, sufficient data collection,”;

17 (C) by striking “or” at the end of subpara-
18 graph (A);

19 (D) by striking the period at the end of
20 subparagraph (B) and inserting “; or”; and

21 (E) by adding at the end the following:

22 “(C) design and implement a cooperative re-
23 search program to collect the best scientific informa-
24 tion available for such fish stocks.”.



1 **SEC. 7. FINDINGS, PURPOSE, AND POLICY REGARDING FISH**
2 **AS FOOD.**

3 (a) **FINDINGS.**—Section 2(a) (16 U.S.C. 1801(a)) is
4 amended by adding at the end the following:

5 “(11) Fish are an important natural renewable
6 resource of food and fisheries have played a tradi-
7 tional and essential role in providing high quality
8 protein for human use.

9 “(12) Fish are an important source of essential
10 nutrients, particularly Omega-3 fatty acids, and
11 there is agreement among medical scientists that
12 some of the world’s most serious diseases can be
13 prevented by increased fish consumption.”.

14 (b) **PURPOSE.**—Section 2(b) (16 U.S.C. 1801(b)) is
15 amended—

16 (1) by striking “and” at the end of paragraph
17 (6);

18 (2) by striking the period at the end of para-
19 graph (7) and inserting “; and”; and

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

21 “(8) To promote fisheries conservation and
22 management that will enhance our Nation’s food
23 supply, income, and economic growth.”.

24 (c) **POLICY.**—Section 2(c) (16 U.S.C. 1801(c)) is
25 amended—



1 (1) by striking "and" at the end of paragraph
2 (6);

3 (2) by striking the period at the end of para-
4 graph (7) and inserting "; and"; and

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

6 "(8) that conservation and management meas-
7 ures shall contribute to the food supply, economy,
8 and health of the Nation."

9 **SEC. 8. OBSERVERS.**

10 (a) **FISHERY MANAGEMENT PLAN REQUIREMENT.—**

11 Section 303(a) (16 U.S.C. 1853(a)) is amended—

12 (1) by striking "and" at the end of paragraph
13 (13);

14 (2) by striking the period at the end of para-
15 graph (14) and inserting "; and"; and

16 (3) by adding the following:

17 "(15) to the extent that observers are deployed
18 on board United States fishing vessels or in United
19 States fish processing plants under the provisions of
20 the fishery management plan or regulations imple-
21 menting the fishery management plan, comply with
22 the goals and objectives required under subsection
23 (e)."



1 (b) REQUIREMENTS FOR UNITED STATES OBSERVER
2 PROGRAMS.—Section 303 (16 U.S.C. 1853) is amended
3 by adding at the end the following:

4 “(e) REQUIREMENTS FOR UNITED STATES OB-
5 SERVER PROGRAMS.—(1) Before establishing a program
6 under this Act that utilizes observers deployed on United
7 States fishing vessels or in United States fish processing
8 plants, the Council with jurisdiction over the fishery in
9 which the observers will be deployed, or in the case of a
10 highly migratory species fishery, the Secretary, shall
11 establish—

12 “(A) a set of goals and objectives and an imple-
13 mentation schedule for the program; and

14 “(B) a statistically reliable method for achiev-
15 ing the goals and objectives.

16 “(2) The goals and objectives required under para-
17 graph (1) shall ensure—

18 “(A) equity among the various harvesting and
19 processing sectors in the fishery;

20 “(B) that the costs of the program are appro-
21 priately shared by all beneficiaries, including partici-
22 pants in other fisheries; and

23 “(C) that those fishing vessels and processing
24 plants where observers are deployed are not, as a re-
25 sult of that deployment, put at a disadvantage with



1 respect to other harvesters or processors in that
2 fishery or in other fisheries.”.

3 **SEC. 9. NATIONAL STANDARD REGARDING CUMULATIVE**
4 **IMPACTS.**

5 Section 301(a)(8) (16 U.S.C. 1851(a)(8)) is amended
6 to read as follows:

7 “(8) Conservation and management measures
8 shall, consistent with the conservation requirements
9 of this Act (including the prevention of overfishing
10 and rebuilding of overfished stocks), take into ac-
11 count the importance of fishery resources to fishing
12 communities, and the cumulative economic and so-
13 cial impact of fishery conservation and management
14 measures on such communities, in order to—

15 “(A) provide for the sustained participa-
16 tion of such communities; and

17 “(B) to the extent practicable, minimize
18 adverse economic impacts on such commu-
19 nities.”.

20 **SEC. 10. OPTIMUM YIELD CAP.**

21 Section 3(28)(B) (16 U.S.C. 1802(28)(B)) is amend-
22 ed by striking “reduced” and inserting “modified”.



107TH CONGRESS
2D SESSION

H. R. 4003

To protect diverse and structurally complex areas of the seabed in the United States exclusive economic zone by establishing a maximum diameter size limit on rockhopper, roller, and all other groundgear used on bottom trawls.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2002

Mr. HEFLEY (for himself, Mr. UDALL of Colorado, Mr. PALLONE, Mr. SAXTON, Mr. MORAN of Virginia, Mr. GREENWOOD, Mr. CASTLE, Mr. ANDREWS, and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on Resources

A BILL

To protect diverse and structurally complex areas of the seabed in the United States exclusive economic zone by establishing a maximum diameter size limit on rockhopper, roller, and all other groundgear used on bottom trawls.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Ocean Habitat Protec-
5 tion Act".

