

## **Executive Director's Report**

### **New Plan Coordinator**

We have hired Jane DiCosimo as plan coordinator to fill the position left by Brent Paine. Jane will take over the Gulf of Alaska groundfish FMP, halibut management and other issues, and staff member David Witherell will move on to the BSAI groundfish and crab fisheries. Jane's official start date is July 1, but she is up here for this meeting to watch the Council in operation and become familiar with current issues. She comes from the South Atlantic Fishery Management Council where she has worked since 1987, advancing from statistician to fishery biologist in charge of coastal pelagics and law enforcement. She has also worked over the years on billfish, shrimp, snapper-grouper, and wreckfish. Jane has a Bachelors Degree from Rutgers University and a Masters Degree from the Virginia Institute of Marine Science.

### **Chairmen Meet on Magnuson Act**

Regional Council Chairmen met May 14-16 in Washington, D.C. to review Magnuson Act proposals and several administrative matters. Item B-1(a) summarizes the meeting and amendment proposals offered by the House Subcommittee on Fisheries Management, the minority fisheries staff, Representative Gilchrest, and the Administration. Council Chairmen comments and responses are in Appendix I. According to a recent memo from Larry Six at the Pacific Council, bills are expected to be introduced by the Senate and House committee leadership sometime in June with mark-ups in late June or July. Senate Committee staff indicated that the Council Chairs' recommendations would be included in their bill.

The Gilchrest bill would provide the most exhaustive overhaul of the Act. The proposed changes come verbatim from an issues paper drafted by the Marine Fish Conservation Network, formed in 1992, whose membership includes three dozen fishing and conservation organizations, and a steering committee composed of Greenpeace, Center for Marine Conservation, National Audubon Society, National Coalition for Marine Conservation, and World Wildlife Fund. Item B-1(b) is their issues paper which I sent you last October. It includes (1) eliminating overfishing and rebuilding depleted fish populations, (2) reforming the councils, (3) improving conservation and management of large pelagics, (4) minimizing bycatch, (5) providing adequate funding for fisheries research, management, and enforcement, and (6) protecting marine fish habitats. Several of these themes also appear in the Stevens and Murkowski waste/discard bills which you have already received, and in proposals offered by the Fisheries Subcommittee staff, and the Fisheries Minority staff (B-1(c)). The Administration's proposals are under B-1(d).

We may want to schedule time later this week, after you have had an opportunity to review the draft amendments, to develop our Council's recommendations on amending the Magnuson Act. And one final note, several of the proposed changes to the Act concern overfishing, rebuilding depleted stocks, and enhancing the role of scientists and SSCs in setting ABCs. Out of curiosity, I asked Dave Witherell to compare our setting of ABCs with our SSC's recommendations over the years. His results are tabulated in Table 1. For 1987-1994, we've set 215 ABCs. Only once did the Council's ABC exceed the SSC's and that was when the ABC was set for GOA pollock in 1992, halfway between the SSC and Plan Team recommendations. Three times, the Council set an ABC less than the SSC's, and at no time has our TAC exceeded ABC.

### September Council Meeting

Our September meeting will be one week later than usual and start on Friday, September 30, run through the weekend and end on Wednesday, October 5, so that the delegation heading to Russia will have time to pack and leave by Friday. The AP will begin on Wednesday, September 28, and the SSC on Thursday, September 29. The main agenda item will be initial review of the limited entry system, full utilization and harvest priority, and other items involved in comprehensive rationalization planning. We will need to approve the initial groundfish specifications for review, and also consider Pacific pelagics, but I would like to keep the agenda as focused as possible, mainly on CRP during the six days we have available. The meeting will be at the Seattle Red Lion Inn at Sea-Tac Airport.

### Pacific Pelagics

You'll note that I removed Pacific pelagics from the agenda. We most likely will need all the time available this week on the other, more pressing items, plus the Pacific Council has yet to address the issue even though many of the pelagics fishermen opposed to a Western Pacific Council management lead, come directly from California and Oregon. The Pacific Council is being asked to take it up in August. That means that our September meeting might be opportune for addressing pelagics after we have comments from the Pacific Council. Also, we will be in Seattle and closer to the fishermen who normally fish pelagics, even though they often depart from Dutch Harbor. I am unaware of any Alaska-based fishermen who participate in this fishery. The Executive Director of the Western Pacific Council has suggested that while in Seattle, we meet jointly with one or two representatives of the Western Pacific and Pacific councils to discuss management of Pacific pelagics. Please let me know your preferences on this proposed meeting so I can schedule it.

### Call for Proposals

Once again summer is upon us and we need to determine whether to call for groundfish and halibut proposals. We did not call for proposals in 1992, then we did in 1993, and both years we got plenty to work on anyway. Do you want to call for proposals this summer or concentrate our efforts on finishing up CRP and other issues already on the docket? Sablefish and halibut IFQs/CDQs will begin in 1995, so there may not be a need to call for halibut allocation proposals. Along those lines, please remember that we come will back to the halibut charter issue in December. We also have a pretty full plate with salmon bycatch, full utilization/harvest priority, and any extension of inshore-offshore and pollock CDQs.

### Future Meetings

For 1995, we will meet the weeks of January 9 (Anchorage), April 17 (Anchorage), June 19 (Dutch Harbor, Kodiak, or Juneau), August 7 (possible summer mtg, if necessary), September 18 (Seattle), and December 4 (Anchorage). We still are developing cost-figures for the June meeting and will make a decision once we have them.

For 1996, we need your approval to arrange meetings for the weeks of: January 8 (Anchorage), April 15 (Anchorage), June 17 (Alaska, but not Anchorage), August 5 (possible summer mtg, if necessary), September 16 (Portland), and December 9 (Anchorage).

**Table 1. Number of Allowable Biological Catch (ABC) recommendations for groundfish targets in the Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI) area, from the North Pacific Fishery Management Council and its Scientific and Statistical Committee, 1987-1994, based on one ABC per species or complex.**

**Gulf of Alaska**

<u>Year</u>	<u># of species or complexes</u>	<u># of times Council set ABC's &gt; SSC</u>	<u># of times Council set ABC's &lt; SSC</u>	<u># of times Council set TAC's &gt; ABC</u>	<u># of times Council set TAC's = ABC</u>	<u># of times Council set TAC's &lt; ABC</u>	<u>Notes</u>
1994	16	0	1	0	8	8	POP ABC reduced 3,943 to 3,030 mt
1993	14	0	0	0	5	9	
1992	14	1	0	0	8	6	Pollock ABC set midway between SSC and Plan Team
1991	14	0	0	0	8	6	P. cod ABC was adjusted among areas
1990	11	0	1	0	7	4	P. cod ABC reduced 120,000 to 90,000 mt.
1989	9	0	1	0	6	3	Slope rockfish ABC reduced 22,700 to 20,000 mt.
1988	9	0	0	0	6	3	
1987	10	0	0	0	5	5	
<b>Total GOA</b>	<b>97</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>53</b>	<b>44</b>	

**Bering Sea and Aleutian Islands**

<u>Year</u>	<u># of species or complexes</u>	<u># of times Council set ABC's &gt; SSC</u>	<u># of times Council set ABC's &lt; SSC</u>	<u># of times Council set TAC's &gt; ABC</u>	<u># of times Council set TAC's = ABC</u>	<u># of times Council set TAC's &lt; ABC</u>	<u>Notes</u>
1994	17	0	0	0	11	6	
1993	17	0	0	0	6	11	
1992	17	0	0	0	10	7	
1991	17	0	0	0	10	7	
1990	13	0	0	0	3	10	
1989	13	0	0	0	2	11	
1988	12	0	0	0	2	10	
1987	12	0	0	0	5	7	
<b>Total BSAI</b>	<b>118</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>49</b>	<b>69</b>	

<b>GOA &amp; BSAI</b>	<b>215</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>102</b>	<b>113</b>	
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# North Pacific Fishery Management Council

Richard B. Lauber, Chairman  
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## MEMORANDUM

TO: Council Executive Directors

FROM: Clarence Pautzke  
Executive Director, NPFMC 

DATE: May 26, 1994

SUBJECT: Draft Summary of Council Chairmen's Meeting

Here is a draft summary of the Chairmen's meeting. Things may start hopping in D.C. soon, so I would appreciate your comments as soon as possible so we can finalize the draft. Feel free to round out the various sections as appropriate. If there is a disagreement over some item, I'll get back to you.

We go into Council meeting on Sunday, June 5, so I would appreciate any comments by the end of the day on Thursday, June 2, so we can get the final version out to you before our meeting begins. I know that's a quick turnaround, but let's see if we can make it.

enclosure

## **DRAFT SUMMARY**

**Council Chairmen's Meeting  
May 14-16, 1994  
Washington, D.C.**

Council Chairmen, Vice Chairmen, and associated Council staffs met on Saturday, May 14, 1994, beginning at 1:00 p.m. The meeting was called to order by Lee Anderson, Chairman of the Mid-Atlantic Fishery Management Council. Various representatives from NMFS and NOAA, and the U.S. Senate and House of Representatives joined the meeting on Sunday and Monday, May 15-16, 1994. The meeting adjourned at 1:00 p.m. on Monday, May 16.

### **Attendees:**

#### **New England Fishery Management Council**

Joe Brancleone, Chair  
Eric Smith, V. Chair  
Doug Marshall, Exec. Director  
Sandy Stone, Adm. Officer

#### **Mid-Atlantic Council**

Dr. Lee Anderson, Chair  
Anthony DiLernia, V. Chair  
David Keifer, Exec. Director  
Carol Stevenson, Adm. Officer  
Joanna Davis, Exec. Secretary

#### **South Atlantic Council**

John Floyd, Chair  
Robert Mahood, Exec. Director

#### **Gulf of Mexico Council**

Thomas Wallin, Chair  
Robert Shipp, V. Chair  
Wayne Swingle, Exec. Director

#### **Caribbean Council**

Patricia Skov, Chair  
Jose Campos, V. Chair  
Miguel Rolon, Exec. Director

#### **Pacific Council**

Frank Warrens, Chair  
Peter Leipzig, V. Chair  
Larry Six, Exec. Director

#### **North Pacific Council**

Richard Lauber, Chair  
Robert Alverson, V. Chair  
Clarence Pautzke, Exec. Director  
Judy Willoughby, Adm. Officer  
Helen Allen, Exec. Secretary

#### **Western Pacific Council**

Rufo Lujan, V. Chair  
Kitty Simonds, Exec. Director

NOAA/National Marine Fisheries Service

Rolland Schmitt, Asst. Administrator for Fisheries, NMFS  
Richard Schaefer, NMFS Office of Fisheries Management  
Nancy Foster, NMFS Office of Fisheries Management  
George Darcy, NMFS Office of Fisheries Management  
Margaret Hayes, NOAA Office of General Counsel  
Commander Tom Meyer, NMFS Office of Fisheries Management  
Dick Surdi, NMFS Office of Fisheries Management  
Sally Yozell, NOAA Office of Legislative Affairs  
Alan Risenhoover, NOAA Office of Legislative Affairs  
Gary Matlock, NOAA/NMFS  
Judson Feder, NOAA-GCF

United States Coast Guard

RADM Richard Applebaum  
RADM Norman Saunders  
CDR Vince O'Shea

Congressional Staff

Bill Price, House Committee on Merchant Marine & Fisheries, Subcommittee Staff  
Greg Lambert, House Committee on Merchant Marine & Fisheries, Subcommittee Staff  
Rod Moore, House Committee on Merchant Marine & Fisheries, Republican Fisheries Staff  
Penny Dalton, Senate Committee on Commerce, Science & Transportation, Staff  
Dave Whaley, House Committee on Merchant Marine & Fisheries, Republican Fisheries Staff  
Bonnie Bruce, House Committee on Merchant Marine & Fisheries, Republican Fisheries Staff

Others

Mary Hope, National Research Council  
Alan Guimond, Industry Representative  
Terri A. Cian, CA. Office of Real Estate Appraisers  
Jack Dunnigan, Atlantic States Marine Fisheries Commission

**Agenda**

The agenda focused mainly on reauthorization of the Magnuson Act and several Council administrative matters. The Chairmen also received a briefing on other fishery-related legislation, reports on the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the United Nations Conference on Straddling Stocks and Highly Migratory Species, and a presentation on a recent report, "Improving the Management of U.S. Marine Fisheries," by the National Research Council.

## **Administrative Matters**

Ten subjects were submitted for discussion:

- (1) Paying for unused sick and annual leave.
- (2) Workload analysis.
- (3) Designating a single grants management specialist for all Councils.
- (4) Locality pay.
- (5) Standards for Council member removal.
- (6) Establishing standard definitions for marine recreational fishermen/fishing and charter boat vessels.
- (7) Policy on indigenous people.
- (8) Social science research and data collection.
- (9) NMFS E-Mail authorization for the Councils.
- (10) Single-Council designation for Pacific pelagics management.

Following are summaries and recommendations, if any:

### (1) Sick Leave

In an April 14, 1994 letter to Regional Councils Rollie Schmitt outlined three options for dealing with payment of unused sick and annual leave upon the separation, retirement or death of Council staff members: (1) NMFS Budget Office maintains two accounts on behalf of Council staff, one for unused sick leave payments, and one for unused annual leave payments; (2) NMFS Budget Office maintains 16 accounts on behalf of Council staff, one for each Council to pay for unused sick leave, and one for each Council to pay for unused annual leave; or (3) Councils maintain two accounts, one for unused sick leave payments, and one for unused annual leave payments. In each case the Council would be responsible for capitalizing the accounts from their annual allocations. The Inspector General and NMFS have indicated they both prefer Option 3.

Councils indicated they prefer that NMFS continue to handle leave pay-outs upon retirement or leaving Councils. Councils have small budgets currently, and any additional funds would be needed for more pressing fishery management matters. The number of retirees is small and it would be easier for NMFS than the Councils to handle the added cost.

If that is not possible, then the Councils prefer to have the ability to set up and manage their own funds (Option 3). Councils stressed that they would require seed money from NMFS to do so. It was pointed out that if Councils had been permitted to handle payment of leave from the beginning, then the accounts would have already been established and funded. Several Councils that have paid out for unused sick or annual leave have found it necessary to leave positions unfilled until funds can be recouped from their administrative budgets. NMFS normally has covered funds necessary for unused annual leave.

Concerning seed money, Dick Schaefer said that NMFS prefers to provide for Council needs through their administrative grants, and that the Councils should start planning to set aside dollars for sick and annual leave pay-outs. He will report Council wishes to Mr. Schmitt, but if that's not a viable option, then the policy in Option 3 would be implemented.



In discussing a uniform Council-wide cap on the number of hours of unused sick leave that would be reimbursable, Councils indicated that the amount of leave compensated should be an individual Council decision.

(2) Workload Analysis

NMFS provided a revised workload analysis based on current and projected activities for each Council, based on input from the NMFS Regional Offices. Most Chairmen expressed opposition to this method of determining funding levels. The points were derived without any input from the Councils and without each Council's perspective on its own workload. Council Chairmen also were concerned with NMFS's plan to deduct \$880,000 for management of Atlantic highly migratory species from the anticipated \$1.5 million increase for Councils for FY 1995. Mr. Schaefer responded that the allocations and the budgets are just draft recommendations and all comments will be taken into consideration.

Chairmen suggested forming a workgroup of Council representatives to work on a more acceptable method of developing the budget allocations. For 1995, however, they unanimously approved the following motion:

**That the Councils receive current levels of funding (1994) as a base, and that the projected \$1.5 million increase (or whatever increase is finally approved) be divided among Councils based on the workload analysis percentages, after deleting the highly migratory species deduction, recomputing the percentages, and dividing that among the Councils.**

A follow-up letter signed by all Council Chairmen will be sent to Mr. Schmitt.

During the next six months the Council representatives will work together to improve the workload analysis formulas to be used in 1996 and beyond, or develop alternative methods for apportioning Council funding. Bob Mahood (SAFMC) offered to arrange the meeting for Council representatives.

(3) Grants Management

At the request of the Councils, the NOAA Grants Office has considered assigning a single grants specialist to serve all Councils to assure consistency and familiarity with Council needs. However, because all grants are processed at the same time, the Grants Office felt that this could lead to missed deadlines if the grants specialist became ill or was unavailable for some other reason. The Grants Office has, however, reorganized into teams with concentrated expertise to be shared among the team members. There will be two grants management specialists, along with a team leader assigned to Councils.

The Councils accepted this arrangement while noting their main concern that the same two persons always handle Council grants so they are familiar with each situation and provide continuity.

(3) Locality Pay

The Federal government has begun providing locality pay adjustments in salaries based on local conditions, including cost of living and typical salaries of non-government employees. This locality

pay program is being implemented nationwide, and is separate and apart from COLA adjustments already established for high-cost areas such as Alaska, Hawaii, and the Caribbean.

Most Councils have moved toward locality pay adjustments for their staffs and Council members. CDR Tom Meyer will report back to the Council on NMFS programs in establishing locality pay adjustments.

(5) Standards for Council Member Removal

This discussion was requested by the Western Pacific Council because of a recent incident within their Council where the Regional Director's designee initiated motions to remove two Council members because of fisheries violations committed by their corporations or members of their families (but not by the Council members themselves). Their main concern was whether NMFS had an established policy on when they would initiate removal actions, or was it left up to the discretion of the individual Regional Directors. Mr. Schmitt said he would review current procedures and develop policy as necessary on what types of violations or Council member action might compel NMFS to initiate removal proceedings.

It was noted that in the Act a Council must first recommend removal by at least 2/3 vote of voting members before any removal action can proceed to the Secretarial level.

(6) Definition of Marine Recreational vs Commercial Fisherman

In 1991 the MAFAC Recreational Fisheries Subcommittee requested that NMFS provide for the record definitions for marine recreational fishing/fisherman. In 1992 MAFAC approved NMFS-recommended definitions as agency policy, to be followed later by incorporation into the 602 Guidelines. In a February 17, 1993 memo to Regional Directors, then-Asst. Administrator Fox provided the definitions as informal guidance and requested that the RDs advise Councils of the preferred definitions. At this meeting Council Chairmen were provided with a draft *Federal Register* notice to amend the 602 regulations. Mr. Schaefer said that this is not a high priority and there will be plenty of time for Councils to comment, perhaps at the next Chairmen's meeting.

Dick Schaefer characterized NMFS's determination of recreational versus commercial fishing as, "once you sell a fish, you are no longer a recreational fisherman; if you have received compensation, put it into commerce, then you're a commercial fisherman."

Council Chairmen commented about the unique characteristics of each of their regions. Most already have incorporated some type of definition into their plans. They also stressed the importance of determining appropriate definitions for charter and excursion operations. Mr. Schaefer said they would be working on those distinctions in the future.

(7) Policy on Indigenous People

Kitty Simonds recapped legislation in Congress which would require recognition of indigenous fishing rights within a region when developing fishery regulations. She suggested that NMFS develop a policy similar to that of the Fish and Wildlife Service on co-management by tribes and the ability of tribes to manage fisheries.

The Western Pacific Council asked NMFS to appoint a committee to develop a draft national policy on the role of indigenous peoples in the management and utilization of fishery resources in the EEZ. Mr. Schmitten advised that a national working group has been established by Interior Secretary Babbitt and Commerce Secretary Brown to review the Nation's fisheries policies as they affect the U.S. insular areas. Mr. Schmitten is a member of the working group which held its first meeting in Guam on April 22. Mr. Schmitten pointed out in an April 20, 1994 letter to the Western Pacific Council that various groups do not qualify as Indigenous or Native peoples and stressed the importance of provisions in the Magnuson Act that would apply to all groups with a stake in fisheries management. He has directed NMFS regional offices to ensure that FMPs and amendments contain an evaluation of relevant social and cultural considerations, as well as an assessment of the impacts of management on all users of these resources, including indigenous peoples.

This was an information-only item; Ms. Simonds will keep other Councils informed.

(8) Social Science Research and Data Collection

An update was requested on NMFS' plans to initiate social science research and data collection. Mr. Schaefer said that the agency is getting serious about the need for this kind of data, although its collection with existing dollars and resources may be difficult. Based on regional input, NMFS has begun to prepare initial planning documents and start a program for future budgets.

Clarence Pautzke said that Councils are being called on more often to incorporate this kind of information in their analyses, and are sometimes criticized because it is not sufficient. However, this kind of data is not readily available and its collection is very expensive. He asked whether NMFS will be initiating that type of data collection in the near future.

Mr. Schaefer said it is their intent to start collecting data in FY 95, which will serve as a foundation on which to build better information bases for social analyses. NMFS has added social scientists to its staffs and hopes Councils will consider adding a social scientist to their staffs, too. It was pointed out that this, too, would require additional staff positions and funding, both in the Councils and Regions.

(9) E-Mail

The Western Pacific Council requested a discussion of whether Councils should be able to communicate with NMFS by E-Mail. Mr. Schaefer said there was no official policy at this time, but that he felt it would be a good idea. He will discuss it with Mr. Schmitten and report back to the Councils. He cautioned that all E-Mail transmissions are public record, subject to FOIA requests and the scrutiny of others.

(10) Single-Council Designation for Pacific Pelagics Management

The Western Pacific Council has requested that the Pacific and North Pacific Councils designate the Western Pacific Council as the lead in developing reporting requirements/amendments for the Pacific pelagic fisheries. The North Pacific Council has not yet discussed the issue in a Council meeting. Larry Six noted that his Council has not taken a position yet either, however they are receiving letters from Pacific Coast constituents concerned over which Council should take the lead. This issue will probably be resolved by the three Councils this fall.

## **Magnuson Act Amendment Proposals**

Council Chairmen reviewed their previous recommendations from the Chairmen's meeting in San Francisco, and reviewed draft amendment proposals from the minority and majority staffs of the House Committee on Merchant Marine and Fisheries, and received a review of draft proposals from National Marine Fisheries Service. Summaries, comments, and recommendations, if any, are found in Appendix I to this meeting summary.

## **Reports/Presentations**

### **Improving the Management of U.S. Marine Fisheries, National Research Council**

Mary Hope provided a draft report developed by their Committee on Fisheries. The report was developed for the purpose of recommending changes to the Magnuson Act. The report is not meant to provide specific language changes or to suggest where to find funding, but rather to focus attention on overfishing, institutional structure, quality of fishery science and data, and the ecosystem approach to fishery management. The final report is due out by May 23, 1994 for use during the reauthorization process.

### **Briefing on Other Fishery-related Legislation**

Rod Moore advised that the Endangered Species Act would not come before Congress this year. The Clean Water Act may, but it is not certain. The Marine Mammal Act has been amended so that observer requirements now apply to both Category 1 and Category 2 fisheries. The designation of categories has been changed slightly; it is no longer a matter of how frequently a fisherman encounters a marine mammal, but how frequently they injure or kill one. The amendment also requires establishment of a scientific review panel for stock assessment on all marine mammal stocks. Stocks designated as "strategic" will require more stringent reviews. Penny Dalton noted that the thrust at this time is to use the limited funds on the most critical species.

### **FAO Agreement to Promote Compliance with International Conservation and Management by Fishing Vessels on the High Seas**

Maggie Hayes reviewed the agreement which was signed in November, 1993, and will become effective as soon as twenty-five signatures are obtained. The agreement essentially states that each party shall take the measures necessary to ensure that a fishing vessel flying its flag does not engage in any activity that undermines the effectiveness of international conservation and management measures.

### **United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks**

Ms. Hayes also reported on the above conference, held in March, 1994. The conference resulted in a revised negotiating text which seeks to address the inadequate management of high seas fisheries in many areas due to unregulated fishing, overcapitalization, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases, and lack of sufficient cooperation between States. It was unclear just when a final agreement will be reached.

## **Next Chairmen's Meeting**

The North Pacific Fishery Management Council will sponsor the next Chairmen's meeting, tentatively scheduled for July of 1995.

# DRAFT

## APPENDIX I

### MFCMA AMENDMENT PROPOSALS

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#### Summary of proposals and comments submitted by:

Representative Gilchrest: HR 4404

Fisheries Management Subcommittee Staff (May 5, 1994)

(House Merchant Marine and Fisheries Committee)

Republican Fisheries Staff (April 25, 1994)

NOAA/NMFS (May 16, 1994)

Council Chairmen's Meeting (May 14-16, 1994)

## **COUNCIL COMPOSITION/CONFLICT OF INTEREST**

### **Gilchrest:**

- At least 25% of the appointed members of each Council must be selected for their fisheries expertise demonstrated by university, environmental organization, or other nonuser group affiliation.
- Violation of conflict of interest provisions is a basis for removing a Council member, financial disclosure must include grandchildren, parents, and siblings, Council members must recuse themselves if conflicted, and conflict of interest could invalidate Council action and cause member to be removed from Council.
- Require roll call votes and submission of tally to Secretary.
- Council members or public can challenge another Council member for violating conflict of interest.
- All FMP/amendments submitted for Secretarial review will be evaluated for conflict of interest.

### **Subcommittee Staff:**

- Add Native American tribal government affiliates and consumer advocates.
- Give least practicable priority to paid representatives of a fishery association unless they are also employed in a commercial fishery.
- Include recusal provisions.
- Councils should be able to take action on 2/3 vote rather than majority vote.

### **Minority staff:**

- Do not change membership unless requested and supported by all affected Councils.
- Set number of members from each state permanently and delete "at large" seats.
- Do not establish dedicated seats for interest groups, gear types, and Indian tribes.
- Require Councils to establish mandatory recusal procedures and define what constitutes a conflict.

### **NMFS:**

- Dedicate one seat on Pacific Council to a representative from an Indian tribe with federally recognized fishing rights. ("Pacific Council Seat for Treaty Indian")
- Impose the following conflict of interest procedures:
  1. Council member who has a financial interest significantly affected by Council decision may not debate or vote in deliberations except as a member of the public.
  2. Upon request or on his/her own initiative, RD shall make a determination whether individual has a financial interest.
  3. RD may authorize participation if the need for individual's participation outweighs the potential conflict of interest.
  4. Member may submit request to AA to review RD determination.
  5. If Council makes decision before AA review, ruling may not be treated as cause for invalidation of decision.

