

EXECUTIVE DIRECTOR'S REPORT

Magnuson Act Amendments

A complete copy of the Magnuson Fishery Conservation and Magnuson Act as amended to date and showing the proposed amendments in the House and Senate in their proper place in the Act is included in your notebook as item B-1(a). This was prepared by the Pacific Council and is the best method I have seen for comparing the Act and the proposed amendments.

Council and SSC Charters

Charters for both the SSC and Council expire on April 13 and need to be renewed for another two year term. I don't believe any changes are necessary and suggest that we advise NMFS that that is the case.

Resignation of Advisory Panel Member Lewis Schnaper

Lewis Schnaper has resigned from the Advisory Panel [see enclosed letter B-1(b)] and has recommended Ed Wojeck, current Executive Director of the Alaska Trollers Association, as his replacement. Mr. Wojeck has sent in his resume and asked that he be considered as a member of the Advisory Panel.

Because this Council meeting is focused on the troll salmon fishery, I have invited Mr. Wojeck to sit with the Advisory Panel pending a decision by the Chairman on filling the two current vacancies on the Advisory Panel.

Request for an Alternate on the SSC

John Clark, head of fisheries research for the Alaska Department of Fish and Game and a member of the Scientific and Statistical Committee, has asked that Phil Rigby be appointed as his alternate on the SSC. Phil has worked with the Council since it was formed and is well known to all of us.

Council policy has been not to appoint permanent alternates for SSC members. You have approved them on a short-term basis when a primary member has been tied up on a research program or travel that precluded attendance for two or three meetings. Action by the Council is needed on this request.

ATA Representation on Salmon Plan Development Team

At the December meeting Council member Ron Skoog requested the Council to consider appointing a scientist from the Alaska Trollers Association to the Salmon Plan Development Team. We have received a resume from Earl Krygier which has been sent to the SSC for their review of his qualifications. Appointment to the Plan Development Team, of course, is a prerogative of the Council.

1982 Meeting Schedule

My recommendation in the last Council mailing was for three-day meetings to run Wednesday, Thursday and Friday because of the conflict with the SSC when we meet on Tuesday. Will the Council concur with that recommendation?

Public Hearing and Council Luncheons

I'd like to remind the Council that we do have a public hearing on Amendment #11 to the Gulf of Alaska Groundfish FMP scheduled for 9 a.m. Friday morning in this room.

The Council will lunch today at the Prospector. On Tuesday and Wednesday they will be joined by the Board of Fisheries for lunch at the Baranof.

Public Law 94-265
94th Congress, H. R. 200
April 13, 1976

As amended by PL 95-354, PL 96-61, and PL 96-561
Italics indicates amendments proposed by House and by Senate in 1981.

AN ACT

To provide for the conservation and management of the fisheries,
and for other purposes.

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

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SEC. 2. FINDINGS, PURPOSES AND POLICY

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

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been over-fished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

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

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery *H.R. 5002: amend by adding "by the United States fishing industry."*

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development.

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

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the

conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act; and

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources.

SEC. 3. DEFINITIONS.

As used in this Act, unless the context otherwise requires--

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that--

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis.

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(3) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(4) The term "Continental Shelf fishery resources" means the following:

COLEENTERATA

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

CRUSTACEA

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

MOLLUSKS

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

SPONGES

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

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

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such

sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

(6) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(7) The term "fishery" means--

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(8) The term "fishery conservation zone" means the fishery conservation zone established by section 101.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishing" means--

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for--

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(14) The term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(16) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(17) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(18) The term "optimum", with respect to the yield from a fishery, means the amount of fish--

(A) which will provide the greatest overall benefit to the nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

(19) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(20) The term "Secretary" means the Secretary of Commerce or his designee.

(21) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(22) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

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

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

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

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

(27) The term "vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State. *H.R. 5002: amend by striking out "or" and inserting in lieu thereof a comma; and by inserting ", or numbered under the Federal Boating Safety Act of 1971 (46 U.S.C. 1451 et seq.)" immediately before the period.*

TITLE I--FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

SEC. 101. FISHERY CONSERVATION ZONE.

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

SEC. 102. EXCLUSIVE FISHERY MANAGEMENT AUTHORITY

The United States shall exercise exclusive fishery management authority, in the manner provided for in this Act, over the following:

(1) All fish within the fishery conservation zone.

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

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

SEC. 103. HIGHLY MIGRATORY SPECIES.

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

SEC. 104. EFFECTIVE DATE.

This title shall take effect March 1, 1977.

TITLE II--FOREIGN FISHING AND INTERNATIONAL
FISHERY AGREEMENTS

SEC. 201. FOREIGN FISHING.

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

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

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

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

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

(1) was in effect on the date of enactment of this Act; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

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

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that--

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted--

(i) to board, and search or inspect, any such vessel at any time.

(ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and

(iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D) duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;

(E) any fees required under section 204(b)(10) be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation; and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

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

(4) The foreign nation will--

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

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

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

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

(1) As used in this subsection--

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

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

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

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

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

(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent, of the calculation factor; or

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

For purposes of this paragraph, the term "designated preceding harvest season" means--

(I) until a reduction factor is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season, and

(II) after such amount is first achieved, the most recent harvesting season in which a reduction factor amount was achieved.

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

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

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

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

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

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

(B) the annual fishing level determined pursuant to paragraph (3) for the harvesting season.

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

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

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

(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information; then such portion or part shall be allocated for use by foreign fishing vessels in such succeeding harvesting season. The determinations required to be made under

subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and on the basis of any recommendation of any appropriate fishery management council.

(e) ALLOCATION OF ALLOWABLE LEVEL.--(1) The Secretary of State, in cooperation with the Secretary, shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to any fishery subject to the exclusive fishery management authority of the United States. All such determinations shall be made by the Secretary of State and the Secretary on the basis of--

(A) whether, and to what extent, such nations impose tariff barriers or nontariff barriers on the importation, or otherwise restrict the market access of United States fish or fishery products;

(B) whether, and to what extent, such nations are cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;

(C) whether, and to what extent, such nations and the fishing fleets of such nations have cooperated with the United States in the enforcement of United States fishing regulations;

(D) whether, and to what extent, such nations require the fish harvested from the fishery conservation zone for their domestic consumption;

(E) whether, and to what extent, such nations otherwise contribute to, or foster the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(F) whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

(G) whether, and to what extent, such nations are cooperating with the United States in, and making substantial contributions to fishery research and the identification of fishery resources; and

(H) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2)(A) For the purposes of this paragraph--

(i) The term "certification" means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 [22 U.S.C. 1978(a)].

