

**Comparison of H.R. 39¹ and S. 39²
to Amend the Magnuson Fishery Conservation and Management Act**

Issue	H.R. 39	S. 39
Bycatch	<p>Defines as fish harvested but not sold or kept for personal use, including economic and regulatory discards. Defines economic and regulatory discards. (p. 5) New national standard #8 to minimize bycatch (p. 12). Adds reference in policy section. (p. 3) Fishery management plans (FMP) shall require bycatch data from fisheries, must include measures to minimize bycatch and minimize mortality caused by economic and regulatory discards. (pp. 5,12, 21, 22) Adds discretionary provision on assessing impacts of fisheries on non-targeted stocks and ecosystem. (p. 23) Adds discretionary provision to allow incentives and harvest preferences within gear groups to avoid bycatch, and to specify allowable gear groups, and to identify allowable gear groups and process for evaluating new gear technology, and to reserve portion of ABC for research (p. 24). Adds study on bycatch contributions to charitable organizations. (pp. 71-72)</p>	<p>Same definitions as H.R. 39. FMPs must assess bycatch and minimize mortality caused by economic and regulatory discards. May include harvest preferences and incentives (pp. 4, 5, 7, 33, 34, 93)</p>
Voting Member Qualifications	<p>Adds academic training, marine conservation advocacy and affiliation with non-user groups as selection criteria. (p. 13)</p>	<p>No change.</p>
Conflict of Interest	<p>Secretary of Commerce (SOC) shall remove any appointed member who violates new provisions. SOC to establish rules within 1 year prohibiting affected individuals from voting if interest significantly affected. National Oceanic and Atmospheric Administration general counsel to determine when a violation would occur. "Significantly affected" means a financial interest shared only by a minority of persons within the same sector or gear group. (pp. 13, 17-20)</p>	<p>Appointed member shall not vote if there is a significant and predictable effect on financial interest. "Significant and predictable" means there is a close causal link between decision and benefit shared only by minority of persons within same sector. Designated official to determine if a violation would occur. SOC to issue guidelines on recusal. (pp. 28-31)</p>

¹All page references are to May 20, 1995, 1:23 p.m. draft of H.R. 39.

²All page references are to original bill introduced on January 4, 1995.

Issue	H.R. 39	S. 39
Mid-Atlantic Council Membership	Adds North Carolina and boosts membership by two, to 21. (pp. 12-13)	No change.
Council Member Compensation	Reduce to GS 15-1 effective 1-1-96. Reduces pay from \$312.52 per day to \$260.44. (pp. 13-14)	No change.
Council Procedures	Written and oral statements shall include qualifications and interest of testifiers. Detailed minutes must be kept and all reports are part of minutes. (p. 16) Two or more members may add agenda items 21 days before meeting; two or more members need to sign request. Any voting member may request a roll call vote. (pp. 14, 16-17)	Same as H.R. 39, except any interested person may propose to modify agenda if signed by at least 2 members 14 days before meeting. (pp. 19, 26-27)
Habitat	Add habitat reference to findings and purposes of Act. (pp. 1-2) Defines "essential fishery habitat." (p. 6) Councils must notify SOC if any state or federal action impacts essential fish habitat. Federal agencies must respond within 15 days. FMPs must include description of essential habitat (p. 21) and may include measures necessary to minimize adverse impacts of fishing on habitat. (p. 24) SOC to identify essential habitat and must comment on any federal actions which may impact essential habitat. (pp. 2, 3, 5, 14-15, 21, 24, 29-31)	FMPs must summarize habitat information and identify federal actions necessary to protect habitat. SOC shall identify essential fish habitat and must comment on federal actions which impact essential habitat. (pp. 3, 4, 5, 32, 56-57)
Fishery Dependent Communities (FDC)/ Community Development Quotas	Establishes CDQ authority for Bering Sea. (pp. 43-44)	New national standard requires that measures take into account the importance of fisheries to fishery dependent communities (FDCs). FDCs eligible for economic assistance under sustainable development strategy or disaster relief program. (pp. 5, 16)
Fees	Requires observer fees for any observer program within 18 months. (pp. 22-23) Also see fees under ITQs.	Requires fees to be assessed for ITQs and allows fees to be assessed for industry share of buyback programs (p. 51) . (also see below under IFQs and sustainable fisheries).

Overfishing	Includes definition of overfishing which is same as 602 rules. Definition of OY is changed for overfished stocks (p. 4) Defines rebuilding as measures needed to restore ability of a stock to produce maximum sustainable yield on a continuing basis. FMPs must include definition of overfishing and rebuilding programs for overfished stocks. SOC to notify councils if overfishing is occurring and will intervene if council fails to act within 1 year Requires rebuilding schedule not to exceed 10 years. (pp. 6, 21, 31-35)	Optimum yield definition is changed to account for protection of marine ecosystems and to provide for rebuilding of overfished stocks. Defines overfishing as in H.R. 39. National standard 1 is revised to address rebuilding. SOC to report annually to Congress and councils identifying overfished stocks. Requires councils to prepare plans or plan amendments to prevent overfishing. Rebuilding schedules may not exceed 10 years except under extraordinary circumstances. SOC will act if council fails to do so in 1 year. (pp. 6-7, 15, 33, 37, 54-56)
Review of Regulations	Establishes 75-day time limit on SOC review of regulatory amendments. Public comment period ranges from 15 to 45 days. SOC may publish a final regulation on the subject matter or decline to publish a final regulation, and must provide to council in writing an explanation of the reasons for the action. (pp. 35-37)	Establishes 65- to 110-day time limit on SOC review of all regulations proposed by councils. FMPs and amendments require 95 days. Requires SOC to return disapproved regulations to councils with written explanation of deficiencies and recommendations for correction, and councils may submit revised regulations. SOC must consult with councils before revising any proposed regulations. (pp. 44-49) Also notes that regulations may be submitted with FMP submission or later. (p. 35)
Emergency Actions	Emergency regulations in effect for 180 days and may be extended additional 180 days and removes regional director from unanimous vote requirement. Requires benefit-cost analysis for 180-day extension. (pp. 39-40)	Similar to H.R. 39, except SOC may close or restrict a fishery covered by an FMP, to prevent overfishing or reduce bycatch, without opportunity for notice and comment, if council guidelines are followed. Unlike H.R. 39, regional director is <u>not</u> removed from unanimous vote. (pp. 61-64)
Transshipment Permits	SOC may issue a transshipment permit to a foreign vessel for transporting fish products at sea. (pp. 6-9)	Similar to H.R. 39. (pp. 10-15)
North Pacific Waste Reduction	North Pacific Fishery Management Council must submit measures to ensure total catch measurement by 1-1-97. (p. 23)	Extensive requirements to phase-in full retention by harvesters and full utilization by processors by 1-1-2000. Also increases observer requirements (pp. 70-80)

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Individual Quotas	Adds extensive requirements on ITQ systems, including Secretarial guidelines, a national review panel, lien registry, 7-year sunset, and fee system similar to S.39. Fees on current ITQ programs are exempt for 5 years. (pp. 45-57) Current programs also are exempt from certain other requirements. Limited access plans also must be approved by relevant advisory committee appointed under laws implementing relevant international fishery agreements. (pp. 27-28)	Defines individual transferable quotas (ITQ). SOC must develop guidelines before more ITQs can be approved and thereafter all ITQs must meet guidelines. SOC must collect fee from each ITQ holder up to 4 percent annually of the value of the fish harvested or processed. Up to 1 percent fee for receiving an initial ITQ or transferring an ITQ. (pp. 5, 34, 40-44, 51-53)
PFMC Tribal Member	No change.	One of the 8 appointed members shall be from a tribe with federally recognized fishing rights from WA, OR, CA or ID. Nominations from tribes. Seat to rotate among tribes. (pp. 16-19)
Pacific Region Stock Assessment	Establishes review group and assessment program for Pacific Council groundfish that may use private vessels. (pp. 37-38)	No change.
Fishery Impact Statements	FIS needs to be sent to Governors and House and Senate Committees. (pp. 24-25)	No change.
Negotiated Measures	No change.	Councils may establish negotiation panels to assist in developing management measures. Establishes process for appointing panels and operating procedures for panels. Councils must adopt the consensus of such panels to the maximum extent possible. (pp. 20-26)
Gear Evaluation	Adds discretionary FMP provision for identifying and evaluating new gear technologies. (p. 24)	Councils shall develop and SOC shall publish a list of all fishing technologies employed. No person may employ a technology not on the list without advance notice. Councils may ask the SOC to prohibit unlisted technologies by emergency regulation. (pp. 58-61)

Sustainable Fisheries/ Capacity Reduction Programs	Extensive provisions on voluntary fishing capacity reduction program funded by industry and fees not to exceed 5% of annual harvest value. 15-year limitation. Deposited in Fisheries Compensation and Restoration Fund. (pp. 57-64)	SOC may develop a sustainable development strategy for any overfished fishery or commercial fishery failure. Strategy to address fishery recovery effort, economic assistance to communities, alternative economic opportunities, long-term objectives for the fishery. SOC may implement a buy-out program for fishing vessels or permits. Non-federal share may come from industry fee not to exceed 5 percent annually of the value of fish harvested. Fees deposited in Ocean Conservation Trust Fund. (pp. 80-87)
Disaster Relief	No change.	SOC to determine if there is a commercial fishery failure due to natural causes, man-made causes beyond the control of fishery managers or undetermined causes. SOC authorized to make money available to states, communities or SOC for assessing the effects of the failure, restoring the fishery and assisting a community. Federal share not to exceed 75 percent. (pp. 87-89)
Monitoring and Research	No change.	SOC to develop proposal for a standardized fish vessel registration and data collection system on a regional basis for public comment and then congressional transmittal. SOC to promulgate regulations for fishing vessels required to carry observers and to establish observer training programs. (pp. 90-99) SOC must develop a strategic fisheries research plan within 1 year and update it every 3 years. (pp. 99-102)
Stock Recovery Financing	No change.	Amends Merchant Marine Act to authorize SOC to guarantee obligations which aid in refinancing existing obligations for fishing vessels or facilities necessary because of fishery recovery efforts. (pp. 105-114)
Highly Migratory Species (HMS)	SOC shall appoint plan development teams for each SOC FMP for HMS in Atlantic and Gulf. (pp. 25-27)	SOC shall appoint advisory panel for each HMS FMP in Atlantic and Gulf. (p. 38) SOC shall manage if within authority of more than 1 council. (p. 17)
Driftnets	Modifies and updates section 206(e) on SOC reports to Congress. (pp. 11-12)	Modifies section 206(e). (p. 15)