### **Council Chairmen:**

- Oppose giving lower priority to paid association representatives in making Council appointments, because industry representatives have experience and time to study issues and materials associated with Council decisions.
- Also oppose Gilchrest requirement for 25% of appointed members to have university, environmental or other non-user group affiliation. Governors and the Secretary can nominate and appoint from a broad variety of interests. APs and SSCs also provide input from diverse backgrounds.

**Council Composition/Conflict of Interest, continued**

- Councils oppose mandatory recusal and abstention requirements which would deprive the Council of expertise in debating issues and may even rule out most Council members from voting on certain key issues. The Council Chairmen suggested alternative language to NMFS' procedures presented above:
  1. A Council member may not vote on any FMP, FMP amendment, or regulation proposal which would disproportionately advantage that Council member beyond other individuals participating in a particular fishery.
  2. Upon request of any Council member, a Council shall make a determination whether an individual may have a disproportionate interest in the decision.
  3. Council may authorize participation if the need for the individual's participation outweighs the potential disproportionate interest.
  4. Any interested person with a substantial grievance may submit a request to the Assistant Administrator, within 15 days after the vote, to review the interest in question and the Council action. The AA shall be required to act not later than 30 days after receiving the grievance.

## **OTHER COUNCIL PROCEDURES**

### **Gilchrest:**

- All Council decisions must be recorded through a roll call vote which is to be forwarded to the Secretary with the decision.

### **Subcommittee Staff:**

- Councils should be able to take action on 2/3 vote rather than majority vote.
- Councils should be able to retain independent legal counsel.
- Clarify state jurisdiction issues and differing State and Federal landing laws.

### **Minority Staff:**

- Require that SSCs and APs meet a minimum number of times each year.
- Amend Council compensation rate to reflect new Federal compensation levels.

**NMFS: None**

### **Council Chairmen:**

- Agree with proposal to amend compensation rates to reflect new Federal compensation levels.
- Agree that Councils should be allowed to retain independent legal counsel.
- Oppose the proposed requirement for a minimum number of SSC/AP meetings. This should be left to each Council to determine according to their agenda, the issues being discussed, and budget concerns.
- Oppose the 2/3 vote proposal and the proposal to require roll call votes on all decisions.



## OVERFISHING/RECOVERY PLANS

### Gilchrest:

- Adds overfishing definition and modifies OY definition to prevent overharvesting resource.
- Expands National Standard 2 (best scientific data available) to account for uncertainties in data, provide for ecological needs, and create a margin of safety against overfishing.
- Makes Secretary's Guidelines (602s) mandatory.
- FMPs must have objective definition of overfishing.
- If no FMP, Secretary or Council may adopt interim conservation measures to protect resource for up to one year, but does not replace need for recovery plan.
- Require recovery plan; if Council doesn't prepare one, Secretary must.
- Requires Secretary to prepare plan if mortality exceeds MSY catch by 10% average over 3 years, or ecological integrity compromised, or stock depleted.
- Secretary must publish list of both FMP and non-FMP overfished species, conduct assessments if not available.

### Subcommittee Staff:

- Include 602 Guidelines definition of overfishing.
- Require Secretarial list of overfished species.
- Explicitly define Secretary's role in stewardship of fishery resources.
- Clarify purpose to focus more on conservation and sustainable management.
- Councils must give written response to NMFS when they do not follow 50 CFR 602 Guidelines.
- Require Councils to disclose reasons for ignoring scientific recommendations in developing OY.

### Minority Staff:

- Require each Council to define overfishing as it relates to fisheries under its jurisdiction and amend plans to include definition within specified time.

### NMFS:

- Rebuild depleted stocks to MSY levels; adds "rebuild depleted stocks" to National Standard 1.
- Adds "ensures the rebuilding of depleted stocks to a level consistent with producing the MSY" to definition of Optimum Yield.
- Requires Secretary to report annually to Councils on stocks that are overfished or approaching overfishing.
- After notification, requires Councils to submit FMP, amendment, or proposed regulations to Secretary within 1 year to: prevent overfishing when approaching overfished condition, or to stop overfishing and restore to MSY when overfished.
- Requires Secretary to prepare a FMP or proposed regulations if the Council fails to submit an amendment or proposed regulations.

### Council Chairmen:

- Current overfishing definition in 602 Guidelines is sufficient.
- Council Chairmen and Executive Directors expressed concern over legislating rebuilding programs, saying that overfishing may not necessarily be a result of fishing practices. For instance, the Pacific Council cited Pacific salmon where a significant amount of their mortality is non-fishing mortality.
- Chairmen agreed that all Councils should move toward an ecosystem approach, however a Congressional mandate will only make management more difficult without adequate funding to achieve the desired result. With regard to rebuilding plans, this is best left to each Council to determine for each fishery based on information on the specific fishery and region.

## **OBSERVERS**

### **Gilchrest:**

- Requires observers on all vessels and U.S. processors.
- Establishes fee system and National Fishery Observer Fund to pay for costs of implementing the plan. Vessels/processors would be assessed based on a percentage of wholesale (1% cap), ex-vessel value (2% cap).
- Possible establishment of risk-assessment pool for liability insurance.

**Subcommittee Staff:** No new observer provisions.

**Minority Staff:** No new observer provisions.

### **NMFS:**

- Provide observers with the same lien priority for past-due wages as is currently provided for seamen's liens under admiralty and general maritime law.

### **Council Chairmen:**

- Regarding the Gilchrest amendments, Councils already have the authority to initiate observer plans; not necessary to amend Act.

## HABITAT

### Gilchrest:

- Adds habitat loss language to Findings.
- Defines essential habitat in Act, and includes turtles in definition of "fish."
- Councils may request Secretary to initiate consultation on critical habitat issues.
- Requires all Federal agencies to respond within 45 days in writing to Council/Secretary recommendations on actions affecting habitat.
- Gives Secretary veto power over other Federal agency actions affecting habitat.
- Requires Councils to adopt measures to conserve essential habitat and minimize impacts.
- Requires Secretary to publish annual report on habitat impacts.
- Council can request Secretary to identify essential habitat, possible impact (to be prepared within 12 months).

### Subcommittee Staff:

- No definition recommended.
- Endorses strengthening habitat identification and protection provisions in Act.

### Minority Staff:

- Require Councils to define "essential habitat" and NMFS/USFWS to identify habitat based on each Council's definition.
- Require Councils to adopt conservation/management measures to conserve essential habitat and amend FMP within a specified period of time.

### NMFS:

- Adds a Finding that a national program is needed to provide long-term protection for essential fish habitats.
- Adds a Finding that greatest long-term threat to fisheries is the continuing loss of habitats.
- Adds a Finding that habitat protection can be achieved through direct advocacy in existing Federal procedures.
- Adds a definition of essential fish habitat.
- Requires Councils to annually submit to the Secretary a list of all essential fish habitats for all FMPs in effect.

### Council Chairmen:

- Allow for discretionary (rather than obligatory) designation of essential habitat in FMPs.
- If designated in FMP, project proponents would be required to consult with NMFS (similar to ESA Section 7 consultation) on impact on species in FMP.
- Activities by all entities receiving federal funding for anadromous fish would be required to be consistent with FMP and Act; activities would be audited at least biennially.
- Chairmen agreed that Councils need to respond to the need to provide long-term protection for essential fish habitats, but they need the regulatory tools to accomplish this goal, including the additional funding required.

## **OTHER FEES**

**Gilchrest:** See "Observers" for recommended fee program.

**Subcommittee Staff:** No recommendations.

**Minority Staff:**

- Recommends fees be imposed on ITQ fisheries (at least) with funds to be used for enforcement in the area collected.

**NMFS:**

- Secretary may establish fees for permits issued to pay for the cost of management. Fees not to exceed 3 percent annually of the value of fish under individual harvest shares. Fees not to exceed 1 percent of the exvessel value of all fish at point of first sale within the jurisdiction of the U.S.
- Secretary can expend funds to:
  - Collect, process and analyze information collected.
  - Place observers on vessels.
  - Conduct scientific research and publish information.
  - Improve enforcement.
  - Educate users and public.
  - Conduct buyout programs in overcapitalized fisheries.

**Council Chairmen:**

- Allow Councils to establish fees for implementation and maintenance of data collection programs and controlled access systems.
- Fees should be assessed on regional basis through Council plans or amendments and put in a dedicated fund to be used specifically for program for which collected.
- A cap on fees should be set.
- If Secretary imposes fees, a substantial amount of the fees collected in a region should go to that regions' programs and the fees collected from foreign imports could be used wherever needed in that particular budget cycle.
- If Secretary imposes fees, Councils should have input as to the collection and use of the fees.

## BYCATCH/WASTE

### Gilchrest:

- Adds policy to Act to reduce bycatch insignificant levels approaching zero.
- Adds seventh policy: to ensure to the maximum extent practicable that all State and Federal actions are consistent with the conservation and management of fisheries under the Act.
- Defines bycatch as take/harvest of all non-targeted fish/non-fish, all fish discarded/lost, and prohibited target species.
- New National Standard: Conservation and management measures shall reduce bycatch to the lowest level practicable and avoid unnecessary waste of fish.
- Requires FMPs to allow only gear types that minimize bycatch; include bycatch assessment methods, bycatch reduction regulations, specify technology to reduce bycatch.
- Require Secretary to set up a fee/incentive program to minimize bycatch; fees to be used by Councils for bycatch management.

### Subcommittee Staff:

- Define bycatch as in Senator Stevens' bill: "any fish species for which quota is established, but which are not the target species of a fishery in which a fishing vessel is engaged." Councils or Secretary would set bycatch quotas for FMP species, depressed, commercial extinct, or critical stocks, and other stocks deemed necessary by the Secretary.
- Would establish a 2-year bycatch demonstration program to demonstrate prevention methods in operation of high-bycatch fisheries. NMFS would accomplish, report to Congress.
- In preparing FMPs, require Councils to pay attention to bycatch fisheries and develop reduction methods.

### Minority Staff:

- Require Councils to look at conservation/management options to reduce bycatch, waste and highgrading. Council should pay particular attention to fisheries where bycatch is high and develop methods to achieve meaningful reductions.
- Councils should adopt incentive programs, rather than relying on solely punitive measures.
- Not recommending that NMFS impose gear restrictions or mandatory reduction levels.

### NMFS:

- Add National Standard 8 - Minimize incidental catch of non-target resources that results in unnecessary waste.

### Council Chairmen:

- Chairmen favored the bycatch demonstration program.
- Minority Staff recommendations should be included in the discretionary part of Act.
- Recommended the new National Standard 8 should read: "Minimize discard of fisheries resources." Some discards are unavoidable and a cost of doing business. Chairmen feel the real issue is reducing discard mortality.

## **602 GUIDELINES**

### **Gilchrest:**

- Include 602 Guidelines in Act giving them force of law.

### **Subcommittee Staff:**

- Require Councils to provide written response to NMFS if they reject a Guideline.

**Minority Staff:** No recommendations.

**NMFS:** No recommendations.

### **Council Chairmen:**

- The 602 Guidelines already seem to have the force of law and the Secretary can reject any recommendation which does not conform to the Guidelines and National Standards.

## **CITIZEN SUITS**

### **Gilchrest:**

- Allow citizens to sue Secretary/Councils for violations of Act, other non-discretionary duties.
- Courts can award litigation, attorney, expert witness fees to plaintiff.

### **Subcommittee Staff:**

- Allow individuals or groups to sue NMFs for violations of Act (taken from ESA).

**Minority Staff:** No recommendations.

**NMFS:** No recommendations.

### **Council Chairmen:**

- Not necessary. Citizens already have a myriad of ways to have input into the fishery management process.

## **CITIZEN PETITIONS**

### **Gilchrest:**

- Allow any citizen to petition Secretary to take action. If warranted and supported by information provided, Secretary must take requested action. Secretary must rule within 90 days of receipt.

**Subcommittee Staff:** No recommendations.

**Minority Staff:** No recommendations.

**NMFS:** No recommendations.

### **Council Chairmen:**

- Not necessary. Same comments as for Citizens Suits.

## FMP IMPLEMENTATION

### Gilchrest:

- Council/Secretary can impose "interim measures" (effective up to 1 year to conserve FMP or non-FMP stocks).

### Subcommittee Staff:

- Extend Secretarial authority to impose emergency rule for 160 days rather than current 90 days; additional 90-day extension to stay the same.
- Councils must give written response to NMFS if they do not follow 50 CFR 602 Guidelines.

Minority Staff: No recommendations.

### NMFS:

- Fisheries Resource/Mgmt Emergencies. Emergency rules concerning resource or management problems may be extended for an additional 270-day period, after the initial 90-day period, provided the public has had an opportunity to comment on the emergency regulation, and the Council is actively preparing an FMP, amendment or proposed regulations to address the emergency.
- Public Health Emergencies. A regulation that responds to a public health emergency may remain in effect until the circumstances that created the emergency no longer exist; requires the public have an opportunity to comment after the regulation is published.

### Council Chairmen:

- Extend authority to impose emergency rule to 180 days, with one 180-day extension. (The Administration's suggestion of 90/270 wouldn't solve the problem. If the first 90 days is extended, there will be fewer instances for the need to extend.) With regard to the recommendation for "interim measures" in the Gilchrest bill, Chairmen indicated that a 180-day emergency rule with possible extension of 180 days would make the interim measure unnecessary.
- Regional Directors should not vote on any emergency action in any fishery. A unanimous vote, without the RD, on emergency actions, would compel the Secretary to act.
- Impose 60-day time limit for Secretarial action on regulatory amendments and require written response detailing reasons, if disapproved. (Mainly, Councils would like some kind of time frame for processing and implementing regulatory actions, similar to FMP amendments.)
- Exempt FMP/amendment from impact analyses required by other applicable law. If exemption not possible, require consistent reviews/time schedules for MFCMA/NEPA. (Facilitate review and approval of amendments by having the MFCMA and NEPA (and other) review periods concurrent.)

## OVERCAPITALIZATION

Gilchrest: No recommendations.

### Subcommittee Staff:

- Require NMFS to conduct feasibility study of recycling fishing vessels for enforcement purposes, as NOAA research vessels and donated to other countries as form of foreign aid.
- Universal licensing of fishing vessels in Section 311 to determine effort levels.

### Minority Staff:

- Require Secretary/Councils to provide report on overcapitalization and recommend solutions, including buyouts, with cost/options for funding; include 10-year forecast of U.S. fishing industry structure.

NMFS: No recommendations.

### Council Chairmen:

- Councils need the tools to deal with overcapitalization, but should not be "required" to take specific actions, i.e., give Councils authority to research and establish buyback programs if they are feasible for the fishery involved. It was suggested that NMFS develop a revolving fund for buyback programs.

## ALLOCATION

Gilchrest: No recommendations.

Subcommittee Staff: No recommendations.

### Minority Staff:

- Give Councils clear authority to use ITQs, CDQs, or other allocation systems, with sufficient guidelines to protect national interests, existing participants, and resource conservation. Congress shouldn't take a position on use.
- Establishment of TACs and allocating fish should not be separated.

NMFS: No recommendations.

### Council Chairmen:

- Agree with both recommendations of the Minority staff.



## **GEAR**

### **Gilchrest:**

- Gear must be evaluated with respect to impact on habitat, bycatch, before being approved for use in FMP fishery.

### **Subcommittee Staff:**

- Require NMFS to publish list of approved gears. Shift burden of proof to industry for financing and testing of new gear types for approval for use.

**Minority Staff:** No recommendations.

**NMFS:** No recommendations.

### **Council Chairmen:**

- Concerned that these restrictions could be a deterrent to research and development of new and possibly more efficient gear. Councils should preserve the right to determine whether to prohibit certain types of gear. A particular gear may be acceptable in one fishery or area and totally inappropriate for another. The ability to apply for experimental permits now exists and, along with Council oversight, can provide for protection yet allow new gears to be tested.

## **FISHERIES UNDER MORE THAN ONE COUNCIL JURISDICTION**

### **Gilchrest:**

- Approve plans by simple majority of all individual voting members combined.
- Secretary's management of highly migratory species in force on July 1, 1993 shall remain so until superseded by Council plans.

**Subcommittee Staff:** No recommendations.

**Minority Staff:** No recommendations.

**NMFS:** No recommendations.

### **Council Chairmen:**

- 3 out of 5 affected Councils recommend return of HMS in Atlantic EEZ to Councils. Those opposed cited budget concerns as the reason to leave authority with NMFS.
- 4 out of 5 affected Councils recommend that actions be approved by a simple majority of voting members of all 5 Councils.

## BEST SCIENTIFIC INFORMATION AVAILABLE

### Gilchrest:

- Allows Secretary to disapprove plan if not consistent with best scientific information available presented by scientists during plan development.

### Subcommittee Staff:

- Require Councils to disclose reasons for ignoring scientific recommendations in development of OY.

### Minority Staff:

- Require SSC to meet a minimum number of times per years.
- Do not separate TAC setting and allocations.

NMFS: No recommendations.

### Council Chairmen:

- No action is required. The Secretary can already disapprove actions based on whether or not the best scientific information was utilized. The Gilchrest amendment indicates any scientist, not just members of the Scientific and Statistical Committees, could object to Council recommendations and the Secretary would be compelled to disapprove.

## OTHER ISSUES

### Gilchrest:

- Adds to policy section language of intent to ensure all federal/state actions are consistent with measures authorized under Act.

### Subcommittee Staff:

- Explicitly define Secretarial role in stewardship of fishery resources.
- Clarify purpose to focus more on conservation and sustainable management.
- Establish new oversight committee to review Act process, other applicable law, to streamline review/approval process.

### Minority Staff:

- Technical changes:
  - Use new name for Pacific Marine Fisheries Commission
  - Change scientific names to reflect new classifications
  - Delete requirements for foreign allocations and driftnet reports
  - Examine technic changes recommended by NMFS/GCF
  - Change waiting period on GIFA approval form 60 legislative days to possibly 90 calendar days.

### NMFS:

- Delete need for Secretaries of Commerce and State to submit foreign allocation report to Congress.

### Council Chairmen:

- Limit disclosure of information collected pursuant to the North Pacific Fisheries Research Plan (Section 313) when information is not relevant fishery management information.

## **RELATED TO ATLANTIC TUNAS CONVENTION ACT**

### **Gilcrest:**

- **Require appointment of director of NMFS or his designee as a Commissioner.**
- **Prohibit appointment of persons to the Commission who may have a financial interest or serve in any capacity an organization that has financial interest in catching, harvesting, processing, or marketing activity that is undertaken within any fishery over which the Commission has jurisdiction.**

### **Subcommittee Staff:**

- **PDTs should be established for ICCAT fisheries to allow non-NMFS scientists, environmentalists, and users to participate in drafting management plans.**

**Minority Staff: No recommendations.**

**NMFS: No recommendations.**

**Council Chairmen: No recommendations.**

### **FOREIGN FISHING PERMITS FOR TRANSSHIPMENT**

**NMFS:**

- Provides Secretary authority to approve foreign fishing permit to transship fish products, regardless of the existence of a GIFA.
- Provides for foreign vessels to apply for permit to transship fish products, regardless of the existence of a GIFA. Secretary may approve application if:
  - in the interest of the United States,
  - owner complies with boarding, observer, fee, and other requirements,
  - owner established bonds or financial assurances required by the Secretary.

**Council Chairmen:**

- Chairmen had no recommendation, but stressed the need for NMFS to consider specific requirements in their areas, i.e., vessel tracking systems.

### **ECONOMIC DATA FROM PROCESSORS**

**NMFS:**

- Deletes exemption of processors from reporting economic data. Fish processors who first receive fish will be required to submit data which are necessary for conservation and management.

**Council Chairmen:**

- This information was very specifically exempted from the Act to protect confidential economic data.

### **3-YEAR LIMIT ON CONFIDENTIALITY OF STATISTICS**

**NMFS:**

- Any statistic submitted to the Secretary shall be confidential and not disclosed for three years following the year submitted.
- Exceptions to confidentiality requirement continue to include:
  - Federal employees and Council responsible for FMP developing and monitoring;
  - State employees pursuant to an agreement; and,
  - When required by court order.

**Council Chairmen:**

- Oppose this recommendation. Disclosure of any confidential information, particularly after only three years, could deter fishermen/processors from divulging reliable information. It was also pointed out that States may not be willing to share confidential data if a future release is against their policy.

## Other NMFS Proposals

### NATIONAL DATA COLLECTION PROGRAM

#### NMFS:

- Provides Secretary with authority to establish by regulation a nationwide mandatory data collection program. The program will:
  - Integrate data collection programs under FMPs into a non-duplicative data collection and management system.
  - Include all species within the geographical area of a Council.
  - Coordinate with other collection programs by the Secretary or States to ensure completeness and avoid duplication.

#### Council Chairmen:

- Councils already have the authority to initiate data collection programs - several have. Most fish are landed within the States' jurisdiction and their data gathering programs should be sufficient. One suggestion was to set national standards for recordkeeping and getting States to agree and comply.

### DATA FROM INTERNAL WATERS PROCESSING OPERATIONS

#### NMFS:

- Requires the owner or operator of foreign processor vessels operating in the internal waters of a State to report the tonnage of fish received from U.S. vessels, and the locations from which such fish were harvested.

Council Chairmen: No recommendations.

### ASSAULT AGAINST DATA COLLECTORS

#### NMFS:

- Prohibits acts to forcibly assault, resist, oppose, impede, intimidate or interfere with data collectors employed by or under contract to NMFS, just as currently prohibited against observers.

Council Chairmen: No opposition to the proposal.

### LARGE SCALE DRIFTNETS

#### NMFS:

- Expands U.S. enforcement authority against stateless vessels and vessels whose flag state authorizes such enforcement.
- Creates a rebuttable presumption that a vessel in U.S. waters with gear capable of use as a large-scale driftnet is engaged in large-scale driftnet fishing.

Council Chairmen: No opposition to this proposal.

## Other NMFS Proposals

### PERMIT SANCTIONS

#### NMFS:

- Provides same judicial oversight for permit sanction as for other civil penalties.
- Provision does not apply to permit suspension for non-payment of penalty or fine.

Council Chairmen: No recommendations or comments.

### PENALTY AND FORFEITURE FUND

#### NMFS:

- Provides that receipts from all natural resource violations under the Magnuson or any other marine resource law can be used for enforcement purposes.

Council Chairmen: There were no recommendations or comments.

### PACIFIC COUNCIL SEAT FOR TREATY INDIAN

#### NMFS:

- Requires one seat appointed to Pacific Council to be from Indian tribe with Federally recognized fishing rights.
- Secretary shall appoint the treaty indian representative as designated by the Secretary of the Interior from a list of at least three individuals submitted by the tribal governments.
- The representative shall serve for a term of three years and may not be reappointed to a consecutive term.
- Representation shall be rotated among the geographic areas involved.

#### Council Chairmen:

- The Chairman of the Pacific Council said he would prefer it not be restricted to one term. If tribal leaders concurred, a member should be able to serve more than one term. There was discussion of whether the Secretary of the Interior should be involved in the appointment process.

## Other NMFS Proposals

### **STREAMLINED FISHERY MANAGEMENT PLANS**

#### **Subcommittee staff:**

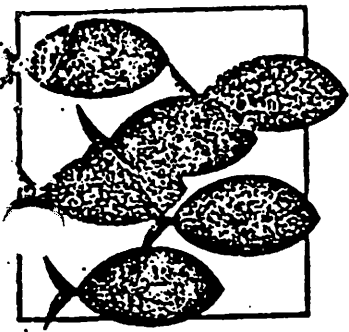
- Include substance of other applicable law such as NEPA, Paperwork Reduction Act, ESA, RFA, etc. in Magnuson Act to streamline the review and approval process.

#### **NMFS:**

- Reorder and revise Secs 303, 304, 305 in their entirety to reduce size, effort, and attention regarding FMPs, and increase effort, and attention regarding regulations.
- Fishery management plan (10-15 pages) would contain summary of description of fishery, impact of fishery, problems addressed, alternatives, objections, definition of overfishing, OY/MSY, capacity and utilization, scientific data needed, and essential habitat.
- Regulations would contain management measures, specify pertinent data, weather considerations, permits, closed areas, limit catch, limit gear, State management, limited access, processor data, and observers.

#### **Council Chairmen:**

- Chairmen are in favor of increasing efficiency and reducing the time required to implement fishery regulations. There is some concern, however, over the amount of latitude NMFS would have in interpreting Council intent.



**The  
Marine  
Fish  
Conservation  
Network**

*"...To Protect, Restore, and Conserve Marine Fisheries."*

AGENDA B-1(b)  
JUNE 1994

**Proposal to Strengthen the  
Magnuson Marine Fish Conservation and Management Act of 1976:**

**Summaries of the Major Issues,  
Needed Action, and  
Suggested Amendment Language**

*Submitted by*

**The Marine Fish Conservation Network**

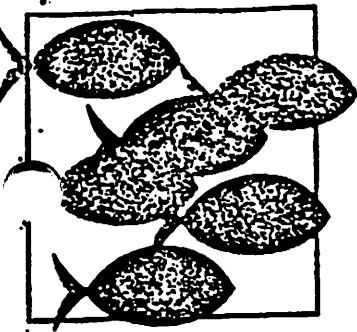
**September 1993**

*Steering Committee:*

**Center for Marine Conservation • Greenpeace • National Audubon Society • National Coalition for Marine Conservation • World Wildlife Fund**

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# The Marine Fish Conservation Network

*"...To Protect, Restore, and Conserve Marine Fisheries."*

## *Proposed Amendments to the Magnuson Fishery Conservation and Management Act of 1976*

### **Objective - ELIMINATE OVERFISHING AND REBUILD DEPLETED FISH POPULATIONS**

The Marine Fish Conservation Network urges Congress to strengthen the Magnuson Act to make the prevention of overfishing the priority over all other considerations. The Act should be amended to make it explicit that the intent of the law is to eliminate overfishing, by including language that will compel fishery managers to stop overfishing and rebuild overfished populations in a timely and effective manner.