H.R. 5002: amend to read "(i) *The term 'certification' means--*

"(I) a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling; or

"(II) a certification made by the Secretary under paragraph (1) of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)(1), regardless of whether the President directed any action to be taken under paragraph (4) of such section 8(a) as a result of such certification.

A certification made by the Secretary under subclause (I) shall also be deemed to be a certification for the purposes of paragraph (1) of such section 8(a).";

(ii) the term "remedial period" means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that--

(i) is in effect for that foreign country on the date of issuance;
or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period;

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

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 8(d) during the remedial period, the Secretary of State shall return to the

foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this Act.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 204.

(D) If the certification of a foreign country is not terminated under section 9(d) of the Fishermen's Protective Act of 1967 before the close of the last day of the remedial period, the Secretary of State--

(i) with respect to any allocation made to that country and in effect [as reduced under subparagraph (B)] on such last day, shall rescind, effective on and after the day after such last day, any harvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f) FOREIGN ALLOCATION REPORT.--The Secretary of the Treasury, in cooperation with the Secretary and the Secretary of State, shall prepare and submit a report to the Congress and the President, not later than July 1 of each year, setting forth--

(1) a list of species of all allocations made to foreign nations pursuant to subsection (e) and all permits issued pursuant to section 204(b)(6)(B); and

(2) all tariff and nontariff trade barriers imposed by such nations on the importation of such species from the United States.

(g) RECIPROCITY.--Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

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

(1) shall contain a preliminary description of the fishery and a preliminary determination as to--

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which--

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and

(C) are described in section 303(b)(2), (3), (4), (5), and (7).

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

(i) FULL OBSERVER COVERAGE PROGRAM.--(1) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the fishery conservation zone.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that--

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the fishery conservation zone to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone--

(i) the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be impractical, or

(ii) the facilities of the vessel for the quartering of a United States observer, or for the carrying out of observer functions, are so inadequate or unsafe that the health or safety of an observer would be jeopardized; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act.

H.R. 5002: amend to read "(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific, enforcement, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific programs relating to the conservation of living resources as the Secretary deems appropriate."

(4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen's Protective Act of 1967 [22 U.S.C. 1980(e)] with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. *H.R. 5002: amend to read "All payments made by the Secretary to carry out this subsection shall be paid from the Fund."* Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

H.R. 5002: amend by adding "(j) RECREATIONAL FISHING.--Notwithstanding any other provision of this title, fishing vessels of foreign nations may engage in recreational fishing within the fishery conservation zone, the territorial sea of the United States, and the internal waters of a State subject to obtaining such permits, paying such fees, and complying with such conditions and restrictions as the Secretary, with respect to the fishery conservation zone, and the appropriate State official, with respect to the territorial sea and internal waters, shall impose as being necessary or appropriate to ensure that the fishing activity of such foreign vessels is consistent with any applicable fishery management plan implemented under

section 305. The Secretary shall consult with the Secretary of State and the Secretary of the department in which the Coast Guard is operating in formulating the conditions and restrictions applicable with respect to the fishery conservation zone."

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS.

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

- (1) shall renegotiate treaties as provided for in subsection (b);
- (2) shall negotiate governing international fishery agreements described in section 201(c);
- (3) may negotiate boundary agreements as provided for in subsection (d);
- (4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements--
 - (A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and
 - (B) which provide for the conservation and management of anadromous species and highly migratory species; and
- (5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

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

(c) INTERNATIONAL FISHERY AGREEMENTS.--No international fishery agreement (other than a treaty) which pertains to foreign fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area--

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

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

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

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

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

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

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

(a) IN GENERAL.--No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) REFERRAL TO COMMITTEES.--Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.

(c) COMPUTATION OF 60-DAY PERIOD.--For purposes of subsection (a)--

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) CONGRESSIONAL PROCEDURES.--

(1) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.--The provisions of this section are enacted by the Congress--

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) DEFINITION.--For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress--

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) PLACEMENT ON CALENDAR.--Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE HOUSE.--

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and

motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) FLOOR CONSIDERATION IN THE SENATE.--

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control, with respect to the applicable fishery agreement resolution.

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

SEC. 204. PERMITS FOR FOREIGN FISHING.

(a) IN GENERAL.--After February 28, 1977, no foreign fishing vessel shall engage in fishing within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.--

(1) ELIGIBILITY.--Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a).

(2) FORMS.--The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) CONTENTS.--Any application made under this subsection shall specify--

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, *H.R. 5002: amend by adding "hold capacity"* and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the estimated amount or tonnage of fish which will be caught, taken or harvested in each such fishery by each such vessel during the time the permit is in force;

(E) the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States; and

(F) the ocean area in which, and the season or period during which, such fishing will be conducted; and shall include any other pertinent information and material which the Secretary may require.

(4) TRANSMITTAL FOR ACTION.--Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3) and shall be set forth under the name of each Council to which it will be transmitted for comment. The Secretary of State shall promptly transmit--

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy of such material to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.

H.R. 5002: amend by striking out subparagraphs (B) and (C) of paragraph (4) and inserting in lieu thereof the following: "(B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

"(C) a copy or a summary of the application to the appropriate Council, upon its request."

(5) ACTION BY COUNCIL.--After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall *H.R. 5002: amend by striking out "After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall" and inserting in lieu thereof "After receiving an application copy or summary under paragraph (4)(C), the Council may"* prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) APPROVAL.--After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B), the application, if he determines that the fishing described in the application will meet the requirements of this Act.

(B) (i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by United States fish processors.

(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to

the foreign nation concerned, such other matters as the Secretary deems appropriate.

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.--The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c) (1), (2), and (3).

(D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.

(E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) NOTICE OF APPROVAL.--The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to--

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating;

(C) any Council which has authority over any fishery specified in such application; and

(D) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.