Issue	H.R. 39	S. 39
National Standard 5	No change.	Amends national standard 5 to require that measures consider (rather than promote) efficiency. (p. 15)
Safety	FMPs must take into account safety of human life at sea. (p. 22)	FMPs must consider and provide for safety of life and property at sea to the extent practicable. (p. 31)
Atlantic Herring and Mackerel	No foreign allocations can be made until FMP is implemented, and Council approval is required. (pp. 9-10)	Similar provision but date is 12-1-99.
Incidental Catch in Gulf and South Atlantic	Eliminates time limit of 3 years on incidental research program and makes other changes. (pp. 28-29)	SOC must report on shrimp fishery bycatch research (pp. 102-103) Modifies language concerning incidental mortality reduction program. (p. 103)
Gulf of Mexico Fisheries	Provisions on fishing assessments and monitoring. (pp. 67-71)	No change.
Prohibited Acts	Prohibits failure to disclose financial information and addresses transshipments. (pp. 41-43)	Modifies prohibitions concerning observers, driftnets and transshipments. (pp. 65-67)
Enforcement	No change.	Requires annual report on the adequacy of federal enforcement resources and recommendations to improve enforcement. Expands authority of SOC to use fines for payment of storage costs and to pay for rewards. (pp. 68-70)
Multi-Council Designation	No change.	Adds clarifying language in new subsection 303(d) on designating Council responsibility in multi-council fisheries. (pp. 35-40)
Observers and Rights of Observers	Adds new section 315 concerning rights of observers. (p. 45) Also adds FMP requirements on observer safety, and if observers are required, for observer fees. Plans must be amended within 18 months. (p. 22) May have 1 or more observers. (p. 23)	No change.

State Jurisdiction

Requires additional data on fish harvested by U.S. vessels in internal waters joint ventures (p. 40) Adds authority for extension of Alaska state jurisdiction into federal waters under specific conditions (p. 41).

Concerning internal waters, same as H.R. 39, but also requires a hearing before state preemption if state requests. (p. 64) S. 39 does not extend authority for Alaska.

Civil Penalties

Secretary may also consider facts established on violator's ability to pay. (p. 64)

Revises procedure for judicial review. Expands use of permit sanctions. Fines to be deposited in fund and may be used for buyout programs (pp. 67-68).

CGP:hla
NPFMC
7/6/95

**SHOWING THE TEXT OF H.R. 39, AS ORDERED
REPORTED BY THE COMMITTEE ON RESOURCES**

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Fishery Conservation
3 and Management Amendments of 1995".

4 SEC. 2. AMENDMENT OF THE MAGNUSON FISHERY CON-
5 SERVATION AND MANAGEMENT ACT.

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

12 SEC. 3. FINDINGS, PURPOSES, AND POLICY.

13 (a) FINDINGS.—Section 2(a) (16 U.S.C. 1801(a)) is
14 amended—

15 (1) in paragraph (2)—

16 (A) by striking "and (B)" and inserting
17 "(B)"; and

18 (B) by inserting before the period at the
19 end the following: ", and (C) losses of essential
20 fishery habitat can diminish the ability of
21 stocks of fish to survive";

1 (2) in paragraph (6) by inserting after “to in-
2 sure conservation,” the following: “to provide long-
3 term conservation of essential fishery habitat,”; and

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

5 “(9) Continuing loss of essential fishery habitat
6 poses a long-term threat to the viability of commer-
7 cial and recreational fisheries of the United States.
8 To conserve and manage the fishery resources of the
9 United States, increased attention must be given to
10 the protection of this habitat .”.

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

13 (1) by striking “and” after the semicolon at the
14 end of paragraph (5);

15 (2) by striking the period at the end of para-
16 graph (6) and inserting a semicolon; and

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

18 “(7) to promote the conservation of essential
19 fishery habitat in the review of projects that affect
20 essential fishery habitat; and

21 “(8) to ensure that conservation and manage-
22 ment decisions with respect to the Nation’s fishery
23 resources are made in a fair and equitable manner.”.

1 (c) POLICY.—Section 2(c)(3) (16 U.S.C. 1801(c)(3))
2 is amended by inserting after “practical measures that”
3 the following: “minimize bycatch and”.

4 SEC. 4. DEFINITIONS.

5 (a) EXECUTION OF PRIOR AMENDMENTS TO DEFINI-
6 TIONS.—Notwithstanding section 308 of the Act entitled
7 “An Act to provide for the designation of the Flower Gar-
8 den Banks National Marine Sanctuary”, approved March
9 9, 1992 (Public Law 102–251; 106 Stat. 66), section
10 301(b) of that Act (adding a definition of the term “spe-
11 cial areas”) shall take effect on the date of the enactment
12 of this Act.

13 (b) NEW AMENDMENTS.—Section 3 (16 U.S.C.
14 1802) is amended—

15 (1) in paragraph (4)—

16 (A) by striking “COLEENTERATA” from the
17 heading of the list of corals and inserting
18 “CNIDARIA”; and

19 (B) in the list appearing under the heading
20 “CRUSTACEA”, by striking “DEEP-SEA RED
21 CRAB-GERYON QUINQUEDENS” and inserting
22 “DEEP-SEA RED CRAB-CHACEON
23 QUINQUEDENS”;

1 (2) in paragraph (16) by striking “of one and
2 one half miles” and inserting “of two and one-half
3 kilometers”;

4 (3) in paragraph (17) by striking “Pacific Ma-
5 rine Fisheries Commission” and inserting “Pacific
6 States Marine Fisheries Commission”;

7 (4) by amending paragraph (21) to read as fol-
8 lows:

9 “(21) The term ‘optimum’, with respect to yield
10 from a fishery, means the amount of fish—

11 “(A) which will provide the greatest overall
12 benefit to the Nation, with particular reference
13 to food production and recreational opportuni-
14 ties; and

15 “(B)(i) which, subject to clause (ii), is pre-
16 scribed as such on the basis of the maximum
17 sustainable yield from such fishery, as modified
18 by any relevant economic, social, or ecological
19 factor; or

20 “(ii) which, in the case of a fishery which
21 has been classified by the Secretary as
22 overfished, is prescribed as such on the basis of
23 the maximum sustainable yield as reduced to
24 allow for the rebuilding of the fishery to a level

1 consistent with producing maximum sustainable
2 yield on a continuing basis.”;

3 (5) in paragraph (31) (as redesignated by the
4 amendments made by subsection (a) of this section)
5 by striking “for which a fishery management plan
6 prepared under title III or a preliminary fishery
7 management plan prepared under section 201(h) has
8 been implemented” and inserting “regulated under
9 this Act”; and

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

11 “(34) The term ‘bycatch’ means fish which are
12 harvested by a fishing vessel, but which are not sold
13 or kept for personal use, including economic discards
14 and regulatory discards.

15 “(35) The term ‘economic discards’ means fish
16 which are the target of a fishery, but which are not
17 retained by the fishing vessel which harvested them
18 because they are of an undesirable size, sex, or qual-
19 ity, or for other economic reasons.

20 “(36) The term ‘regulatory discards’ means fish
21 caught in a fishery which fishermen are required by
22 regulation to discard whenever caught, or are re-
23 quired by regulation to retain but not sell.

1 “(37) The term ‘essential fishery habitat’
2 means those waters necessary to fish for spawning,
3 breeding, or growth to maturity.

4 “(38) The term ‘overfishing’ means a level or
5 rate of fishing mortality that jeopardizes the ability
6 of a stock of fish to produce maximum sustainable
7 yield on a continuing basis.

8 “(39) The term ‘rebuilding program’ means
9 those conservation and management measures nec-
10 essary to restore the ability of a stock of fish to
11 produce maximum sustainable yield on a continuing
12 basis.

13 “(40) The term ‘total allowable catch’ means
14 the total amount of fish in a fishery that may be
15 harvested in a fishing season, as established in ac-
16 cordance with a fishery management plan for the
17 fishery.”.

18 **SEC. 5. FOREIGN FISHING.**

19 **(a) TRANSSHIPMENT PERMITS.—**

20 (1) AUTHORITY TO OPERATE UNDER TRANS-
21 SHIPMENT PERMITS.—Section 201(a)(1) (16 U.S.C.
22 1821(a)(1)) is amended to read as follows:

23 “(1) is authorized under subsection (b) or (c) or
24 under a permit issued under section 204(d);”.

1 (2) AUTHORITY TO ISSUE TRANSSHIPMENT
2 PERMITS.—Section 204 (16 U.S.C. 1824) is amend-
3 ed by adding at the end the following:

4 “(d) TRANSSHIPMENT PERMITS.—

5 “(1) AUTHORITY TO ISSUE PERMITS.—The Sec-
6 retary may issue a transshipment permit under this
7 subsection which authorizes a vessel other than a
8 vessel of the United States to engage in fishing con-
9 sisting solely of transporting fish products at sea
10 from a point within the boundaries of any State or
11 the exclusive economic zone to a point outside the
12 United States to any person who—

13 “(A) submits an application which is ap-
14 proved by the Secretary under paragraph (3);
15 and

16 “(B) pays a fee imposed under paragraph
17 (7).

18 “(2) TRANSMITTAL.—Upon receipt of an appli-
19 cation for a permit under this subsection, the Sec-
20 retary shall promptly transmit copies of the applica-
21 tion to the Secretary of the department in which the
22 Coast Guard is operating, any appropriate Council,
23 and any interested State.

1 “(3) APPROVAL OF APPLICATION.—The Sec-
2 retary may approve an application for a permit
3 under this section if the Secretary determines that—

4 “(A) the transportation of fish products to
5 be conducted under the permit, as described in
6 the application, will be in the interest of the
7 United States and will meet the applicable re-
8 quirements of this Act;

9 “(B) the applicant will comply with the re-
10 quirements described in section 201(c)(2) with
11 respect to activities authorized by any permit
12 issued pursuant to the application;

13 “(C) the applicant has established any
14 bonds or financial assurances that may be re-
15 quired by the Secretary; and

16 “(D) no owner or operator of a vessel of
17 the United States which has adequate capacity
18 to perform the transportation for which the ap-
19 plication is submitted has indicated to the Sec-
20 retary an interest in performing the transpor-
21 tation at fair and reasonable rates.