#### Summary of the Problem

The Magnuson Act mandates that conservation and management measures must prevent overfishing. But in most cases, managers react to overfishing after it occurs. A recent report by the National Marine Fisheries Service disclosed that 67 species or species groups are overfished, or 43% of those species assessed. (Our Living Oceans, 1992). Because of overfishing, the same report says, U.S. fisheries produce only half their potential yield, resulting in losses of about \$3 billion a year to the nation's fishing economy.

A major flaw in the Magnuson Act is that it does not expressly prohibit overfishing. What it says is that "Conservation and management measures shall prevent overfishing while achieving the optimum yield from each fishery on a continuing basis." [§301(a)(1)] "Overfishing" is not defined in the law. However, "optimum" yield is defined as the maximum sustainable yield (a biological determination) "modified by any relevant economic, social or ecological factors." [§3(21)(B)] The problem is that this definition of optimum yield puts economic, social and biological factors on equal footing. Managers may, and often do, subordinate conservation objectives to short-term economic interests, resulting in an optimum yield that is higher than the sustainable biological yield.

The NMFS guidelines for the development of fishery management plans [50 CFR §602.11] direct the Councils to define overfishing and prepare a recovery plan when a condition of overfishing exists. Even so, the guidelines do not carry the force of law. Moreover, they make no provision for what happens if a Council does not recognize that overfishing is occurring, nor do they specify the time period in which a Council must take remedial action. Finally, the guidelines do not require that Councils establish a specific rebuilding goal and a time limit for reaching that goal.

Although the National Standards require that conservation and management measures shall be based upon the best scientific information available [§301(a)(2)], Councils frequently ignore the advice given to them by scientists (whether Council staff, members of the Council's S&S Committee

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or NMFS employees) with the result that the recommendations of some management plans bear little relation to the information provided.

### Needed Action

The Marine Fish Conservation Network believes the Magnuson Act should be amended to:

- define and prohibit overfishing;
- emphasize biological and ecological factors over economic factors in decision-making;
- require each management plan to contain an objective and measurable definition of overfishing consistent with the statute but tailored to the fish populations covered by the plan;
- require that, when overfishing is occurring, the Councils prepare a recovery program featuring a specific rebuilding goal and a timetable for achieving that goal;
- mandate that conservation and management measures include a safety margin to provide a buffer against overfishing;
- require that the Secretary determine that the management action proposed by the Council is consistent with the best scientific information available;
- authorize the Secretary to intervene when a Council fails to make a required determination that a condition of overfishing exists and/or fails to develop a satisfactory recovery plan within a specified period of time;
- direct the Secretary to publish a list of overfished species, and prepare a research plan for those species whose status is unknown;
- for overfished species not covered by a fishery management plan, require the Secretary to prepare a recovery plan; and
- provide the councils and the Secretary with authority to take interim conservation steps in the absence of a plan.

**Objective - ELIMINATE OVERFISHING AND  
REBUILD DEPLETED FISH POPULATIONS**

**Amendments Suggested by the Marine Fish Conservation Network:**

**• §3. DEFINITIONS**

(21) (amended)

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, biological, or ecological factor[.], provided that economic and social factors do not increase the yield above maximum sustainable yield, compromise ecological integrity or lead to or prolong overfishing, or impede recovery from such overfishing.

(22)(new)

The term "overfishing" means a level or a rate of fishing that either jeopardizes the capacity of a fish species, population, or population complex to provide maximum sustainable yield on a continuing basis or compromises ecological integrity.

**• §301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT**

(amend §301(a)(1) as follows)

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery [for the United States fishing industry].

(new provision)

Insert at (a)(3) (renumbering (3) as (4) and so on) --

In order to account for inadequacies in data, uncertainties in the best available scientific information, and unpredictable variations and fluctuations in fish populations and harvests, and to provide for the ecological needs of the species that interact within a management unit, conservation and management measures shall provide an adequate margin of safety to act as a buffer against overfishing.

**(b) GUIDELINES.**

(Amended as follows:)

-- The Secretary shall establish [advisory] guidelines [which shall not have the force and effect of law], based on the national standards, to assist in the development of fishery management plans.

• §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--

(new)(renumber) specify an objective definition of overfishing for each fish species or population involved in the fishery, as described pursuant to paragraph (2) of this section, such definition to be developed or expressed in terms of a minimum level of spawning biomass, maximum level or rate of fishing mortality, or other measurable standard designed to ensure the maintenance of the fish population's abundance, age structure, sex ratio, and size structure so as to preserve its capacity to provide maximum sustainable yield and maintain ecological integrity. Within 90 days of enactment of this provision, the Secretary shall review each existing fishery management plan as amended for consistency with this requirement and notify the Council involved of his or her finding. Within 180 days of notification, an amendment must be prepared and submitted to the Secretary for any existing fishery management plan not approved under this section to add a definition of overfishing as specified in this paragraph.

(new paragraph, renumber) -

with respect to any fishery management plan or amendment relating to a fishery for which a determination has been made that such fishery is overfished, contain a recovery plan which will establish measures for rebuilding the fish species, population, or population complex in accordance with specifications for a recovery plan set forth in section 304(h)(2).

• §304(b) REVIEW BY THE SECRETARY (amended)

(2) If after review under subsection (a) the Secretary determines that the plan or amendment is not consistent with the criteria set forth in paragraph 1(B) of that subsection or with the best scientific information presented to the Council by scientists participating in the plan development process, the Secretary shall notify the Council in writing of his disapproval of the plan or amendment.

• §304(c) PREPARATION BY THE SECRETARY (amended)

(1) The Secretary [may] shall prepare a fishery management plan, including a recovery plan if required, 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;

(B)(new renumber) the appropriate Council fails to develop and submit to the Secretary a recovery plan as required pursuant to subsection (h) of this section, within the time specified therein;

(C) the Secretary determines that a fish species, population, or population complex is overfished, pursuant to paragraph (e)(4) of this section, and if no fishery management plan or required part thereof, with respect to such fishery is in force and if no such plan or

amendment is submitted by the appropriate Council to the Secretary for approval within 240 days of being notified of such determination; or

(D) the Secretary determines, based upon the best scientific information available, whether or not a fishery management plan exists and irrespective of any objective definition of overfishing therein, that a fish species, population, or population complex either--

(i) has sustained fishing mortality that either exceeds maximum sustainable yield by more than ten percent per annum averaged over a period of three consecutive years, or that compromises ecological integrity, or

(ii) is depleted.

Such a determination shall constitute a determination of overfishing which requires a recovery plan. Notwithstanding the foregoing, the Secretary may determine that a fish species or population is not overfished, based upon the best scientific information available, only when such determination is based on a clear preponderance of such scientific information. Nothing in this paragraph shall prevent a more stringent objective definition of overfishing under a fishery management plan, pursuant to section 304(e) or pursuant to a judicial determination. For this purpose, a fish species or population shall be deemed "depleted" when it is determined by the Secretary, using the best available scientific information and a calculation that provides a risk-averse assessment, that the spawning population is reduced to 20 percent or less than the unfished population, unless it can be shown, subject to review and approval by the Secretary, that a smaller spawning population is adequate to provide maximum sustainable yield and maintain ecological integrity. If the size of the spawning population cannot be determined, alternative measurements may be used subject to approval by the Secretary.

(E) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment, as the case may be.

#### **· §304(e) OVERFISHING LIST AND FISHERIES RESEARCH**

(new provision)

(4) From time to time, but no less than one year after the date of enactment of this provision and each year thereafter, the Secretary shall, after consultation with the appropriate Council(s) and based on the best scientific information available, prepare and publish in the Federal Register a list of fish species, populations, and population complexes that are overfished and the objective definition of overfishing utilized by the Secretary to make that determination. Such determination can be made whether or not a fishery management plan exists or contains an objective definition of overfishing and need not be in conformity with any such plan. In such cases where scientific data are severely limited, the Secretary's informed judgment must be used. In the case of fish species, populations, and population complexes for which there is insufficient information to make such a determination, the Secretary will develop a research plan to identify and gather the needed data. The plan shall--

(A) identify priority research needed to assess the condition of the fish species, populations, and population complexes and support fishery conservation and management;

- (B) describe a research program to achieve these priority objectives; and  
(C) indicate the timetable for achieving the goals outlined in (A) and (B).

• **§304(h) RECOVERY PLANS** (new subsection)

- (1) In the event that the Secretary determines that a condition of overfishing has occurred with respect to a fish species, population, or population complex subject to a fishery management plan, based on the best scientific information available and the definition of overfishing specified in such plan, the Secretary shall notify the appropriate Council(s) in writing of such determination;  
(2) Within 180 days after the receipt of such notice, the appropriate Council(s) shall prepare and submit to the Secretary for approval an amendment to the applicable fishery management plan, including a recovery plan that specifies:  
(A) the action or combination of actions to be taken to rebuild the fish species, population, or population complex specified in the notice;  
(B) the time within which such rebuilding shall be accomplished, which shall be no greater than five years, with a periodic review of progress of the plan no less than annually beginning in the third year;  
(C) such time set forth in subsection 304(h)(2)(B) may be extended only upon a determination by the Secretary, based upon the best available scientific information (which must include at a minimum information from the annual progress report), that a longer period will be required due only to the reproductive capacity, productivity or life span of the fish species; and  
(D) the level of abundance to which such fish populations or population complexes are to be rebuilt to provide maximum sustainable yield and maintain ecological integrity.  
(3) The Secretary shall review and act upon such amendment within 180 days after receipt and in accordance with the procedures set forth in this section.

• **§305(new) INTERIM MEASURES** (new subsection - renumber)

- (1) In the absence of a fishery management plan which contains such a provision, the Secretary or the appropriate Council (subject to approval by the Secretary) may adopt as an interim measure regulations with respect to any fish species, population, or population complex consisting of specific provisions to conserve such fish species, population, or population complex, including (but not limited to) a provision setting a minimum size to increase yield per recruit, prohibiting a type of fishing gear; or closing an area to fishing.  
(2) Any interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect.  
(3) Any interim measure shall not constitute a recovery plan for purposes of sections 303(renumbered), 304(c), and 304(h). Any interim measure promulgated under this subsection shall remain in force for one year after its adoption, unless (1) it is specifically limited to a lesser period or superseded by a fishery management plan or amendment thereto, or (2) the Secretary, initially or prior to the expiration of the interim measure, follows the procedures to review and approve the measures that are applicable to a fishery

management plan, or amendment to a plan, contained in section 304.

· § 305(new) CITIZEN SUITS PROVISION (new subsection - renumber)  
Add new subsection as follows:

### **CITIZEN SUITS**

(a) In General. Except as provided in subsection (b), any person may commence a civil action on his own behalf against the Secretary or the appropriate Council where there is alleged a violation of any provision of this Act or any regulation promulgated thereunder, or a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary, or the appropriate Council, as the case may be, to perform such act or duty.

(b) Notice. No action may be commenced under subsection (a) before the 60th calendar day after the date on which the plaintiff has given notice of such action to the Secretary and the affected Council where the action is directed against such Council; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any fishery resource. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by regulation. Until the adoption of such regulation on the manner of notice, delivery of notice upon the Secretary by first class, prepaid United States mail, with proof of mailing, shall satisfy the notice requirement herein.

(c) Costs. The court, in issuing any final order in any suit brought pursuant to subsection (a), may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines such award is appropriate.

(d) Other rights. Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement or to seek any other relief.

(e) Intervention. In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the United States or another party shows that the person's interest is adequately represented by existing parties in the action.

· § 305(new) CITIZEN PETITIONS PROVISION

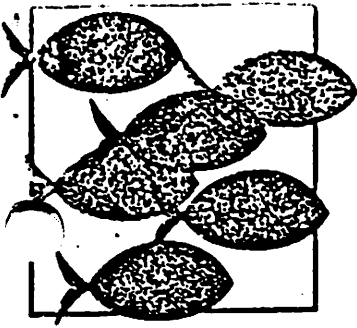
Add new subsection as follows:

**CITIZEN PETITIONS**

(a) In general -- Any interested person may petition the Secretary at any time to make any finding or determination, or take any other action authorized by this Act. The petition shall include such substantial information as may be necessary to demonstrate the need for the action requested by the petition.

(b) Consideration and ruling -- To the maximum extent practicable, within 90 days after receiving the petition of an interested person to make a finding or determination, or take any other action authorized by this Act, the Secretary shall make a ruling as to whether the petition presents substantial information indicating that the petitioned action may be warranted. The Secretary shall promptly publish such ruling in the *Federal Register* and, if the petition is found to present such information, the Secretary shall undertake to make a finding or determination, or take any other action authorized by the relevant provisions of this Act.





# The Marine Fish Conservation Network

*"...To Protect, Restore, and Conserve Marine Fisheries."*

## *Proposed Amendments to the Magnuson Fishery Conservation and Management Act of 1976*

### **Objective - REFORM THE REGIONAL FISHERY MANAGEMENT COUNCILS**

The Marine Fish Conservation Network believes that reform of the Fishery Management Councils is a fundamental issue for reauthorization of the Magnuson Act. We recommend amending the Act to ensure a fairer representation of the broad public interest among Council membership, and to prohibit Council members from voting on issues in which they have an economic interest.

#### Summary of the Problem

The Regional Fishery Management Council system, whereby management decisions are made at the regional level, as close to the fishers and other interested members of the public as possible, is a cornerstone of the Magnuson Act. However, by including active fishing industry representatives as voting members of the Councils, Congress also paved the way for potential conflicts of interest in fishery management decisions. Individuals cannot be expected to vote objectively when their financial interests are at stake and, in fact, there have been numerous cases of conflict of interest throughout the Council system.

As adopted by Congress, the Act originally established mechanisms for reducing conflicts of interest. The National Standards, Secretarial and judicial review, and the requirements of the Federal Advisory Committee Act (FACA) and Title 18 of the U.S. Code, §208 (the rules prohibiting government employees from engaging in conflicts of interest), all could be used to address the problem. However, over time these safeguards were eroded to such a degree that there are now few constraints on Council members.

As a result of various re-authorizations of the Act, Councils are no longer subject to FACA or 18 U.S.C. §208. While the Act requires voting members to disclose information concerning economic interests in fisheries, the requirement does not prohibit them from voting on matters affecting those interests. Furthermore, the courts have been reluctant to challenge the expertise of the Councils and advisory committees, leaving only procedural matters and cases of "arbitrary and capricious" actions for judicial review.

Meanwhile, fishing interests dominate the Councils. Language added in 1986 directed the Secretary of Commerce to give priority for Council membership to active participants in fisheries or

their representatives over those simply knowledgeable individuals. Non-fishers experienced in fisheries conservation and management, therefore, frequently would not meet the qualifications for membership on the Councils. While that requirement has since been modified so that knowledge conservation and management may be considered sufficient experience to be a voting Council member, there is still inadequate non-user representation on the Councils.

Finally, many observers of the Council system have noted that another source of conflict of interest is the designated state official. These individuals, by virtue of their positions as state employees, are often beholden to the dominant political/constituent interests in their home states, and therefore may be constrained from voting in an objective manner. This additional potential for conflict among designated Council members only serves to underscore the need to reduce the potential for conflict of interest among Council appointees.

### Needed Action

The Marine Fish Conservation Network views reform of the Council system as necessary to the attainment of the conservation objectives of the Act. The Network's proposals are designed to improve the existing system of fisheries management. We offer these as a preferred alternative to proposals being advocated by some which would completely overturn and re-structure the Council system. In order to make the present system work, we recommend the following:

- prohibit members from voting on matters relating to a fishery in which they have a financial interest;
- authorize the Secretary to remove any Council member for violating disclosure and conflict of interest provisions, and provide the Secretary with the authority to reject a plan or amendment whose passage was contingent on a conflict of interest vote;
- provide the Secretary with adequate tools for determining conflicts of interest;
- increase participation of knowledgeable individuals who are not actively involved in the fisheries; and
- enhance the role of advisory panels as a means to provide information to the councils and to encourage participation by knowledgeable individuals early in the council discussion process.

**Objective - REFORM THE  
REGIONAL FISHERY MANAGEMENT COUNCILS**

**Amendments Suggested by the Marine Fish Conservation Network:**

**· §302(b). VOTING MEMBERS**

Amend (2)(B) as follows --

The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. In addition, the Secretary, in making appointments under this section, shall ensure that no fewer than 25% of the appointed members of each Council are persons selected for their fisheries expertise, as demonstrated by university, environmental organization or other non-user group affiliation and by past actions and accomplishments.

Add to paragraph (5) at the end of the first sentence -- or if the Secretary makes a written determination, including a statement of the reasons for such determination, that the member has violated conflict of interest provisions of subsection (k) of this section as amended.

**· §302(e). TRANSACTIONS OF BUSINESS (new - renumber)**

(2) Each decision of the Council shall be recorded through a roll call vote such that the vote of individual members is registered and forwarded with the decision to the Secretary for review under §304.

**· §302(k). DISCLOSURE OF FINANCIAL INTEREST**

Add AND RECUSAL at end of section heading.

Rewrite paragraph (2)(B) as --

the spouse, [minor] child, parent, sibling or partner of that individual;

Add a new subsection (5)(C) --

be kept on file with the Secretary for use in reviewing Council actions as required under §304 and made available for public inspection at reasonable hours.

Amend paragraph (6) as --

The participation by an affected individual referred to in paragraph (1)(B) or (C) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under [paragraph (5) may not] this subsection (§302(k)) may be treated as cause for the invalidation of that action if the vote of that individual was necessary for approval of that action under subsection (e).

Strike paragraph (7). {Exemption from 18 U.S.C. §208}

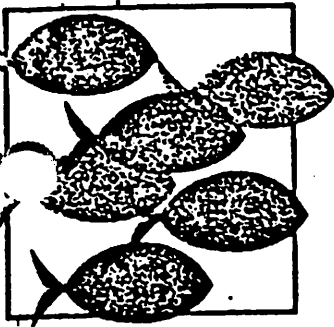
Add new paragraph (7) -- A Council member holding a financial interest requiring disclosure under provisions of this subsection shall recuse him or herself from voting on or participating

in all Council actions that would affect such financial interest. Council members and the public may submit, in writing, a challenge to the vote of any Council member for violation of this provision to the Secretary for review under §304.

**• §304. ACTION BY THE SECRETARY**

Add paragraph (2)(D) under subsection (a) --  
evaluate the action for violation of §302(k).

Under subsection (b), add new paragraph (3) and renumber --  
If the Secretary determines that a Council member voted in violation of §302(k) in any Council action, the Secretary shall disapprove the action if that vote was necessary for approval of the action and may remove the member or members in question under the provisions of §302(b)(5).



# The Marine Fish Conservation Network

*"...To Protect, Restore, and Conserve Marine Fisheries."*

## *Proposed Amendments to the Magnuson Fishery Conservation and Management Act of 1976*

### **Objective - IMPROVE CONSERVATION AND MANAGEMENT OF LARGE PELAGIC FISHES**

The Marine Fish Conservation Network urges Congress to amend the Magnuson Act to allow domestic fishery management actions for large pelagic fishes (the so-called "highly migratory species") to be more restrictive than those recommended by international agreement, when such action is deemed necessary to achieve U.S. conservation and management goals. Additionally, we recommend that Congress return management responsibility for large pelagics to the Atlantic Fishery Management Councils:

#### Summary of the Problem

The Atlantic bluefin tuna, blue marlin, white marlin, Atlantic swordfish, and several species of large coastal sharks are overfished. These large pelagic fishes, along with other species of tuna, shark, and billfish, are defined as "highly migratory species" in the Magnuson Act, because of their migrations throughout and beyond the U.S. 200-mile zone. They are not, however, the only species under U.S. jurisdiction to exhibit such migratory behavior (ref. salmon, whiting, anchovy, etc.).

International management of these fish has failed to prevent overfishing or even to rebuild depleted populations. Despite having jurisdiction over Atlantic tuna and billfish since 1969, the International Commission for the Conservation of Atlantic Tunas (ICCAT) did not act to prevent overfishing of bluefin tuna, swordfish and marlin. Current ICCAT management plans for bluefin and swordfish are inadequate to rebuild these fisheries. Yet the Magnuson Act, as amended in 1990, forbids U.S. regulations from being more restrictive than those measures agreed to at ICCAT, even when those measures are ineffective.

The Act itself recognizes that international management measures alone are not effective [§2(a)(4)]. Moreover, restricting the scope of conservation and management measures promulgated under the Magnuson Act is wholly inconsistent with other U.S. law, is unique among ICCAT treaty nations, and undermines U.S. authority to properly manage our own fisheries in our own waters. In effect, handcuffing domestic regulations to ICCAT makes the Magnuson Act irrelevant to the management of large pelagic fishes in the Atlantic.

The transfer of domestic management of Atlantic highly migratory species from the Regional Councils to the Secretary, also by amendment in 1990, is inconsistent with the management system

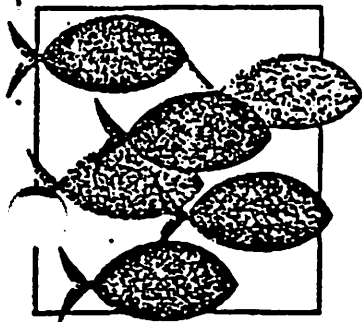
devised by Congress for all other species under U.S. jurisdiction, as well as the Act's stated policy of assuring that conservation and management measures involve and are responsive to the needs of interested and affected citizens. [§2(c)(3)] Denying the Atlantic Councils management of these important fisheries has significantly reduced public input into the management process and accountability of fishery managers to the public. As a result, it has seriously eroded public confidence in management decisions.

Since 1990, Secretarial/NMFS management of highly migratory species in the Atlantic has been limited primarily to implementing ICCAT regulations, despite the overfished condition of most highly migratory species under its jurisdiction. (The Western Pacific Council, on the other hand, has amended its domestic large pelagic plan to include tunas.) The only exception is a Secretarial plan for Atlantic sharks, a plan that started out as an emergency action in 1989 but took four years to complete - during which time some species of sharks may have been seriously overfished.

### Needed Action

The Marine Fish Conservation Network urges Congress to:

- repeal language added in the Fishery Conservation Amendments of 1990 limiting domestic authority over highly migratory species to implementing international recommendations, along with the repeal of similar language added to the Atlantic Tunas Convention Act in 1990;
- repeal language transferring U.S. authority from the Atlantic Councils to the Secretary, at the same time amending the Act to facilitate preparation of multi-Council plans;
- strengthen the U.S. posture in international negotiations by designating the Director of the National Marine Fisheries Service as head of the U.S. delegation to ICCAT; and
- amend the Atlantic Tunas Convention Act (16 U.S.C. 971) to prohibit appointment as Commissioners individuals who have a direct financial stake in the fisheries under the Commission's jurisdiction.



# The Marine Fish Conservation Network

*"...To Protect, Restore, and Conserve Marine Fisheries."*

## *Proposed Amendments to the Magnuson Fishery Conservation and Management Act of 1976*

### **Objective - MINIMIZE BYCATCH**

The Marine Fish Conservation Network urges Congress to address the destructive and wasteful bycatch problem in marine fisheries. The U.S. needs a national policy to reduce and, wherever possible, eliminate bycatch and its harmful effects on fish populations and the marine ecosystem. Congress should develop terms and definitions to characterize bycatch and create a framework through which bycatch problems can be resolved in Fishery Management Plans (FMPs). It is not enough to avoid waste by finding alternative markets for non-target fish.

#### Summary of the Problem

Bycatch, usually the result of using non-selective fishing gear, comes in many forms, from the catch of species that are unwanted to those that are prohibited. This includes undersized fish; fish reserved for a specific gear type; low value fish or fish for which no market exists; hooked or netted fish damaged by sharks or other predators; fish killed by "ghost fishing" of lost or abandoned gear; and fish killed but lost during fishing operations. The problems caused by bycatch include overfishing, waste of resources, loss of economic opportunity, and potentially serious ecological impacts including disruptions of predator/prey interactions and changes in bio-community structure.

Currently, bycatch is regulated in cases where the bycatch species are protected under non-fishery laws. For example, shrimp trawlers must use turtle excluder devices (TEDs) in their nets because of their catch of endangered turtles. The impetus for that regulation was the Endangered Species Act. Drift nets are highly regulated because of interactions with marine mammals protected under the Marine Mammal Protection Act. Where fish are concerned, however, bycatch is usually only restricted when it is particularly valuable to competing fishers.

Neither the Magnuson Act nor the 602 guidelines for preparing FMPs specifically deal with bycatch. Managers may account for bycatch impacts in developing plans, but they seldom do. Agenda 21, the blueprint that emerged from the Environmental Summit at the UN Conference on Environment and Development, includes language urging fishing nations to "promote the development and use of selective gear and practices that minimize the waste of catch of target species and minimizes bycatch of non-target species." The Magnuson Act needs similar, more specific regulations designed to reduce or eliminate bycatch.

Objective - IMPROVE CONSERVATION AND  
MANAGEMENT OF LARGE PELAGIC FISHES

Amendments Suggested by the Marine Fish Conservation Network:

- **§304(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL**  
(amended)  
Strike paragraphs (3)(A) through (F).

- Amend paragraph (1), last sentence, to read as follows -  
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] all of the combined individual voting members of the concerned Councils present and voting.