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The fishes and other marine species that
4 are associated with 3-dimensional structurally com-
5 plex seafloor habitats within the exclusive economic
6 zone of the United States—

7 (A) constitute valuable and renewable nat-
8 ural resources;

9 (B) are an essential component of marine
10 biodiversity;

11 (C) contribute to the food supply, economy,
12 and health of the United States;

13 (D) support the economies of coastal com-
14 munities; and

15 (E) provide recreational opportunities.

16 (2) Commercial and recreational fishing con-
17 stitute major sources of employment and contribute
18 significantly to the economy of the United States.

19 (3) The United States is dependent upon
20 healthy and diverse ocean ecosystems for income,
21 nutrition, medicines, raw materials, and valuable
22 natural processes.

23 (4) Diverse types of sponges, deep-sea corals,
24 and other species are found in marine habitats,
25 many of which have not been adequately studied for
26 their potential benefit to society or their ecological

1 importance to fish species and other forms of marine
2 life.

3 (5) Habitat complexity and marine biodiversity
4 created by geologic structures and structure-forming
5 organisms on the seabed are essential to numerous
6 fish species, including commercially and
7 recreationally harvested species, that rely on them
8 for food and shelter from predation.

9 (6) Bottom trawling reduces habitat complexity
10 and biological diversity by smoothing geologic
11 bedforms and by removing, crushing, burying, and
12 exposing benthic organisms to predators and scav-
13 engers.

14 (7) The reduction of biodiversity caused by bot-
15 tom trawling is detrimental to many commercially
16 and recreationally important species and to the in-
17 dustries and people that depend on them.

18 (8) In the past, the practice of bottom trawling
19 was conducted mainly on soft bottom areas, and was
20 rarely used in three-dimensional, structurally com-
21 plex habitats.

22 (9) Technological modifications to bottom
23 trawls, including the creation of large rockhopper
24 and roller gear and chafing gear, facilitate the use
25 of bottom trawls in rocky and other complex marine

1 habitats that were once refuges for fishes and other
2 marine life.

3 (10) The expansion in the use of bottom trawls
4 from soft bottom areas to three-dimensional, struc-
5 turally complex habitats over the past 20 years has
6 had and continues to have significant, adverse ef-
7 fects on the diversity and habitat complexity of these
8 areas.

9 (11) Numerous scientific studies show that bot-
10 tom trawling is especially damaging to three-dimen-
11 sional, structurally complex habitats such as corals,
12 boulder fields, sponge beds, and gravel bottoms.

13 (12) Bottom trawling in these habitats signifi-
14 cantly reduces their value for economically and eco-
15 logically important fishes and other marine life. Re-
16 ductions in structural complexity may be long-term
17 and irreversible. Recovery of some of these areas to
18 their natural state after a single pass of a trawl may
19 take decades or centuries. With repeated trawling in
20 the same area, the damage may be irreversible.

21 (13) Prohibiting the use of large rockhopper,
22 roller, and other groundgear is a practical, pre-
23 cautionary, and enforceable measure to protect
24 structurally complex, benthic marine habitats from
25 the damaging effects of bottom trawling.

1 **SEC. 3. PROHIBITION ON USE OF LARGE ROCKHOPPER AND**
2 **ROLLER GEAR ON BOTTOM TRAWL NETS.**

3 (a) **PURPOSE.**—The purpose of this section is to pre-
4 vent bottom trawls from accessing and damaging three-
5 dimensional, structurally complex marine habitats that are
6 needed by commercially and recreationally important
7 fishes and other marine life for food and shelter from pre-
8 dation.

9 (b) **PROHIBITION.**—Section 307 of the Magnuson-
10 Stevens Fishery Conservation and Management Act (16
11 U.S.C. 1857) is amended—

12 (1) by striking “or” after the semicolon at the
13 end of paragraph (1);

14 (2) by striking the period at the end of para-
15 graph (1)(P) and inserting “; or”; and

16 (3) by inserting after paragraph (1)(P) the fol-
17 lowing:

18 “(Q) to use a bottom trawl with rollers,
19 bobbins, tires, rockhoppers, or any other devices
20 attached to the foot rope of the trawl net that
21 are in excess of 8 inches in diameter for fishing
22 that is subject to the jurisdiction of the United
23 States, including fishing by a vessel of the
24 United States beyond the equivalent of the ex-
25 clusive economic zone of all countries.”.

1 (c) REBUTTABLE PRESUMPTION.—Section 310(e) of
2 the Magnuson-Stevens Fishery Conservation and Manage-
3 ment Act (16 U.S.C. 1857) is amended by adding at the
4 end the following:

5 “(4) For purposes of this Act, it shall be a rebuttable
6 presumption that any vessel that is shoreward of the outer
7 boundary of the exclusive economic zone or beyond the
8 equivalent zone of all countries, and that has on board
9 gear comprised of a trawl net with rollers, bobbins, tires,
10 rockhoppers, or any other devices attached to the foot rope
11 of the trawl net that are in excess of 8 inches in diameter,
12 is engaged in fishing using such gear.”.

○

107TH CONGRESS
2D SESSION

H. R. 4618

To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide for the conservation of stocks of Pacific highly migratory species by directing the Secretary of Commerce to prohibit pelagic longline fishing in the exclusive economic zone off the coasts of the States of California, Oregon, and Washington.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2002

Mr. HUNTER (for himself, Mr. CUNNINGHAM, and Mr. SAXTON) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide for the conservation of stocks of Pacific highly migratory species by directing the Secretary of Commerce to prohibit pelagic longline fishing in the exclusive economic zone off the coasts of the States of California, Oregon, and Washington.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Pacific Highly Migra-
5 tory Species Conservation Act of 2002".