22 “(4) WHOLE OR PARTIAL APPROVAL.—The Sec-
23 retary may approve all or any portion of an applica-
24 tion under paragraph (3).

1 “(5) FAILURE TO APPROVE APPLICATION.—If
2 the Secretary does not approve any portion of an ap-
3 plication submitted under paragraph (1), the Sec-
4 retary shall promptly inform the applicant and speci-
5 fy the reasons therefor.

6 “(6) CONDITIONS AND RESTRICTIONS.—The
7 Secretary shall establish and include in each permit
8 under this subsection conditions and restrictions
9 which shall be complied with by the owner and oper-
10 ator of the vessel for which the permit is issued. The
11 conditions and restrictions shall include the require-
12 ments, regulations, and restrictions set forth in sub-
13 section (b)(7).

14 “(7) FEES.—The Secretary shall collect a fee
15 for each permit issued under this subsection, in an
16 amount adequate to recover the costs incurred by
17 the United States in issuing the permit.”.

18 (b) FOREIGN FISHING FOR ATLANTIC MACKEREL
19 AND ATLANTIC HERRING.—

20 (1) RESTRICTION ON ALLOCATIONS.—Section
21 201(e)(1)(A) (16 U.S.C. 1821(e)(1)(A)) is amended
22 by adding at the end the following new sentence:
23 “No allocation may be made for a fishery that is not
24 subject to a fishery management plan prepared
25 under section 303.”.

1 (2) COUNCIL RECOMMENDATION REQUIRED TO
2 APPROVE APPLICATION.—Section 204(b)(6) (16
3 U.S.C. 1824(b)(6)) is amended—

4 (A) in subparagraph (A) by striking “sub-
5 paragraph (B)” and inserting “subparagraphs
6 (B) and (C)”; and

7 (B) by adding at the end the following new
8 subparagraph:

9 “(C)(i) The Secretary may not approve an ap-
10 plication which proposes harvest of Atlantic mack-
11 erel or Atlantic herring by one or more foreign fish-
12 ing vessels unless the appropriate Council has rec-
13 ommended that the Secretary approve the portion of
14 the application making that proposal and the Sec-
15 retary includes the appropriate conditions and re-
16 strictions recommended by the Council.

17 “(ii) For purposes of this subparagraph, the
18 term ‘appropriate Council’ means the Mid-Atlantic
19 Fishery Management Council with respect to Atlan-
20 tic mackerel and the New England Fishery Manage-
21 ment Council with respect to Atlantic herring.”.

22 (c) PERIOD FOR CONGRESSIONAL REVIEW OF GOV-
23 ERNING INTERNATIONAL FISHERY AGREEMENTS.—Sec-
24 tion 203 (16 U.S.C. 1823) is amended—

1 (1) in subsection (a) by striking “60 calendar
2 days of continuous session of the Congress” and in-
3 serting “120 calendar days (excluding any days in a
4 period for which the Congress is adjourned sine
5 die)”;

6 (2) by striking subsection (c); and

7 (3) by redesignating subsection (d) as sub-
8 section (e).

9 (d) TECHNICAL CORRECTION.—

10 (1) CORRECTION.—Section 201(e)(1)(E)(iv) (16
11 U.S.C. 1821(e)(1)(E)(iv)) is amended by inserting
12 “or special areas” after “the exclusive economic
13 zone”.

14 (2) APPLICATION.—The amendment made by
15 paragraph (1) shall take effect on the date it would
16 take effect if it were enacted by section 301(d)(2) of
17 the Act entitled “An Act to provide for the designa-
18 tion of the Flower Garden Banks National Marine
19 Sanctuary”, approved March 9, 1992 (Public Law
20 102-251; 106 Stat. 63).

21 SEC. 6. LARGE-SCALE DRIFT NET FISHING.

22 Section 206(e) (16 U.S.C. 1826(e)) is amended to
23 read as follows:

24 “(e) REPORT.—Not later than March 17th of each
25 year, the Secretary, after consultation with the Secretary

1 of State and the Secretary of the department in which the
2 Coast Guard is operating, shall submit to the Committee
3 on Commerce, Science, and Transportation of the Senate
4 and the Committee on Resources of the House of Rep-
5 resentatives a list of those nations whose nationals or ves-
6 sels conduct, and of those nations that authorize their na-
7 tionals to conduct, large-scale drift net fishing beyond the
8 exclusive economic zone of any nation in a manner that
9 diminishes the effectiveness of, or is inconsistent with, any
10 international agreement governing large-scale drift net
11 fishing to which the United States is a party or otherwise
12 subscribes.”.

13 **SEC. 7. NATIONAL STANDARD FOR FISHERY CONSERVA-**
14 **TION AND MANAGEMENT TO MINIMIZE**
15 **BYCATCH.**

16 Section 301(a) (16 U.S.C. 1851(a)) is amended by
17 adding at the end the following:

18 “(8) Conservation and management measures
19 shall, to the maximum extent practicable, minimize
20 bycatch.”.

21 **SEC. 8. REGIONAL FISHERY MANAGEMENT COUNCILS.**

22 (a) **MEMBERSHIP OF NORTH CAROLINA ON MID-AT-**
23 **LANTIC FISHERY MANAGEMENT COUNCIL.**—Section
24 302(a)(2) (16 U.S.C. 1852(a)(2)) is amended—

1 (1) by striking "and Virginia" and inserting
2 "Virginia, and North Carolina";

3 (2) by striking "19" and inserting "21"; and

4 (3) by striking "12" and inserting "13".

5 (b) VOTING MEMBERS, GENERALLY.—Section
6 302(b) (16 U.S.C. 1852(b)) is amended—

7 (1) in paragraph (2)(B) in the first sentence by
8 inserting before the period the following: ", and of
9 other individuals selected for their fisheries expertise
10 as demonstrated by their academic training, marine
11 conservation advocacy, consumer advocacy, or other
12 affiliation with nonuser groups"; and

13 (2) by adding at the end the following new
14 paragraph:

15 "(6) The Secretary shall remove any member of a
16 Council required to be appointed by the Secretary in ac-
17 cordance with subsection (b)(2) if the member violates sec-
18 tion 307(1)(O).".

19 (c) COMPENSATION.—

20 (1) AMENDMENT.—Section 302(d) (16 U.S.C.
21 1852(d)) is amended in the first sentence—

22 (A) by striking "each Council," and insert-
23 ing "each Council who are required to be ap-
24 pointed by the Secretary and"; and

1 (B) by striking "shall, until January 1,
2 1992," and all that follows through "GS-16"
3 and inserting the following: "shall receive com-
4 pensation at a daily rate equivalent to the low-
5 est rate of pay payable for GS-15,".

6 (2) EFFECTIVE DATE.—The amendment made
7 by paragraph (1)(B) shall take effect on January 1,
8 1996.

9 (d) TRANSACTION OF BUSINESS.—Section 302(e)
10 (16 U.S.C. 1852(e)) is amended by adding at the end the
11 following:

12 "(5) At the request of any voting member of a
13 Council, the Council shall hold a roll call vote on any
14 matter before the Council. The official minutes re-
15 quired under subsection (j)(2)(E) and other appro-
16 priate records of any Council meeting shall identify
17 all roll call votes held, the name of each voting mem-
18 ber present during each roll call vote, and how each
19 member voted on each roll call vote."

20 (e) COMMUNICATIONS WITH FEDERAL AGENCIES
21 REGARDING ESSENTIAL AND OTHER FISHERY HABI-
22 TAT.—Section 302(i) (16 U.S.C. 1852(i)) is amended—

23 (1) in paragraph (1), by striking "and" after
24 the semicolon at the end of subparagraph (A) and

1 striking the period at the end of subparagraph (B)
2 and inserting “; and”;

3 (2) by adding at the end of paragraph (1) the
4 following:

5 “(C) shall notify the Secretary regarding, and
6 may comment on and make recommendations to any
7 State or Federal agency concerning, any activity un-
8 dertaken, or proposed to be undertaken, by any
9 State or Federal agency that, in the view of the
10 Council, may have a detrimental effect on the essen-
11 tial fishery habitat of a fishery under the authority
12 of the Council.”; and

13 (3) by amending paragraph (2) to read as fol-
14 lows:

15 “(2) Within 15 days after receiving a comment or
16 recommendation under paragraph (1) from a Council re-
17 garding the effects of an activity on essential fishery habi-
18 tat, a Federal agency shall provide to the Council a de-
19 tailed response in writing. The response shall include a
20 description of measures being considered by the agency
21 for avoiding, mitigating, or offsetting the impact of the
22 activity on such habitat. In the case of a response that
23 is inconsistent with the recommendations of the Council,
24 the Federal agency shall explain its reasons for not follow-
25 ing the recommendations.”.

1 (h) PROCEDURAL MATTERS.—Section 302(j)(2) (16
2 U.S.C. 1852(j)(2)) is amended—

3 (1) by striking “guidelines” and inserting
4 “shall”;

5 (2) in subparagraph (C), by inserting after
6 “fishery)” the following: “sufficiently in advance of
7 the meeting to allow meaningful public participation
8 in the meeting.”;

9 (3) by adding at the end of subparagraph (D)
10 the following: “The written statement or oral testi-
11 mony shall include a brief description of the back-
12 ground and interests of the person on the subject of
13 the written statement or oral testimony.”;

14 (4) by amending subparagraph (E) to read as
15 follows:

16 “(E) Detailed minutes of each meeting of the
17 Council shall be kept and shall contain a record of
18 the persons present, a complete and accurate de-
19 scription of matters discussed and conclusions
20 reached, and copies of all reports received, issued, or
21 approved by the Council. The Chairman shall certify
22 the accuracy of the minutes of each meeting and
23 submit a copy thereof to the Secretary. The minutes
24 shall be made available to any court of competent ju-
25 risdiction.”; and

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

2 “(G) A Council member may add an item to the
3 agenda of a meeting of a Council or of a committee
4 or advisory panel of a Council by presenting to the
5 Chairman of the Council, committee, or panel, at
6 least 21 days before the date of the meeting, a writ-
7 ten description of the item signed by 2 or more vot-
8 ing members of the Council.”.