- Add a new paragraph (3) as follows:  
Any fishery management plan or amendment which --  
(A) addresses a highly migratory species fishery to which section 304(f)(1) applies,  
(B) was prepared by the Secretary, and  
(C) was in force and effect on July 1, 1993,  
shall remain in force and effect until superseded by a fishery management plan or amendment prepared by the appropriate Council(s), and approved by the Secretary.

- **§102. HIGHLY MIGRATORY SPECIES** (amended)  
The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and promoting the objective of optimum [utilization] yield of such species throughout their range, both within and beyond the exclusive economic zone.

- **ATLANTIC TUNAS CONVENTION ACT** (amended)

- Amend §3(a) as follows --

In (1) insert after "at the pleasure of the President" the following:

One Commissioner shall be director of the National Marine Fisheries Service or his or her designee, who shall be the only Commissioner who is a salaried employee of any State or political subdivision thereof, or the Federal Government. No Commissioner shall be an individual with a financial interest or serving as an officer, director, trustee, partner or employee with an organization that has a financial interest in any catching, harvesting, processing, or marketing activity that is undertaken within any fishery over which the Commission has jurisdiction.

Strike (2) and renumber.

- Amend §6(C)(3)(k) to read --  
except that no regulation promulgated under this section may have the effect of increasing [or decreasing] any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission.



## Needed Action

The Marine Fish Conservation Network recommends that the Magnuson Act be amended to provide broader authority to manage bycatch problems. The Act should:

- explicitly define bycatch and establish a national policy to reduce bycatch in all commercial fisheries to "insignificant levels approaching zero";
- include a new national standard on reducing bycatch;
- require the use of selective gear which minimizes bycatch mortality;
- require all fishery management plans to establish a program for reducing bycatch by all gear within the plan's jurisdiction;
- mandate a comprehensive assessment of the level of bycatch of all gear in each fishery;
- strengthen existing conservation engineering programs within the federal government by increasing funding and establishing cooperative efforts with the fishing industry in research and development of new, more selective gear. These efforts should be funded by increased appropriations and fees imposed on those fishing operations with significant levels of bycatch; and
- require the Councils, in cooperation with NMFS, to develop programs with a sufficient level of incentives and disincentives to encourage participation of all fishing boats in bycatch measurement and reduction efforts, while requiring participation of those boats with bycatch levels above a certain threshold.

## Objective - MINIMIZE BYCATCH

### Amendments Suggested by the Marine Fish Conservation Network:

- §2(c). POLICY (amended)

(3) to assure that the national fishery conservation and management program...considers the effects of fishing on immature fish and encourages development of practical measures that reduce bycatch to insignificant levels approaching zero and avoid unnecessary waste of fish;

- §3. DEFINITIONS (new - renumber)

(2) The term "bycatch" means the incidental catch, take or harvest of:

(A) marine mammals, birds, turtles, and fish that are not the target species of the fishery in which a fishing vessel is engaged,

(B) all fish discarded or lost during fishing operations, and

(C) fish of the same species targeted by the fishery in which a fishing vessel is engaged which are prohibited by conservation and management measures promulgated under a fishery management plan.

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

(26) The term "target species" refers to the species or species groups for which the vessel is fishing.

- § 301. NATIONAL STANDARDS

Amend subsection (a)(1) as follows:

(New) (renumber)

(-) Conservation and management measures shall reduce bycatch to the lowest level practicable and avoid unnecessary waste of fish.

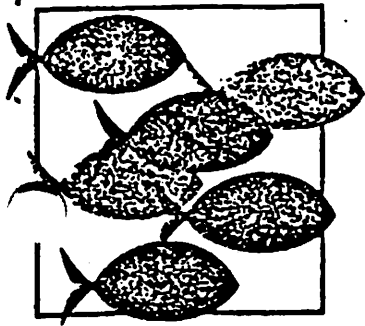
- §303. CONTENTS OF FISHERY MANAGEMENT PLANS (new - renumber)

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

(3) specify allowable gear types for the fishery.

(4) require the use of gear types which minimize bycatch and associated mortality.

(5) assess the bycatch of all gear types used in the fishery; require through regulation provisions to measure bycatch and associated mortality; develop regulations such as seasonal, time and area closures, gear modifications, and others to reduce bycatch and associated mortality; specify the best available technology that reduces bycatch; and evaluate the bycatch of all new gear types and methods before they can be allowed in the fishery.



# The Marine Fish Conservation Network

*"...To Protect, Restore, and Conserve Marine Fisheries."*

## *Proposed Amendments to the Magnuson Fishery Conservation and Management Act of 1976*

### **Objective - PROVIDE ADEQUATE FUNDING FOR FISHERIES RESEARCH, MANAGEMENT, AND ENFORCEMENT**

The Marine Fish Conservation Network urges Congress to amend the Magnuson Act to permit fishery managers to collect user fees in order to recover the costs of fisheries management. We further recommend that compensatory revenues be deposited in a trust fund dedicated to supporting research, management, enforcement, monitoring and other fundamental fisheries programs.

#### Summary of the Problem

The status of more than a third of the species under Magnuson Act jurisdiction is unknown due to lack of funding for basic fish species or population assessment research. Even where general population trends are known, the data are often imprecise. This imprecision in assessing fish abundance undermines the ability of managers to respond to overfishing in a timely and effective manner.

There are critical gaps in fishery catch statistics, both in terms of the amount of information collected and the adequacy of the collection systems. These gaps deny managers essential information on the current levels of harvest, both commercial and recreational, fish discarded at sea as well as fish landed. As managers consider quota-based and limited entry management programs, the need for more accurate and precise information becomes acute.

These research and information shortfalls are largely the result of chronic underfunding. So is the poor state of habitat and ecosystem-based studies. Research is needed to better understand predator/prey interactions and their ecological needs, as well as to assess the effects of altering the physical and chemical environment on fish behavior, growth, feeding and reproduction.

Essential research in these and other areas has been held up by years of inadequate funding. Funding for management-related scientific research and data collection should be increased, along with funding for monitoring and enforcement. When the Magnuson Act was passed in 1976, the annual National Marine Fisheries Service enforcement budget was approximately \$7 million. The 1993 appropriation of \$11 million for enforcement and monitoring illustrates that recent budget allocations have been inadequate to keep up with inflation and the additional enforcement burden resulting from 20 years of fishery management plan development.

• §304(d) ESTABLISHMENT OF FEES (amended)

The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to sections 303(renumbered) and 304(new). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. [The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.]

• § 304(new) BYCATCH RESEARCH (new provision)

(new) The Secretary shall establish, in cooperation with industry, a program for the elimination of bycatch through fees and incentive programs. Such fees collected through bycatch programs shall be made available to the appropriate Councils to be used exclusively for bycatch related management activities, including but not limited to costs of observer programs and cooperative efforts with the government on research and development of selective fishing gear and other technological devices for the reduction of bycatch.

To the extent that new appropriations are not available or forthcoming in sufficient amounts, the users of marine resources will have to contribute to the costs of improving fish species or population assessments and research, data collection and analysis, monitoring and enforcement, with emphasis on at-sea observer programs.

Currently, fishers pay no fees to the federal government to exploit publicly-owned resources. In this, they are unique among the users of public natural resources. In fact, the Magnuson Act limits the collection of fees to the cost of issuing and administering fishing permits [§304(d)], thereby preventing the owners of the resource, the public, from recouping the costs of management from those who are the primary beneficiaries, the fishers. An equitable fee system, on the other hand, would provide a more adequate funding base for NMFS and the Fishery Management Councils to fulfill their management duties.

### Needed Action

The Marine Fish Conservation Network recommends that Congress develop new and innovative sources of funding to meet the increasing needs of fisheries management. The Magnuson Act should be amended to:

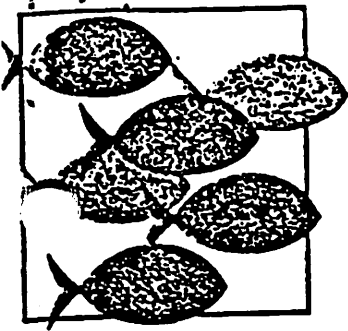
- allow Fishery Management Councils to implement a system of user fees and/or excise taxes on landed value of fish in order to support research, management and enforcement activities; and
- establish a protected fund for receipt of fees and other revenues which would (a) be in addition to and not in lieu of base funding currently provided for fisheries management programs, and (b) be allocated in such a way as to fairly and equitably benefit the fisheries from which they were received.

**Objective - PROVIDE ADEQUATE FUNDING  
FOR FISHERIES RESEARCH, MANAGEMENT, AND ENFORCEMENT**

**Amendments Suggested by the Marine Fish Conservation Network:**

**· §304(d) ESTABLISHMENT OF FEES (amended)**

The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to sections 303(renumbered) and 304(new). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. [The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.]



# The Marine Fish Conservation Network

*"...To Protect, Restore, and Conserve Marine Fisheries."*

## *Proposed Amendments to the Magnuson Fishery Conservation and Management Act of 1976*

### **Objective - PROTECT MARINE FISH HABITATS**

The Marine Fish Conservation Network urges Congress to strengthen the habitat protection provisions of the Magnuson Act. Realizing that protection of habitat is probably the cheapest investment the Nation can make to sustain productive fisheries, the law should require that marine fish habitat protection be elevated to the highest level within NMFS and the law be amended to require that other Federal agencies respond to habitat concerns raised by the Fishery Management Councils. Most importantly, the Magnuson Act should be amended to give the Secretary of Commerce authority to insist that all Federal actions affecting important fish habitat be subject to review by the Secretary to determine their consistency with the objectives of fishery management plans written under the Act.

#### Summary of the Problem

For marine fishes, including anadromous species, critical habitat extends from upland streams to the continental shelf and beyond. Fish depend on coastal rivers, bays, salt marshes, mangrove swamps, seagrass meadows, offshore reefs, hardbottom areas, and other types of marine habitat for migratory paths and critical breeding, nursery, and feeding grounds. But these habitats continue to be degraded and destroyed by humans, largely stemming from population pressures in our coastal zone. Physical alterations, water diversions, containment discharges, nutrient over-enrichment, and other sources of point and nonpoint discharges, as well as other factors are degrading and destroying critical fish habitat on a daily basis. Already, more than 50% of our Nation's coastal wetlands have been destroyed. This degradation and loss of habitat could well become the greatest long-term threat to the future viability of marine fisheries. Much of this problem is largely the direct result of thousands of land use and water policy decisions made by Federal, state, and local governments.

Efforts to manage and conserve fish must encompass measures to manage and conserve their habitat. Yet, for the most part, our current fishery management laws and institutions manage fish in isolation from their habitat. The Magnuson Act, as do the numerous other federal environmental statutes that ostensibly promote coastal protection, only authorizes fishery managers to comment on potentially damaging activities and, to the extent they may recommend modifications, they are merely advisory. The National Marine Fisheries Service, in particular, has no veto authority over decisions on proposed projects, policies, or programs that would damage

habitat and limit fish population sizes. 1990 Amendments to the Act inadequately address this problem of lack of control over the decisions of other agencies that significantly effect fish habitat

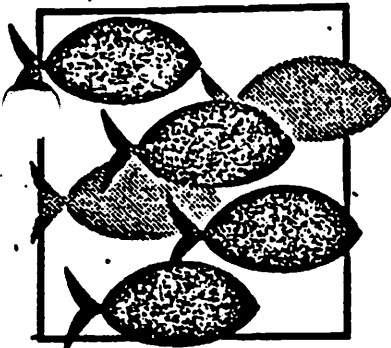
In sum, although NMFS is the Federal government's primary advocate for conserving the habitat of marine fish, responsible fishery managers have no authority to command attention to their concerns; their voice is no more forceful than that of any citizen group whose demands on government policy compete directly with the habitat needs of marine fisheries. And without enough quality habitat to support populations of fish all other management and conservation considerations will be irrelevant.

### Needed Action

The Marine Fish Conservation Network believes the habitat provisions of the Magnuson Act should be strengthened to enhance the role of fishery managers in the conservation of habitat critical to the conservation and management of marine fisheries under their jurisdiction. Congress should amend the Act to:

- adopt an aggressive national fishery habitat protection program, including development of a strategic plan for this program in order to guide both national and regional operations;
- provide NMFS with the authority to require that all federal actions be consistent with objectives of approved fishery management plans;
- mandate that NMFS implement policy to protect and restore critical fish habitat in coordination with regional management councils and other federal agencies, including EPA, Army Corps of Engineers, and US Fish and Wildlife Service;
- develop a research program with respect to fishery-related habitat values;
- increase the consultative role of the Regional Fishery Management Councils in habitat protection by requiring a written response to Council habitat concerns for all fisheries under their jurisdiction, not just anadromous species;
- require that councils consider the effects of fishing practices not only on fish habitat, but also on habitat of other marine species;
- provide for adequate funding and staffing to carry out this national fishery habitat protection program.





# NETWORK NEWS

VOLUME I, NUMBER I

SEPTEMBER 1993

A PUBLICATION  
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MARINE FISH  
CONSERVATION  
NETWORK

## Network Launches Nationwide Campaign to Conserve Marine Fish

The Marine Fish Conservation Network, a broad-based coalition of national, regional, and local organizations, has embarked on an ambitious nationwide campaign to reform the way marine fisheries are managed in this country. We intend to shift the emphasis of management from short-term economic gain to long-term economic and ecological sustainability. The Network's main target is the upcoming reauthorization of the Magnuson Fishery Conservation and Management Act (the Magnuson Act or FCMA), our nation's primary mechanism for conserving and managing marine fish. The Marine Fish Conservation Network intends to put the "C" back into the FCMA.

Unknown to most Americans, we have failed to adequately conserve the majority of marine fish populations off our shores. With the Magnuson Act's original passage in 1976, the U.S. asserted jurisdiction over 2.2 million square nautical miles of oceans, an area larger and with greater marine habitat, plant, and animal diversity than off any other country. But we are depleting, degrading, and destroying our irreplaceable marine resources at a shocking rate. To conserve what we have left and ensure that depleted fish populations are restored to abundant levels that can support viable and sustainable fisheries,

we must act now. Healthy populations of fish will result in healthier oceans and a healthier economy, to the benefit of the fish, the fishers, and every American.

The Magnuson Act effectively stopped foreign fish-

ing fleets from plundering the resources off our coasts, but it has been largely ineffective in preventing the continued squandering of this public resource. Essentially, foreign overfishing has been replaced by American overfishing. No matter who catches the fish now, we all lose if we cannot implement stronger conservation measures to ensure sustainability.

Our national campaign is now underway. In June, the Network hired Bill Mott as its Campaign Director and in September we will hire a Media Coordinator. Working together as a coalition of people and groups, including a steering committee of national conservation organizations and active Network participants, the Network plans to bring marine fish conservation issues to the people.

We face an uphill, or upcurrent, task in elevating the profile of marine fish conservation among the American public. Most people are largely unaware of the extent to which our nation's fisheries have been mismanaged or why; many remain uninformed about the degree to which fish populations are depleted and do not completely understand the role played by threats such as pollution, overfishing, and wasteful fishing practices. Further, most Americans do not fully appreciate that the resource being managed belongs to everyone, not just the fishing industry. And, although they may not have cute and fuzzy exteriors, we often forget that fish are not just commodities but are wildlife, too.

Through its national grassroots and media campaign, the Network will heighten awareness of and concern for marine fish conservation issues. In the process, we plan to build a constituency for fish and fish conservation and thereby help our Congressional leaders find the political will to make positive and ef-

See Campaign page 2

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The Magnuson Fishery Conservation and Management Act	page 2
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# What is the Magnuson Fishery Conservation and Management Act?

The Magnuson Fishery Conservation and Management Act of 1976 (FCMA) is the basis of fisheries management in U.S. jurisdictional waters. In 1976, in an effort to undo years of foreign fishing, Congress passed the Act to give the United States sole management authority over the living resources within 200 miles of our shores. Prior to passage of the FCMA, many valuable fish off U.S. shores were exploited and depleted by foreign fishers. Now, 17 years later, the U.S. fishing industry has become the dominant commercial interest using virtually all fishery resources within the 200-mile zone. While we have changed the nationality of the resource user and brought the resource under domestic control, the U.S. fleet merely expanded to fill the void left by the departure of the

foreign vessels. Fisheries found adjacent to our shores are, unfortunately, still subject to intense fishing pressure and many fish populations are dangerously overfished.

This dire situation is the result of two essentially

incompatible purposes incorporated in the FCMA: 1) to encourage the development of the domestic fishing industry, and 2) to rebuild and maintain the U.S. fishery resources: the fishes. Nowhere is this juxtaposition of contradictory goals more evident than in Sec. 301(a)(1) of the Act where the Fishery

Management Councils created by the Act are instructed to prevent "overfishing" — an undefined term — while achieving "optimum yield," which is defined as maximum sustainable yield "modified by any relevant economic, social or ecological factor." In practice, this allows non-biological factors to override biological ones in the management of living resources.

Many of the nation's most economically important fisheries are seriously depleted or overfished, with consequent disruption of ocean biological systems. More than 40% of those assessed species in the U.S. are known to be overfished, while the status of a third more is unknown. In New England alone the cost of overfishing is estimated at \$350 million annually from lost potential catches and 14,000 lost jobs.

When Congress adopted the FCMA it created a unique form of participatory government by establishing eight Regional Fishery Management Councils comprised of "individuals who, by reason of their occupational or other experience, scientific expertise, training, are knowledgeable regarding the conservation and management of the commercial or recreational harvest..." This is both a major strength and a major weakness, because Council members include active fishers or their representatives. Often these conflicts of interest impede Council efforts to conserve the fish. The short-term economic interest of some Council members has overridden the long-term interest of the resource.

Overfishing and Regional Council conflicts of interest are only two of many issues related to the Magnuson Act that the Network is striving to correct. For a comprehensive overview of the major issues, please contact the Network.

## Information Available!

Part of the purpose of the Network is to share and disseminate information. The Network has compiled a list of available materials on fish conservation and Magnuson reauthorization from members and other sources. If you would like to receive a listing, including papers, congressional testimony, books, reports, and videos, please contact the Network. Also, if you have any materials you would like to add to our growing list, please contact the Network.

## Campaign

Continued from page 1—

fective change. We must compel Congress to act now or risk squandering forever much of our nation's marine heritage.

Time is of the essence — the reauthorization battle is now. Everyone can help during our campaign. Throughout the next year, we will be appealing to citizens to write, call, and visit their leaders in Congress. We will mail, fax, and e-mail Action Alerts at

key times outlining how you can take action to help. To take action for the fish, please see back page.

The Network's activities have been made possible through grants from the following private foundations: the Pew Charitable Trusts, the Rockefeller Brothers Fund, and the Surdna Foundation.

## Happenings on the Hill



This summer was a busy time for both the

House Merchant Marine and Fisheries Committee and the Senate Commerce Committee, as well as for members of the Network. Several hearings on the Magnuson reauthorization have been held over the last several months, including a Senate Commerce Committee hearing held in late June at which Mike Sutton from the World Wildlife Fund testified. At a Senate hearing in early August, Carl Safina, with National Audubon Society, testified on behalf of the Network. During August recess, members of the House Merchant Marine and Fisheries Committee traveled to Portland, Oregon and Anchorage, Alaska for field hearings. The Portland hearing focused primarily on regional problems, with much emphasis on salmon issues while broader fisheries issues were discussed in Anchorage, where representatives of the Alaska Longline Fishermen's Association, Alaska Marine Conservation Council, and Trustees for Alaska, all members of the Network, were asked to testify. The Senate also conducted field hearings: in Ketchikan, Dellingham, and Kodiak, Alaska. Greenpeace was asked to testify at the Ketchikan hearing. Most recently, the House held a field hearing in Brooklyn, New York (the district of Representative Thomas Manton, Chair of the House Subcommittee on Fisheries Management, includes parts of Queens and Brooklyn) to solicit opinions from people in the region on Magnuson reauthorization.

In anticipation of reauthorization activities, the Network sent a preliminary legislative package on Magnuson reauthorization in July to key committee and personal staff. The package included an overview of the major issues, needed action, and suggested amendment language. A comprehensive version of our package was delivered to the Hill in early September shortly after Congress reconvened. We expect the Senate Commerce Committee to start drafting reauthorization legislation in late September and the House Merchant Marine and Fisheries Committee to begin in October. To receive our legislative package, please contact the Network. To voice your concerns and to help in the reauthorization process, please see back page.

## About the Marine Fish Conservation Network...

The Marine Fish Conservation Network was formed last year by five national conservation organizations that believe substantial improvements in the Magnuson Act are essential to protect, restore, and conserve the nation's marine fish resources at sustainable population levels. Along with a steering committee of the World Wildlife Fund, National Audubon Society, the National Coalition for Marine Conservation, Greenpeace, and the Center for Marine Conservation, the Network is currently comprised of three dozen fishing and conservation organizations (see box below). Any organization that formally endorses the Network's National Agenda can become a member. Together, we are coordinating our efforts to dramatically strengthen the Magnuson Act.

### The Network's objectives are to:

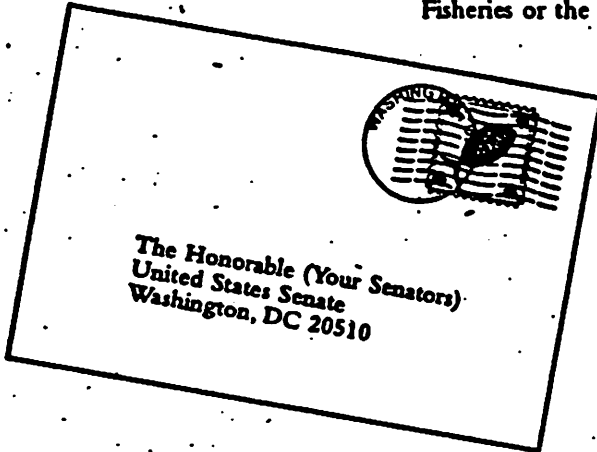
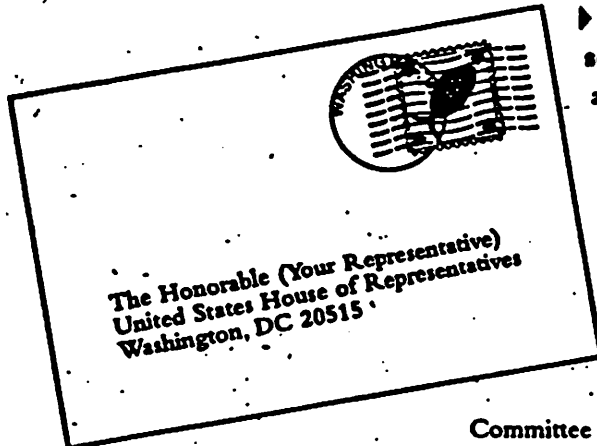
- Eliminate overfishing and rebuild depleted fish populations
- Adopt a precautionary, risk-averse approach to fisheries management
- Reduce conflicts of interest on the fishery management councils
- Improve conservation of large pelagic fishes
- Minimize bycatch
- Protect marine fish habitats
- Enhance monitoring and enforcement
- Provide adequate funding for fisheries research and enforcement

### Members of the Network as of September 1, 1993 include:

Alaska Longline Fishermen's Association	National Association of Underwater Instructors
Alaska Marine Conservation Council	National Audubon Society
American Oceans Campaign	National Coalition for Marine Conservation
Carrying Capacity Network	Natural Resources Defense Council
Center for Marine Conservation	New York Sportfishing Federation
Chesapeake Bay Foundation	North Pacific Longline Association
City of St. Paul/Bering Sea Coalition	Oregon Natural Resources Council
Conservation Law Foundation	Pacific Center for International Studies
Environmental Defense Fund	Project ReefKeeper
Fish Unlimited	Sierra Club
Fisheries Defense Fund	Sport Fishing Institute
Florida Conservation Association	The Billfish Foundation
Florida League of Anglers	The Sounds Conservancy
Greenpeace	Trustees for Alaska
Hawaii Fishermen's Foundation	Waccamah Audubon Society
International Game Fish Association	World Wildlife Fund
Jersey Coast Anglers Association	
Maryland Saltwater Sportfishermen's Association	

# How You Can Help the Fish!

With your help, the Network will be most effective! You can help us elevate the level at which marine fish conservation issues are discussed and addressed in this country. To help our campaign, you can:



▶ **Contact your representatives in Congress** and let them know how you feel about conserving marine fish to protect the ecological integrity of the oceans and provide for sustainable fisheries. If any of your representatives are members of either the House Committee on Merchant Marine and Fisheries or the Senate Commerce Committee, it is especially important that they hear from you. Contact the Network for a list of committee members or if you would like to receive our platform on the major issues.

▶ **Endorse the Network's National Agenda** (See page 3 for current list of endorsing members.) Whatever type of organization you represent, you can help by endorsing the Network's Agenda. If you need a copy of the Agenda or would like additional copies to distribute to your members and others, please contact the Network.

▶ **Provide useful contacts.** Do you have contacts with local opinion leaders, the media, funders, Congress, and/or others who could help the Network's campaign succeed? If so, please contact the Network.

▶ **Participate in the Network's Campaign directly.** Are you interested in working with the Network to coordinate a successful grassroots campaign in your district/region, or do you know of a good candidate for this type of position who could volunteer time in 1994? If so, please let us know!

**To help, please contact:**

The Marine Fish Conservation Network  
1725 DeSales St., NW Suite 500  
Washington, DC 20036  
Ph: 202/857-3274 Fax: 202/872-0619



**The Marine Fish Conservation Network**

1725 DeSales St., NW

Suite 500

Washington, DC 20036

imprecise, which can undermine the ability of managers to respond to overfishing in a timely and effective manner.