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) Atlantic highly migratory species of fish
5 have been overfished by the method of pelagic
6 longlining, which led to the Standing Committee on
7 Research and Statistics of the International Com-
8 mission on the Conservation of Atlantic Tunas to
9 recommend that significant closures to use of pelagic
10 longline fishing gear should be established to pre-
11 serve those species.

12 (2) Encroachment of pelagic longline fishing
13 gear into west coast waters will have a serious im-
14 pact on the economically valuable recreational and
15 commercial albacore fisheries off the coasts of the
16 States of California, Oregon, and Washington.

17 (3) Pelagic longline fishing gear and the pelagic
18 longline fishing method have had a devastating im-
19 pact on Atlantic species of fish, which will be rep-
20 licated in the exclusive economic zone off the coasts
21 of the States of California, Oregon, and Washington
22 at the same time the Congress is debating legislation
23 to restrict use of pelagic longline fishing gear in east
24 coast waters and the Gulf of Mexico.

25 (b) PURPOSES.—The purposes of this Act are the fol-
26 lowing:

1 (1) To ensure the conservation of Pacific highly
2 migratory species.

3 (2) To prohibit pelagic longline fishing in the
4 exclusive economic zone off the coasts of the States
5 of California, Oregon, and Washington.

6 **SEC. 3. CLOSURE OF WEST COAST EEZ TO PELAGIC**
7 **LONGLINE FISHING.**

8 (a) IN GENERAL.—Subsection (g) of section 304 of
9 the Magnuson-Stevens Fishery Conservation and Manage-
10 ment Act (16 U.S.C. 1854(g)) is amended—

11 (1) by striking so much as precedes the text of
12 paragraph (1) and inserting the following:

13 “(g) HIGHLY MIGRATORY SPECIES.—

14 “(1) FISHERY MANAGEMENT PLAN OR AMEND-
15 MENT FOR ATLANTIC, GULF, AND CARIBBEAN SPE-
16 CIES.—”; and

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

18 “(3) PROTECTION OF SPECIES IN PACIFIC
19 OCEAN.—(A) The Secretary shall issue regulations
20 that prohibit pelagic longline fishing for highly mi-
21 gratory species in the exclusive economic zone off
22 the coasts of the States of California, Oregon, and
23 Washington.

24 “(B) In this paragraph the term ‘pelagic
25 longline fishing’ means a method of fishing that uses

1 any fishing gear consisting of a length of line sus-
2 pended horizontally in the water above the bottom
3 from lines attached to surface floats and to which
4 gangions and hooks are attached and are used to
5 target pelagic species.

6 “(C) To carry out this paragraph there is au-
7 thorized to be appropriated to the Secretary
8 \$2,000,000.”.

9 (b) REGULATIONS.—The Secretary of Commerce
10 shall issue regulations under the amendment made by sub-
11 section (a) by not later than 90 days after the date of
12 the enactment of this Act.

○

AMENDMENT TO H.R. 4749

OFFERED BY

Page 15, strike line 22 and all that follows through page 17, line 11, and insert the following:

1 “(7)(A) describe and identify essential fish
2 habitat for the fishery, including habitat areas of
3 particular concern for the fishery, based on the
4 guidelines established by the Secretary under section
5 305(b)(1)(A);

6 “(B) minimize to the extent practicable adverse
7 effects on such habitat caused by fishing, giving pri-
8 ority to habitat areas of particular concern; and

9 “(C) identify other actions to encourage the
10 conservation and enhancement of such habitat.”.

11 (c) HABITAT AREA OF PARTICULAR CONCERN.—Sec-
12 tion 3 (16 U.S.C. 1802) is amended by adding at the end
13 the following:

14 “(46) The term ‘habitat area of particular con-
15 cern’ means a discrete area of essential fish habitat
16 that is—

17 “(A) important ecologically;



- 1 “(B) sensitive to human-induced environ-
- 2 mental degradation;
- 3 “(C) stressed by development activities; or
- 4 “(D) a rare habitat type.”.



AMENDMENT TO H.R. 4749
OFFERED BY ORTIZ

At the end of the bill add the following:

1 **SEC. . NATIONAL STANDARD REGARDING CUMULATIVE**
2 **IMPACTS.**

3 Section 301(a)(8) (16 U.S.C. 1851(a)(8)) is amended
4 to read as follows:

5 “(8) Conservation and management measures
6 shall, consistent with the conservation requirements
7 of this Act (including the prevention of overfishing
8 and rebuilding of overfished stocks), take into ac-
9 count the importance of fishery resources to fishing
10 communities, and the cumulative economic and so-
11 cial impact of fishery conservation and management
12 measures on such communities, in order to—

13 “(A) provide for the sustained participa-
14 tion of such communities; and

15 “(B) to the extent practicable, minimize
16 adverse economic impacts on such commu-
17 nities.”.