9 (i) DISCLOSURE OF FINANCIAL INTEREST AND
10 RECUSAL.—Section 302(k) (16 U.S.C. 1852(k)) is
11 amended—

12 (1) in the heading by inserting “AND RECUSAL”
13 before the period;

14 (2) in paragraph (1)—

15 (A) in subparagraph (A) by inserting “or”
16 after the semicolon at the end;

17 (B) in subparagraph (B) by striking “; or”
18 at the end and inserting a period; and

19 (C) by striking subparagraph (C);

20 (3) in paragraph (3)(B) by striking “or (C)”;

21 (4) in paragraph (5)—

22 (A) in subparagraph (A) by striking “and”
23 at the end;

24 (B) in subparagraph (B) by striking the
25 period at the end and inserting “; and”; and

1 (C) by adding at the end the following:

2 “(C) be kept on file by the Secretary for
3 use in reviewing Council actions and made
4 available by the Secretary for public inspection
5 at reasonable hours.”;

6 (5) in paragraph (6) by striking “or (C)”;

7 (6) in paragraph (7) by striking “or (C)”; and

8 (7) by adding at the end the following:

9 “(8) The Secretary, in consultation with the Councils,
10 and by not later than 1 year after the date of the enact-
11 ment of the Fishery Conservation and Management
12 Amendments of 1995, shall establish rules which prohibit
13 an affected individual from voting on a matter in which
14 the individual or any other person described in paragraph
15 (2) with respect to the individual has an interest that
16 would be significantly affected. The rules may include pro-
17 visions which take into account the differences in fisheries.

18 “(9) A voting member of a Council shall recuse him-
19 self or herself from voting if—

20 “(A) voting by the member would violate the
21 rules established under paragraph (8); or

22 “(B) the General Counsel of the National Oce-
23 anic and Atmospheric Administration (or a designee
24 of the General Counsel under paragraph (10)(C)(ii))
25 determines under paragraph (10) that voting by the

1 member would violate the rules established under
2 paragraph (8).

3 “(10)(A) Before any vote held by a Council on any
4 matter, a voting member of the Council may, at a meeting
5 of the Council, request the General Counsel of the Na-
6 tional Oceanic and Atmospheric Administration (or a des-
7 ignee of the General Counsel under subparagraph (C)(ii))
8 to determine whether voting on the matter by the member,
9 or by any other member of the Council, would violate the
10 rules established under paragraph (8).

11 “(B) Upon a request under subparagraph (A) regard-
12 ing voting on a matter by a member—

13 “(i) the General Counsel of the National Oce-
14 anic and Atmospheric Administration (or a designee
15 of the General Counsel under subparagraph (C)(ii))
16 shall determine and state whether the voting would
17 violate the rules established under paragraph (8), at
18 the meeting at which the request is made; and

19 “(ii) no vote on the matter may be held by the
20 Council before the determination and statement are
21 made.

22 “(C) The General Counsel of the National Oceanic
23 and Atmospheric Administration shall—

24 “(i) attend each meeting of a Council; or

1 “(ii) designate an individual to attend each
2 meeting of a Council for purposes of this paragraph.

3 “(11) For the purposes of this subsection, the term
4 ‘an interest that would be significantly affected’ means a
5 personal financial interest which would be augmented by
6 voting on the matter and which would only be shared by
7 a minority of other persons within the same industry sec-
8 tor or gear group whose activity would be directly affected
9 by a Council’s action.”.

10 (j) CONFORMING AMENDMENT.—Section
11 302(k)(1)(A) (16 U.S.C. 1852(k)(1)(A)) is amended to
12 read as follows:

13 “(A) is nominated by the Governor of a State
14 for appointment as a voting member of a Council in
15 accordance with subsection (b)(2) or is designated
16 by the Governor of a State under subsection
17 (b)(1)(A) and is not an employee of the State;”.

18 **SEC. 9. CONTENTS OF FISHERY MANAGEMENT PLANS.**

19 (a) **REQUIRED PROVISIONS.—**

20 (1) **NEW REQUIREMENTS.—**Section 303(a) (16
21 U.S.C. 1853(a)) is amended—

22 (A) in paragraph (5) by striking “and the
23 estimated processing capacity of, and the actual
24 processing capacity utilized by, United States
25 fish processors,” and inserting the following:

1 “the amount and species of bycatch taken on
2 board a fishing vessel based on a standardized
3 reporting methodology established by the Coun-
4 cil for that fishery, and the estimated process-
5 ing capacity of, and the actual processing ca-
6 pacity utilized by, United States fish proc-
7 essors;”;

8 (B) by amending paragraph (7) to read as
9 follows:

10 “(7) include a description of essential fishery
11 habitat for a fishery based on the guidelines estab-
12 lished by the Secretary under section 304(h)(1);”;

13 (C) in paragraph (8) by striking “and”
14 after the semicolon at the end;

15 (D) in paragraph (9) by striking the period
16 at the end and inserting a semicolon; and

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

18 “(10) include a measurable and objective deter-
19 mination of what constitutes overfishing in that fish-
20 ery, and a rebuilding program in the case of a plan
21 for any fishery which the Council or the Secretary
22 has determined is overfished;

23 “(11) include conservation and management
24 measures necessary to minimize bycatch to the maxi-
25 mum extent practicable;

1 “(12) to the extent practicable, minimize mor-
2 tality caused by economic discards and regulatory
3 discards in the fishery;

4 “(13) take into account the safety of human life
5 at sea; and

6 “(14) in the case of any plan which under sub-
7 section (b)(8) requires that observers be carried on
8 board vessels—

9 “(A) be fair and equitable to all fishing
10 vessels and fish processing vessels, that are ves-
11 sels of the United States and participate in
12 fisheries covered by the plan;

13 “(B) be consistent with other applicable
14 laws;

15 “(C) take into consideration the operating
16 requirements of the fishery and the safety of
17 observers and fishermen; and

18 “(D) establish a system of fees to pay the
19 costs of the observer program.”.

20 (2) AMENDMENT OF PLANS.—Not later than 18
21 months after the date of enactment of this Act, each
22 Regional Fishery Management Council established
23 under the Magnuson Fishery Conservation and Man-
24 agement Act shall submit to the Secretary of Com-
25 merce an amendment to each fishery management

1 plan in effect under that Act to comply with the
2 amendments made by paragraph (1).

3 (3) FISH WEIGHING.—By January 1, 1997, the
4 North Pacific Fishery Management Council shall re-
5 quire all fish processors that process fish species
6 under the management of the Council to weigh those
7 fish to ensure an accurate measurement of the total
8 harvest of each species.

9 (b) AMENDMENTS RELATING TO DISCRETIONARY
10 PROVISIONS, GENERALLY.—Section 303(b) (16 U.S.C.
11 1853(b)) is amended—

12 (1) in paragraph (8) in the matter preceding
13 the first semicolon, by striking “require that observ-
14 ers” and inserting “require that one or more observ-
15 ers”;

16 (2) in paragraph (9) by striking “and” after
17 the semicolon;

18 (3) by redesignating paragraph (10) as para-
19 graph (14); and

20 (4) by inserting after paragraph (9) the follow-
21 ing:

22 “(10) assess and specify the effect which con-
23 servation and management measures of the plan will
24 have on stocks of fish in the ecosystem of the fishery
25 which are not part of the fishery;

1 “(11) include incentives and harvest preferences
2 within fishing gear groups to promote the avoidance
3 of bycatch;

4 “(12) specify gear types allowed to be used in
5 the fishery and establish a process for evaluating
6 new gear technology that is proposed to be used in
7 the fishery;

8 “(13) reserve a portion of the allowable biologi-
9 cal catch of the fishery for use for scientific research
10 purposes;

11 “(14) establish conservation and management
12 measures necessary to minimize, to the extent prac-
13 ticable, adverse impacts on essential fishery habitat
14 described in the plan under subsection (a)(7) caused
15 by fishing; and”.

16 (c) REQUIREMENT TO SUBMIT FISHERY IMPACT
17 STATEMENTS TO AFFECTED STATES AND THE CON-
18 GRESS.—Section 303 of the Magnuson Fishery Conserva-
19 tion and Management Act (16 U.S.C. 1533), as amended
20 by section 16(b), is further amended by adding at the end
21 the following new subsection:

22 “(h) SUBMISSION OF FISHERY IMPACT STATEMENTS
23 TO INTERESTED STATES AND THE CONGRESS.—Not later
24 than the date a fishery management plan prepared by a
25 Council or the Secretary takes effect under section 304,

1 the Council or the Secretary, respectively, shall submit the
2 fishery impact statement required in the plan under sub-
3 section (a)(9) to—

4 “(1) the Governor of each State that might be
5 affected by the plan, who may use information in the
6 statement to assist persons in applying for loans and
7 grants for economic relief; and

8 “(2) the Committee on Resources of the House
9 of Representatives and the Committee on Commerce,
10 Science, and Transportation of the Senate.”

11 **SEC. 10. AMENDMENTS RELATING TO MISCELLANEOUS DU-**
12 **TIES OF SECRETARY.**

13 (a) **SAFETY AT SEA.**—Section 304(a)(2)(C) (16
14 U.S.C. 1854(a)(2)(C)) is amended by striking “to fishery
15 access” and all that follows through the period and insert-
16 ing “with respect to the provisions of sections 303(a)(6)
17 and (13).”.

18 (b) **HIGHLY MIGRATORY SPECIES.**—Section 304(f)
19 (16 U.S.C. 1854(f)) is amended—

20 (1) by striking the subsection heading and in-
21 serting the following: “FISHERIES UNDER AUTHOR-
22 ITY OF MORE THAN ONE COUNCIL.—”;

23 (2) in paragraph (3)(C)(ii) by inserting before
24 the semicolon the following: “and the plan develop-
25 ment team established under paragraph (4)”;

1 (3) in paragraph (3)(E), strike “allocation or
2 quota” each place it appears and insert “allocation,
3 quota, or fishing mortality level”;

4 (4) in paragraph (3)(F)(ii) by inserting “and
5 the plan development team established under para-
6 graph (4)” before the semicolon;

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

8 “(4)(A) The Secretary shall establish a plan de-
9 velopment team for each highly migratory species
10 fishery over which the Secretary has authority under
11 paragraph (3)(A), to advise the Secretary on and
12 participate in the development of each fishery man-
13 agement plan or amendment to a plan for the fish-
14 ery under this subsection.