(9) DISAPPROVAL OF APPLICATIONS.--If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign

nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) FEES.--[Effective with respect to permits issued for 1981.] Reasonable fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish and publish a schedule of such fees, which shall apply nondiscriminatorily to each foreign nation. Such fees shall be formulated so as to ensure that the receipts resulting from the payment of the fees under this paragraph for permits issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979. The fees collected by the Secretary under this paragraph for permits issued for 1981 shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) and used for the purpose of making loans therefrom, *H.R. 5002: amend by striking out "loans therefrom," and all that follows thereafter and inserting in lieu thereof "loans therefrom."* but only to the extent and in amounts provided for in advance in appropriation Acts.

(10) FEES.--[Effective with respect to permits issued after 1981.] Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. The fees imposed under this paragraph shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act (including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered by surcharges under section 201(i)(4) during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year. The amount collected by the Secretary under this paragraph shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742C) for so long as such fund exists and used for the purpose of making loans therefrom, *H.R. 5002: amend by striking out "loans therefrom," and all that follows thereafter and inserting in lieu thereof "loans therefrom."* but only to the extent and in amounts provided for in advance in appropriation Acts.

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

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

(12) SANCTIONS.--If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 307 the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue the Secretary shall--

(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

(B) suspend such permit for the period of time deemed appropriate;
or

(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

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

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

SEC. 205. IMPORT PROHIBITIONS.

(a) DETERMINATIONS BY SECRETARY OF STATE.--If the Secretary of State determines that--

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms

not more restrictive than those established under sections 201 (c) and (d) and 204 (b) (7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation--

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

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

(b) PROHIBITIONS.--Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States--

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

(c) REMOVAL OF PROHIBITION.--If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) DEFINITIONS.--As used in this section--

(1) The term "fish" includes any highly migratory species.

(2) The term "fish products" means any article which is produced from or composed of (in whole or in part) any fish.

TITLE III--NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

(a) IN GENERAL.--Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. *H.R. 5002: amend by adding "by the United States fishing industry" S. 1668: "(1) Conservation and management measures shall prevent overfishing while allowing, on a continuing basis, the full utilization of optimum yield from each fishery by United States harvesters."*

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) GUIDELINES.--The Secretary shall establish guidelines, based on the national standards, to assist in the development of fishery management plans. *H.R. 5002: amend by adding "The guidelines shall not have the force and effect of law." S. 1668: amend by adding "Such guidelines shall not require mandatory compliance."*

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

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

(1) NEW ENGLAND COUNCIL.--The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The New England Council shall have 17 voting members, including 11 *H.R. 5002: amend by striking out "11" in paragraphs (1) and (5) and inserting in lieu thereof "12" appointed by the Secretary pursuant to subsection (b)(1)(C) H.R. 5002: amend by striking out "(b)(1)(C)" each place it appears therein and inserting "(b)(1)(B)" (at least one of whom shall be appointed from each such State).*

(2) MID-ATLANTIC COUNCIL.--The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The Mid-Atlantic Council shall have 19 voting members, including 12 *H.R. 5002: amend by striking out "12" and inserting in lieu thereof "13" appointed by the Secretary pursuant to subsection (b)(1)(C) H.R. 5002: "(b)(1)(B)" (at least one of whom shall be appointed from each such State).*

(3) SOUTH ATLANTIC COUNCIL.--The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The South Atlantic Council shall have 13 voting members, including 8 *H.R. 5002: amend by striking out "8" in paragraphs (3) and (6) and inserting in lieu thereof "9" appointed by the Secretary pursuant to subsection (b)(1)(C) H.R. 5002 "(b)(1)(B)" (at least one of whom shall be appointed from each such State).*

(4) CARIBBEAN COUNCIL.--The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States. The Caribbean Council shall have 7 voting members, including 4 *H.R. 5002: amend by striking out "4" in paragraph (4) and inserting in lieu thereof "5" appointed by the Secretary pursuant to subsection (b)(1)(C) H.R. 5002 "(b)(1)(B)" (at least one of whom shall be appointed from each such State).*

(5) GULF COUNCIL.--The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States. The Gulf Council shall have 17 voting members, including 11 *H.R. 5002: amend by striking out "11" in paragraphs (1) and (5) and inserting in lieu thereof "12" appointed by the Secretary pursuant to subsection (b)(1)(C) H.R. 5002: "(b)(1)(B)" (at least one of whom shall be appointed from each such State).*

(6) PACIFIC COUNCIL.--The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 *H.R. 5002: "9" appointed by the Secretary pursuant to subsection (b)(1)(C) H.R. 5002: "(b)(1)(B)" (at least one of whom shall be appointed from each such State).*

(7) NORTH PACIFIC COUNCIL.--The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 *H.R. 5002: amend by striking out "7" and inserting in lieu thereof "8"* appointed by the Secretary pursuant to subsection (b)(1)(c) *H.R. 5002: "(b)(1)(B)"* (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington). *H.R. 5002 amend by striking out "5" and inserting in lieu thereof "6"*.

(8) WESTERN PACIFIC COUNCIL.--The Western Pacific Fishery Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) *H.R. 5002: "(b)(1)(B)"* (at least one of whom shall be appointed from each such State).

H.R. 5002: "(8) WESTERN PACIFIC COUNCIL.--The Western Pacific Fishery Management Council shall consist of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of all States except Alaska, Washington, Idaho, Oregon, and California. The Western Pacific Council shall have 13 voting members, including 9 appointed by the Secretary pursuant to such subsection (b)(1)(B) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands)."

S. 1668: "(8) WESTERN PACIFIC COUNCIL.--The Western Pacific Management Council shall consist of the State of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b)(1)(C), at least one of whom shall be appointed from each such State."