AMENDMENT TO H.R. 4749
OFFERED BY MR. JONES OF NORTH CAROLINA

At the end of the bill add the following:

1 **SEC. . ENSURING USE OF BEST SCIENTIFIC INFORMA-**
2 **TION AVAILABLE.**

3 (a) **TERM DEFINED.**—Section 3 (16 U.S.C. 1802) is
4 further amended by adding at the end the following:

5 “(47) The term ‘best scientific information
6 available’—

7 (A) means information that—

8 “(i) can be determined to be directly
9 related to the specific issue under consider-
10 ation;

11 “(ii) is based on a statistically valid
12 sample such that any conclusions drawn
13 are reasonably supported and not mere
14 speculation;

15 “(iii) has been independently peer-re-
16 viewed;

17 “(iv) has been collected within a time
18 frame that is reasonably related to the spe-
19 cific issue under consideration; and



1 “(v) is consistent with information
 2 that is available from other reliable
 3 sources,
 4 including information obtained by scientifically
 5 valid research that is conducted in cooperation
 6 between the Department of Commerce and a
 7 person that is not an officer or employee of the
 8 Department of Commerce or by a person other
 9 than an officer or employee of the Department
 10 of Commerce; and

11 “(B) may include anecdotal information
 12 collected from the harvesting and processing of
 13 fish.”.

14 (b) PROHIBITION ON USE OF OTHER INFORMATION
 15 IN FISHERY MANAGEMENT DECISIONS.—Section
 16 301(a)(2) (16 U.S.C. 1851(a)(2)) is amended by inserting
 17 “only” after “shall be based upon”.

18 **SEC. . PEER REVIEW OF STOCK ASSESSMENTS.**

19 (a) SCIENTIFIC REVIEW COMMITTEES.—Section
 20 302(g) (16 U.S.C. 1852(g)) is amended by adding the fol-
 21 lowing:

22 “(6)(A) Each Council may establish one or
 23 more scientific review committees to conduct peer re-
 24 views of all stock assessments prepared for fisheries
 25 under the Council’s jurisdiction.



1 “(B) A committee established under this para-
2 graph by a Council shall, at a minimum, consist of
3 at least one member from each of the committees es-
4 tablished under paragraphs (1) and (3) by the Coun-
5 cil, one member who is not affiliated with the au-
6 thors of the stock assessments under review, and
7 such other members as the Council considers appro-
8 priate, excluding the authors of the stock assessment
9 reviewed by the committee.”.

10 (b) REQUIREMENT TO CONDUCT REVIEWS.—Section
11 404 (16 U.S.C. 1881c) is further amended by adding at
12 the end the following:

13 “(g) INDEPENDENT PEER REVIEW.—The Secretary
14 shall conduct an independent and confidential peer review
15 of any stock assessment conducted under this section prior
16 to its use to further the purposes, policy, and provisions
17 of this Act. The review shall consider the recommenda-
18 tions of any scientific review committee established under
19 section 302(g)(6) with respect to the fishery that is the
20 subject of the stock assessment.”.



**AMENDMENT TO H.R. 4749
OFFERED BY MR. SAXTON**

At the end of the bill add the following:

1 **SEC. . MID-ATLANTIC CONSERVATION ZONE FOR HIGH-**
2 **LY MIGRATORY SPECIES.**

3 Section 307 (16 U.S.C. 1857) is amended—

4 (1) by inserting “(a) IN GENERAL.—before “It
5 is unlawful”; and

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

7 “(b) PELAGIC LONGLINE FISHING IN MID-ATLANTIC
8 CONSERVATION ZONE FOR HIGHLY MIGRATORY SPE-
9 CIES.—

10 “(1) PROHIBITION.—It is unlawful for any per-
11 son to engage in pelagic longline fishing—

12 “(A) in the lower mid-Atlantic Conserva-
13 tion Zone, in the period each year beginning
14 August 15 and ending October 1; or

15 “(B) in the upper mid-Atlantic Conserva-
16 tion Zone, in the period beginning July 15 and
17 ending September 1.

18 “(2) LOWER MID-ATLANTIC CONSERVATION
19 ZONE.—For purposes of this subsection, the lower
20 mid-Atlantic Conservation Zone is the area that is



1 enclosed by a series of geodesics connecting in suc-
2 cession the points at the following coordinates:

3 “(A) 36 degrees 30 minutes north latitude,
4 75 degrees 0 minutes west longitude.

5 “(B) 37 degrees 0 minutes north latitude,
6 75 degrees 0 minutes west longitude.

7 “(C) 38 degrees 0 minutes north latitude,
8 74 degrees 0 minutes west longitude.

9 “(D) 38 degrees 0 minutes north latitude,
10 73 degrees 0 minutes west longitude.

11 “(E) 37 degrees 0 minutes north latitude,
12 74 degrees 0 minutes west longitude.

13 “(F) 36 degrees 30 minutes north latitude,
14 75 degrees 0 minutes west longitude.

15 “(3) UPPER MID-ATLANTIC CONSERVATION
16 ZONE.—For purposes of this subsection, the upper
17 mid-Atlantic Conservation Zone is the area that is
18 enclosed by a series of geodesics connecting in suc-
19 cession the points at the following coordinates:

20 “(A) 38 degrees 0 minutes north latitude,
21 74 degrees 0 minutes west longitude.

22 “(B) 40 degrees 0 minutes north latitude,
23 72 degrees 0 minutes west longitude.

24 “(C) 39 degrees 0 minutes north latitude,
25 72 degrees 0 minutes west longitude.



- 1 “(D) 38 degrees 0 minutes north latitude,
- 2 73 degrees 0 minutes west longitude.
- 3 “(E) 38 degrees 0 minutes north latitude,
- 4 74 degrees 0 minutes west longitude.”.