15 “(B) The plan development team shall—

16 “(i) consist of not less than 7 individuals
17 who are knowledgeable about the fishery for
18 which the plan or amendment is developed, se-
19 lected from members of advisory committees
20 and species working groups appointed under
21 Acts implementing relevant international fishery
22 agreements pertaining to highly migratory spe-
23 cies and from other interested persons;

1 “(ii) be balanced in its representation of
2 commercial, recreational, and other interests;
3 and

4 “(iii) participate in all aspects of the devel-
5 opment of the plan or amendment.

6 “(C) The Federal Advisory Committee Act (5
7 U.S.C. App.) shall not apply to any plan develop-
8 ment team established under this paragraph.”; and
9 (6) in paragraph (3)(D) by striking clauses (ii)
10 and (iii) and inserting the following:

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

14 “(iii) promote international conservation;

15 “(iv) minimize the establishment of regulations
16 that require the discarding of Atlantic highly migra-
17 tory species which cannot be returned to the sea
18 alive; and

19 “(v) promote the implementation of scientific
20 research programs that include to the extent prac-
21 ticable, the tag, and release of Atlantic highly migra-
22 tory species.”.

23 (c) LIMITED ACCESS.—Section 304(c)(3) (16 U.S.C.
24 1864(c)(3)) is amended by inserting “or advisory commit-
25 tee appointed under laws implementing relevant inter-

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to the extent practical

1 national fishery agreements to which the United States
2 is a party” before the period at the end.

3 (d) INCIDENTAL HARVEST RESEARCH.—Section
4 304(g) (16 U.S.C. 1854(g)) is amended—

5 (1) in paragraph (1) by striking “3-year”;

6 (2) by striking paragraph (4) and inserting the
7 following:

8 “(4) No later than 12 months after the enactment
9 of the Fishery Conservation and Management Amend-
10 ments of 1995, the Secretary shall, in cooperation with
11 affected interests and based upon the best scientific infor-
12 mation available, complete a program to—

13 “(A) develop technological devices and other
14 changes in fishing operations to minimize the inci-
15 dental mortality of nontargeted fishery resources in
16 the course of shrimp trawl activity to the extent
17 practicable from the level of mortality at the date of
18 enactment of the Fishery Conservation and Manage-
19 ment Amendments of 1990;

20 “(B) evaluate the ecological impacts and the
21 benefits and costs of such devices and changes in
22 fishing operations; and

23 “(C) assess whether it is practicable to utilize
24 those nontargeted fishery resources which are not
25 avoidable.”;

1 (3) in paragraph (6)(B) by striking "April 1,
2 1994" and inserting "the submission under para-
3 graph (5) of the detailed report on the program de-
4 scribed in paragraph (4)."; and

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

7 "(7) Any measure implemented under this Act to re-
8 duce the incidental mortality of nontargeted fishery re-
9 sources in the course of shrimp trawl fishing shall apply
10 to such fishing throughout the range of the nontargeted
11 fishery resource concerned."

12 (e) ESSENTIAL FISHERY HABITAT; OVERFISHING.—
13 Section 304 (16 U.S.C. 1854) is further amended by add-
14 ing at the end the following:

15 "(h) ACTIONS BY THE SECRETARY ON ESSENTIAL
16 FISHERY HABITAT.—(1) Within one year after the date
17 of enactment of the Fishery Conservation and Manage-
18 ment Amendments of 1995, the Secretary shall—

19 "(A) establish guidelines ^{and} ~~to~~ assist the Councils
20 in the description of essential fishery habitat in fish-
21 ery management plans; and

22 "(B) establish a schedule for the amendment of
23 fishery management plans to describe essential fish
24 habitats.

1 “(2) The Secretary, in cooperation with the Secretary
2 of the Interior, shall identify the essential fishery habitat
3 for each fishery for which a fishery management plan is
4 in effect. The identification shall be based on the descrip-
5 tion of essential fishery habitat contained in the plan.

6 “(3) Each Federal agency shall consult with the Sec-
7 retary with respect to any action proposed to be author-
8 ized, funded, or carried out by such agency that the head
9 of the agency has reason to believe, or the Secretary be-
10 lieves, may result in the destruction or adverse modifica-
11 tion of any essential fishery habitat identified by the Sec-
12 retary under paragraph (2). If the Secretary finds that
13 the proposed action would result in destruction or adverse
14 modifications of such essential fishery habitat, the Sec-
15 retary shall comment on and make recommendations to
16 the agency concerning that action.

17 “(4) Within 15 days after receiving recommendations
18 from the Secretary under paragraph (3) with respect to
19 a proposed action, the head of a Federal agency shall pro-
20 vide a detailed, written response to the Secretary which
21 describes the measures proposed by the agency to avoid,
22 mitigate, or offset the adverse impact of the proposed ac-
23 tion on the essential fishery habitat. In the case of a re-
24 sponse that is inconsistent with the recommendation of the

1 Secretary, the agency shall explain its reasons for not fol-
2 lowing the recommendations.

3 “(5) The Secretary shall review programs adminis-
4 tered by the Department of Commerce to ensure that any
5 relevant programs further the conservation and enhance-
6 ment of essential fishery habitat identified by the Sec-
7 retary under paragraph (2). The Secretary shall coordi-
8 nate with and provide information to other Federal agen-
9 cies to further the conservation and enhancement of essen-
10 tial fishery habitat identified by the Secretary under para-
11 graph (2).

12 “(6) Nothing in this subsection shall have the effect
13 of amending or repealing any other law or regulation or
14 modifying any other responsibility of a Federal agency
15 with respect to fisheries habitat.

16 “(i) ACTION BY THE SECRETARY ON
17 OVERFISHING.—(1) In addition to the authority granted
18 to the Secretary under subsection (c), if the Secretary
19 finds at any time that overfishing is occurring or has oc-
20 curred in any fishery, the Secretary shall immediately no-
21 tify the appropriate Council and request that action be
22 taken to end overfishing in the fishery and to establish
23 a rebuilding program for the fishery. The Secretary shall
24 publish each notice under this paragraph in the Federal
25 Register.

1 “(2) If the Council does not submit to the Secretary
2 before the end of the 1-year period beginning on the date
3 of notification under paragraph (1) a fishery management
4 plan, or an amendment to the appropriate existing fishery
5 management plan, which is intended to address
6 overfishing in the fishery and to establish any necessary
7 rebuilding program, then the Secretary shall within 9
8 months after the end of that period prepare under sub-
9 section (c) a fishery management plan, or an amendment
10 to an existing management plan, to end overfishing in the
11 fishery and to establish any necessary rebuilding program.

12 “(3) If the Secretary finds that overfishing is occur-
13 ring in any fishery for which a fishery management plan
14 prepared by the Secretary is in effect, the Secretary
15 shall—

16 “(A) within 1 year act under subsection (c) to
17 amend the plan to end overfishing in the fishery and
18 to establish any necessary rebuilding program; and

19 “(B) in the case of a highly migratory species
20 fishery, pursue international rebuilding programs.

21 “(4) Any rebuilding program under this subsection
22 shall specify the time period within which the fishery is
23 expected to be rebuilt. The time period shall be as short
24 as possible, taking into account the biology and natural
25 variability of the stock of fish, other environmental factors

1 or conditions which would affect the rebuilding program,
2 and the needs of the fishing industry. The time period may
3 not exceed 10 years, except in cases where the biology of
4 the stock of fish or other environmental factors dictates
5 otherwise.

6 “(5) If the Secretary finds that the action of any Fed-
7 eral agency has caused or contributed to the decline of
8 a fishery below maximum sustainable yield, the Secretary
9 shall notify the agency of the Secretary’s finding and rec-
10 ommend steps that can be taken by the agency to reverse
11 that decline.

12 “(6)(A) The Secretary shall review the progress of
13 any rebuilding program required under this subsection be-
14 ginning in the third year in which the plan is in effect,
15 and annually thereafter.

16 “(B) If the Secretary finds as a result of the review
17 that the rebuilding program is not meeting its specified
18 goals due to reasons related to the reproductive capacity,
19 productivity, life span, or natural variability of the fish
20 species concerned or other environmental conditions or
21 factors beyond the control of the rebuilding program, the
22 Secretary shall—

23 “(i) reassess the goals of the program;

1 “(ii) determine, based on the best available sci-
2 entific information, whether revision to the program
3 is needed; and

4 “(iii) if the Secretary determines under clause
5 (ii) that such revisions are needed, direct the Council
6 that established the program to make revisions to
7 the program, or in the case of a program established
8 by the Secretary, make such revisions.

9 “(C) If the Secretary finds as a result of the review
10 that the rebuilding program is not meeting its specified
11 goals for reasons other than those described in subpara-
12 graph (B), the Secretary shall direct the Council that es-
13 tablished the program to make revisions to the program,
14 or in the case of a program established by the Secretary,
15 make such revisions.

16 “(7)(A) The Secretary shall report annually to the
17 Congress and the Councils on the status of fisheries within
18 each Council’s geographic area of authority and identify
19 those fisheries that are approaching a condition of being
20 overfished.

21 “(B) For each fishery that is subject to a fishery
22 management plan, the status of the fishery shall be deter-
23 mined for purposes of subparagraph (A) in accordance
24 with the determination of what constitutes overfishing in
25 the fishery included in the plan under section 303(a)(10).

1 “(C) The Secretary shall identify a fishery under sub-
2 paragraph (A) as approaching a condition of being
3 overfished if, based on trends in fishing effort, fishery re-
4 source size, and other appropriate factors, the Secretary
5 determines that the fishery is likely to become overfished
6 within 2 years.

7 “(D) For any fishery that the Secretary identifies
8 under subparagraph (A) as approaching the condition of
9 being overfished, the report shall—

10 “(i) estimate the time frame within which the
11 fishery will reach that condition; and

12 “(ii) make specific recommendations to the ap-
13 propriate Council regarding actions that should be
14 taken to prevent that condition from being
15 reached.”.