There are critical gaps in fishery catch statistics, both in terms of the amount of information collected and the adequacy of the collection systems. These gaps deny managers essential information on the current levels of commercial and recreational harvest, fish discarded as well as landed. As managers propose quota-based and limited entry management programs, the need for more accurate and precise information becomes acute.

These research and information shortfalls are largely the result of chronic underfunding, as is the poor state of habitat and ecosystem-based studies. Because fish do not live in a vacuum, we need to better understand the interdependent relationships in their environment. This means studying predator/prey interactions (both fish/fish and mammal/fish) and the effects of selectively and intensively removing certain species from an ecosystem. Research is needed to assess the effects of altering the physical and chemical environment on fish behavior, growth, feeding, and reproduction.

Essential research has been held up by years of inadequate funding. Funding for management-related scientific research and data collection needs to be increased. To the extent that new appropriations are not available, the money should be obtained through re-prioritizing existing funds and developing new, innovative sources of funding.

At present, fishers pay virtually no fees to the federal government to exploit publicly-owned resources. Congress should consider user fees and/or excise taxes on the landed value of fish. Compensatory revenues should be deposited in a trust fund dedicated to supporting research, management, enforcement, and other fundamental fisheries programs.

## Conclusion

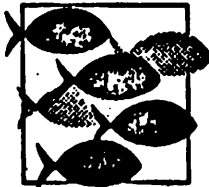
Too many of our nation's economically important commercial and recreational fishes are depleted or in decline, producing far below

their biological potential. While each year new species are added to the growing list of those overfished, efforts to restore depleted populations are slow and ineffective.

The price we are paying for poor management is more than we can afford. In New England alone, the annual cost of overfishing the nation's oldest fishery - cod and flounder - is estimated at \$350 million. That's almost twice the annual budget of the National Marine Fisheries Service. Nationwide, commercial and recreational industries, jobs, lifestyles, quality of life, and the quality of our environment hang in the balance.

The Marine Fish Conservation Network urges Congress to act forcefully to strengthen the Magnuson Fishery Conservation and Management Act to protect, restore, and conserve our marine fisheries.

*For more information and to find out how you can help, please contact:*



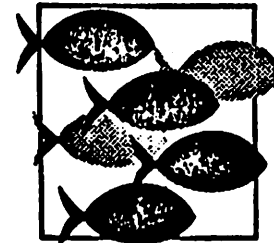
**The  
Marine  
Fish  
Conservation  
Network**

1725 DeSales Street, N.W. • Suite 500 •  
Washington, DC 20036 • Phone (202) 857-3274  
or Fax (202) 872-0619

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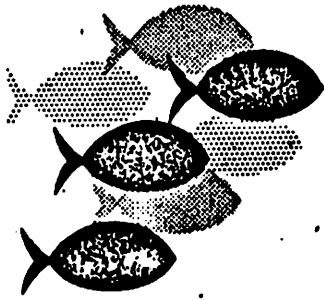
# A National Agenda to Protect, Restore, and Conserve Marine Fisheries

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**The  
Marine  
Fish  
Conservation  
Network**

*Steering Committee:*  
Center for Marine Conservation  
Greenpeace  
National Audubon Society  
National Coalition for Marine  
Conservation  
World Wildlife Fund



## The Marine Fish Conservation Network

*The Marine Fish Conservation Network is a broad-based coalition of national, regional, and local organizations whose primary goal is to reform and strengthen the management of marine fisheries in order to promote their long-term sustainability.*

*The Network's most immediate objective is to improve the Magnuson Fishery Conservation and Management Act when the law is reauthorized by Congress in 1994. The Magnuson Act is the principal mechanism for conserving and managing living marine resources off our coasts, but significant changes are needed to improve the law's effectiveness.*

*With this goal in mind, the Network has prepared "A National Agenda to Protect, Restore, and Conserve Marine Fisheries."*

### Introduction to the Issues

Marine fish are a precious natural resource of enormous ecological, social, and economic value. They are an important source of food, recreation, and employment, as well as major components of the ocean ecosystem. Healthy marine fish populations contribute significantly to the national economy and enhance our quality of life, but only if used and managed wisely.

In 1976 Congress passed the Magnuson Act, which created a 200-mile conservation and management zone around the U.S. coastline

and established eight regional fishery management councils and the National Marine Fisheries Service (NMFS), with oversight by the Secretary of Commerce. The Act empowered the councils and NMFS to serve as stewards of our living marine resources, yet, less than 20 years later, this country's fisheries continue to decline, some precipitously and possibly permanently. Currently, NMFS itself admits that approximately *one out of every three* fisheries is overfished and the status of another third remains unknown. Marine fisheries are producing far below their potential, at a cost of more than \$3 billion a year to the U.S. economy.

Contributing to the problem of overfishing are the rampant bycatch and discard of unwanted or protected fish and other marine animals caused by indiscriminate fishing gear; the degradation and destruction of wetland and other critical fish habitats; an inadequate understanding of fish and their role in the ocean ecosystem; and poor monitoring of fishing activities and enforcement of fishing regulations.

The failure to protect marine fish from overfishing and other threats and to rebuild depleted fish populations back to healthy levels is compelling proof that there are serious problems with current fisheries management. We urge Congress to address these problems during reauthorization of the Act and to include amendments to make it clear that the number one priority of fisheries management.

### Priorities for Improved Fish Conservation

The Marine Fish Conservation Network believes substantial improvements in the Magnuson Act are essential to protect, restore, and conserve the nation's marine fish resources at sustainable population levels.

*The goals of the Network are to:*

- Eliminate overfishing and rebuild depleted fish populations
- Adopt a precautionary, risk-averse approach to fisheries management

- Reduce conflicts of interest on the fishery management councils
- Improve conservation of large pelagic fishes
- Minimize bycatch problems
- Protect marine habitats
- Enhance monitoring and enforcement
- Provide adequate funding for fisheries research and enforcement



## Network Goals

### Eliminate Overfishing and Rebuild Depleted Fish Populations

As the National Marine Fisheries Service states in its 1991 Strategic Plan: "It is better to prevent overfishing than to suffer the losses necessary to reverse it." But in nearly all cases today, managers are reacting to overfishing, not preventing it.

A basic flaw in the Magnuson Act is its failure to clearly define or expressly prohibit overfishing. Instead, the law's key provisions direct managers to prevent overfishing while achieving the "optimum yield" from each fishery, broadly defined as the amount of fish that can be taken in a sustainable manner "modified by relevant social, economic, and ecological factors."

In practice, the basic biological needs of the resource receive less consideration than the immediate needs of fishers. As a result, overfishing is permitted in the name of short-term economic gain. For the same reasons, there are few effective recovery plans for depleted fisheries, hence some severely overfished populations continue to be overfished.

Marine fish are a public resource that should not be misused. Conservation and management measures to prevent overfishing and rebuild fish populations must take priority over any other considerations. Management plans for each fishery need a clear, measurable definition of overfishing as well as measures to prevent that condition from occurring.

In the case of depleted fisheries, recovery plans should establish specific rebuilding goals and timetables for achieving those goals. Although there will be short-term social and economic impacts associated with rebuilding fisheries to a healthy state, the long-term increased yield from restored populations will provide the greatest benefit, to the nation and the fishing industry.

### Adopt a Precautionary, Risk-Averse Approach to Fisheries Management

In 1976, the framers of the Magnuson Act, recognizing that certainty is a rare commodity in fisheries science, instructed managers to base their decisions on "the best scientific information available" at the time. They intended that, to prevent overfishing, management measures should contain a built-in buffer against uncertainties.

But in their struggle to strike a balance between conservation and the immediate financial interests of fishers, decision-makers typically err in favor of fishing. "In the face of uncertainty and pressure from the fishing industry," NMFS points out (1991 Strategic Plan), "fishery managers have often tended to base their decisions on an optimistic view of the condition of fishery resources. These 'risk-prone' decisions eventually result in overfishing."

Better science can help increase the accuracy and reliability of the information available to managers. But, when uncertainty exists, the risk of overfishing is reduced by giving the benefit of the doubt to fish conservation, i.e., making "risk-averse" decisions instead of erring towards overfishing.

Conservation and management measures should minimize risk by providing a margin of safety as a buffer against overfishing and damage to associated species and ecosystems. In addition, the burden of proof to demonstrate that damage will not occur should be on those who would exploit fish, not on those charged with conserving them.

### Reduce Conflicts of Interest on Fishery Management Councils

Congress created the regional fishery management council system so that people active in the fisheries would be a part of the process and decisions could benefit from their knowledge and experience. This provision is both a major strength and a major weakness of the Act.

Council members include fishing vessel owners, commercial fishers, and fishing industry employees with an immediate financial stake in the fisheries they regulate. This classic conflict of interest has kept councils from adopting timely and effective management measures.

Fishery management benefits from the advice of active fishers. But those serving as council members should not be permitted to vote on matters relating to any way influencing a fishery in which they have a direct or indirect financial interest. Individuals unaffiliated with any user group, but knowledgeable about fisheries and the marine environment, should be appointed to serve on the councils to enhance their effectiveness and to ensure fair representation of the broad public interest.

### Improve Conservation of Large Pelagic Fishes

Effective management of the fisheries related to large, ocean-wandering predators – the tunas, sharks, and billfish that occupy the top of the ocean food chain – has been especially elusive. As a result of poor management and overfishing, the large pelagic fishes (defined as "highly migratory species" in the Act) are among the most at-risk fish in the sea.

In the Atlantic, for instance, the bluefin tuna's breeding population has declined 90% since the

mid-1970s. The number of adult swordfish has been halved in even less time; the majority of swordfish are caught by fishers before they reach reproductive age. Marlin, killed primarily as bycatch in tuna and swordfish fisheries, are declining in both the Atlantic and Pacific. A modest plan to protect sharks in the Atlantic and Gulf of Mexico took effect in 1993 and imposed the first-ever federal limits on shark fishing. Already, however, some species may have been devastated by excessive fishing.

Until 1990, the tuna fisheries (along with their bycatch of billfish and sharks) were unregulated under the Magnuson Act. That year, Congress gave the Pacific Ocean management councils authority over tuna, but transferred responsibility for all highly migratory species in the Atlantic Ocean to NMFS. This agency, however, is currently prohibited from enacting measures to conserve Atlantic large pelagics that are stronger than those recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT), an international commission ostensibly formed to conserve the large fishes, including tuna, marlin, and billfish, that are found throughout the Atlantic. Yet throughout its 25-year history, ICCAT has failed to keep catches at sustainable levels or to stem ongoing declines.

International cooperation to conserve large pelagic fishes throughout their migratory range is essential. The United States should more aggressively pursue, through ICCAT and other international bodies, the conservation objectives of the Magnuson Act. But because of the poor record of international fisheries treaties to date, the United States must remove any and all constraints on its authority to act unilaterally when more conservative measures are in the best interests of U.S. fishers and the health of the resources on which they depend.

### Minimize Bycatch

The use of non-selective fishing gear – any type of gear that catches large amounts of unintended fish and other marine species – causes intolerable waste and serious conservation problems. Worldwide, discarded bycatch amounts to an estimated 12 to 20 billion pounds

of sea life every year, or 20% of the overall catch.

Examples of non-selective gear include large high-seas drift nets that catch virtually anything that tries to swim through the netting, and trawl nets that drag the ocean bottom, scooping up all species in their paths. Perhaps the most egregious example of bycatch is the Gulf of Mexico shrimp trawl fishery, where 9 to 11 pounds of juvenile fish are caught and thrown overboard for every pound of shrimp taken.

The astronomical number of fish killed as bycatch, usually unreported, is not just a problem of waste: bycatch contributes to overfishing. For instance, red snapper in the Gulf of Mexico, one of over a hundred species caught in shrimp trawls, is severely depleted primarily because of the enormous number of young fish killed as bycatch.

The Magnuson Act is largely silent on the subject of bycatch and dead discards. Bycatch is restricted only where it threatens a species protected under a non-fishery statute (e.g. dolphins and sea turtles) or where it includes species highly valued and sought after by other fishers.

The Magnuson Act should include a definition of undesirable bycatch and make it a national policy to minimize the negative impact of bycatch on fish populations and the marine ecosystem. Researchers should accumulate better data on the extent of bycatch and its impact in each fishery, and managers should include provisions to reduce the incidental capture of fish and other marine animals in all fishery management plans.

More research needs to be conducted in the area of gear selectivity, including the development of bycatch-reducing technologies. Management strategies should include incentives for fishers to increase gear selectivity or use more selective methods of fishing.

## Protect Marine Habitats

The continuing loss and degradation of fish habitat - to pollution, development, and other human activities caused largely by human

population pressures - could become the greatest long-term threat to the viability of coastal marine fisheries. Damage to estuaries, wetlands, seagrass meadows, reefs, and river systems are leading factors in the decline of many species.

*Major threats to fish habitats are:*

- **Destruction:** Over half our coastal wetlands, essential habitat to 75% of the nation's marine fisheries, have been destroyed.
- **Pollution:** Contaminants affect spawning behavior, survival of young fish, and the incidence of deformities and tumors. They also threaten human health.
- **Nutrient overload:** Agricultural runoff and dumping of untreated sewage triggers massive increases in algal growth (preventing sunlight from reaching bottom-dwelling organisms) and depleting the water of life-giving oxygen.
- **Water diversion:** In some river systems, dams have eliminated 80-100% of the migration routes for salmon, striped bass, shad, and other marine species that spawn in fresh water. Excessive diversions of water from bays and estuaries destroy important spawning and nursery grounds for numerous coastal fish.

The Magnuson Act gives neither NMFS nor the fishery management councils direct control over these threats, even though they may severely reduce fish abundance.

The United States should adopt and implement a strong program to preserve fish habitats nationwide. The program should include research to quantify fishery-related habitat values and require certification that federally-approved projects will not harm essential fish habitats. NMFS should have authority to modify, restrict, or prohibit projects or activities that will alter, degrade, or destroy essential fish habitats.

## Enhance Monitoring and Enforcement

To properly manage fisheries, regulations must be enforceable and the total fish catch accurately tabulated. But few fisheries in the United States are subject to onboard observer coverage; catch data are supplied by the harvesting vessels or processors, usually on a voluntary basis. Consequently, this information is often inaccurate and incomplete.

More precise and reliable data on catch and effort, as well as fishery-independent information, must be made available to fishery scientists to better assess population sizes, and to fishery managers to better regulate fishing activities.

As management plans are now written, most regulations must be enforced at sea. With a small force of agents burdened with a mounting number of rules to enforce and fishers to enforce them upon, violators know the chances of being caught are slim. As a result, compliance with fishery laws is poor in some fisheries, almost non-existent in others.

Funding for monitoring and enforcement activities must be increased. A universal licensing scheme would give managers the information they need on who's fishing, when, where, and how, and what they are catching. A comprehensive at-sea observer program to monitor commercial fisheries would help provide unbiased and detailed information on fishing activities as they occur. In the future, managers should rely less on measures that must be enforced offshore and more on rules that are enforceable at the dock or the point of sale.

## Provide Adequate Funding for Fisheries Research & Conservation

Of the 153 species of fish whose status has been assessed by the National Marine Fisheries Service, 42% are overfished. But the status of more than a third of the species under Magnuson Act jurisdiction is unknown due to lack of funding for basic research. Even where general population trends are known, the data are oft



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# U.S. House of Representatives Committee on

## Merchant Marine and Fisheries

Room 1334, Longworth House Office Building  
Washington, DC 20515-6230

**DRAFT AND CONFIDENTIAL**

### MEMORANDUM

**TO:** Chairman Manton  
**FROM:** Subcommittee Staff  
**DATE:** May 5, 1994  
**RE:** Proposed amendments to the Magnuson Act

#### Section 2 - Findings, purposes, and policy

- \* Explicitly define Secretary of Commerce's (Secretary) role in the stewardship of fishery resources
- \* Clarify purpose to focus more on conservation and sustainable management
- \* Ecosystem Approach - An environmentally holistic approach to policy and management still needs clarification. Scientists may still lack the data necessary to effectively manage marine ecosystems. Further, the ecosystem parameters have not been defined by the scientific community: some say marine ecosystems should be managed on a global scale, while others claim that systems can be refined to smaller areas. For inshore waters, watershed management (from mountain headwaters to estuaries) is a comparable example.

Draft proposed amendments to MFCMA  
3/3/94, Page 2

### Section 3 - Definitions

#### \* Define overfishing

The overfishing definition can come directly from the 50 CFR 602 guidelines established in July of 1989 by the Secretary of Commerce (as per mandate by a Magnuson reauthorization). The definition is as follows:

Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce Maximum Sustainable Yield (MSY) on a continuing basis. Each FMP must establish to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by that FMP, and provide an analysis of how the definition was determined and how it relates to reproductive potential.

#### \* Define bycatch

The bycatch definition could be based on the definition offered in H.R. 2022, the North Pacific Fishery Waste Reduction Act of 1994, sponsored by Senator Stevens. We must clarify that the use of "quotas" will refer to 1) quotas established in a FMP; 2) quotas established by the Secretary or the Council(s) for significantly depressed, commercially extinct, or critical stocks; or 3) quotas for any other stocks which the Secretary deems necessary. Quotas should not be established for species for which it would be fiscally irresponsible to do so due to insignificant take except in the case of a depressed stock. Sen. Stevens language follows:

Bycatch means any fish species for which a quota is established, but which are not the target species of a fishery in which a fishing vessel is engaged.

Draft proposed amendments to MFCMA  
5/5/94, Page 3

**TITLE III  
NATIONAL FISHERY MANAGEMENT PROGRAM**

**Section 301 - National standards for fishery conservation and management**

- **602 Guidelines** - amend the act to recognize the 50 CFR 602 guidelines established by the Secretary for assistance to the Councils' in development of FMP's. We recommend to amend the Act to require Councils to provide a written response to NMFS when the Council rejects the guidelines.
- **Bycatch Demonstration Program** - the purpose of this program is to demonstrate bycatch prevention methods in the operations of a high-bycatch fishery. It requires voluntary participation by vessel owners. NMFS scientists have developed some methods to reduce bycatch, though most of these methods have not been used during normal fishing vessel operations. A rough outline of the program is as follows

**Program Length** - 3 years total (6 months to determine priority fisheries, 2 years to conduct demonstration program, and 6 months to compile data and report to Congress on findings)

**Priority Fisheries / Reduction Methods** - Within 6 months of enactment, NMFS will be required to prioritize the top 10 fisheries by the amount of bycatch harvested with the target species. Two factors to be considered are 1) percentage of bycatch harvested vs. target species, and 2) total volume of bycatch in a fishery.

For each priority fishery, NMFS is to determine a list of 5 scientifically peer reviewed methods to significantly reduce bycatch for each of the 10 prioritized fisheries. Economic feasibility should be considered in determining reduction methods.

**Bycatch Demonstration Program** - NMFS should test reduction methods in the top 5 of the 10 prioritized fisheries and in subsequent fisheries thereafter subject to appropriations. NMFS is to contract with a reasonable number of vessel owners to test at least 1 of the 5 reduction methods for each of the top 5 fisheries. Participation in the program is voluntary. In the event that a vessel owner suffers a financial loss due to the testing, NMFS is to recuperate for this loss based on an average annual income of the vessel owner over the past five years, allowing for inflation. The demonstration project should test the reduction methods for a period of 2 years.

**Report to Congress** - Within 6 months following the study, NMFS is to report to Congress on the data collected from this program. This report should include recommendations regarding on the most successful methods to reduce bycatch.

Draft proposed amendments to MFCMA  
3/5/94, Page 4

- \* **Reduce Overcapitalization** - NMFS to conduct a feasibility study (including a cost/benefit analysis) of recycling fishing vessels for enforcement purposes. This idea was presented by you at the Commerce, Justice, State Appropriations Subcommittee hearing on April 28, 1994. Your statement recommended that \$1 million of the \$4.6 million enforcement budget increase for NMFS be directed to this demonstration program. The idea of converting fishing vessels into NOAA research vessels should also be examined. Finally, the concept of converting U.S. fishing vessels for then donation as foreign aid should be considered, as another means of reducing the capitalization in U.S. fisheries.
- \* **Gear** - suggestion that NMFS publish a list of approved gears instead of the current practice of listing non-approved/ banned gears. The onus would then be on the industry to develop and test new gears, and possibly pay for NMFS approval testing.
- \* **Shift burden of proof to the industry for financing and testing of new gear types for approval (related to above change)**

#### Section 302 - Regional Fishery Management Councils

- \* **Conflict of Interest** - We agree with the Minority staff recommendations that the Act should be amended to include recusal provisions.
- \* **Designated Appointments / Membership** - Amend Sec. 302 (b) (2) (A) to read the following:

The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, Native American tribal government affiliation, consumer advocacy, or training, are knowledgeable regarding the conservation and/or management, or the commercial or recreational harvest, of the fishery resources of the geographic area concerned...

Amend Sec. 302 (b) (2) (B) to reflect the following:

after "the jurisdiction of the Council." insert "In making an appointment, the Secretary should give the least practicable priority to paid representatives of a fishery association unless they are also employed in a commercial fishery."

**Draft proposed amendments to MFCMA  
5/5/94, Page 5**

- \* **Procedure - Councils should be able to take action on 2/3 vote rather than majority vote.**

**There should be a new oversight committee to review Magnuson Act process, the substance of other applicable law, such as NEPA, Paperwork Reduction Act, ESA, Regulatory Flexibility Act, should be included in the Act to streamline the review and approval process.**

**Councils should be able to retain independent legal counsel.**

**Section 303 - Contents of fishery management plans**

- \* **Bycatch Amendment - We recommend amending Sec. 303(A)(10) to support bycatch reduction in the development of FMP's. We recommend phrasing the amendment as stated in the Minority staff recommendations:**

**Councils shall include necessary and appropriate attention to fisheries where bycatch levels are acute and develop methods to achieve meaningful reductions.**

- \* **Essential habitat - include the NFI/Network language on habitat without the veto provisions.**
- \* **Require NMFS to publish a list of overfished species - currently NMFS only publishes a list of targeted fisheries**
- \* **Recovery programs - though recovery plans are recommended in the 602 guidelines, plans often are not developed. Cost estimates, alternative mechanisms, strategies for long term yield have not yet been conducted for many fisheries.**
- \* **Citizen suits - taken from ESA, to allow individuals or groups to sue NMFS for violations of the Magnuson Act**
- \* **Require Councils to disclose reasons for ignoring scientific recommendations in development of OY**

**Section 305 - Implementation of fishery management plans**

- \* **Extend Secretarial authority to impose emergency rule for 160 days rather than current 90 days. The provision to extend a rule for an additional 90 days should be retained unamended.**

Draft proposed amendments to MFCMA  
3/5/94, Page 6

Section 306 - State jurisdiction

- \* Clarification of regulations for those fishing in both state and EEZ waters/incongruent landing laws - west coast Floridian recreational fishermen have complained saying that they have been unjustly fined by at-sea and dock NMFS enforcement officials for holding/landing undersize fish. The State of Florida has imposed size limits which differ from Council(s) FMP size limits

Section 311 - Enforcement

- \* Universal licensing of fishing vessels to determine effort - written into the MMPA for vessels which interact with marine mammals

TITLE IV  
MISCELLANEOUS PROVISIONS

- \* Scientific/Peer Review - for fisheries managed under ICCAT, plan development teams (PDT's) should be established to allow non-NMFS scientists, environmentalists, and users to participate in drafting management plans. These teams could consist of ICCAT delegates who are already FACA exempt in that capacity. The industry and enviro's alike wish to mutually exclude each other from this process. This is related to ATCA but can be inserted in Magnuson process.

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**U.S. House of Representatives  
 Committee on  
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April 25, 1994

**MEMORANDUM**

**TO:** Council Chairmen and Executive Directors

**FROM:** Republican Fisheries Staff, Committee on Merchant Marine and Fisheries

**RE:** Amendments to the Magnuson Fishery Conservation and Management Act (MFCMA)

In anticipation of the Council Chairmen's meeting in May, the Republican fisheries staff of the Committee on Merchant Marine and Fisheries has attempted to outline the general areas and issues that we believe the Republican Committee leadership will consider addressing during MFCMA re-authorization. Please recognize that these are staff suggestions. Further, it is the intent of the Republican leadership to - as much as possible - work on a consensus bill with the Democratic leadership. Therefore, while this memo will provide a general idea of staff suggestions, it does not necessarily reflect what will be contained in a final legislative proposal.

**BYCATCH/WASTE**

The staff recommends that the Councils be required to look at conservation and management options to reduce bycatch, waste, and high-grading. Councils should pay particular attention to fisheries where bycatch is high and develop methods to achieve meaningful reductions. Republican members are particularly interested in having Councils adopt positive incentive programs to avoid bycatch and waste, rather than relying solely on punitive measures. Staff does not recommend that NMFS impose gear restrictions or mandatory reduction levels.

**ALLOCATIONS**

The staff recognizes that many Councils are examining the use of ITQs and other allocation mechanisms to manage fisheries within their jurisdictions. Currently, such proposals are generally governed by section 303(b)(6). The staff does not believe that the Congress should take a position on whether or not ITQs, CDQs, or other allocative programs should be allowed. Therefore, we recommend amending section 303(b)(6) to give

Councils clear authority to use ITQs, CDQs, processor quotas, etc., with sufficient guidelines to protect the national interest, existing participants in the fisheries, and conservation of the resource.

#### COUNCIL MATTERS

The staff recommends that no change be made to membership by constituent States on Regional Fishery Management Councils with the following exceptions:

- \* changes that are requested and supported by all affected Councils; and

- \* consideration of establishing firm numbers on State representation on Councils (e.g., setting the number of members from each State permanently and getting rid of "at large" seats).

The staff recommends against establishing "dedicated" seats for interest groups, gear types, and Indian tribes.

The staff recommends strengthening the requirements on preventing "conflicts of interest". Suggestions include requiring the Councils to establish mandatory recusal procedures and defining what would constitute a conflict.