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

(b) VOTING MEMBERS.--(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member. *H.R. 5002: amend by striking out subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).*

(C) The members required to be appointed by the Secretary shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable constituent State. With respect to the initial such appointments, such Governors shall submit such lists to the Secretary as soon as practicable, not later than 45 days after the date of the enactment of this Act. As used in this subparagraph, (i) the term "list of qualified individuals" shall include the names (including pertinent biographical data) of not less than three such individuals for each applicable vacancy, and (ii) the term "qualified individual" means an individual who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

(2) Each voting member appointed to a Council pursuant to paragraph (1)(C) shall serve for a term of 3 years; except that, with respect to the members initially so appointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years. *H.R. 5002: amend by striking out "(1)(C)" and inserting in lieu thereof "(1)(B)" and by adding at the end: "The Secretary shall make, and announce publicly, the appointment of an individual under paragraph (1)(B) not less than 45 days before the first day on which the individual is to take office as a member of a Council. The Secretary may remove for cause any member appointed under paragraph (1)(B) if the Council concerned first recommends removal by not less than two-thirds of the members who are voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons on which the recommendation is based."*

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

(c) NONVOTING MEMBERS.--(1) The nonvoting members of each Council shall be: *H.R. 5002: amend subsection (c)(1) by redesignating subparagraphs (A) through (D) as subparagraphs (B) through (E), respectively; and by inserting immediately before subparagraph (B) (as so redesignated) the following new subparagraph:*

"(A) The regional director of the National Marine Fisheries Service for the geographical area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the nonvoting member."

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) COMPENSATION AND EXPENSES.--The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members may be reimbursed for actual expenses. *H.R. 5002: amend by striking out "for GS-18 of the General Schedule" and inserting in lieu thereof "of \$100"; and by striking out "(c)(1)(C)" and inserting in lieu thereof "(c)(1)(D)".*

(e) TRANSACTION OF BUSINESS.--

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet in the geographical area concerned at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement.

(f) STAFF AND ADMINISTRATION.--

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. Each Council shall publish and make available to the public a statement of its organization, practices, and procedures. *H.R. 5002: amend by adding "Such procedures shall include, but shall not be limited to, the following requirements:*

"(A) Emergency meetings of the Council shall be held at the call of the Chairman.

"(B) Timely notice of each regular meeting and each emergency meeting of the Council and the agenda for each such meeting must be published in newspapers of general circulation throughout the geographical area concerned; and timely notice of each regular meeting and agenda shall also be published in the Federal Register.

"(C) Interested persons shall be given an opportunity to submit oral or written statements regarding matters before the Council at regular and emergency meetings.

"(D) A record shall be kept of the proceedings at each regular or emergency meeting and the record (including a copy of each written statement and document presented in the course of the proceedings, as well as the transcript, if any, of the proceedings) shall be available for public inspection and copying at a single location in the offices of the Council.

The requirements set forth in subparagraphs (A) through (D) shall also apply with respect to the procedures for the scientific and statistical committee and advisory panels established under subsection (g) by a Council. The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply with respect to any Council, scientific and statistical committee, or advisory panel."

(7) The Secretary shall pay--

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

H.R. 5002: amend by adding "(8) Each Council shall establish such procedures relating to the confidentiality of statistics submitted to it as the Council deems appropriate, including, but not limited to, restrictions regarding Council employee access and the prevention of conflicts of interest; except that such procedures must, in the case of statistics submitted to the Council by a State, be consistent with the laws or regulations of that State concerning the confidentiality of such statistics."

(g) COMMITTEES AND PANELS.--

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

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

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

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each such plan as are necessary;

H.R. 5002: amend to read as follows:

"(1) prepare and submit to the Secretary--

"(A) a fishery management plan with respect to each fishery, within its geographical area of authority, that in the judgment of the Council requires conservation and management,

"(B) a data collection program described in section 303(e) if the Council determines such a program to be necessary, and

"(C) such amendments to any fishery management plan or data collection program prepared by it as the Council may deem, from time to time, to be necessary;"

S. 1668: amend to read "(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority that the Council shall determine requires conservation and management through a fishery management plan and, from time to time, such amendments to each such plan as are necessary;"

(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(B) *H.R. 5002: amend by*

striking out "204(b)(4)(B)" and inserting in lieu thereof "204(b)(4)(C)", and any fishery management plan or amendment transmitted to it under section 304(c)(2);

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act; H.R. 5002: *amend by adding "(and for purposes of this paragraph, the term 'geographical area concerned' may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area)"*

S. 1668: amend to read "(3) conduct public hearings, at such times and locations as the Council shall determine necessary and appropriate, in order to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act;"

(4) submit to the Secretary--

(A) a report, before February 1 of each year, on the Council's activities during the immediately preceding calendar year,

(B) such periodic reports as the Council deems appropriate, and

(C) any other relevant report which may be requested by the Secretary;

H.R. 5002: amend to read "(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;"

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a) (3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority; and

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

S. 1668: amend by adding "(i) DISCRETIONARY FUNCTIONS.--Each Council may, in connection with its other functions and responsibilities, comment on or make recommendations concerning any activity by any person or group or by any State or Federal agency that directly or indirectly impacts upon any fishery resource for which the Council has responsibility. Not later than 45 days after receiving any such comment or recommendation the head of any Federal

agency concerned shall respond to the Council fully and in detail, stating how such comment or recommendation will be addressed.

"(j) PROCEDURES.--The Federal Advisory Committee Act (5 U.S.C. App. 1) shall not apply to the Councils, their scientific and statistical committees or their advisory councils. In order to assure public participation in its activities, each Council shall adopt the following procedures:

"(1) Each Council shall establish its own procedures with respect to the purposes, duties, and composition of its subcommittees, scientific and statistical committee, and its advisory panels.

"(2) Each Council meeting and each meeting of any scientific and statistical committee and each advisory panel shall be open to the public, except as provided in paragraph (7).

"(3) Timely notice of each meeting of a Council shall be published in the Federal Register except that Councils may meet without such notice in the event that the chairman and the vice chairman determine that an emergency exists. If such a determination is made, public notice shall be given by appropriate publication in the newspapers having the widest circulation in the major fishing ports of the Council's region and by such other means as will result in wide publicity.

"(4) Interested persons shall be permitted to file statement with the Council, the scientific and statistical committee, or any advisory panel of the Council.

"(5) Subject to section 552(b) of title 5, United States Code, and guidelines concerning the confidentiality of data prescribed by the Secretary or by the Councils under section 303(d), the administrative record, including minutes of meetings, records, or other documents which were made available to or prepared for or by each Council, shall be available for public inspection and copying at a single location in the offices of the Council.

"(6) Minutes of each meeting of a Council shall be kept and shall contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council.