AMENDMENT TO H.R. 4749

OFFERED BY

Page 12, line 11, strike “; and” and insert a period.

Page 12, strike lines 12 through 17.

Page 12, strike line 23 through page 13, line 4, and
insert the following:

1 “(13) allow the retention and donation for char-
2 itable purposes of all dead bycatch that cannot oth-
3 erwise be avoided under terms that ensure, through
4 the use of onboard fisheries observers or other
5 equivalently effective means, that such retention and
6 donation does not allow the evasion of vessel trip
7 limits, total allowable catch levels, or other conserva-
8 tion and management measures.”.



AMENDMENT TO H.R. 4749
OFFERED BY MR. SAXTON

At the end of the bill add the following:

1 **SEC. . PROHIBITION ON USE OF LARGE ROCKHOPPER**
2 **AND ROLLER GEAR ON BOTTOM TRAWL**
3 **NETS.**

4 (a) **PURPOSE.**—The purpose of this section is to pre-
5 vent bottom trawls from accessing and damaging three-
6 dimensional, structurally complex marine habitats that are
7 needed by commercially and recreationally important
8 fishes and other marine life for food and shelter from pre-
9 dation.

10 (b) **PROHIBITION.**—Section 307 of the Magnuson-
11 Stevens Fishery Conservation and Management Act (16
12 U.S.C. 1857) is amended—

13 (1) by striking “or” after the semicolon at the
14 end of paragraph (1);

15 (2) by striking the period at the end of para-
16 graph (1)(P) and inserting “; or”; and

17 (3) by inserting after paragraph (1)(P) the fol-
18 lowing:

19 “(Q) to use a bottom trawl with rollers,
20 bobbins, tires, rockhoppers, or any other devices
21 attached to the foot rope of the trawl net that



1 are in excess of 8 inches in diameter for fishing
2 that is subject to the jurisdiction of the United
3 States, including fishing by a vessel of the
4 United States beyond the equivalent of the ex-
5 clusive economic zone of all countries.”.

6 (c) REBUTTABLE PRESUMPTION.—Section 310(e) of
7 the Magnuson-Stevens Fishery Conservation and Manage-
8 ment Act (16 U.S.C. 1857) is amended by adding at the
9 end the following:

10 “(4) For purposes of this Act, it shall be a rebuttable
11 presumption that any vessel that is shoreward of the outer
12 boundary of the exclusive economic zone or beyond the
13 equivalent zone of all countries, and that has on board
14 gear comprised of a trawl net with rollers, bobbins, tires,
15 rockhoppers, or any other devices attached to the foot rope
16 of the trawl net that are in excess of 8 inches in diameter,
17 is engaged in fishing using such gear.”.



AMENDMENT TO H.R. 4749
OFFERED BY MR. SAXTON

Page 33, line 18, strike “(a) NEW ENGLAND COUNCIL.—”.

Page 33, strike line 23 and all that follows through page 36, line 25.



AMENDMENT TO H.R. 4749

OFFERED BY

Page 11, strike lines 7 through 11 and insert the following:

1 “(29)(A) The term ‘overfished’ means, with re-
2 spect to a stock of fish, that the stock is of a popu-
3 lation size that is below the long-term average abun-
4 dance associated with the production of maximum
5 sustainable yield.



AMENDMENT TO H.R. 4749

OFFERED BY

Page 11, strike lines 5 through 15 and insert the following:

1 (a) DEFINITIONS.—Section 3 (16 U.S.C. 1802) is
2 further amended—

3 (1) by amending paragraph (29) to read as fol-
4 lows:

5 “(29)(A) The term ‘overfished’ refers to a stock
6 of fish that, as a result of fishing, is at a population
7 level beneath that necessary to produce 50 percent
8 of the Maximum Sustainable Yield.

9 “(B) The term ‘overfishing’ means a rate or
10 level of harvest by commercial and recreational fish-
11 ing that results in a reduction in the population level
12 of the fish stock beneath that necessary to produce
13 50 percent of the Maximum Sustainable Yield.”;

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

15 “(49) The term ‘carrying capacity’ means the
16 maximum population level of a stock of fish that the
17 current state of the environment will support and
18 which changes as the state of the environment
19 changes.



1 “(50) The term ‘Maximum Sustainable Yield’
2 means the long-term average maximum amount of
3 surplus production (in number or weight) that can
4 be removed on an annual basis by both commercial
5 and recreational fishermen that could be continu-
6 ously taken from a stock of fish under the existing
7 carry capacity, and which is adjusted as the carrying
8 capacity changes.

9 “(51) The term ‘surplus production’ means any
10 quantity of fish (in number or weight) that can be
11 removed from a stock of fish where the quantity of
12 fish removed when combined with natural mortality
13 is no greater than (equal to or less than) the quan-
14 tity of fish the stock of fish is capable of reproduc-
15 ing through growth and reproduction.”.



Section by Section Analysis
H.R. 4749, introduced by Chairman Gilchrest
Magnuson-Stevens Act Amendments of 2002
(Language in italics is new or represents changes to the discussion draft)

Section 1: Short Title. This section gives the short title of the bill as “the Magnuson-Stevens Act Amendments of 2002.”

Section 2: This section establishes that all amendments, unless otherwise noted, are to the Magnuson-Stevens Fishery Conservation and Management Act.