#### HABITAT

Staff notes that the MFCMA already contains several provisions regarding habitat and believes that measures should be included to strengthen existing authority as follows:

- \* Councils should be required to define "essential habitat" for the purpose of FMPs for fisheries under the Councils' jurisdiction. The definition should include spawning areas, nursery areas, and areas of special ecological significance to those fisheries. The definition should not include the entire geographical area which could be occupied by the fish stocks.

- \* Based on each Council's definition, NMFS and the USFWS should be required to identify the essential habitat for the fisheries and provide that information to the Councils.

- \* Councils should be required to adopt conservation and management measures to conserve essential habitat, including by amending existing FMPs within a specified time.

#### FEES

The staff recommends supporting - at a minimum - a requirement that fees be imposed on ITQ fisheries, with funds being used for enforcement in the region in which they are collected. The staff will also discuss any recommendations proposed by the Administration. Any general fee imposed should:

- a) be fair and equitable
- b) be based on specific identifiable benefits
- c) be used in the area in which it is collected
- d) recognize other license, tax, and fee costs already imposed on the fishing industry.



**SCIENCE AND MANAGEMENT**

The staff recommends that Scientific and Statistical Committees and Advisory Panels be required to meet a minimum number of times each year.

The staff recommends that each Council be required to define overfishing as it relates to fisheries under its jurisdiction and amend existing management plans to comply with that definition within a set period of time.

The staff does not recommend that the establishment of TACs and allocating fish be separated.

**TECHNICAL AND MISCELLANEOUS AMENDMENTS**

Amend the Council compensation rate to reflect the new Federal personnel compensation levels.

Amend the definition of "Pacific Marine Fisheries Commission" to reflect the Commission's new name.

Change scientific names to reflect new classifications.

Amend the definition of "large scale driftnet fishing" to reflect international standards.

Delete the requirements for foreign allocation and driftnet reports.

Examine technical changes in the enforcement section recommended by NMFS/GCF.

Change the waiting period on GIFA approval from 60 legislative days to some number (90?) of calendar days.

**ECONOMIC STUDY**

Republican members have expressed concern that efforts to address levels of capitalization in the fisheries have been uneven and haphazard. Staff recommends that the Secretary and the Councils be required to provide a report on capitalization in the fisheries and recommendations on how problems can be addressed, including buyouts, along with costs and options for funding. The report should also include a projection of how the U.S. fishing industry will be structured in the next 10 years.



May 16, 1994

The Honorable Thomas Foley  
Speaker of the House of  
Representatives  
Washington, D.C. 20515-6501

Dear Mr. Speaker:

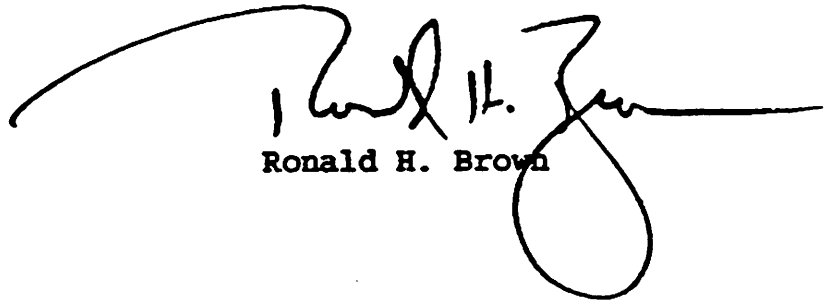
Enclosed are six copies of a draft bill --

"To amend the Magnuson Fishery Conservation and  
Management Act,"

together with a statement of purpose and need.

We have been advised by the Office of Management and Budget  
that enactment of this legislative proposal is in accord with the  
program of the President.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Ronald H. Brown".

Ronald H. Brown

Enclosures



THE SECRETARY OF COMMERCE  
Washington, D C. 20230

May 16, 1994

The Honorable Albert Gore, Jr.  
President of the Senate  
Washington, D.C. 20510-0010

Dear Mr. President:

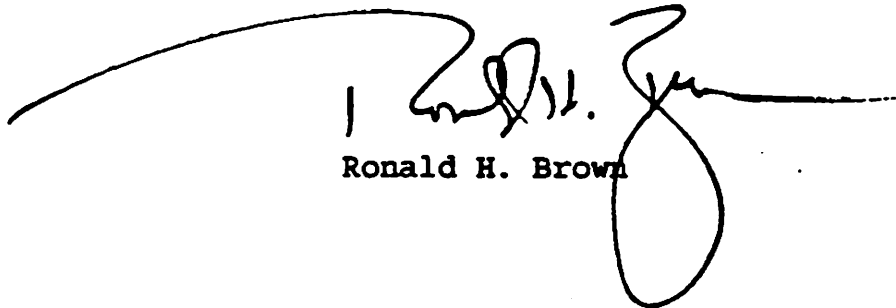
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in accord with the program of the President.

Sincerely,

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Ronald H. Brown

Enclosures

## STATEMENT OF PURPOSE AND NEED

The Magnuson Fishery Conservation and Management Act establishes United States jurisdiction over certain marine fishery resources and prescribes the exercise of that jurisdiction. The authorization of appropriations for carrying out the provisions of the Act expired on September 30, 1993. The purpose of the draft bill is to authorize appropriations for fiscal years 1994, 1995, and 1996, and to make the following amendments to the Act.

## FINDINGS, PURPOSE, AND POLICY

Section 1 would amend sections 2 (a) and (b) of the Act to emphasize the importance of habitat protection and the need for interagency attention to actions and issues that may adversely affect the fishery habitat.

## DEFINITIONS

Section 2(a) would also add a new term "essential fish habitat" to section 3(7) of the Act as a guide to the identification of areas of habitat that are considered essential to the production of optimum yield from one or more fisheries under management by a Council. These habitats include areas used for spawning, nursery, feeding and migration, as well as other areas that are vital for life cycle functions of specific fisheries.

Section 2 (c) would revise the definition of "optimum yield" (OY) to add a new Part (C) as a complement to amended national standard 1 that requires the rebuilding of depleted stocks, and

to define the level to which those depleted stocks must be rebuilt. This change provides that stocks should be rebuilt to a level consistent with that necessary to produce the maximum sustainable yield (MSY), i.e., the long term average for the stock and a level that can be measured for management purposes. This requirement does not negate the provision in Part (B) which allows MSY to be modified by any relevant economic, social or ecological factor to arrive at a calculation for optimum yield. For any given year, when the population size is at or near MSY, fishing mortality could be permitted at a level that would be greater than that necessary to maintain the population at MSY. However, if as a result of allowing fishing at the OY level, the population itself declines, fishing effort would have to be controlled to rebuild the stock to the MSY level. In this case, managers would be prohibited from modifying the harvest level for economic or social reasons.

#### FOREIGN FISHING

Section 3(a) would amend Section 201(a) (1) of the Act to add to the Secretary's authority for approval of foreign fishing applications. Specifically, the paragraph would authorize the approval of applications under section 204(b) (6) (A), as amended, for the transshipment of U.S. caught fishery products by foreign carriers when deemed to be in the interest of the United States, particularly in cases in which domestic carriers are not available.

Section 3(b) would amend section 201 of the Act to delete the requirement that the Secretaries of Commerce and State prepare a foreign allocation report for submission to Congress and the President by July 1 of each year. The report is intended to highlight countries using trade barriers to restrict imports of U.S. products, thereby reducing competition for fishery products taken by foreign fishermen and joint venture operations in the U.S. Exclusive Economic Zone (EEZ). With the "Americanization" of the fisheries off the U.S. coast, foreign fishing opportunities are no longer useful leverage for the United States to negotiate reductions in trade barriers to U.S. exports. Because of these developments, the report lacks any practical value, and its requirement should be eliminated from the Act.

#### PERMITS FOR FOREIGN FISHING

Section 4 would amend section 204 of the Act to allow the Secretary to issue a permit to foreign vessels for transshipment of fish products in the absence of a governing international fishery agreement (GIFA), when that permit is in the interest of the United States, and all fees have been paid and other requirements are met. The Magnuson Act requires foreign transshipment to satisfy the same GIFA, application, and permit requirements as are required of foreign nations whose vessels and owners engage in the catching, taking and processing of fish in the EEZ. Very few nations currently have GIFA's with the United States, although the U.S. fishing industry often must rely on the

availability of foreign refrigerated transports to transship its production from the EEZ to foreign markets because of the lack of available U.S. vessels.

Requiring the same qualification criteria for foreign transshipment activities as are required for catching, taking, or processing operations by foreign fishing vessels is overly burdensome and time consuming, as well as unnecessary to management's needs. Foreign fishing, such as joint ventures, will continue to be authorized only under a GIFA; however, the approval of foreign transshipments at sea in the EEZ or within the boundary of any state that are found to be in the interest of the United States will be encouraged by not subjecting them to the same stringent approval requirements as for harvesting vessels.

#### LARGE-SCALE DRIFTNET FISHING

Section 5 would delete section 206(e) of the Act to eliminate the requirement that a Driftnet Report be prepared annually. The purposes of the section have been met, with Japan, Korea and Taiwan agreeing and publicly committing to the implementation of the United Nations Resolution calling for a moratorium on the use of driftnets after December 31, 1992. As a result, the report is no longer necessary.

## NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

Section 6(a) would amend section 301(a)(1) of the Act to add the phrase "rebuild depleted stocks" to the requirement to prevent overfishing. The phrase "rebuild depleted stocks" is necessary to require rebuilding stocks when they become depleted and in need of rebuilding. This concept only applies to stocks whose population has been drawn down so as to jeopardize sustainable production. As noted in the amendment to the definition of "optimum yield" in section 2(c), this provision focuses on the level of the stock in question, and requires control of fishing mortality when the current population size of the stock is reduced. Rebuilding, therefore, should only apply to situations in which stocks have become depleted, i.e., below a level that is necessary to allow production at the maximum sustainable level.

Section 6(b) would amend section 301(a) of the Act to add a new national standard 8 that would require conservation and management measures to minimize incidental catches that result in the waste of living marine resources. This standard seeks to have fishery managers develop measures, where possible, that will eliminate the unnecessary, destructive, and wasteful take of non-target species that has significantly drawn down the populations of many of our marine resources. This new standard recognizes that not all incidental catch is bad (i.e., legal incidental take of cod in a haddock fishery). Rather, it focuses on the incidental catch that wastes a living marine resource, in



whatever form, such as discarding and highgrading. The use of "living marine resources" is necessary to specifically include marine mammals or threatened/endangered species.

#### REGIONAL FISHERY MANAGEMENT COUNCILS

Sections 7(a) and (b) would amend sections 302(a) and (b) of the Act (16 U.S.C. 1852) to provide an additional seat on the Pacific Council for a representative of Indian tribes of California, Oregon, Washington, or Idaho that have Federally recognized fishing rights. The representative would be appointed by the Secretary of Commerce, as designated by the Secretary of Interior from a list of not less than three individuals nominated by the appropriate tribal governments. Representation would be rotated among the tribes and each appointed representative would serve for a term of three years and not be reappointed for a consecutive term.

Although Indian representatives have been appointed to the Pacific Council from among the nominees provided by the Governors of the Pacific Council's constituent states, there is no assurance that the Governors will include such nominees for consideration during each appointment cycle. This amendment will ensure that Treaty Indians have continuity of representation on the Pacific Council.

Section 7(c) would amend section 302(h) of the Act to require a

Regional Fishery Management Council to prepare a fishery management plan amendment to prevent a stock or stock complex approaching an overfished condition from becoming overfished, or to rectify an overfished condition in that stock or stock complex. Council action is required within 1 year of the Council receiving a report from the Secretary that the stock is approaching an overfished condition, or is overfished, based on the definition of overfishing contained in the plan.

Section 7(d) would amend section 302(i) of the Act to require the Regional Fishery Management Councils to publish an annual listing beginning in December 1995 of all essential fish habitats for all fishery management plans in effect. This listing is intended to provide a ready reference for all projects being developed that may affect fishery habitat, and for all reviewing officials of those projects.

Section 7(e) would amend section 302(k) of the Act, to preclude a Council member from participating in a decision that would significantly affect the member's financial interest. The NMFS Regional Director, at his own initiative or at the request of the affected individual, would determine whether a Council member is barred from participating in a particular decision; he could authorize participation if he determines that the need for the member's participation outweighs the potential for a conflict of interest. The Assistant Administrator (AA) for Fisheries would,

upon request of any Council member, review the Regional Director's determinations. If the Council decision were made before the AA's review, the eventual ruling would not affect the validity of the action.

This amendment, which leaves intact the Council members' financial disclosure requirements and exemption from 18 U.S.C. 208, would eliminate the perception or potential that any member's vote on an issue before the Council is influenced by the member's financial interests related to the issue.

#### CONTENTS OF FISHERY MANAGEMENT PLANS

Section 8 would replace Section 303 of the Act in its entirety by reordering the provisions of the section regarding the contents of fishery management plans and regulations. The amendment would focus more effort and attention on the important fishery regulations that represent the requirements the industry and public must comply with. This would be done by removing the requirement for extensive, detailed fishery management plans (FMPs).

Currently, the FMPs have become cumbersome documents that can be confusing because of their size and complexity. They are also largely redundant to other documents required by law (Environmental Impact Statement, Fishery Impact Statements, Regulatory Flexibility Analyses). The Act currently requires

FMPs to contain all necessary conservation and management measures. The amendment would remove these measures from the FMP and, instead, have the Councils prepare proposed regulations incorporating all the management measures. The "new" fishery management plan is envisioned as a 10-15 page document that summarizes the fishery, problems, objectives, alternatives and impacts. Appropriate references would be made to the EIS, FIS, RFA, etc. for more detail, if needed.

The benefit of this amendment would be to make the rulemaking process more flexible and more timely. The Councils could change management measures fairly substantially without first amending the FMP. All necessary analysis of the effects of proposed measures would be done in compliance with NEPA, the Regulatory Flexibility Act, and other applicable law. The revision of section 303 would not change significantly the current roles of the Secretary and the Councils.

In addition to reordering the provisions of the FMP, section 8 includes several amendments to the existing provisions. A new paragraph (9) is added to amended section 303(a) requiring each fishery management plan to contain a description of all essential fish habitats. The word "essential" in the term "essential fish habitat" was selected in order to avoid confusion with the term "critical habitat" which is used in the Endangered Species Act. This provision would require the Councils, through fishery

management plans (FMPs), to be responsible for administering a program to identify essential habitats in their geographical area of concern. Once habitats are identified as essential, other Federal agencies would be able to provide special consideration for these areas in permitting, licensing, and construction decisions.

Section 303(c)(4) of the Act, as amended, is revised to delete the phrase "and fees to be paid to" from the requirement to obtain a permit from the Secretary. The authority to collect fees and the requirement for fees to be paid is fully contained in amended section 305(d), and, therefore, no longer need be referenced in section 303(c)(4).

Section 303(c)(10) of the Act, as amended, is revised to provide for the collection of economic data from processors, as is now required from harvesting and other entities in the industry. Economic data for processors, as well as fishermen, are necessary to meet the requirements of the Magnuson Act and other applicable law, including national standard 1 (calculation of optimum yield), national standard 7 (minimizing costs including those on processors), and the National Environmental Policy Act and Executive Order 12291 (economic/social analyses).

Section 8 amends section 303(d) to establish a three-year limit on maintaining the confidentiality of data. Currently, the Act

requires the Secretary to prescribe by regulation (50 CFR 603) procedures to preserve in perpetuity the confidentiality of data submitted by fishermen or processors. The intent is to prevent the disclosure of the identity or business of any person who submits such statistics. The confidentiality protection of data under the current section affords little benefit beyond the three-year period, but causes many difficulties in efficiently accessing the data for both the authorized users and administrators of the data. The requirement for maintaining data confidentiality permanently also results in extreme administrative costs and burdens. Preserving the confidentiality of data forever, for example, requires maintaining complex data management access and control systems in perpetuity, with significant personnel and computer storage and programming costs. This amendment strikes a careful balance between protecting the business practices of individuals and allowing the public access to information on users and uses of the Nation's fisheries resources.

#### PRE-RULEMAKING PROCEDURES

Section 9 would replace section 304 of the Act (ACTION BY THE SECRETARY) in its entirety with necessary provisions to address guidance to, and actions by, the Councils or Secretary prior to rulemaking. Of particular importance are guidance for Secretarial actions after receipt of an FMP or amendment from the Council, and Secretarial action if a Council fails to submit a

necessary FMP or amendment or fails to adequately revise an FMP or amendment that has been disapproved.

Section 9 also includes several amendments to existing provisions of the Act. Section 304(d) of the Act, Establishment of Fees, is moved to section 305(d) of the amended Act to be consistent with and properly included in the rulemaking provisions of the Act. This provides for greater continuity and will enable the public to more readily understand the authority and requirements of the establishment of fees under the rulemaking authority of the Secretary.

Section 9 would amend section 304(f)(3)(E) of the Act to delete the requirement that fishing vessels of the United States must be provided with a reasonable opportunity to harvest an allocation or quota under a relevant international fishery agreement. The primary management program for highly migratory species should continue to be accomplished through international organizations. However, the current requirement that U.S. fishermen be allowed a fair opportunity to take an internationally established quota may pose a problem if the United States wishes to establish a quota on a local stock or substock of a highly migratory species for conservation purposes that is less than that allowed by the international organization. The inability to set a lower quota could result in local overfishing and the loss of long-term benefits.

Section 9 would add a new section 304(h) to provide the Secretary with the authority to implement uniform recordkeeping and reporting requirements for all fisheries subject to Magnuson Act jurisdiction. Current authority is limited to individual FMP recordkeeping and reporting (section 303(a)), and individual fishery data collection programs in advance of an FMP (section 303(e)).

Lacking the authority for a national data collection program has resulted in a series of independent requirements for each FMP that are not integrated with each other, or with non-FMP fisheries data collection programs sponsored by the National Marine Fisheries Service (NMFS) or state governments. As a consequence, recreational and commercial fishermen and processors are subject to redundant recordkeeping and reporting regulations depending on the number of FMP and other species they handle. Moreover, additional reporting and recordkeeping requirements imposed by non-Magnuson Act authorities makes it more likely that duplication of data collection activities exists. The availability, quality and timeliness of information available to NMFS, the Councils, and fishermen in developing and monitoring FMP's has been compromised.

Granting this authority to the Secretary would provide the ability to integrate independent FMP-specific data collection programs into a comprehensive data collection and management



system. Data on currently managed species as well as potential fisheries subject to management would be collected. This would: (1) provide baseline information about how fishermen actually fish, change fisheries and the amount of effort used during the year, and how regulations in one FMP will affect their overall livelihood and the stocks of fish on which they depend, (2) reduce the need for fishermen and processors to maintain separate logbooks or records for each FMP, (3) allow the implementation of efficient data entry, analysis and dissemination systems within NMFS, and (4) improve the coordination of fisheries data collection between NMFS and data collection programs sponsored by the states and other Federal agencies.

Section 9 would add a new paragraph (2) to section 304(f) of the Act, as amended (formerly section 304(c)), to require the Secretary to take action to prepare an amendment if the Council has not submitted the necessary amendment within the required time as provided for in section 302(h)(2) of the Act, as amended. This provision would ensure that action is taken within a reasonable time period to protect a stock from overfishing. It utilizes the definition of overfishing currently required in each fishery management plan as the triggering mechanism. The required amendment must address the prevention of current or future overfishing and must incorporate provisions to rebuild depleted stocks. Amendment of 50 CFR Part 602 guidelines is anticipated to identify a timeframe for restoration of a stock.

Section 9 would add a new subsection (h) to section 304 of the Act, as amended, to require the Secretary to report annually to the Councils on the status of stocks under their jurisdiction. This report and the underlying analysis would provide the basis for the Councils to prepare an amendment to an FMP, in accordance with section 302(h)(2) as amended, when a stock is approaching a condition of being overfished or is overfished

#### RULEMAKING

Section 10 would replace section 305 of the Act with necessary provisions that would focus under one section all actions necessary for the preparation, promulgation and implementation of regulations. Provisions regarding emergency regulations, the establishment of fees, the responsibility of the Secretary, and judicial review of the regulations are also addressed. Combining these aspects of rulemaking in one section will provide the public with a clearer understanding of the roles, authorities, and responsibilities of the Councils and Secretary regarding fishery management regulations.

Section 10 also includes several amendments to existing provisions of the Act. Section 10 would amend section 305(d) of the Act (formerly section 304(d)) with provisions for the establishment of fees based on the costs of issuing of permits, the costs of implementing fishery management measures, the value

of fish taken through individual harvest share programs, and the value of all fish upon first sale.

This amendment is consistent with the findings of the National Performance Review that private parties should provide compensation for the use of public fishery resources for commercial purposes, particularly where the Federal government provides general and specific services. This section would also allow the use of fees to reduce harvesting capacity in overfished fisheries through various means, including removal of fishing vessels and permits if the fishery is subject to a limited entry system.

Section 10 would add a new paragraph (B) at section 305(c)(3) of the Act, as amended (formerly section 305(c)(3)), to expand the timeframe for emergency actions to include an additional 270-day period. Approval of the additional 270-day period would be dependent on prior provision for public comment on the emergency and progress by the Council, or Secretary, as appropriate, on the development of an FMP amendment to effect a permanent solution to the problem. Fishery managers have found that 180 days (two 90-day periods) is frequently insufficient time for a Council or the Secretary to implement a permanent solution to a problem through an FMP or amendment. Without relief, a hiatus in necessary regulations may result in adverse effects on the resource or industry. This provision seeks to strike a balance among the

need for quick action to address a problem in the resource or fishery, the need for public participation, and the need for additional time to effect a permanent resolution to the problem without a hiatus in controlling regulations.

Section 10 would also add a new subsection (C) to section 305(c)(3) of the Act, as amended (formerly section 305(c)(3)), to authorize the Secretary to extend indefinitely emergency regulations when necessary to protect the public health. Cases of severe illness or death have been recorded as a result of seafood poisoning in recent years during outbreaks of shellfish toxins. Other health emergencies, such as the accidental sinking of arsenic trioxide cargo off the coast of New Jersey, may also necessitate Federal action. The Magnuson Act does not provide the Secretary with sufficient authority to issue emergency regulations for more than 180 days in the event of a health emergency associated with seafood or its environment.

#### STATE JURISDICTION

Section 11 would amend section 306(c)(1) to establish a new subsection to require foreign processors operating in the internal waters of a State to report certain vessel and catch information to the Secretary. Detailed information on internal waters processing operations is generally available only to State officials of the approving governor. Federal and other State agencies, as well as other regulatory organizations such as the

Interstate Marine Fisheries Commissions, involved with managing the species need to know the amount of fish harvested, where U.S. fishermen are harvesting the fish, and whether the species are managed under a fishery management plan or found in waters of two or more States. Although some data may be shared among the interested parties, all too often the data provided to the Secretary are inconsistent, incomplete, and not timely. By requiring foreign internal waters processors to provide reports to the Secretary, NMFS will have complete and reliable data for the effective management and scientific understanding of the fishery resources of the United States. Further, by requiring this information, NMFS may assure that the national management and conservation program is utilizing, and is based upon, the best scientific information available.

#### PROHIBITED ACTS

Section 12(a) would amend section 307(1)(L) of the Act to extend the protection of criminal penalties to persons employed by or under contract to NMFS and involved in collecting fishery information in their official duties. Unlike observers, who were afforded protection under the Fishery Conservation Amendments of 1990, no prohibitions or criminal sanctions explicitly address assaults on statistical agents. Statistical agents, however, are often the primary Federal contact with members of the fishing industry and must often endure the brunt of fishermen's displeasure with regulatory actions take under the Magnuson Act,

the Endangered Species Act, the Marine Mammal Protection Act, the Lacey Act, or other applicable law.

Section 12(b) addresses two problems that have arisen in enforcing the prohibition against large-scale driftnet fishing. Section 307(1)(M) would be revised to clarify what vessels are subject to U.S. jurisdiction, to include foreign vessels whose nation authorizes the United States to exercise jurisdiction, and stateless vessels. It would also create a rebuttable presumption that a vessel with gear capable of use for large-scale driftnet fishing is engaged in such fishing.

Section 12(c) would amend section 307(2)(A) of the Act to provide an exception whereby foreign vessels would be allowed to transship fish products at sea in the EEZ or within the boundary of any state under a permit issued by the Secretary.

Sections 12(d) and (e) contain conforming changes.

#### CIVIL PENALTIES AND PERMIT SANCTIONS

Section 13 would amend section 308(b) of the Act to provide for judicial review of permit sanctions. Although the Magnuson Act provides that any person who is assessed a civil penalty may obtain a review of the penalty in U.S. district court, it does not provide explicitly for such review of permit sanctions. The two standards should be treated the same, especially since they

may be imposed together in the same administrative hearing. The draft bill would also delete language in section 308(b) regarding the serving of a copy of a complaint to ensure consistency of service procedures with other district court actions in accordance with the Federal Rules of Civil Procedure.

#### ENFORCEMENT

Section 14(a) would amend section 311(e) (1) of the Act to allow the Penalty and Forfeiture Fund to be capitalized by receipts from, and to be used for, the enforcement of all statutes dealing with living marine resources. The Magnuson Act does not currently provide for monies from the Penalty and Forfeiture Fund to be used for enforcement-related activities associated with various living marine resource statutes such as the Marine Mammal Protection Act.

Section 14(b) would amend section 311(e) (2) of the Act to provide that any person found in any enforcement proceeding to be in violation of the Act or any other marine resource law shall be liable for the costs of the sale, storage, care, or maintenance of fish or property seized as a result of the violation. This section makes three changes to existing law by: (1) expanding the scope of the provision to include all enforcement proceedings instead of civil penalties; (2) listing explicitly that sales costs are an expense for which violators are liable; and

(3) clarifying that liability extends to enforcement of all marine resource laws.