"(7) Paragraphs (2), (4), (5), and (6) of this section shall not apply to any portion of a meeting of the Council, scientific and statistical committee, or advisory panel that is closed to the public in accordance with this subsection. A Council may close all or any portion of a meeting to the public upon 15 days' notice to the Secretary. Such notice shall be in writing and shall set forth the time and place of the meeting and the reason for closure. A meeting may be closed to the public for reasons of foreign policy, or for discussion of personnel matters, privileged or confidential information, or other matters listed in section 552(b) of title 5, United States Code."

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) REQUIRED PROVISIONS. Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery and include a summary of the information utilized in making such specification;

(4) assess and specify--

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3);

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States; and

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

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

(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

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

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

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

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

(6) establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account-- *H.R. 5002: amend that part of paragraph (6) which precedes subparagraph (A) to read as follows:*

"(6) establish for the fishery, in order to achieve optimum yield, a limited access system (which system may include a vessel 'buy-back' or equivalent program, may provide for the funding of any such program through the fee schedule for the system, and may be administered by the States concerned), and in developing such a system, the Council and the Secretary shall take into account--"

(A) present participation in the fishery,

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

(C) the economics of the fishery,

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

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

(F) any other relevant considerations; and

H.R. 5002: amend by striking out "and" at the end of paragraph (6) and redesignating paragraph (7) as paragraph (8); and by inserting:

"(7) set forth those factors, if any, that are impeding the full utilization of the optimum yield of the fishery by the United States fishing industry and recommend those measures which should be taken to eliminate, or reduce the effect of, those factors; and"

S. 1668: amend by striking "and" at the end of paragraph (6); and redesignating paragraph (7) as paragraph (8); and by inserting:

"(7) state the factors, if any, which have impeded full utilization of the optimum yield by fishing vessels of the United States and measures which would be useful to eliminate or reduce the obstacles to full domestic utilization of the optimum yield; and"

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

(c) PROPOSED REGULATIONS. -- Any Council may prepare any proposed regulations which it deems necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which is prepared by it. H.R. 5002: amend first sentence to read: "Each Council shall prepare such proposed regulations as it deems necessary or appropriate to carry out each fishery management plan, and any amendment thereto, that is prepared by it." Such proposed regulations shall be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 304 and 305. S. 1668: amend by striking "Any Council may" and substituting "Each Council shall".

(d) CONFIDENTIALITY OF STATISTICS. -- Any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) shall be confidential and shall not be disclosed except when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics.

S. 1668: amend to read "(d) CONFIDENTIALITY OF STATISTICS.--(1) Any statistics submitted to the Councils by any person with a written request that such statistics be regarded as confidential and any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) or any other data gathering program relating to fishery management shall not be disclosed, except when required by court order. Each Council shall establish its own procedures to preserve such confidentiality with respect to such confidential data submitted to it. Such procedures shall be designed to establish--

"(A) the need of any Council employee for access to such statistics;

"(B) that no conflict of interest will result from the disclosure of such statistics to such employee; and

"(C) that data submitted by any State shall be subject to safeguards that are consistent with that State's regulations.

"(2) The Secretary shall by regulation prescribe such procedures as may be necessary to preserve the confidentiality of statistics submitted to him pursuant to fishery management plans, except that on request the Secretary

must disclose such statistics to the staff of the Council or Councils responsible for, or having a demonstrable interest in, the plan pursuant to which such statistics were obtained or to any plan to which such statistics are relevant, except when such disclosure is prohibited by existing State-Federal data agreements. The Secretary or any Council may release or make public any statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics."

H.R. 5002: amend by adding "(e) DATA COLLECTION PROGRAMS.--(1) If a Council determines that the statistics and other data available to it are insufficient or unreliable for the purposes of--

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

"(B) preparing a fishery management plan;

the Council may prepare and submit to the Secretary a data collection program for the fishery which sets forth the types of statistics and other data which the Council considers necessary, the periods of time over which, and the intervals at which, such data should be collected, the probable sources of the data, a justification for the need for such data as it relates to the fishery or the fishery management plan proposed to be prepared, and such other matters as the Council deems appropriate or the Secretary may require.

"(2) The Secretary shall review and approve or disapprove each data collection program within 60 days after the date on which the program is submitted to him. The Secretary shall approve a data collection program if he determines that the need for the data is justified. If the Secretary does not consider any specific data, collection sequence, or source proposed in a data collection program to be appropriate for purposes of determining whether a fishery management plan is needed or the preparation of a plan, he shall disapprove all or part of the program, inform the Council of the reasons therefor, and propose suggestions for improvement. Within 60 days after the date of disapproval, the Council may amend the proposed program and resubmit it to the Secretary for approval.

"(3) The Secretary, within 60 days after approving a data collection program under this subsection, shall promulgate regulations to implement the program."

SEC. 304. ACTION BY THE SECRETARY.

(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.--Within 60 days after the Secretary receives any fishery management plan, or any amendment to any such plan, which is prepared by any Council, the Secretary shall--

(1) review such plan or amendment pursuant to subsection (b); and

(2) notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment.

In the case of disapproval or partial disapproval, the Secretary shall include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council receives such notification. H.R. 5002: amend by striking out "60 days" and inserting in lieu thereof "90 days"; and by adding at the end: "If the Secretary does not notify the Council of his approval, disapproval, or partial disapproval of the fishery management plan or amendment before the close of the 90-day period following his receipt of it, the plan or amendment shall be deemed, as of the close of such period, to be approved by the Secretary for purposes of section 305(a)(1).

S. 1668: amend to read "(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.--(1) Any fishery management plan or amendment to such plan which is prepared by any Council shall be reviewed and either approved or rejected within a period of 60 days after its receipt by the Secretary. The Secretary shall review and notify the Council in writing as promptly as possible if it is his intention to reject such plan or amendment on the grounds that it is inconsistent with the requirements of the national standards, section 303(a) of this Act, or any other applicable law. Such notice shall specify with particularity (A) the applicable law with which such plan or amendment is inconsistent, and (B) the nature of such inconsistency. Such notice shall also set forth in detail the recommendation of the Secretary concerning the action required to be taken by the Council to conform such plan or amendment to the requirements of such applicable law.

"(2) The counting of the 60-day review period shall be interrupted as of the date of the Secretary's notice of his intention to reject such plan or amendment until such Council shall have resubmitted such plan or amendment to the Secretary. The counting of the 60-day review period shall resume on the date the revised plan or amendment is received by the Secretary.