Section 3: Report on Overcapitalization. This section would require the Secretary of Commerce to report to Congress identifying and describing the 20 U.S. fisheries which face the worst problem with excess harvesting capacity. In addition, the report would include recommendations for reducing the excess capacity including the retirement of any latent capacity that might contribute to further overcapitalization if activated.

Section 4: Buyout Provisions. This section would change the existing statutory requirements for any buyout conducted under section 312(b) of the Act. Rather than allow a buyout program to purchase vessels or permits, this section would require any program to purchase vessels **and all existing permits**. Vessels would not have to be scrapped; however, the Secretary would be required to ensure that the vessel could not fish in U.S. waters.

In addition, this section would require the Secretary to ensure that any vessels purchased under this section could not move to any other fishery on the high seas or in foreign waters and contribute to overcapacity problems in other parts of the world.

Section 5: Data Collection. This section would require the Secretary to coordinate with the coastal states in developing and implementing a program to gather data from those in the recreational fishing sector which are licensed under state regulations and participating in Federally-managed fisheries.

The Secretary would be required to report to Congress after three years on the progress in developing the program and whether the program has resulted in significantly better data collection from the recreational sector.

In a separate report, the Secretary would be required to report to Congress on what types of economic data fishery managers need from the processing sector in order to comply with existing laws (such as the Regulatory Flexibility Act), why the information is necessary and not available from existing sources, and what steps the Secretary would take to ensure the confidentiality of the proprietary information once submitted.

Section 6: Ecosystem-based Management. This section would include a new provision within the Policy section of the Act to add that it is one of the policies of Congress through this Act to

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“support and encourage efforts to understand the interactions of species in the marine environment and the development of ecosystem-based approaches to fisheries conservation and management that will lead to better stewardship and sustainability of the Nation’s coastal fishery resources and fishing communities.”

This section would also add a new provision to the section of the Act describing the fisheries research activities of the Secretary to add a new area of research dealing with ecosystem-based approaches to fishery conservation and management (consistent with the language above).

This section would require the Secretary, in conjunction with the Councils, to create a definition for “ecosystem” and “marine ecosystem”, and establish criteria for the development of ecosystem-based management plans by each regional fishery management council based on the recommendations of the Ecosystems Principles Advisory Panel. This section would further require the Secretary to report to Congress, within 2 years, on the criteria and include an identification and description of those areas of scientific understanding for which sufficient data are not available.

Following the submission of the report to Congress, the Secretary would be required, in conjunction with the regional science centers and the Councils, to identify specific marine ecosystems within each region. The Secretary would then be required to develop and begin to implement regional research plans to meet the information deficit identified in the report. These research plans must include suggestions for reasonable timelines and cost estimates for the collection of the required information. The Secretary would then be required to report to Congress annually on the progress of the regional research plans.

This section also requires the Secretary to identify two fisheries – one from the east coast and one from the west coast – and then develop and implement, in consultation with the appropriate Councils, an ecosystem-based fishery management plan for those two fisheries.

Section 7: Observers. This section would require the Secretary to report to Congress within one year on the needs for a national observer program including recommendations on what forms of observation options are available, whether the data collection needs are for management or enforcement purposes, what level of coverage is necessary in various fisheries to provide statistically reliable information, cost estimates for various options and various levels of coverage, options for funding such a program, what, if any, vessel sizes should be exempted for safety purposes, how data will be gathered, and how the proprietary information will be kept confidential.

Section 8: Overfishing. This section would split the definitions of “overfished” and “overfishing” to clarify that these are two different terms and are used differently in the rest of the Act. These new definitions follow the existing definitions and are based on recommendations by the National Marine Fisheries Service (NMFS).

This section would also make changes to the annual Status of Stocks report to Congress

on overfishing, stocks that are overfished, and those stocks that are approaching an overfished condition. These changes would make it clear whether the stocks that are identified as overfished or approaching an overfished condition are actually overfished as a result of fishing activities or other causes. The report would also be changed to so that any fishery which is identified as overfished or approaching an overfished condition will be clearly identified as to whether it is the target of a commercial fishery.

Section 9: Bycatch. The first component of this section is a change to the definition of bycatch to include birds in the definition. The second portion would require that each fishery management plan (FMP) include a standardized reporting methodology within one year of the date of enactment; however, the language also includes a provision that if a Council cannot meet this requirement, they must report to the Secretary and detail why the requirement cannot be met. *Following this report to the Secretary, the Secretary must take appropriate action to address the reasons cited by the Council.*

This section includes a discretionary provision authorizing Councils to include a provision in an FMP allowing for the donation of bycatch that is already dead and cannot be avoided for charitable purposes. This allowance could not be used to evade vessel trip limits, total allowable catch levels, or other conservation and management measures.

This section includes a requirement that the Secretary identify the fisheries with significant bycatch problems. The Secretary would then be required to work with the Councils and the fishing industry to develop new gear or modifications to existing gear that will help minimize the identified bycatch problems. The provision also includes *a requirement for a new research grant program to fund research into gear technology which minimizes bycatch and minimizes adverse fishing gear impacts on habitat areas of particular concern, and authorizes \$10 million in each of five years for this grant program.* The Secretary would then be required to report annually to Congress on the amounts expended on the grant program and what reductions have been identified as a result of this section.

Section 10: Fish Habitat Research and Protection. This section contains a number of new provisions including a requirement that funding for research on essential fish habitat be prioritized for those fisheries which are overfished or approaching an overfished condition.