#### OBSERVERS WAGES AS MARITIME LIENS

Section 15 would provide observers under the draft bill with the same lien priority for past-due wages as is currently provided for seamen's liens under admiralty and general maritime law.

#### CONFORMING AMENDMENTS

Section 16 would make technical amendments to correct references to sections that are redesignated in the draft bill.

#### AUTHORIZATION OF APPROPRIATIONS

Section 17 would amend section 406 of the Act to authorize appropriations for carrying out the Act at a level of \$103,218,000 for fiscal year 1994, \$142,502,000 for fiscal year 1995; and "such sums as may be necessary" for fiscal year 1996.



A BILL

To amend the Magnuson Fishery Conservation and Management Act.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That

FINDINGS, PURPOSES, AND POLICY

1  
2 Sec. 1. Section 2 of the Act (16 U.S.C. § 1801) is amended--

3 (a) in paragraph (a) (2) by--

4 (1) inserting "resource" between "fishery" and "conservation";

5 and

6 (2) deleting "and" before "(B)", and adding after the second  
7 occurrence of "threatened" ", and (C) direct and indirect habitat  
8 losses have resulted in diminished capacity to support existing  
9 fishing levels"; and

10 (b) in paragraph (a) (6) by inserting "to provide long-term  
11 protection for essential marine and estuarine fish habitats," between  
12 "conservation," and "and to realize"; and

13 (c) by adding new paragraphs (a) (9) and (10) to read as  
14 follows:

15 "(9) The greatest long-term threat to the viability of commercial  
16 and recreational fisheries is the continuing loss of marine and  
17 estuarine habitats on a national level. Habitat considerations must  
18 receive increased attention in the conservation and management of  
19 fishery resources of the United States.

1           "(10) Fishery habitat protection can be achieved through direct  
2      advocacy for fishery habitats by the Secretary in the implementation  
3      of existing Federal procedures for interagency consultation and the  
4      application of other Federal statutes under the Secretary's purview.";  
5      and  
6      (d) by adding a new paragraph (b) (7) to read as follows:  
7           "(7) to promote the advocacy of fishery habitat protection in the  
8      review of projects conducted under Federal permits, licenses, or other  
9      authorities that affect, or have the potential to affect, fishery  
10     habitats."

11   DEFINITIONS

12      Sec. 2.   Section 3 of the Act (16 U.S.C. § 1802) is amended--  
13              (a)   by renumbering subsections (6) through (31) as subsections (7)  
14      through (32), respectively, and by adding a new subsection (6) as  
15      follows:

16              "(6)   The term 'essential fish habitat' means any area formally  
17      identified by a Council or by the Secretary for species managed under  
18      section 304(g) (3) that is--

19              (A)   landward of the outer boundary of the exclusive  
20      economic zone and essential to the life cycle of marine,  
21      estuarine, anadromous, or catadromous species; or

22              (B)   essential to the production of optimum yield throughout  
23      the range of one or more fisheries under management by a Council  
24      or by the Secretary under section 304(g) (3); or

1 " (C) meeting other criteria or guidance as provided by the  
2 Secretary to the Councils.";

3 (b) by further amending renumbered section 3(22) of the Act by  
4 revising the text and adding a new paragraph (C) to read as follows:

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

7 " (A) which will provide the greatest overall benefit to the  
8 Nation, with particular reference to food production and  
9 recreational opportunities;

10 " (B) which is prescribed on the basis of the maximum  
11 sustainable yield from a fishery, as modified by any relevant  
12 economic, social, or ecological factor; and

13 " (C) which ensures the rebuilding of depleted stocks to a  
14 level consistent with producing the maximum sustainable yield."

#### 15 FOREIGN FISHING

16 Sec. 3. (a) Section 201(a)(1) of the Act (16 U.S.C. § 1821(a)(1))  
17 is revised to read as follows:

18 " (1) is authorized under subsection (b) or (c), or is  
19 approved under section 204(b)(6)(A)(ii);".

20 (b) Section 201 of the Act (16 U.S.C. § 1821) is amended by  
21 deleting section 201(f), and by redesignating subsections (g),  
22 (h), (i), and (j) as subsections (f), (g), (h), and (i),  
23 respectively.

1 PERMITS FOR FOREIGN FISHING

2 Sec. 4. (a) Section 204(b)(1) of the Act (16 U.S.C. § 1824(b)(1))  
3 is amended to read as follows:

4 "(b) APPLICATIONS AND PERMITS.--

5 "(1) ELIGIBILITY.-- (A) Except as provided in  
6 subparagraph (B), each foreign nation with which the  
7 United States has entered into a governing  
8 international fishery agreement shall submit an  
9 application to the Secretary of State each year for a  
10 permit for each of its fishing vessels that wishes to  
11 engage in fishing described in subsection (a).

12 "(B) An owner of a vessel other than a vessel of  
13 the United States, who wishes to engage in the trans-  
14 shipment at sea of fish products in the exclusive  
15 economic zone or within the boundary of any State, may  
16 submit an application to the Secretary each year for a  
17 permit for a vessel belonging to that owner, whether or  
18 not such vessel is subject to an international fishery  
19 agreement described in section 201(b) or (c).

20 "(C) No permit issued under this section may be  
21 valid for longer than a year; and section 558(c) of  
22 title 5, United States Code, does not apply to the  
23 renewal of any such permit."

24 (b) Section 204(b)(4) of the Act (16 U.S.C. § 1824(b)(4))  
25 is amended by--

1 (1) inserting "submitted under paragraph (1) (A)" after  
2 the words "any application";

3 (2) redesignating subparagraphs (A), (B), and (C) as  
4 subparagraphs (i), (ii), and (iii);

5 (3) redesignating paragraph (4) as paragraph (4) (A);  
6 and

7 (4) inserting a new paragraph (4) (B) to read as  
8 follows:

9 "(B) Upon receipt of any application submitted  
10 under paragraph (1) (B) which complies with the  
11 requirements of paragraph (3), the Secretary shall  
12 promptly transmit copies of the application or summary  
13 as indicated under subparagraphs (A) (ii) and (iii)."

14 (c) Section 204(b) (5) of the Act (16 U.S.C. § 1824(b) (5))  
15 is amended by replacing the words "under paragraph (4) (C)" with  
16 the words "submitted under paragraph (1) (A)".

17 (d) Section 204(b) (6) of the Act (16 U.S.C. § 1824(b) (6))  
18 is amended by--

19 (1) replacing the phrase "transmitted under paragraph  
20 (4) (A)" with the phrase "submitted under paragraph  
21 (1) (A)" in paragraph (6) (A);

22 (2) redesignating paragraph (6) (A) as paragraph  
23 (6) (A) (i); and

24 (3) adding a new subparagraph (A) (ii), as follows:

25 "(ii) In the case of any application submitted  
under paragraph (1) (B), the Secretary may approve the

1 application upon determining that the activity  
2 described in the application will be in the interest of  
3 the United States and will meet the applicable  
4 requirements of this Act, and that the owners or  
5 operators have agreed to comply with requirements set  
6 forth in section 201(c) (2) and have established any  
7 bonds or financial assurances that may be required by  
8 the Secretary; or the Secretary may disapprove all or  
9 any portion of the application."

10 (e) Section 204(b) (8) of the Act (16 U.S.C. § 1824(b) (8))  
11 is amended by inserting the words ", or the agent for the foreign  
12 vessel owner for any application submitted under paragraph  
13 (1) (B) " at the end of subparagraph (A).

14 (f) Section 204(b) (9) of the Act (16 U.S.C. § 1824(b) (9))  
15 is amended by--

16 (1) inserting the words "paragraph (1) (A) of" after the  
17 phrase "by a foreign nation under";

18 (2) redesignating paragraph (9) as paragraph (9) (A);

19 and

20 (3) adding a new paragraph (9) (B) to read as  
21 follows:

22 "(B) If the Secretary does not approve any  
23 application submitted by a foreign vessel owner under  
24 paragraph (1) (B) of this subsection, the Secretary  
25 shall promptly inform the vessel owner of the disap-  
26 proval and the reasons therefore. The owner, after

1 taking into consideration the reasons for disapproval,  
2 may submit a revised application under this  
3 subsection."

4 (g) Section 204(b)(11) of the Act (16 U.S.C. § 1824(b)(11))  
5 is amended by--

6 (1) inserting the words "submitting an application  
7 under paragraph (1)(A)" after the words "If a foreign  
8 nation";

9 (2) redesignating paragraph (11) as paragraph (11)(A);  
10 and

11 (3) adding a new paragraph (11)(B), to read as follows:

12 "(B) If the vessel owner submitting an  
13 application under paragraph (1)(B) notifies the  
14 Secretary of acceptance of the conditions and  
15 restrictions established by the Secretary under  
16 paragraph (7), and upon payment of the applicable fees  
17 established pursuant to paragraph (10) and confirmation  
18 of any bonds or financial assurances that may be  
19 required for such fishing, the Secretary shall  
20 thereupon issue a permit for the vessel."

#### 21 LARGE-SCALE DRIFTNET FISHING

22 Sec. 5. Section 206 of the Act (16 U.S.C. § 1826) is amended by  
23 deleting subsection 206(e), and by redesignating subsections (f),  
24 (g), and (h) as subsections (e), (f), and (g), respectively.

1 NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

2 Sec. 6 (a) Section 301(a) of the Act (16 U.S.C. 1851) is  
3 amended by revising subsection (1) to read as follows:

4 "(1) Conservation and management measures shall  
5 prevent overfishing and rebuild depleted stocks. Such  
6 measures shall be designed to achieve, on a continuing  
7 basis, the optimum yield from each fishery."

8 (b) Section 301(a) of the Act (16 U.S.C. 1851) is amended  
9 by adding a new subsection 8 to read as follows:

10 "(8) Conservation and management measures shall, to  
11 the extent practicable, minimize the incidental catch of  
12 non-target living marine resources that results in the  
13 unnecessary waste of those resources."

14 REGIONAL FISHERY MANAGEMENT COUNCILS

15 Sec. 7 (a) Section 302(a) of the Act (16 U.S.C. 1852(a)) is  
16 amended by revising subsection (a) (6) to read as follows:

17 "(6) PACIFIC COUNCIL.--The Pacific Fishery Management  
18 Council shall consist of the States of California, Oregon,  
19 Washington, and Idaho and shall have authority over the  
20 fisheries in the Pacific Ocean seaward of such States. The  
21 Pacific Council shall have 14 voting members, including 8  
22 appointed by the Secretary in accordance with subsection  
23 (b) (2) (at least one of whom shall be appointed from each



such State), and including one appointed from an Indian  
2 tribe with Federally recognized fishing rights from  
3 California, Oregon, Washington, or Idaho."

4 (b) Section 302(b) of the Act (16 U.S.C. 1852(b)) is  
5 amended--

6 (1) by revising paragraph (C) of subsection (b)(1) to  
7 read as follows:

8 "(C) The members required to be appointed by the  
9 Secretary in accordance with subsections (b)(2) and  
10 (5)";

11 (2) by renumbering subsection (5) as subsection (6),  
12 and inserting a new subsection (5) to read as follows:

13 "(5) (A) The Secretary shall appoint to the  
14 Pacific Fishery Management Council one  
15 representative, designated by the Secretary of the  
16 Interior, of an Indian tribe with Federally  
17 recognized fishing rights from California, Oregon,  
18 Washington, or Idaho, from a list of not less than  
19 three individuals submitted by the tribal  
20 governments. The representative shall serve for a  
21 term of three years and may not be reappointed to  
22 the consecutive term.

23 "(B) Representation shall be rotated among  
24 the tribes taking into consideration --

25 (i) the qualifications of the individuals on  
the list referred to in subparagraph (A),

1 (ii) the various treaty rights of the Indian  
2 tribes involved and judicial cases that set forth  
3 how those rights are to be exercised, and

4 (iii) the geographic area in which the tribe of  
5 the representative is located.

6 "(C) A vacancy occurring prior to the  
7 expiration of any term shall be filled in the same  
8 manner set out in subparagraphs (A) and (B),  
9 except that the Secretary may use the list from  
10 which the vacating representative was chosen. A  
11 representative appointed to fill such a vacancy  
12 may not be reappointed to a consecutive term.";  
13 and,

14 (3) by replacing the words "subsection (b) (2)" in  
15 renumbered subsection (6) with the words "subsections (b) (2)  
16 and (5)".

17 (c) Section 302(h) of the Act (16 U.S.C. 1852(h)) is  
18 amended by redesignating subparagraphs (2) through (6) as  
19 subparagraphs (3) through (7), respectively, and by adding a new  
20 subparagraph (2) as follows:

21 "(2) take immediate action to prepare an amendment to  
22 the applicable fishery management plan or to submit proposed  
23 regulations:

24 "(A) to prevent overfishing of a stock or stock  
25 complex, as defined in the fishery management plan,  
26 from occurring whenever such stock or stock complex, as

identified under section 304(h), is determined to be approaching an overfished condition, or

"(B) to stop overfishing of the stock or stock complex, and to restore the stock to a condition that is consistent with producing the maximum sustainable yield when such stock or stock complex is determined to be overfished.

"A Council shall submit a plan amendment or proposed regulations to the Secretary within 1 year from the date of transmittal of the report on the status of stocks, as required under section 304(h), to the Council for those stocks that are approaching a condition of being overfished or are overfished."

(d) Section 302(i) of the Act (16 U.S.C. § 1853(i)) is amended--

(1) in subparagraph (1)(A) by deleting "and" before "(B)";

(2) in subparagraph (1)(B) by deleting the period and replacing it with "; and";

(3) by adding a new subparagraph (1)(C) to read:

"(C) shall be responsible for identifying essential fish habitats.";

(4) by adding a new paragraph (3) as follows:

"(3) By December 31, 1995, and annually thereafter, the Councils shall submit for publication by the Secretary a listing of all essential fish

1 habitats identified pursuant to subparagraph (1) (C) for  
2 all fishery management plans in effect on that date."

3 (e) Section 302(k) of the Act (16 U.S.C. 1852(k)) is  
4 amended by adding a new subparagraph (8) as follows:

5 "(8) (A) An affected individual who has a financial  
6 interest that would be significantly affected by a Council  
7 decision may not participate in the Council's deliberations  
8 relating to that decision, unless such individual receives a  
9 written authorization under subparagraph (B) or (C) below.  
10 An affected individual who may not participate may comment  
11 or testify on the decision as a member of the public.

12 "(B) (i) At the request of an affected individual, or at  
13 the initiative of the appropriate regional director, the  
14 regional director shall make a determination for the record  
15 whether the individual has a financial interest that would  
16 be significantly affected by a Council decision.

17 "(ii) If the regional director determines that an  
18 affected individual's financial interest would be  
19 significantly affected by a Council decision, the regional  
20 director may authorize the individual's participation in the  
21 decision if the director determines in writing that the need  
22 for the individual's participation outweighs the potential  
23 for a conflict of interest.

24 "(C) Any Council member may submit a written request to  
25 the Assistant Administrator for Fisheries, National Oceanic  
26 and Atmospheric Administration, to review any determination

1 by the regional director under subparagraph (B). Such  
2 review shall be completed within 90 days of receipt of the  
3 request.

4 "(D) If the Council makes a decision before the  
5 Assistant Administrator for Fisheries has reviewed a  
6 determination or authorization under subparagraph (C), the  
7 eventual ruling may not be treated as cause for the  
8 invalidation or reconsideration of the decision.

9 "(E) The Secretary is authorized to issue guidelines  
10 with respect to making the determinations under sections  
11 8(A) and (B)."

#### CONTENTS OF FISHERY MANAGEMENT PLANS

13 Sec. 8. Section 303 of the Act (16 U.S.C. 1853) is amended in  
14 its entirety to read as follows:

15 "SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS AND  
16 REGULATIONS.

17 "(a) Fishery Management Plans.--Before undertaking  
18 management of any fishery, the Council or the Secretary shall  
19 prepare a fishery management plan, which shall--

20 "(1) contain a description of the fishery, including,  
21 but not limited to, the number of vessels involved, the type  
22 and quantity of fishing gear used, the species of fish  
23 involved and their location, the cost likely to be incurred  
in management, actual and potential revenues from the

1 fishery, any recreational interest in the fishery, and the  
2 nature and extent of foreign fishing and Indian treaty  
3 fishing rights, if any;

4 "(2) assess the impact of the fishery on the physical  
5 environment, with particular attention to protected species  
6 and habitat, and to any stocks of naturally spawning  
7 anadromous fish in the region;

8 "(3) identify the problems to be addressed and  
9 management objectives to be achieved in regulating the  
10 fishery, and outline the primary alternative approaches to  
11 resolving the problems and achieving the objectives;

12 "(4) specify an objective and measurable definition of  
13 overfishing for each stock or stock complex in the fishery;

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

18 "(6) establish a process for specifying--

19 "(A) the capacity and the extent to which  
20 fishing vessels of the United States, on an annual  
21 basis, will harvest the optimum yield,

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

26 "(C) the capacity and extent to which United

1 States fish processors, on an annual basis, will  
2 process that portion of such optimum yield that  
3 will be harvested by fishing vessels of the United  
4 States;

5 "(7) assess and specify the nature and extent of  
6 scientific data that are needed for effective management of  
7 the fishery; and

8 "(8) contain a description, based on guidelines  
9 developed by the Secretary, of all essential fish habitats  
10 including--

11 "(A) the characteristics that make the habitats  
12 essential to the conservation and management of the  
13 particular fishery for which the plan was prepared;

14 "(B) the threats facing the continued viability of  
15 each essential fish habitat for the long-term  
16 maintenance of the specific fishery;

17 "(C) the adequacy of the existing regulatory  
18 regime in providing long-term protection for these  
19 habitats; and

20 "(D) recommendations for regulatory and non-  
21 regulatory actions that should be considered to ensure  
22 the long-term protection of these habitats.

23 "(b) TRANSITION. Councils are encouraged to prepare  
24 fishery management plans under the new format to replace existing  
25 fishery management plans. However, any fishery management plan  
that has not been replaced by 1 year from enactment shall be

1 deemed a plan for the purposes of the amended Act; the plan's  
2 conservation and management measures shall be deemed deleted from  
3 the document.

4 "(c) REGULATIONS. Regulations promulgated to conserve and  
5 manage a fishery--

6 "(1) shall contain the conservation and management  
7 measures, applicable to foreign fishing and fishing by  
8 vessels of the United States, that are--

9 "(A) necessary and appropriate for the  
10 conservation and management of the fishery to prevent  
11 overfishing, and to protect, restore, and promote the  
12 long-term health and stability of the fishery;

13 "(B) described in this subsection; and

14 "(C) consistent with the national standards, the  
15 other provisions of this Act, regulations implementing  
16 recommendations by international organizations in which  
17 the United States participates (including but not  
18 limited to closed areas, quotas, and size limits), and  
19 any other applicable law;

20 "(2) shall specify the pertinent data that shall be  
21 submitted to the Secretary with respect to the fishery,  
22 including, but not limited to, information regarding the  
23 type and quantity of fishing gear used, catch by species in  
24 numbers of fish or weight thereof, areas in which fishing  
25 was engaged in, time of fishing, number of hauls, and the  
26 estimated processing capacity of, and the actual processing



1 capacity utilized by, United States fish processors;

2       " (3) may consider and provide for temporary  
3 adjustments, after consultation with the Coast Guard and  
4 persons utilizing the fishery, regarding access to the  
5 fishery for vessels otherwise prevented from harvesting  
6 because of weather or other ocean conditions affecting the  
7 safe conduct of the fishery; except that the adjustment  
8 shall not adversely affect conservation efforts in other  
9 fisheries or discriminate among participants in the affected  
10 fishery;

11       " (4) may require a permit to be obtained from the  
12 Secretary, with respect to--

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

17               " (B) the operator of any such vessel;

18               " (C) any United States fish processor who first  
19 receives fish that are subject to the regulations;

20       " (5) may designate zones where, and periods when,  
21 fishing shall be limited, or shall not be permitted, or  
22 shall be permitted only by specified types of fishing  
23 vessels or with specified types and quantities of fishing  
24 gear;

25       " (6) may establish specified limitations on the catch  
of fish (based on area, species, size, number, weight, sex,

1 incidental catch, total biomass, or other factors), which  
2 are necessary and appropriate for the conservation and  
3 management of the fishery;

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

9 "(8) may incorporate (consistent with the national  
10 standards, the other provisions of this Act, and any other  
11 applicable law) the relevant fishery conservation and  
12 management measures of the coastal States nearest to the  
13 fishery;

14 "(9) (A) may establish a system for limiting access to  
15 the fishery in order to achieve optimum yield if, in  
16 developing such system, the Council and the Secretary  
17 take into account--

- 18 (i) present participation in the fishery,  
19 (ii) historical fishing practices in, and  
20 dependence on, the fishery,  
21 (iii) the economics of the fishery,  
22 (iv) the capability of fishing vessels used  
23 in the fishery to engage in other fisheries,  
24 (v) the cultural and social framework  
25 relevant to the fishery, and  
26 (vi) any other relevant considerations;

1           "(B) However, regulations may not establish such a  
2 limited access system, except for fisheries managed  
3 under section 304(g) (3), unless such system is first  
4 approved by a majority of the voting members, present  
5 and voting, of each appropriate Council;

6           "(10) may require fish processors who first receive  
7 fish that are subject to the regulations to submit data  
8 which are necessary for the conservation and management of  
9 the fishery;

10           "(11) may require that observers be carried on board a  
11 vessel of the United States engaged in fishing for species  
12 that are subject to the regulations, for the purpose of  
13 collecting data necessary for the conservation and  
14 management of the fishery; except that such a vessel shall  
15 not be required to carry an observer on board if the  
16 facilities of the vessel for the quartering of an observer,  
17 or for carrying out observer functions, are so inadequate or  
18 unsafe that the health or safety of the observer or the safe  
19 operation of the vessel would be jeopardized; and

20           "(12) may prescribe such other measures, requirements,  
21 or conditions and restrictions as are determined to be  
22 necessary and appropriate for the conservation and  
23 management of the fishery.

24           "(d) CONFIDENTIALITY OF STATISTICS.--Any statistic submitted  
25 to the Secretary by any person in compliance with any requirement  
under regulations promulgated under section 305 shall be

1 confidential and shall not be disclosed, for a period of three  
2 years following the year of submission to the Secretary, except--

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

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

8 " (3) when required by court order.

9 "The Secretary shall, by regulation, prescribe such procedures as  
10 may be necessary to preserve such confidentiality, except that  
11 the Secretary may release or make public any such statistics in  
12 any aggregate or summary form which does not directly or  
13 indirectly disclose the identity or business of any person who  
14 submits such statistics. Nothing in this subsection shall be  
15 interpreted or construed to prevent the use for conservation and  
16 management purposes by the Secretary, or with the approval of the  
17 Secretary, the Council, of any statistic submitted in compliance  
18 with a requirement under regulations promulgated under section  
19 305.

20 " (e) RESTRICTION ON USE OF CERTAIN DATA.--The Secretary  
21 shall promulgate regulations to restrict the use, in civil  
22 enforcement or criminal proceedings under this Act, the Marine  
23 Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), or the  
24 Endangered Species Act (16 U.S.C. 1531 et seq.), of information  
25 collected by voluntary fishery data collectors, including sea  
26 samplers, while aboard any vessel for conservation and management

1 purposes if the presence of such a fishery data collector aboard  
2 is not required by any of such Acts or regulations thereunder."

3 PRE-RULEMAKING PROCEDURES

4 Sec. 9. Section 304 of the Act - ACTION BY THE SECRETARY (16  
5 U.S.C. 1854) is amended in its entirety to read as follows:

6 "SEC. 304. PRE-RULEMAKING PROCEDURES

7 "(a) DATA COLLECTION PROGRAMS.--

8 (1) If a Council determines that additional  
9 information and data (other than information and data that  
10 would disclose proprietary or confidential commercial or  
11 financial information regarding fishing operations or fish  
12 processing operations) would be beneficial for the purposes  
13 of determining whether a fishery is in need of management,  
14 the Council may request that the Secretary implement a data  
15 collection program for the fishery which would provide the  
16 types of information and data (other than information and  
17 data that would disclose proprietary or confidential  
18 commercial or financial information regarding fishing  
19 operations or fish processing operations) specified by the  
20 Council. The Secretary shall approve such a data collection  
21 program if he determines that the need is justified, and  
22 shall promulgate regulations to implement the program within  
23 60 days after such determination is made. If the Secretary  
1 determines that the need for a data collection program is

1 not justified, the Secretary shall inform the Council of the  
2 reasons for such determination in writing. The  
3 determinations of the Secretary under this subsection  
4 regarding a Council request shall be made within a  
5 reasonable period of time after he receives that request.

6 "(2) The Secretary shall establish by regulation a  
7 nation-wide mandatory data collection program to provide  
8 basic fisheries performance data. The program shall--

9 "(A) integrate data collection programs under  
10 existing fishery management plans into a non-  
11 duplicative data collection and management system;

12 "(B) include all species of fish within the  
13 geographical areas of authority of the Councils; and

14 "(C) coordinate with other data collection  
15 programs conducted by the Secretary, other Federal  
16 agencies, or by the States, to ensure completeness and  
17 to avoid duplication.

18 "(b) FISHERIES RESEARCH.--

19 "(1) The Secretary shall initiate and maintain, in  
20 cooperation with the Councils, a comprehensive program of  
21 fishery research to carry out and further the purposes,  
22 policy, and provisions of this Act. Such program shall be  
23 designed to acquire knowledge and information, including  
24 statistics, on fishery conservation and management and on  
25 the economics of the fisheries.