"(3) Unless otherwise specifically stated in such notice of intent to reject, the fishery management plan or amendment shall be presumed to be consistent with section 303(a) and all other applicable law except the national standards.

"(4) After the Secretary receives a fishery management plan, or any amendment to such plan, revised by a Council in response to the Secretary's notice of intention to reject the original of such plan or amendment and within the overall period of 60 days, the Secretary shall review such revised plan or amendment. The Secretary's review of any revised plan or amendment shall be limited to determining (A) whether such plan or amendment as revised by such Council in response to the Secretary's notice is responsive to the recommendations by the Secretary in such notice, and (B) whether such plan or amendment as revised is consistent with the national standards.

"(5) In the event the Secretary shall determine that any revised fishery management plan or amendment to any such plan is not responsive to the Secretary's recommendations contained in a notice of intent or is not consistent with the national standards, the Secretary shall notify such Council in writing of his intent to reject such revised plan or amendment.

Such second notice of intent to reject shall specify with respect to the revisions made by the Council the deficiencies in such revisions and with respect to any inconsistency with the national standards the exact nature of such inconsistency, and such notice shall set forth in detail the action required to be undertaken by the Council to cure such deficiencies or such inconsistency.

"(6) Not later than 45 days after any Council receives a second notice of intent from the Secretary, such Council shall resubmit such fishery management plan or amendment to the Secretary revised in accordance with the recommendations contained in such notice or shall notify the Secretary of its intention to redraft such plan or amendment. Upon submission for approval by the Secretary any such plan or such amendment redrafted pursuant to this subsection shall be deemed to be a plan or amendment submitted under paragraph (1).

"(7) In the event that the Secretary shall--

"(A) fail to notify a Council of his intent to reject a fishery management plan or amendment to such a plan within 60 days of the date of receipt of such plan, or

"(B) fail to notify a Council of his intent to reject a revised fishery management plan or revised amendment to any such plan within the remaining portion of the 60-day review period, such plan or amendment shall become effective and the Secretary shall promulgate the regulations which accompany such plan.

"(8) The Secretary shall review and approve or reject proposed regulations not later than 30 days after plan approval. If the Secretary does not act within 30 days such proposed regulations shall be deemed approved.

"(9) Nothing in this section shall be construed to require review of in-season adjustments required within the framework of an approved plan."

(b) REVIEW BY THE SECRETARY.--The Secretary shall review any fishery management plan, and any amendment to any such plan, prepared by any Council and submitted to him to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law. In carrying out such review, the Secretary shall consult with--

(1) the Secretary of State with respect to foreign fishing; and

(2) the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

S. 1668: subsection (b) is repealed and subsections (c), (d), (e), and (f) of such section (and all cross references thereto) are redesignated as subsections (b), (c), (d), and (e), respectively.

(c) PREPARATION BY THE SECRETARY.--(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if--

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management; or *H.R. 5002: amend by striking out "or" after the semicolon at the end of subparagraph (A).*

(B) the Secretary disapproves or partially disapproves any such plan or amendment, and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a)(2). *H.R. 5002: amend by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; or".*

H.R. 5002: amend by adding "(C) if a Council, by not less than two-thirds of the members who are voting members, determines that an emergency involving a fishery exists and requests the Secretary to prepare a fishery management plan for that fishery."

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(2) Whenever, pursuant to paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the appropriate Council may recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this Act, and any other applicable law. After the expiration of such 45-day period, the Secretary may implement such plan or amendment pursuant to section 305.

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

(d) ESTABLISHMENT OF FEES.--The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). Such level shall not exceed the administrative costs incurred by the Secretary in issuing such permits.

H.R. 5002: amend to read "(d) FEES.--The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1) and (6). The level for fees imposed under a permit system pursuant to section 303(b)(1) shall not exceed the costs incurred by the Secretary in issuing the permits. The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States."

S. 1668: Subsection (c) [as so redesignated by subsection (b)] is amended by inserting before the period at the end thereof ", except that fees at levels exceeding administrative costs may be established as part of a system of limited access pursuant to section 303(b)(6)".

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

(f) MISCELLANEOUS DUTIES.--(1) If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may--

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

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

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

S. 1668: amend by adding "(f) ADDITIONAL DATA REQUIREMENTS.--Upon the request of a Council the Secretary may by regulation require persons engaged in the fishery to submit to the Secretary data that would be pertinent to a fishery under section 303(a)(5) and which the Council determines are necessary and appropriate for determining the need for a plan or for the preparation of a preliminary fishery management plan or the preparation of a fishery management plan for the fishery."

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

(a) IN GENERAL.--As soon as practicable after the Secretary--

H.R. 5002: amend by striking out the matter preceding paragraph (1) and inserting in lieu thereof "(a) IN GENERAL.--Within 30 days after the Secretary--"

(1) approves, pursuant to section 304 (a) and (b), any fishery management plan or amendment; or

(2) prepares, pursuant to section 304(c), any fishery management plan or amendment;

the Secretary shall publish in the Federal Register (A) a notice of availability of such plan or amendment, and (B) any regulations which he proposes to promulgate to implement such plan or amendment. *H.R. 5002: amend to read (B) the proposed regulations prepared by the Council as required by section 303(c), any suggested substantive revision by the Secretary to the proposed regulations, and an explanation of such revisions."* Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the

plan or amendment, and on the proposed regulations. *H.R. 5002: amend last sentence to read "Interested persons shall be afforded a period of 30 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, the proposed regulations, and any suggested revision to the proposed regulations."*

(b) HEARING.--The Secretary may schedule a hearing, in accordance with section 553 of title 5, United States Code, on any fishery management plan, any amendment to any such plan, and any regulations to implement any such plan or amendment. If any such hearing is scheduled, the Secretary may, pending its outcome--

(A) postpone the effective date of the regulations proposed to implement such plan or amendment; or

(B) take such other action as he deems appropriate to preserve the rights or status of any person.