The section includes a provision requiring that would require Councils to take action to minimize, to the extent practicable, adverse impacts on essential fish habitat caused by fishing for those essential fish habitat areas were identified based on: information on the growth, reproduction, or survival rates within habitats; information on the production rates by habitat; or for those fisheries which the Secretary determines have a specific fishing activity that is having an adverse effect on essential fish habitat which jeopardizes the ability of the fishery to produce MSY on a continuing basis. *In addition, the Secretary would be required to minimize to the extent practicable adverse effects on habitat areas of particular concern caused by fishing.*

This section would maintain the Council's discretionary authority to minimize to the extent practicable adverse effects caused by fishing on essential fish habitat regardless of the

amount of information available.

This section also defines "habitat areas of particular concern."

Section 11: Demonstration Program for Oyster Sanctuaries and Reserves. This section would require the Secretary to develop a program for the design, construction and placement of oyster *sanctuaries or reserves* in the Chesapeake Bay *consistent with the Chesapeake 2000 Agreement*. The Secretary would be required to develop the program in conjunction with the Army Corps of Engineer, the Coast Guard, *the Environmental Protection Agency*, the State of Maryland, the Commonwealth of Virginia, the Oyster Restoration Partnership, *the Chesapeake Bay Foundation, the Oyster Heritage Foundation*, local commercial and recreational fishing organizations, the Port of Baltimore, the University of Maryland, *the Virginia Institute of Marine Sciences*, and other users of the waters of the Chesapeake Bay.

The program would include the design, construction and placement of artificial structures *and reefs* to maximize the production of oysters and minimize the conflicts with existing users. The placement of such structures *and reefs* must not be hazards to navigation and must be adequately marked on navigational charts. The program would also include a research plan to include measurable goals and a monitoring program to determine the effectiveness of the structures *and reefs*.

The Secretary *is required to make recommendations to the affected states on regulations* prohibiting fishing in the waters surrounding these structures as necessary to ensure the reproduction of oysters. These restrictions may be seasonal in nature and may not be larger than 100 meters from any structure.

The Secretary is required to use only native oyster species (*change from draft which had included "to the extent practicable"*).

A specific authorization of \$5 million for each of five fiscal years is provided.

Section 12: Individual Quota Limited Access Programs. This section would remove the moratorium on the implementation of any Individual Fishing Quota (IFQ) fishery management plans and replace it with specific guidelines for the Councils to follow.

This section would authorize the Secretary to establish an IFQ plan and require the Councils and the Secretary to take into account the need to promote conservation, present participation in the fishery, historical fishing practices in the fishery, dependence on the fishery, the economics of the fishery, the capability of fishing vessels used in the fishery to engage in other fisheries, the cultural and social frame-work relevant to the fishery and local coastal communities, and any other relevant considerations when developing such a plan or plan amendment.

This section provides that a fishery management plan that establishes an individual quota system for a fishery shall provide for administration of the system by the Secretary in accordance

with the terms of the plan, shall include provisions that establish procedures and requirements for each Council having authority over the fishery, for reviewing and revising the terms of the plan that establish the system, for renewing, reallocating, and reissuing individual quotas if determined appropriate by each Council. The plan is required to include provisions to provide for fair and equitable allocation of individual quotas under the system, and minimize negative social and economic impacts of the system on local coastal communities, ensure adequate enforcement of the system, including the use of observers where appropriate, and provide for monitoring the temporary or permanent transfer of individual quotas under the system. The plan must include provisions that prevent any person from acquiring an excessive share of individual quotas issued for a fishery and shall include measurable conservation goals.

An individual quota issued under an individual quota system may be received, held, or transferred in accordance with regulations prescribed by the Secretary under this Act. Except as otherwise provided, any fishery management plan that establishes an individual quota system for a fishery may authorize individual quotas to be held by or issued under the system to fishing vessel owners, fishermen, crew members, communities, other persons as specified by the Council, and United States fish processors. An individual who is not a citizen of the United States may not hold an individual quota issued under a fishery management plan. A Federal agency or official may not hold, administer, or reallocate an individual quota issued under a fishery management plan, other than the Secretary and the Council having authority over the fishery for which the individual quota is issued. A community may not hold more than one percent of the total authorized harvest in the fishery; or a percentage less than one percent as determined by the Council.

This section specifies that any fishery management plan which establishes an individual quota system for a fishery may include provisions that allocate individual quotas under the system among categories of vessels, and provide a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, or crew members who do not hold or qualify for individual quotas. An individual quota system established for a fishery may be limited or terminated at any time by the Secretary or through a fishery management plan or amendment developed by the Council having authority over the fishery for which it is established, if necessary for the conservation and management of the fishery. A fishery management plan that establishes an individual quota system for a fishery must include measurable conservation goals – and to monitor achievement of such goals, may require greater observer coverage or electronic data collection technology on any vessel fishing under an individual quota issued under the system.

Not later than 5 years after the date of the establishment of an individual quota system for a fishery under this section by a Council or the Secretary, and every 5 years thereafter, the Council or Secretary would be required to review the effectiveness of the system in achieving the conservation goals required under this paragraph.

The Secretary or a Council would be required to hold a referendum of the eligible participants before proceeding with the development of an IFQ plan or plan amendment. This referendum would require a 60 percent affirmative vote for the Council or Secretary to proceed.