26 "(2) Within one year after the date of enactment of the

1 Fishery Conservation Amendments of 1990, and at least every  
2 three years thereafter, the Secretary shall develop and  
3 publish in the Federal Register a strategic plan for  
4 fisheries research for the five years immediately following  
5 such publication. The plan shall--

6 " (A) identify and describe a comprehensive program  
7 with a limited number of priority objectives for  
8 research in each of the areas specified in paragraph  
9 (2);

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

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

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

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

24 " (B) Conservation engineering research, including  
25 the study of fish behavior and the development and  
testing of new gear technology and fishing techniques

1 to minimize the harvest of nontarget species and  
2 promote efficient harvest of target species.

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

8 " (4) In developing the plan required under paragraph  
9 (1), the Secretary shall consult with relevant Federal  
10 agencies, scientific and technical experts, and other  
11 interested persons, public and private, and shall publish a  
12 proposed plan in the Federal Register for the purpose of  
13 receiving public comment on the plan. The Secretary shall  
14 ensure that affected commercial fishermen are actively  
15 involved in the development of the portion of the plan  
16 pertaining to conservation engineering research. Upon final  
17 publication in the Federal Register, the plan shall be  
18 submitted by the Secretary to the Committee on Commerce,  
19 Science, and Transportation of the Senate and the Committee  
20 on Merchant Marine and Fisheries of the House of  
21 Representatives.

22 " (c) INCIDENTAL HARVEST RESEARCH.--

23 " (1) Within 9 months after the date of enactment of the  
24 Fishery Conservation Amendments of 1990, the Secretary  
25 shall, after consultation with the Gulf of Mexico Fishery  
26 Management Council and South Atlantic Fishery Management



1 Council, establish by regulation a 3-year program to assess  
2 the impact on fishery resources of incidental harvest by the  
3 shrimp trawl fishery within the authority of such Councils.

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

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

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

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

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

1 activity.

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

12 "(5) The Secretary shall, upon completion of the  
13 programs required by this subsection, submit a detailed  
14 report on the results of such programs to the Committee on  
15 Commerce, Science, and Transportation of the Senate and the  
16 Committee on Merchant Marine and Fisheries of the House of  
17 Representatives.

18 "(d) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.-- After  
19 the Secretary receives a fishery management plan, or amendment to  
20 such plan, which was prepared by a Council, the Secretary shall--

21 "(1) immediately commence a review of the management  
22 plan or amendment to determine whether it is consistent with  
23 the national standards, the other provisions of this Act,  
24 and any other applicable law; and

25 "(2) immediately publish in the Federal Register a  
26 notice stating that the plan or amendment is available and

1 that written data, views, or comments of interested persons  
2 on the document or amendment may be submitted to the  
3 Secretary during the 45-day period beginning on the date the  
4 notice is published.

5 "(e) REVIEW BY THE SECRETARY.--

6 "(1) In undertaking the review required under paragraph  
7 (d) (1), the Secretary shall--

8 "(A) take into account the data, views, and  
9 comments received from interested persons;

10 "(B) consult with the Secretary of State with  
11 respect to foreign fishing;

12 "(C) consult with the Secretary of the department  
13 in which the Coast Guard is operating with respect to  
14 enforcement at sea and to fishery access adjustments  
15 referred to in section 303(c) (3); and

16 "(D) consult with the Secretary of the Interior  
17 with respect to plans that affect anadromous  
18 fisheries."

19 "(2) The Secretary shall approve, disapprove, or  
20 partially disapprove a plan or amendment within 30 days of  
21 the end of the comment period under subsection (d) (2) by  
22 written notice to the Council. A notice of disapproval or  
23 partial disapproval shall specify--

24 "(A) the applicable law with which the plan or  
25 amendment is inconsistent;

"(B) the nature of such inconsistency(ies); and

1           "(C) recommendations concerning the actions that  
2 could be taken by the Council to conform such plan or  
3 amendment to the requirements of applicable law.

4           "(3) (A) If the Secretary disapproves or partially  
5 disapproves a plan or amendment, the Council may submit  
6 a revised plan or amendment to the Secretary.

7           "(B) After the Secretary receives a revised plan  
8 or amendment the Secretary shall follow the procedures  
9 specified in subsections (d) and (e).

10          "(f) PREPARATION BY THE SECRETARY.--

11           "(1) The Secretary may prepare a fishery management  
12 plan, with respect to any fishery, or any amendment to any  
13 such plan, in accordance with the national standards, the  
14 other provisions of this Act, and any other applicable law,  
15 if--

16           "(A) the appropriate Council fails to develop and  
17 submit to the Secretary, after a reasonable period of  
18 time, a fishery management plan for such fishery, or  
19 any necessary amendment to such plan, if such fishery  
20 requires conservation and management; or

21           "(B) the Secretary disapproves or partially  
22 disapproves any such plan or amendment, or disapproves  
23 a revised plan or amendment, and the Council involved  
24 fails to submit a revised or further revised plan or  
25 amendment, as the case may be.

26          " In preparing any such plan or amendment, the Secretary

1 shall consult with the Secretary of State with respect to  
2 foreign fishing and with the Secretary of the department in  
3 which the Coast Guard is operating with respect to  
4 enforcement at sea.

5       "(2) The Secretary shall prepare a fishery management  
6 plan amendment or proposed regulations if the appropriate  
7 Council fails to submit an amendment or proposed regulations  
8 to the Secretary, under section 302(h)(2), within 1 year  
9 after determining that any managed stock is overfished.

10       "(3) (A) Whenever, under paragraph (1), the Secretary  
11 prepares a fishery management plan or amendment, the  
12 Secretary shall immediately--

13               "(i) submit such plan or amendment to the  
14 appropriate Council for consideration and comment;

15               "(ii) publish in the Federal Register a  
16 notice stating that the plan or amendment is  
17 available and that written data, views, or  
18 comments of interested persons on the plan or  
19 amendment may be submitted to the Secretary during  
20 the 45-day period beginning on the date the notice  
21 is published.

22       "(B) The appropriate Council must submit its  
23 comments and recommendations, if any, regarding the  
24 plan or amendment to the Secretary before the close of  
25 the 45-day period referred to in subparagraph (A)(ii).  
After the close of such 45-day period, the Secretary,

1 after taking into account any such comments and  
2 recommendations, as well as any views, data, or  
3 comments submitted under subparagraph (A) (ii), may  
4 adopt such plan or amendment.

5 "(g) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.--

6 "(1) Except as provided in paragraph (3), if any  
7 fishery extends beyond the geographical area of authority of  
8 any one Council, the Secretary may--

9 "(A) designate which Council shall prepare the  
10 fishery management plan for such fishery and any  
11 amendment to such plan, and prepare proposed  
12 regulations for such fishery;

13 "(B) may require that the plan, amendment, and  
14 proposed regulations be prepared jointly by the  
15 Councils concerned.

16 "No jointly prepared fishery management plan, amendment, or  
17 proposed regulations may be submitted to the Secretary,  
18 unless approved by a majority of the voting members, present  
19 and voting, of each Council concerned.

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

23 "(3) (A) The Secretary shall have authority over any  
24 highly migratory species fishery that is within the  
25 geographical area of authority of more than one of the  
26 following Councils: New England Council, Mid-Atlantic

1 Council, South Atlantic Council, Gulf Council, and  
2 Caribbean Council.

3 "(B) In accordance with the provisions of this Act  
4 and any other applicable law, the Secretary shall-

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

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

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

19 "(C) In preparing or amending any fishery  
20 management plan and in promulgating any regulations for  
21 fisheries covered by this paragraph, the Secretary  
22 shall--

23 "(i) conduct public hearings, at appropriate  
24 times and in appropriate locations in the  
25 geographical areas concerned, so as to allow  
26 interested persons an opportunity to be heard in

1 the preparation and amendment of the plan and  
2 regulations;

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

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

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

16 "(v) review, on a continuing basis (and  
17 promptly whenever a recommendation pertaining to  
18 fishing for highly migratory species has been made  
19 under a relevant international fishery agreement),  
20 and revise as appropriate, the conservation and  
21 management measures for the fishery.

22 "(D) Conservation and management measures adopted  
23 under this paragraph shall--

24 "(i) take into consideration traditional  
25 fishing patterns of fishing vessels of the United  
26 States and the operating requirements of the





1           "(1) The Council may submit proposed regulations  
2 consistent with an approved plan or amendment, following  
3 public hearings as specified in section 302(h), for action  
4 by the Secretary under this section.

5           "(A) Such regulations shall be accompanied by a  
6 fishery impact statement which shall assess, specify,  
7 and describe the likely effects, if any, of the  
8 regulations on--

9           "(i) participants in the fisheries affected  
10 by the regulations; and

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

15           "(B) After the Secretary receives proposed  
16 regulations prepared by a Council, the Secretary shall  
17 immediately make a preliminary evaluation of the  
18 proposed regulations for purposes of deciding if they  
19 are consistent with the fishery management plan and the  
20 national standards.

21           "(C) If that decision is affirmative, the  
22 Secretary shall immediately publish such regulations,  
23 with such changes as may be necessary for clarity or  
24 enforceability, in the Federal Register, together with  
25 an explanation of those changes.

26           "(D) If that decision is negative, the Secretary

1 shall notify the Council in writing of the  
2 inconsistencies.

3 "(2) The Secretary may promulgate proposed regulations  
4 consistent with any plan or amendment prepared by the  
5 Secretary.

6 "(3) The comment period on proposed regulations shall  
7 be 45 days, except that the Secretary may shorten the  
8 comment period on minor revisions to existing rules.

9 "(b) IMPLEMENTATION.--The Secretary shall promulgate final  
10 regulations within 45 days after the end of the comment period  
11 under subsection (a)(3). The Secretary must publish an  
12 explanation of any substantive differences between the proposed  
13 and final rules. All final regulations must be consistent with  
14 the plan, with the national standards and other provisions of  
15 this Act, and with any other applicable law.

16 "(c) EMERGENCY ACTIONS.--

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

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

25 "(A) the Secretary shall promulgate emergency  
regulations under paragraph (1) to address the

1 emergency if the Council, by unanimous vote of the  
2 members who are voting members, requests the taking of  
3 such actions; and

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

8 "(3) Any emergency regulation which is inconsistent  
9 with an existing fishery management plan shall be treated as  
10 an amendment to such document for the period in which such  
11 regulation is in effect. Any emergency regulation  
12 promulgated under this subsection--

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

15 "(B) shall remain in effect for not more than 90  
16 days after the date of publication, except that any  
17 such regulation may be promulgated for an additional  
18 period of not more than 270 days, provided the public  
19 has had an opportunity to comment on the emergency  
20 regulation, and, in the case of a Council  
21 recommendation for emergency regulations, the Council  
22 is actively preparing a fishery management plan,  
23 amendment, or proposed regulations to address the  
24 emergency on a permanent basis;

25 "(C) that responds to a public health emergency  
26 may remain in effect until the circumstances that

1 created the emergency no longer exist, provided the  
2 public has an opportunity to comment after the  
3 regulation is published; and

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

10 "(d) ESTABLISHMENT OF FEES.--

11 "(1) The Secretary may establish fees for any permit  
12 issued pursuant to this Act. The level of any such fees  
13 shall be fair and equitable to all participants in the  
14 fisheries, and meet the requirements of section 9701(b) of  
15 title 31, United States Code. The Secretary may enter into  
16 a cooperative agreement with the States concerned, under  
17 which the States administer the permit system; the agreement  
18 may provide that all or part of the fees collected under  
19 this system shall accrue to the States.

20 "(2) The Secretary may establish fees by regulation to  
21 pay the costs of implementing conservation and management  
22 measures authorized by this Act, when it is determined by  
23 the Secretary that participants in the fishery will receive  
24 direct and substantial benefits from such measures. The  
level of any such fees shall be fair and equitable to all

1 participants in the fisheries, and meet the requirements of  
2 section 9701(b) of title 31, United States Code.

3 "(3) The Secretary shall establish fees on the value  
4 of fish authorized to be taken under individual harvest  
5 shares assigned to persons or vessels pursuant to a limited  
6 access system. Fees assessed under this paragraph shall not  
7 exceed 3 percent annually of the value of fish authorized to  
8 be taken under individual harvest shares. The Secretary  
9 shall, by regulation, prescribe the method of determining  
10 the value of fish authorized to be taken by such shares, the  
11 amount of each respective fee on an annual basis, and the  
12 method of collecting such fees.

13 "(4) The Secretary shall establish fees on the ex-  
14 vessel value of all fish upon the first sale within the  
15 jurisdiction of the United States. Fees under this  
16 paragraph shall not exceed one percent of the value of such  
17 fish. The Secretary shall, by regulation, prescribe the  
18 method of determining the value of such fish and the method  
19 of collecting such fees.

20 "(e) FEES CONTINGENT ON APPROPRIATIONS.--The fees  
21 authorized in subsection (d) shall be collected, credited to the  
22 Operations, Research, and Facilities appropriation, and available  
23 until expended for the purposes specified in subsection (f), only  
24 to the extent and in the amounts provided in advance in  
25 appropriations acts.

26 "(f) USE OF FEES.--Fees authorized in subsection (d) may be

1 expended for the following purposes --

2 " (1) collecting, processing, and analyzing economic,  
3 social, biological, and statistical information concerning  
4 marine recreational and commercial fishing and supporting  
5 activities;

6 " (2) placing observers on domestic fishing vessels;

7 " (3) conducting scientific research and publishing  
8 information concerning abundance, distribution, and ecology  
9 of marine fish;

10 " (4) conserving and managing stocks of marine fish,  
11 including, but not limited to, developing, monitoring, and  
12 implementing fishery management plans and regulations;

13 " (5) improving enforcement of marine conservation  
14 programs;

15 " (6) educating resource users and the general public  
16 on aspects of marine conservation programs;

17 " (7) carrying out the other provisions of this Act;

18 and

19 " (8) reducing harvesting capacity, including the  
20 removal from a fishery of fishing vessels and permits issued  
21 by the U.S. Government for fishing privileges if the  
22 Secretary finds that--

23 " (A) the fishery, for which a fishery management  
24 plan is prepared, is determined to be overfished as  
25 defined within that plan;

" (B) the fishery is materially affected by a

1 fishery management plan's stock recovery requirements;

2 " (C) the fishery is economically depressed; and

3 " (D) the fishery is managed pursuant to a

4 limited access program under section 303(c) (9) of the

5 Act.

6 " (g) RESPONSIBILITY OF THE SECRETARY.-- The Secretary shall

7 have general responsibility to carry out the provisions of this

8 Act. The Secretary may promulgate such regulations, in

9 accordance with section 553 of title 5, United States Code, as

10 may be necessary to discharge such responsibility.

11 " (h) EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.--

12 The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the

13 Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive

14 Order Numbered 12866, dated September 30, 1993, shall be complied

15 with within the time limitations specified in subsection (b) as

16 they apply to the functions of the Secretary under such

17 provisions.

18 " (i) JUDICIAL REVIEW.--

19 " (1) Regulations promulgated by the Secretary under

20 this Act and actions described in paragraph (2) shall be

21 subject to judicial review to the extent authorized by, and

22 in accordance with, chapter 7 of title 5, United States

23 Code, if a complaint for such review is filed within 30 days

24 after the date on which the regulations are promulgated or

25 the action is published in the Federal Register, as

26 applicable; except that--



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

3           "(B) the appropriate court shall only set aside  
4           any such regulation or action on a ground specified in  
5           section 706(2)(A), (B), (C), or (D) of such title.

6           "(2) The actions referred to in paragraph (1) are  
7           actions that are taken by the Secretary under regulations  
8           which implement a fishery management plan, including but not  
9           limited to actions that establish the date of closure of a  
10          fishery to commercial or recreational fishing.

11          "(3) (A) Notwithstanding any other provision of law,  
12          the Secretary shall file a response to any complaint  
13          filed in accordance with paragraph (1), not later than  
14          45 days after the date the Secretary is served with  
15          that complaint, except that the appropriate court may  
16          extend the period for filing such a response upon a  
17          showing by the Secretary of good cause for that  
18          extension.

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

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

1 STATE JURISDICTION

2 Sec. 11. Section 306(c)(1) of the Act (16 U.S.C. § 1856(c)(1)) is  
3 amended by--

4 (a) deleting the word "and" from subparagraph 1(A);

5 (b) deleting the period from the end of subparagraph (B) and  
6 replacing it with "; and"; and

7 (c) by inserting immediately after subparagraph (B) the  
8 following new subparagraph:

9 "(C) the owner or operator of the vessel submits  
10 reports on the tonnage of fish received from U.S. vessels  
11 and the locations from which such fish were harvested, in  
12 accordance with such procedures as the Secretary by  
13 regulation shall prescribe."

14 PROHIBITED ACTS

15 Sec. 12. (a) Section 307(1)(L) of the Act (16 U.S.C. § 1857(1)(L))  
16 is amended to read as follows:

17 "(L) to forcibly assault, resist, oppose, impede,  
18 intimidate, or interfere with any observer on a vessel under  
19 this Act, or any data collector employed by or under  
20 contract to the National Marine Fisheries Service;"

21 (b) Section 307(1)(M) of the Act (16 U.S.C. § 1857(1)(M))  
22 is amended by deleting "; or" after the word "nation" and  
23 inserting the following:

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", provided that--

"(i) a vessel used to engage in large-scale driftnet fishing is deemed to be subject to the jurisdiction of the United States if it is used to engage in such fishing shoreward of the outer boundary of the exclusive economic zone of the United States, it is a vessel of the United States, it is a stateless vessel, or it is a foreign-flag vessel and the flag-state authorizes the United States to exercise jurisdiction over it, and

"(ii) it shall be a rebuttable presumption that any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has onboard gear that is capable of use for large-scale driftnet fishing, is engaged in such fishing; or".

(c) Section 307(2)(A) of the Act (16 U.S.C. § 1857(2)(A)) is amended to read as follows:

"(A) in fishing within the boundaries of any State, except--

"(i) recreational fishing permitted under section 201(i),

"(ii) fish processing permitted under section 306(c), or

"(iii) transshipment at sea of fish products within the boundaries of any State in accordance with a permit approved under section 204(b)(6)(A)(ii);".

1 (d) Section 307(3) of the Act (16 U.S.C. § 1857(3)) is  
2 amended to read:

3 "(3) for any vessel of the United States, and for the  
4 owner or operator of any vessel of the United States,  
5 to transfer at sea directly or indirectly, or attempt  
6 to so transfer at sea, any United States harvested fish  
7 to any foreign fishing vessel, while such foreign  
8 vessel is within the exclusive economic zone or within  
9 the boundaries of any State except to the extent that  
10 the foreign fishing vessel has been permitted under  
11 section 204(b)(6)(B) or section 306(c) to receive such  
12 fish;"

13 (e) Section 307(4) of the Act (16 U.S.C. § 1857(4)) is  
14 amended by adding after the word "zone" the following phrase, "or  
15 within the boundaries of any State".

16 CIVIL PENALTIES AND PERMIT SANCTIONS

17 Sec. 13. (a) Section 308(b) of the Act (16 U.S.C. § 1858(b)) is  
18 amended by deleting the first sentence and substituting the  
19 following:

20 "Any person against whom a civil penalty is assessed under  
21 subsection (a), or against whom a permit sanction is imposed  
22 under subsection (g) (other than a permit suspension for  
23 nonpayment of penalty or fine), may obtain review thereof in  
24 the United States district court for the appropriate

1 district by filing a complaint against the Secretary in such  
2 court within 30 days from the date of such order."

3 (b) Section 308(g) (1) (C) of the Act (16 U.S.C.  
4 1858(g) (1) (C)) is amended to read as follows:

5 "(C) any amount in settlement of a civil forfeiture  
6 imposed on a vessel or other property, or any civil penalty  
7 or criminal fine imposed on a vessel or owner or operator of  
8 a vessel or any other person who has been issued or has  
9 applied for a permit under any fishery resource law statute  
0 enforced by the Secretary, has not been paid and is overdue,  
1 the Secretary may--".

2 **ENFORCEMENT**

3 Sec. 14. (a) Section 311(e) (1) of the Act (16 U.S.C. §  
4 1861(e) (1)) is amended by--

5 (1) substituting the word "marine" for the word  
6 "fishery" in the chapeau, and in subparagraphs (A) and (B);  
7 and

8 (2) by amending subparagraph (E) to read as follows:

9 "(E) claims of parties in interest to  
0 property disposed of under section 612(b) of the  
1 Tariff Act of 1930 (19 U.S.C. § 1612(b)), as made  
2 applicable by section 310(c) of this Act or by any  
3 other marine resource law enforced by the  
4 Secretary, to seizures made by the Secretary, in

1 amounts determined by the Secretary to be  
2 applicable to such claims at the time of seizure;  
3 and".

4 (b) Section 311(e) (2) of the Act (16 U.S.C. § 1861(e) (2))  
5 is amended to read as follows:

6 "(2) Any person found in an administrative or judicial  
7 proceeding to have committed any violation of this Act or  
8 any other marine resource law enforced by the Secretary  
9 shall be liable for the cost incurred in the sale, storage,  
10 care, and maintenance of any fish or other property seized  
11 in connection with the violation."

#### 12 OBSERVERS WAGES AS MARITIME LIENS

13 Sec. 15. The Act is amended by adding the following new section:

14 "Sec. 312. OBSERVERS' WAGES AS SEAMEN'S LIENS.--Claims for  
15 observers' wages shall be considered maritime liens against the  
16 vessel and be accorded the same priority as seamen's liens under  
17 admiralty and general maritime law."

#### 18 CONFORMING AMENDMENTS

19 Sec. 16. (a) Section 2(b) (4) of the Act is amended by replacing  
20 the words "fishery management plan" with the words "conservation  
21 and management measures".

22 (b) Section 2(b) (5) of the Act is amended by replacing,

each time it appears, the word "plans" with the word "measures".

(c) Section 3(31) of the Act is amended by replacing the words "for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented" with the words "regulated under this Act".

(d) Section 201(c) of the Act is amended by deleting the phrase ", including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan".

(e) Section 201 of the Act (16 U.S.C. § 1821) is amended by replacing "(g)" in subsection (a)(2) with "(f)" and by replacing "(i)" in subsection (c)(2)(D) with "(h)".

(f) Section 201(g) of the Act is amended by replacing the words "no fishery management plan for that fishery will be prepared and implemented" with the words "no regulations for that fishery will be promulgated"; by replacing the phrase "303(a)(5)" with the phrase "303(c)(2)"; by replacing the phrase "303(b)(2), (3), (4), (5), and (7)" with the phrase "303(c)(5), (6), (7), (8), and (10)"; by replacing the words "a fishery management plan is prepared and implemented" with the words "regulations are promulgated"; and, in the final sentence, by deleting the words "implementing the applicable fishery management plan".

(g) Section 201(h) of the Act is amended by replacing the words "management plans" with the word "regulations".

(h) Section 201(i) of the Act is amended by replacing the

1 words "fishery management plan implemented" with the words  
2 "regulations promulgated".

3 (i) Section 204(b)(7)(A) of the Act is amended to read as  
4 follows:

5 "(A) All of the requirements of regulations promulgated  
6 under section 201(g) or under title III."

7 (j) Section 302(h)(3) of the Act (16 U.S.C. § 1852(h)) is  
8 amended by replacing "204(b)(4)(C)" with "204(b)(4)(A)(iii)".

9 (k) Section 302(h)(4) of the Act is amended by replacing  
10 the words "fishery management plans and amendments to such plans"  
11 with the words "regulations".

12 (l) Section 302(h)(6) of the Act is amended by replacing  
13 the phrase "303(a)(3) and (4)" with the phrase "303(a)(5) and  
14 (6)", and by replacing the phrase "304(f)(3)" with the phrase  
15 "304(g)(3)".

16 (m) Section 306(b)(1) of the Act is amended by replacing,  
17 in subsection (A), the words "covered by a fishery management  
18 plan implemented" with the word "regulations promulgated"; by  
19 replacing, in subsection (B), the words "fishery management plan"  
20 with the word "regulations"; and by replacing the words "such  
21 fishery management plan and the regulations promulgated to  
22 implement such plan" with the word "regulations promulgated for  
23 such fishery".

24 (n) Section 307(1)(J)(i) of the Act is amended by deleting  
25 the words "American Lobster Fishery Management Plan, as  
26 implemented by" and the words ", or any successor to that plan,



implemented under this title".

2 (o) Section 307(2)(B) of the Act (16 U.S.C. § 1857(2)(B))  
3 is amended by replacing "201(j)" with "201(i)".

4 (p) Section 311(f) of the Act is amended by replacing the  
5 words "Fishery Management Plan" in the subhead with the word  
6 "Regulations"; by replacing the words "Fishery Management Plan"  
7 in subsection (1) with the word "regulations"; by replacing the  
8 words "fishery management plan approved" in subsection (2) with  
9 the words "regulations promulgated"; by replacing the words  
10 "under the Northeast Multispecies Fishery Management Plan" in  
11 subsection (3) with the words "for the Northeast Multispecies  
12 fishery"; and by replacing, in subsection (4), the words "Fishery  
13 Management Plan" with the word "regulations" and the words "that  
14 Plan" with the words "those regulations".

15 (q) Section 314(c) of the Act is amended by revising the  
16 subhead to read "MANAGEMENT OF UNDERUTILIZED SPECIES"; by adding  
17 the phrase "and regulations" after "fishery management plans";  
18 and by replacing the words "covered under such a plan" with the  
19 words "regulated under this Act".

#### 20 AUTHORIZATION OF APPROPRIATIONS

21 Sec. 17. Section 406 of the Act (16 U.S.C. § 1882) is amended by  
22 adding at the end the following new paragraph:

23 "(20) \$103,218,000 for the fiscal year ending  
24 September 30, 1994, \$142,502,000 for the fiscal year ending  
25 September 30, 1995, and such sums as may be necessary for  
26 fiscal year 1996."