(c) IMPLEMENTATION. -- The Secretary shall promulgate regulations to implement any fishery management plan or any amendment to any such plan--

(1) after consideration of all relevant matters--

(A) presented to him during the 45-day period referred to in subsection (a), and *H.R. 5002: amend by striking out "45-day" and inserting in lieu thereof "30-day"; and adding at the end thereof the following: "If the Secretary does not promulgate regulations to implement a fishery management plan or amendment within the 30-day period following the close of the 30-day period referred to in subsection (a), the proposed regulations prepared by the Council under section 303(c) with respect to the plan shall be considered to have been promulgated by the Secretary effective on and after the day after the last day of such second 30-day period."*

(B) produced in any hearing held under subsection (b); and

(2) if he finds that the plan or amendment is consistent with the national standards, the other provisions of this Act, and any other applicable law.

To the extent practicable, such regulations shall be put into effect in a manner which does not disrupt the regular fishing season for any fishery.

S. 1668: amend by repealing subsections (b) and (c); and redesignating subsections (d), (e), (f), and (g) (and all cross references thereto) as subsections (b), (c), (d), and (e), respectively.

(d) JUDICIAL REVIEW.--Regulations promulgated by the Secretary under this Act shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.

(e) EMERGENCY ACTIONS.--If the Secretary finds that an emergency involving any fishery resources exists, he may--

(1) promulgate emergency regulations, without regard to subsections (a) and (c), to implement any fishery management plan, if such emergency so requires; or

(2) promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency. *H.R. 5002: amend by striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and by adding: "and if a Council--*

"(3) has requested under section 304(c)(1)(C) that a fishery management plan be prepared, the Secretary may promulgate emergency regulations to conserve the fishery until a plan can be prepared and implemented; or

"(4) by the unanimous vote of the members who are voting members declares that an emergency regarding a fishery exists and that appropriate action (including, but not limited to, closure of, or limitations on catch levels in, the fishery) will alleviate the situation, the Secretary shall promulgate emergency regulations that are necessary to implement such action."

Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection (A) shall be published in the Federal Register together with the reasons therefor; (B) shall remain in effect for not more than 45 days after the date of such publication, except that any such regulation may be repromulgated for one additional period of not more than 45 days *H.R. 5002: amend by adding (and, if such regulation was promulgated under paragraph (3), may be repromulgated following the second 45-day period for an additional period of not more than 90 days if such additional period is required for purposes of preparing a fishery management plan)";* and (C) may be terminated by the Secretary at any earlier date by publication in the Federal Register of a notice of termination.

S. 1668: amend subsection (c) [as so redesignated by paragraph (2)] to read as follows:

"(c) EMERGENCY ACTIONS.--If any Council finds that an emergency involving any fishery exists it may--

"(1) for any fishery for which there is a fishery management plan--

"(A) request the Secretary to promulgate emergency regulations to implement any fishery management plan if such emergency so requires; or

"(B) request the Secretary to promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency;

and, if the Secretary concurs that such emergency exists, he may comply with the Council's request. Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection shall be published in the Federal Register together with the reasons therefor; and shall remain in effect until the Secretary or such Council shall determine that such emergency no longer exists. Not less than once in each 90-day period following the declaration of an emergency under this section, the Secretary and such Council shall review all the circumstances leading to such declaration in order to determine whether such emergency continues to exist; or

"(2) for any fishery for which no fishery management plan has been prepared or is being prepared and which is engaged in predominantly within the fishery conservation zone, by two-thirds vote of the voting Council members, authorize the Secretary to promulgate emergency regulations.

Such regulations shall remain in effect for a period of 90 days and may at the discretion of the Secretary be extended for an additional 90 days."

(f) ANNUAL REPORT.--The Secretary shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources that were undertaken under this Act during the preceding calendar year. H.R. 5002: amend by repealing subsection (f)".

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

H.R. 5002: amend by adding "(h) INAPPLICABILITY OF CERTAIN LAWS TO CERTAIN PROCEDURAL AND TIME REQUIREMENTS.--Neither the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or Executive Order Numbered 12291, dated February 17, 1981, shall affect in any manner or to any extent (A) the time limitations or procedural requirements specified in subsections (a), (b), (c), and (e), section 303(c) and (e), and section 304(a) as they apply to the functions of the Secretary under such provisions; or (B) the taking effect under subsection (c) of certain regulations proposed by a Council."

SEC. 306. STATE JURISDICTION.

(a) IN GENERAL.--Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. H.R. 5002: amend by adding "For purposes of this Act, the jurisdiction and authority of a State shall extend to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the

Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party." No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State. H.R. 5002: amend by adding "or numbered under the Federal Boating Safety Act of 1971 (46 U.S.C. 1451 et seq.)" immediately before the period.

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

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

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

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

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

S. 1668: amend by adding "(c) COUNCIL-STATE PLANS FOR SHARED FISHERIES.-- Nothing in this section shall be construed as prohibiting any fishery management Council and its constituent States, if acting in concurrence and unanimous agreement, to develop fishery management plans for fisheries within and beyond State boundaries. An action by a Council and its State shall not be construed as a commitment by the individual State to adopt the management regime and regulations that could be recommended by the fishery management plan."

SEC. 307. PROHIBITED ACTS.

It is unlawful--

(1) for any person--

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C); or

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing--

(A) within the boundaries of any State; or

(B) within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204 (b) or (c); and

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer directly or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the fishery conservation zone, unless the foreign fishing vessel has been issued a permit under section 204 which authorizes the receipt by such vessel of United States harvested fish of the species concerned.

SEC. 308. CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTY.--Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such

civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) REVIEW OF CIVIL PENALTY.--Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.--If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) COMPROMISE OR OTHER ACTION BY SECRETARY.--The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

SEC. 309. CRIMINAL OFFENSES.

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

- (1) section 307(1) (D), (E), (F), or (H); or
- (2) section 307(2).

(b) PUNISHMENT.--Any offense described in subsection (a)(1) is punishable by a fine of not more than \$50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than \$100,000, or imprisonment for not more than 1 year, or both. *H.R. 5002: amend by striking out ", or imprisonment for not more than 1 year, or both."* *H.R. 5002: This amendment applies with respect to offenses committed under section 309 on or after the date of the enactment of this Act.*

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

SEC. 310. CIVIL FORFEITURES.

(a) IN GENERAL. -- Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 (other than any act for which the issuance of a citation under section 311(c) is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section. *H.R. 5002: amend by inserting "(or the value thereof)" immediately after "fish" each place it appears.*

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

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

- (1) the disposition of forfeited property,
- (2) the proceeds from the sale of forfeited property,
- (3) the remission or mitigation of forfeitures, and
- (4) the compromise of claims,

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary.