16 (f) ACTION ON CERTAIN IMPLEMENTING REGULA-
17 TIONS PROPOSED BY COUNCILS.—Section 304 (16 U.S.C.
18 1854) is further amended by adding at the end the follow-
19 ing:

20 “(j) ACTION ON COVERED IMPLEMENTING REGULA-
21 TIONS PROPOSED BY A COUNCIL.—(1) After the receipt
22 date of a covered implementing regulation submitted by
23 a Council, the Secretary shall—

24 “(A) immediately commence a review of the
25 covered implementing regulation to determine wheth-

1 er it is consistent with the fishery management plan
2 it would implement, the national standards, the
3 other provisions of this Act, and any other applicable
4 law; and

5 “(B) immediately publish the covered imple-
6 menting regulation in the Federal Register and pro-
7 vide a period of not less than 15 days and not more
8 than 45 days for the submission of comments by the
9 public.

10 “(2) Not later than 75 days after the receipt date
11 of a covered implementing regulation submitted by a
12 Council, the Secretary shall—

13 “(A) publish a final regulation on the subject
14 matter of the covered implementing regulation; or

15 “(B) decline to publish a final regulation.

16 “The Secretary shall provide to the Council in writing an
17 explanation of the reasons for the Secretary’s action.

18 “(3) For the purposes of this subsection, the term—

19 “(A) ‘receipt date’ means the 5th day after the
20 day on which a Council submits to the Secretary a
21 covered implementing regulation that the Council
22 characterizes as a final covered implementing regula-
23 tion; and

24 “(B) ‘covered implementing regulation’—

1 “(i) means a proposed amendment to exist-
2 ing regulations implementing a fishery manage-
3 ment plan in effect under this Act, which does
4 not have the effect of amending the plan; and

5 “(ii) does not include any proposed regula-
6 tion submitted with a plan or amendment to a
7 plan under section 303(c).”.

8 (g) PACIFIC REGION STOCK ASSESSMENT.—Section
9 304 (16 U.S.C. 1854) is further amended by adding at
10 the end the following:

11 “(k) PACIFIC REGION STOCK ASSESSMENT.—(1) Not
12 later than 120 days after the date of enactment of the
13 Fishery Conservation and Management Amendments of
14 1995, the Secretary shall, in consultation with the Pacific
15 Fishery Management Council and the States of California,
16 Oregon, and Washington, establish a Pacific Region Sci-
17 entific Review Group (in this subsection referred to as the
18 ‘Group’) consisting of representatives of the National Ma-
19 rine Fisheries Service, each of the States of California,
20 Oregon, and Washington, universities located in those
21 States, commercial and recreational fishermen and shore-
22 based processors located in those States, and environ-
23 mental organizations. Individuals appointed to serve on
24 the Group shall be selected from among individuals who
25 are knowledgeable or experienced in the harvesting, proc-

1 essing, biology, or ecology of the fish stocks of fish that
2 are managed under the Pacific Fisheries Management
3 Council Pacific Coast Groundfish Plan (in this subsection
4 referred to as the 'covered Pacific stocks').

5 “(2) Not later than 180 days after the date of estab-
6 lishment of the Group, the Group shall transmit to the
7 Secretary a research plan of at least 3 years duration to
8 assess the status of the covered Pacific stocks, including
9 the abundance, location, and species, age, and gender com-
10 position of those stocks. The plan shall provide for the
11 use of private vessels to conduct stock surveys.

12 “(3) Immediately upon receiving the plan transmitted
13 under paragraph (2), the Secretary shall take action nec-
14 essary to carry out the plan, including, subject to the
15 availability of appropriations, chartering private vessels,
16 arranging for the deployment of scientists on those vessels
17 (including the payment of increased insurance costs to ves-
18 sel owners), and obtaining the assistance of shore-based
19 fish processors.

20 “(4) The Secretary may offset the cost of carrying
21 out the plan by entering into agreements with vessel own-
22 ers or shore-based fish processors to provide vessel owners
23 or shore-based fish processors with a portion of the total
24 allowable catch reserved for research purposes under sec-
25 tion 303(b).”.

1 SEC. 11. EMERGENCY ACTIONS.

2 Section 305(c) (16 U.S.C. 1855(c)) is amended—

3 (1) in paragraph (2)(A), by inserting “under
4 section 302(b)(1)(A) and (C)” after “voting mem-
5 bers”;

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

8 “(B) shall remain in effect for not more than
9 180 days after the date of such publication, except
10 that any such regulation may, by agreement of the
11 Secretary and the Council and after notice and an
12 opportunity for submission of comments by the pub-
13 lic, be effective for 1 additional period of not more
14 than 180 days; and”;

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

16 “(4) The Secretary may promulgate emergency regu-
17 lations under this subsection to protect the public health.
18 Notwithstanding paragraph (3), regulations promulgated
19 under this paragraph shall remain in effect until with-
20 drawn by the Secretary. The Secretary shall promptly
21 withdraw regulations under this paragraph when the cir-
22 cumstances requiring the regulations no longer exist. The
23 Secretary shall provide an opportunity for submission of
24 comments by the public after regulations are promulgated
25 under this paragraph.

1 “(5) An emergency regulation promulgated under
2 this subsection that closes an area to fishing shall not re-
3 main in effect for an additional period under paragraph
4 (3)(B) unless before the beginning of the additional period
5 the Council having jurisdiction over the area, in conjunc-
6 tion with the Secretary, publishes a report on the status
7 of the fishery in the area that includes an analysis of the
8 costs and benefits of the closure.”.

9 **SEC. 12. STATE JURISDICTION.**

10 (a) **REPORTS.**—Section 306(c)(1) (16 U.S.C.
11 1856(c)(1)) is amended—

12 (1) by striking “and” at the end of subpara-
13 graph (A);

14 (2) by striking the period at the end of sub-
15 paragraph (B) and inserting “; and”; and

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

17 “(C) the owner or operator of the vessel
18 submits to the appropriate Council and the Sec-
19 retary, in a manner prescribed by the Sec-
20 retary, periodic reports on the tonnage of fish
21 received from vessels of the United States and
22 the locations from which such fish were har-
23 vested.”.

24 (b) **STATE AUTHORITY.**—Section 306(b) (16 U.S.C.
25 1856(b)) is amended by adding at the end the following:

1 “(3) For any fishery occurring off the coasts of
2 Alaska for which there is no Federal fishery man-
3 agement plan approved and implemented pursuant
4 to this Act, or pursuant to delegation to a State in
5 a fishery management plan, a State may enforce its
6 laws or regulations pertaining to the taking of fish
7 in the exclusive economic zone off that State or the
8 landing of fish caught in the exclusive economic zone
9 providing there is a legitimate State interest in the
10 conservation and management of that fishery, until
11 a Federal fishery management plan is implemented.
12 Fisheries currently managed pursuant to a Federal
13 fishery management plan shall not be removed from
14 Federal management and placed under State author-
15 ity without the unanimous consent (except for the
16 Regional Director of the National Marine Fisheries
17 Service) of the Council which developed the fishery
18 management plan.”.

19 **SEC. 13. PROHIBITED ACTS.**

20 (a) **PROHIBITION ON DAMAGING GEAR.**—Section
21 307(1)(K) (16 U.S.C. 1857(1)(K)) is amended by striking
22 “to knowingly steal, or without authorization, to” and in-
23 serting “to steal, or to negligently”.

24 (b) **FAILURE TO DISCLOSE FINANCIAL INFORMA-**
25 **TION.**—Section 307(1) (16 U.S.C. 1857(1)) is amended—

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

3 (2) by striking the period at the end of sub-
4 paragraph (N) and inserting "; or"; and

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

6 "(O) to knowingly and willfully fail to dis-
7 close or falsely disclose any financial interest as
8 required under section 302(k) or to knowingly
9 violate any rule established under section
10 302(k)(8)."

11 (c) PROHIBITED FISHING.—

12 (1) IN GENERAL.—Section 307(2)(B) (16
13 U.S.C. 1857(2)(B)) is amended to read as follows:

14 "(B) in fishing, except recreational fishing
15 permitted under section 201(j), within the ex-
16 clusive economic zone or within the special
17 areas, or for any anadromous species or Con-
18 tinental Shelf fishery resources beyond such
19 zone or areas, or in fishing consisting of trans-
20 porting fish products from a point within the
21 boundaries of any State or the exclusive eco-
22 nomic zone or the special areas, unless such
23 fishing is authorized under, and conducted in
24 accordance with, a valid and applicable permit
25 issued under section 204, except that this sub-

1 paragraph shall not apply to fishing within the
2 special areas before the date on which the
3 Agreement between the United States and the
4 Union of Soviet Socialist Republics on the Mar-
5 itime Boundary, signed June 1, 1990, enters
6 into force for the United States; or”.

7 (2) CONFORMING AMENDMENT.—Section
8 301(h)(2)(A) of the Act entitled “An Act to provide
9 for the designation of the Flower Garden Banks Na-
10 tional Marine Sanctuary”, approved March 9, 1992
11 (Public Law 102-251; 106 Stat. 64), is repealed.

12 **SEC. 14. HAROLD SPARCK BERING SEA COMMUNITY DEVEL-**
13 **OPMENT QUOTA PROGRAM.**

14 Section 313 (16 U.S.C. 1862) is amended by adding
15 at the end the following new subsection:

16 “(f) BERING SEA COMMUNITY DEVELOPMENT
17 QUOTA PROGRAM.—(1) The North Pacific Fishery Man-
18 agement Council and the Secretary shall establish a west-
19 ern Alaska community development quota program under
20 which a percentage of the total allowable catch of any Ber-
21 ing Sea fishery is allocated to western Alaska communities
22 that participate in the program.

23 “(2) To be eligible to participate in the western Alas-
24 ka community development quota program under para-
25 graph (1), a community must—

1 “(A) be located within 50 nautical miles from
2 the baseline from which the breadth of the territorial
3 sea is measured along the Bering Sea coast from the
4 Bering Strait to the western most of the Aleutian Is-
5 lands, or on an island within the Bering Sea;

6 “(B) not be located on the Gulf of Alaska coast
7 of the north Pacific Ocean;

8 “(C) meet criteria developed by the Governor of
9 Alaska, approved by the Secretary, and published in
10 the Federal Register;

11 “(D) be certified by the Secretary of the Inte-
12 rior pursuant to the Alaska Native Claims Settle-
13 ment Act to be a Native village;

14 “(E) consist of residents who conduct more
15 than one-half of their current commercial or subsist-
16 ence fishing effort in the waters of the Bering Sea
17 and Aleutian Islands management area; and

18 “(F) not have previously developed harvesting
19 or processing capability sufficient to support sub-
20 stantial participation in the groundfish fisheries in
21 the Bering Sea, unless the community can show that
22 the benefits from an approved Community Develop-
23 ment Plan would be the only way for the community
24 to realize a return from previous investments.”.