The eligible participants would be determined by the Council based on criteria developed by the Secretary. In addition, following the development of an IFQ plan or plan amendment but before forwarding the plan to the Secretary for approval, a second referendum would be required following the same criteria and percentage required for action.

As used in this subsection, the term 'individual quota system' means a system that limits access to a fishery in order to achieve optimum yields through the allocation and issuance of individual quotas. The term 'individual quota' means a grant of permission to harvest or process a quantity of fish in a fishery, during each fishing season for which the permission is granted, equal to a stated percentage of the total allowable catch for the fishery.

This section would require that the Council review and take affirmative action to continue any individual quota plan once every ten years for any plan implemented by the Secretary after the enactment of this bill.

This section also maintains the 3 percent cap on the annual fee paid by holders of individual quota, but would add a new 1 percent fee on the initial allocation of any individual quota issued under a new plan or plan amendment, and a one percent fee on the transfer of any individual quota.

This section also would require the Secretary to issue regulations implementing these provisions and to specify factors that would be required to be considered by a Council in determining whether a fishery should be managed under an individual quota system. The Secretary would also be required to: ensure that any individual quota system be consistent with the requirements of sections 303(b) and 303(d) of the Act, collect fees based on the provisions above; provide for appropriate penalties for violations of individual quotas systems, including the revocation of individual quotas for such violations; include recommendations for potential management options related to individual quotas, including the authorization of individual quotas that may not be transferred by the holder, and the use of leases or auctions by the Federal Government in the establishment or allocation of individual quotas; and establish a central lien registry system for the identification, perfection, and determination of lien priorities, and nonjudicial foreclosure of encumbrances, on individual quotas.

This section would prevent any new individual quota plan from being implemented before the Secretary has issued regulations implementing this section and prevent the implementation of any plan that had not been implemented by May 1, 2002.

This section makes it clear that nothing in these new IFQ provisions would require a reallocation of individual quotas under a fishery management plan already implemented by the Secretary.

This section maintains the current statutory language that makes it clear that an individual quota issued under an individual quota system shall be considered a permit for the purposes of the Act, may be revoked or limited at any time in accordance with this Act, shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access

system authorization if it is revoked or limited, and shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested.

Section 13: Cooperative Education and Research. This section would allow Councils to include a cooperative research component to a fishery management plan using commercial or charter vessels to gather data on stock abundance, composition, distribution or other relevant information for the implementation of the plan. This is a discretionary provision.

This section would also require the Secretary to develop and implement a cooperative stock assessment program for black sea bass, through the New England Fisheries Science Center, using vessels from the commercial fishing industry, if appropriate and available. This cooperative program would be required to include research on the range of the stock, a determination as to whether there is more than one stock, and include a genetic research component to determine if there is more than one stock of black sea bass which would require different management regimes.

Section 14: Report on Highly Migratory Species. The Secretary would be required, within one year, to report to Congress on any nation that is fishing for Atlantic HMS and is not in compliance with the conservation and management provisions or any rebuilding recommendations enacted by the international management body. The report shall also include recommendations for actions the U.S. could take to ensure such compliance.

Section 15: Prohibited Act. This provision would make it a violation of the Magnuson-Stevens Act to sell or buy recreationally caught fish.

Section 16: Membership of Fishery Management Councils. This section adds one new seat to the New England Fishery Management Council for the State of New York.

This section would also add one new voting seat to each Council, appointed by the Secretary and based on the existing statutory qualifications, who is not directly employed or receive a majority of their livelihood from the commercial, charter, or recreational fishing industry. These new seats would be covered by all existing disclosure and conflict of interest provisions.

Section 17: Miscellaneous Amendments to Purposes and Policy. This section would add the phrase "ecologically sound" to modify "development" in the purpose that reads "to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, ensure that optimum yield determinations promote such development in a non-wasteful manner..."

This section also would add the word "restore" after the phrase "to foster" in the current policy statement that reads "to foster and maintain the diversity of fisheries in the United States..."

Section 18: Foreign Fishing. This section would add the phrase “and compliance with and enforcement of international fishing agreements and treaties” to make it clear that when the Secretary is making allocations to foreign nations from the total allowable level of foreign fishing that the Secretary will include in his deliberations whether the nations is in compliance or enforcing existing international agreements.

Section 19: Driftnets. This section would clarify that, in addition to the specifically noted resolution, the United States should implement and comply with any action or resolution dealing with large-scale driftnet fishing which is adopted by the United Nations and to which the U.S. is a signatory nation.

Section 20: Sources for Data in Fisheries Research. This section would clarify that the Secretary should make use of both fishery dependent and fishery independent in gathering information for fisheries research.

Section 21: Miscellaneous Fishery Protections in Fishery Management Plans. *This section would provide Councils with the authority to designate closed areas, seasonal closures, time/area closures, gear restrictions, or other methods for limiting impacts on habitat, limiting bycatch impacts of gear, or limiting fishing impact on spawning congregations in specifif geographic areas.*

Section 22: Cooperative Marine Education and Research Program. *This section would authorize the Secretary to enter into cooperative agreements with universities and institutions of higher learning in order to conduct research in areas that support conservation and management of living marine resources. This section also lists the types of research which may be conducted under this provision.*

Section 23: Authorization of Appropriations. This section would authorize appropriations for fiscal years 2003 through 2007 at the levels noted below.

Fiscal Years	2003	\$200,500,000
	2004	\$214,000,000
	2005	\$222,000,000
	2006	\$230,000,000
	2007	\$238,000,000