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

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to such process; upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

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

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

SEC. 311. ENFORCEMENT.

(a) RESPONSIBILITY.--The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report semiannually, to each committee of the Congress listed in section 203(b) and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this Act.
H.R. 5002: Repeal the last sentence of section 311(a).

S. 1668: amend to read "(a) RESPONSIBILITY.--The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report semiannually to each committee of the Congress listed in section 203(b) and to the Councils on the degree and extent of known and estimated compliance with the provisions of this Act. Said report shall include, but not be limited to, an assessment of the following:

"(1) the degree and extent of violations of the provisions of this Act by foreign and domestic fishing vessels and enforcement action taken in each instance of reported violation;

"(2) estimates of the overall effectiveness of the enforcement activities of the provisions of this Act as applied to the foreign and domestic fishing fleet;

"(3) identification of factors which enhanced or impeded enforcement activities under the Act;

"(4) recommendations to reduce or eliminate any impediments to effective enforcement which may exist;

"(5) evaluation of current and estimatio of future adequacy of personnel, equipment, and facilities at the disposal of the Secretaries to enforce the provisions of the Act; and

"(6) description of the utilization of the personnel, equipment, services, and facilities of other Federal agencies as authorized by the Act."

(b) POWERS OF AUTHORIZED OFFICERS.--Any officer who is authorized [by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)] to enforce the provisions of this Act may--

(1) with or without a warrant or other process--

(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307;

(B) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

(D) seize any fish (wherever found) taken or retained in violation of any provision of this Act; and

(E) seize any other evidence related to any violation of any provision of this Act;

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) exercise any other lawful authority.

(c) ISSUANCE OF CITATIONS.--If any officer authorized to enforce the provisions of this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this Act, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) JURISDICTION OF COURTS.--The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time--

- (1) enter restraining orders or prohibitions;
- (2) issue warrants, process in rem, or other process;
- (3) prescribe and accept satisfactory bonds or other security; and
- (4) take such other actions as are in the interest of justice.

(e) DEFINITION.--For purposes of this section--

(1) The term "provisions of this Act" includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201 (b) or (c), with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term "violation of any provision of this Act" includes (A) the commission of any act prohibited by section 307, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON LAW OF THE SEA TREATY.--If the United States ratifies a comprehensive treaty, which includes provisions with respect to fishery conservation and management jurisdiction, resulting from any United Nations Conference on the Law of the Sea, the Secretary, after consultation with the Secretary of State, may promulgate any amendment to the regulations promulgated under this Act if such amendment is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

SEC. 402. REPEALS.

(a) The Act of October 14, 1966 (16 U.S.C. 1091-1094), is repealed as of March 1, 1977.

(b) The Act of May 20, 1964 (16 U.S.C. 1081-1086), is repealed as of March 1, 1977.

SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

(a) AMENDMENTS.--The Act of August 27, 1954 (22 U.S.C. 1972), is amended--

(1) by amending section 2 thereof to read as follows: "Sec. 2. If (1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or (2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions (A) are unrelated to fishery conservation and management, (B) fail to consider and take into account traditional fishing practices of vessels of the United States, (C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Magnuson

Fishery Conservation and Management Act), or (D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority; and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary (i) for the protection of such vessel and for the health and welfare of its crew; (ii) to secure the release of such vessel and its crew; and (iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act."; and

(2) by amending section 3(a) thereof by inserting immediately before the last sentence thereof the following new sentence: "For purposes of this section, the term 'other direct charge' means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee."

(b) EFFECTIVE DATE.--The amendment made by subsection (a)(1) shall take effect March 1, 1977. The amendment made by subsection (a)(2) shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.

SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

(a) AMENDMENT.--Section 3(15)(B) of the Marine Mammal Protection Act of 1972 [16 U.S.C. 1362(15)(B)] is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966." and inserting in lieu thereof "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured,".

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

(a) AMENDMENT.--Section 2(4) of the Atlantic Tunas Convention Act of 1975 [16 U.S.C. 971(4)] is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094)," and inserting in lieu thereof "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured,".

(b) EFFECTIVE DATE. The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

- (1) \$5,000,000 for the fiscal year ending June 30, 1976.
- (2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.
- (3) \$25,000,000 for the fiscal year ending September 30, 1977.
- (4) \$30,000,000 for the fiscal year ending September 30, 1978.
- (5) \$30,000,000 for the fiscal year ending September 30, 1979.
- (6) \$33,000,000 for the fiscal year ending September 30, 1980.
- (7) \$40,000,000 for the fiscal year ending September 30, 1981.
- (8) \$47,000,000 for the fiscal year ending September 30, 1982.

NOTE: H.R. 5002 includes a proposed amendment to the "Act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for the other purposes," approved September 4, 1980 [16 U.S.C. 1827(e)]. The amendment would change the fourth sentence of section 2(e) to read as follows: "All payments made by the Secretary to carry out this section shall be paid from the fund."

Box 248
Douglas, Alaska 99824

December 16, 1981

Mr Jim Branson
Executive Director
North Pacific Fishery Management Council
Box 3136 DT
Anchorage, AK 99824

Dear Jim:

I hereby submit my resignation from the Advisory Panel to the Council.

As you know, Ed Wojcek has replaced me as executive director of the Alaska Trollers Association, and it is the desire of the ATA board of directors that he have the opportunity to serve on the AP. As I understand that the Council could not consider his membership while I still am on the panel, I am resigning in the hopes that I may be replaced by Mr Wojcek.

I might note that last week at the Pacific Fishery Management Council meeting in Portland that Ed was appointed to replace me on that body's salmon sub-committee.

Thank you for all of your help over the last two years. It has been a pleasure working with you, the Council, and your staff. Best holiday wishes to you all.

Sincerely,

DEC 18 1981

ACTION	ROUTE TO	INITIAL
	Exec. Dir.	
	Deputy Dir.	
	Asst. Dir.	
	Asst. Dir.	
	Asst. Dir.	
	Asst. Dir.	
	Asst. Dir.	
	Asst. Dir.	
	Asst. Dir.	
	Asst. Dir.	
	Sec. Typist	

LEWIS SCHNAPER