1 **SEC. 15. OBSERVERS.**

2 Title III (16 U.S.C. 1851 et seq.) is amended by add-
3 ing at the end the following:

4 **"SEC. 315. RIGHTS OF OBSERVERS.**

5 "(a) **CIVIL ACTION.**—An observer on a vessel (or the
6 observer's personal representative) under the requirements
7 of this Act or the Marine Mammal Protection Act of 1972
8 (16 U.S.C. 1361 et seq.) that is ill, disabled, injured, or
9 killed from service as an observer on that vessel may not
10 bring a civil action under any law of the United States
11 for that illness, disability for that illness, disability, injury,
12 or death against the vessel or vessel owner, except that
13 a civil action may be brought against the vessel owner for
14 the owner's willful misconduct.

15 "(b) **EXCEPTION.**—Subsection (a) does not apply if
16 the observer is engaged by the owner, master, or individual
17 in charge of a vessel to perform any duties in service to
18 the vessel."

19 **SEC. 16. INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS.**

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

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

25 "(A) in developing such system, the Coun-
26 cils and the Secretary take into account—

1 “(i) the need to promote conservation;
2 “(ii) present participation in the fish-
3 ery,
4 “(iii) historical fishing practices in,
5 and dependence on, the fishery,
6 “(iv) the economics of the fishery,
7 “(v) the capability of fishing vessels
8 used in the fishery to engage in other fish-
9 eries,
10 “(vi) the cultural and social frame-
11 work relevant to the fishery and local
12 coastal communities, and
13 “(vii) any other relevant consider-
14 ations; and
15 “(B) in the case of such a system that pro-
16 vides for the allocation and issuance of individ-
17 ual quotas (as that term is defined in sub-
18 section (g)), the plan complies with subsection
19 (g).”.

20 (b) REQUIREMENTS.—Section 303 is further amend-
21 ed by adding at the end the following new subsection:

22 “(g) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA
23 SYSTEMS.—(1) A fishery management plan which estab-
24 lishes an individual quota system for a fishery—

1 “(A) shall provide for administration of the sys-
2 tem by the Secretary in accordance with the terms
3 of the plan;

4 “(B) shall not create, or be construed to create,
5 any right, title, or interest in or to any fish before
6 the fish is harvested;

7 “(C) shall include provisions which establish
8 procedures and requirements for each Council hav-
9 ing authority over the fishery, for—

10 “(i) reviewing and revising the terms of
11 the plan that establish the system; and

12 “(ii) renewing, reallocating, and reissuing
13 individual quotas if determined appropriate by
14 each Council;

15 “(D) shall include provisions to—

16 “(i) provide for fair and equitable alloca-
17 tion of individual quotas under the system, and
18 minimize negative social and economic impacts
19 of the system on local coastal communities;

20 “(ii) ensure adequate enforcement of the
21 system, including the use of observers where
22 appropriate; and

23 “(iii) provide for monitoring the temporary
24 or permanent transfer of individual quotas
25 under the system; and

1 “(E) include provisions that prevent any person
2 from acquiring an excessive share of individual
3 quotas issued for a fishery.

4 “(2) An individual quota issued under an individual
5 quota system established by a fishery management plan—

6 “(A) shall be considered a grant, to the holder
7 of the individual quota, of permission to engage in
8 activities permitted by the individual quota;

9 “(B) may be revoked or limited at any time by
10 the Secretary or the Council having authority over
11 the fishery for which it is issued, if necessary for the
12 conservation and management of the fishery (includ-
13 ing as a result of a violation of this Act or any regu-
14 lation prescribed under this Act);

15 “(C) if revoked or limited by the Secretary or
16 a Council, shall not confer any right of compensation
17 to the holder of the individual quota;

18 “(D) may be received, held, or transferred in
19 accordance with regulations prescribed by the Sec-
20 retary under this Act;

21 “(E) shall, except in the case of an individual
22 quota allocated under an individual quota system es-
23 tablished before the date of enactment of the Fish-
24 ery Conservation and Management Amendments of
25 1995, expire not later than 7 years after the date it

1 is issued, in accordance with the terms of the fishery
2 management plan; and

3 “(F) upon expiration under subparagraph (E),
4 may be renewed, reallocated, or reissued if deter-
5 mined appropriate by each Council having authority
6 over the fishery.

7 “(3)(A) Except as provided in subparagraphs (B)
8 and (C), any fishery management plan that establishes an
9 individual quota system for a fishery may authorize indi-
10 vidual quotas to be held by or issued under the system
11 to fishing vessel owners, fishermen, crew members, other
12 persons as specified by the Council, and United States fish
13 processors.

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

17 “(C) A Federal agency or official may not hold, ad-
18 minister, or reallocate an individual quota issued under
19 a fishery management plan, other than the Secretary and
20 the Council having authority over the fishery for which
21 the individual quota is issued.

22 “(4) Any fishery management plan that establishes
23 an individual quota system for a fishery may include provi-
24 sions that—

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

3 “(B) provide a portion of the annual harvest in
4 the fishery for entry-level fishermen, small vessel
5 owners, or crewmembers who do not hold or qualify
6 for individual quotas.

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

13 “(6) As used in this subsection:

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

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

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

24 (1) by inserting “(1)” before “The Secretary
25 shall”; and

1 (2) by adding at the end the following new
2 paragraph:

3 “(2)(A) Notwithstanding paragraph (1), the Sec-
4 retary shall collect from a person that holds or transfers
5 an individual quota issued under a limited access system
6 established under section 303(b)(6) fees established by the
7 Secretary in accordance with this section and section
8 9701(b) of title 31, United States Code.

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

11 “(i) An initial allocation fee in an amount, de-
12 termined by the Secretary, equal to 1 percent of the
13 value of fish authorized to be harvested in one year
14 under an individual quota, which shall be collected
15 from the person to whom the individual quota is
16 first issued.

17 “(ii) An annual fee in an amount, determined
18 by the Secretary, not to exceed 4 percent of the
19 value of fish authorized to be harvested each year
20 under an individual quota share, which shall be col-
21 lected from the holder of the individual quota share.

22 “(iii) A transfer fee in an amount, determined
23 by the Secretary, equal to 1 percent of the value of
24 fish authorized to be harvested each year under an
25 individual quota share, which shall be collected from

1 a person who permanently transfers the individual
2 quota share to another person.

3 “(C) In determining the amount of a fee under this
4 paragraph, the Secretary shall ensure that the amount is
5 commensurate with the cost of managing the fishery with
6 respect to which the fee is collected, including reasonable
7 costs for salaries, data analysis, and other costs directly
8 related to fishery management and enforcement.

9 “(D) The Secretary, in consultation with the Coun-
10 cils, shall promulgate regulations prescribing the method
11 of determining under this paragraph the value of fish au-
12 thorized to be taken under an individual quota share, the
13 amount of fees, and the method of collecting fees.

14 “(E) Fees collected under this paragraph from hold-
15 ers of individual quotas in a fishery shall be an offsetting
16 collection and shall be available to the Secretary only for
17 the purposes of administering and implementing this Act
18 with respect to that fishery.

19 “(F) The Secretary may not assess or collect any fee
20 under this paragraph with respect to an individual quota
21 system established before the date of enactment of the
22 Fishery Conservation and Management Amendments of
23 1995, during the 5-year period beginning on that date of
24 enactment.”.

1 (d) APPROVAL OF FISHERY MANAGEMENT PLANS
2 ESTABLISHING INDIVIDUAL QUOTA SYSTEMS.—Section
3 304 (16 U.S.C. 1854) is further amended by adding after
4 subsection (k) (as added by section 10 of this Act) the
5 following new subsection:

6 “(1) ACTION ON LIMITED ACCESS SYSTEMS.—(1) In
7 addition to the other requirements of this Act, the Sec-
8 retary may not approve a fishery management plan that
9 establishes a limited access system that provides for the
10 allocation of individual quotas (in this subsection referred
11 to as an ‘individual quota system’) unless the plan com-
12 plies with section 303(g).

13 “(2) Within 1 year after receipt of recommendations
14 from the review panel established under paragraph (3),
15 the Secretary shall issue regulations which establish re-
16 quirements for establishing an individual quota system.
17 The regulations shall be developed in accordance with the
18 recommendations. The regulations shall—

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

22 “(B) ensure that any individual quota system is
23 consistent with the requirements of sections 303(b)
24 and 303(g), and require the collection of fees in ac-
25 cordance with subsection (d)(2);

1 “(C) provide for appropriate penalties for viola-
2 tions of individual quotas systems, including the rev-
3 ocation of individual quotas for such violations;

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

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

15 “(3)(A) Not later than 6 months after the date of
16 the enactment of the Fishery Conservation and Manage-
17 ment Amendments of 1995, the Secretary shall establish
18 a review panel to evaluate fishery management plans in
19 effect under this Act that establish a system for limiting
20 access to a fishery, including individual quota systems,
21 and other limited access systems, with particular attention
22 to—

23 “(i) the success of the systems in conserving
24 and managing fisheries;

1 “(ii) the costs of implementing and enforcing
2 the systems;

3 “(iii) the economic effects of the systems on
4 local communities; and

5 “(iv) the use of limited access systems under
6 which individual quotas may not be transferred by
7 the holder, and the use of leases or auctions in the
8 establishment or allocation of individual quota
9 shares.

10 “(B) The review panel shall consist of—

11 “(i) the Secretary or a designee of the Sec-
12 retary;

13 “(ii) a representative of each Council, selected
14 by the Council;

15 “(iii) 3 representatives of the commercial fish-
16 ing and processing industry; and

17 “(iv) one at large representative who is selected
18 by reason of occupational or other experience, sci-
19 entific expertise, or training, and who is knowledg-
20 eable regarding the conservation and management or
21 the commercial or recreational harvest of fishery re-
22 sources.

23 “(C) Based on the evaluation required under sub-
24 paragraph (A), the review panel shall, by September 30,
25 1997, submit recommendations—

1 “(i) to the Councils and the Secretary with re-
2 spect to the revision of individual quota systems that
3 were established under this Act prior to June 1,
4 1995; and

5 “(ii) to the Secretary for the development of the
6 regulations required under paragraph (2).”

7 (e) RESTRICTION ON NEW INDIVIDUAL QUOTA SYS-
8 TEMS PENDING REGULATIONS.—

9 (1) RESTRICTION.—The Secretary of Commerce
10 may not approve any covered quota system plan, and
11 no covered quota system plan shall take effect,
12 under title III of the Magnuson Fishery Conserva-
13 tion and Management Act before the effective date
14 of regulations issued by the Secretary under section
15 304(k) of that Act, as added by subsection (d).

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

20 (A) proposes establishment of an individual
21 quota system (as that term is used in section
22 303 of the Magnuson Fishery Conservation and
23 Management Act, as amended by subsection (a)
24 of this section); and

1 (B) is submitted to the Secretary after
2 May 1, 1995.

3 **SEC. 17. FISHING CAPACITY REDUCTION PROGRAMS.**

4 (a) **IN GENERAL.**—Title III (16 U.S.C. 1851 et seq.)
5 is further amended by adding after section 315 (as added
6 by section 15 of this Act) the following new section:

7 **“SEC. 316. FISHING CAPACITY REDUCTION PROGRAMS.**

8 **“(a) AUTHORITY TO CONDUCT PROGRAM.**—The Sec-
9 retary, with the concurrence of the Council having author-
10 ity over a fishery, may conduct a voluntary fishing capac-
11 ity reduction program for a fishery in accordance with this
12 section, if—

13 **“(1) the Secretary—**

14 **“(A) determines that the program is nec-**
15 **essary for rebuilding, preventing overfishing, or**
16 **generally improving conservation and manage-**
17 **ment of the fishery; or**

18 **“(B) is requested to do so by the Council**
19 **with authority over the fishery; and**

20 **“(2) there is in effect under section 304 a fish-**
21 **ery management plan that—**

22 **“(A) limits access to the fishery through a**
23 **Federal fishing permit required by a limited ac-**
24 **cess system established under section 303(b)(6);**
25 **and**

1 “(B) prevents the replacement of fishing
2 capacity eliminated by the program through—

3 “(i) a moratorium on the issuance of
4 new Federal fishing permits for the dura-
5 tion of the repayment period; and

6 “(ii) restrictions on fishing vessel ca-
7 pacity upgrading.

8 “(b) PROGRAM REQUIREMENTS.—Under a fishing
9 capacity reduction program conducted under this section
10 for a fishery, the Secretary shall—

11 “(1) seek to permanently reduce the maximum
12 effective fishing capacity at the least cost and in the
13 shortest period of time through the removal of ves-
14 sels and permits from the fishery;

15 “(2) make payments to—

16 “(A) scrap or otherwise render perma-
17 nently unusable for fishing in the United
18 States, vessels that operate in the fishery; and

19 “(B) acquire the Federal fishing permits
20 that authorize participation in the fishery;

21 “(3) provide for the funding of those payments
22 by persons that participate in the fishery, by estab-
23 lishing and imposing fees on holders of Federal fish-
24 ing permits under this Act that authorize that par-
25 ticipation;

1 “(4) establish criteria for determining the types
2 of vessels and permits which are eligible to partici-
3 pate in the program, that—

4 “(A) assess vessel impact on the fishery;

5 “(B) minimize program costs; and

6 “(C) take into consideration—

7 “(i) previous fishing capacity reduc-
8 tion programs; and

9 “(ii) the characteristics of the fishery;

10 “(5) establish procedures for determining the
11 amount of payments under paragraph (1); and

12 “(6) identify sources of funding for the pro-
13 gram in addition to the amounts referred to in sub-
14 section (f)(2)(A), (B), (C), and (D).

15 “(c) PAYMENTS.—

16 “(1) IN GENERAL.—As part of a fishing capac-
17 ity reduction program under this section, and sub-
18 ject to paragraph (2) the Secretary shall make pay-
19 ments under subsection (b)(2).

20 “(2) ESTABLISHMENT OF FEE REQUIRED.—
21 The Secretary may not make any payment under
22 paragraph (1) for a fishery unless there is in effect
23 for the fishery a fee under subsection (d).

24 “(3) LIMITATION ON TOTAL AMOUNT OF PAY-
25 MENTS FOR FISHERY.—The total amount of pay-

1 ments under paragraph (1) for a fishery may not ex-
2 ceed the total amount the Secretary projects will be
3 deposited into the Fund from fees that apply to the
4 fishery under subsection (d).

5 “(d) FEES.—

6 “(1) IN GENERAL.—Notwithstanding any other
7 provision of law, the Secretary, with the concurrence
8 of a majority of the voting members of a Council
9 having authority over a fishery for which a fishing
10 capacity reduction program is conducted under this
11 section, may establish an annual fee on holders of
12 Federal fishing permits authorizing participation in
13 the fishery.

14 “(2) AMOUNT OF FEE.—The amount of a fee
15 established under this subsection for a fishery de-
16 scribed in paragraph (1)—

17 “(A) shall be adequate to ensure that the
18 total amount collected in the form of the fee
19 will not be less than the amount the Secretary
20 determines is necessary for payments under
21 subsection (b)(1) to reduce fishing capacity in
22 the fishery to a level that will ensure the long-
23 term health of the fishery;

24 “(B) shall be based on—

25 “(i) the value of the fishery;

1 “(ii) the projected number of partici-
2 pants in the fishery;

3 “(iii) the projected catch in the fish-
4 ery; and

5 “(iv) the direct costs of implementing
6 a fishing capacity reduction program under
7 this section for the fishery; and

8 “(C) may not exceed, for any permit hold-
9 er, 5 percent of the value of fish harvested
10 under the permit each year.

11 “(3) EFFECTIVE PERIOD.—A fee under this
12 subsection may not be in effect for more than 15
13 years.

14 “(4) USE OF AMOUNTS RECEIVED.—Amounts
15 received by the United States as fees under this sub-
16 section—

17 “(A) shall be deposited into the Fund; and

18 “(B) may not be used to pay any adminis-
19 trative overhead or other costs not directly in-
20 curred in implementing this section with respect
21 to the fishery.

22 “(e) ADVISORY PANELS.—

23 “(1) IN GENERAL.—The Secretary shall estab-
24 lish for each fishery for which a fishing capacity re-
25 duction program is conducted under this section an

1 advisory panel to advise the Secretary regarding that
2 program.

3 “(2) MEMBERSHIP.—Each advisory panel
4 under this subsection shall consist of individuals ap-
5 pointed by the Secretary and shall include represent-
6 atives of—

7 “(A) the Department of Commerce,

8 “(B) Councils having authority over fish-
9 eries for which the panel is established,

10 “(C) appropriate sectors of the fishing in-
11 dustry affected by fishing capacity reduction
12 programs under this sections, and

13 “(D) appropriate States affected by such
14 programs.

15 “(f) FISHERIES CONSERVATION AND RESTORATION
16 FUND.—

17 “(1) ESTABLISHMENT.—There is established in
18 the Treasury of the United States a separate ac-
19 count which shall be known as the Fisheries Con-
20 servation and Restoration Fund (in this section re-
21 ferred to as the ‘Fund’).

22 “(2) DEPOSITS INTO THE FUND.—There shall
23 be deposited into the Fund—

24 “(A) amounts appropriated under clause
25 (iv) of section 2(b)(1)(A) of the Act of August

1 11, 1939 (15 U.S.C. 713e-3(b)(1)(A)), popu-
2 larly known as the Saltonstall-Kennedy Act;

3 “(B) amounts paid to the United States
4 Government as fees established under sub-
5 section (d);

6 “(C) any other amounts appropriated for
7 fisheries disaster that the Secretary determines
8 should be used for fishing capacity reduction
9 programs under this section; and

10 “(D) any other amounts appropriated for
11 making payments under subsection (b)(1).

12 “(3) AVAILABILITY.—

13 “(A) IN GENERAL.—Amounts in the Fund
14 shall be available to the Secretary without fiscal
15 year limitation for making payments under sub-
16 section (b)(1).

17 “(B) MANAGEMENT OF UNNEEDED BAL-
18 ANCE.—Amounts in the Fund that are not cur-
19 rently needed for the purposes of this section
20 shall be invested in obligations of, or guaran-
21 teed by, the United States.

22 “(g) EXPIRATION OF ACQUIRED PERMITS.—Permits
23 acquired by the Secretary under subsection (b)(1)(B)—

24 “(1) shall not be effective after the date of that
25 acquisition; and

1 “(2) may not be reissued or replaced.”.

2 (b) USE OF AMOUNTS TRANSFERRED UNDER
3 SALTONSTALL-KENNEDY ACT.—Section 2(b)(1) of the
4 Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)), popu-
5 larly known as the Saltonstall-Kennedy Act, is amended
6 in subparagraph (A) by striking “and” after the semicolon
7 at the end of clause (ii), by striking the period at the end
8 of clause (iii) and inserting “; and”, and by adding at the
9 end the following new clause:

10 “(iv) to fund fishing capacity reduction
11 programs under section 316 of the Magnuson
12 Fishery Conservation and Management Act, by
13 depositing a portion of amounts transferred
14 into the Fisheries Conservation and Restoration
15 Fund established by that section; and”.

16 **SEC. 18. CONSIDERATION OF ABILITY TO PAY PENALTIES.**

17 Section 308(a) (16 U.S.C. 1858(a)) is amended—

18 (1) in the last sentence by striking “ability to
19 pay,”; and

20 (2) by adding at the end the following new sen-
21 tence: “In assessing such penalty, the Secretary may
22 also consider facts relating to the ability of the viola-
23 tor to pay that are established by the violator in a
24 timely manner.”.

1 SEC. 19. AUTHORIZATION OF APPROPRIATIONS.

2 (a) IN GENERAL.—Title IV (90 Stat. 359–361) is
3 amended to read as follows:

4 “TITLE IV—MISCELLANEOUS
5 PROVISIONS

6 “SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

7 “There are authorized to be appropriated to the Sec-
8 retary, for carrying out this Act, the following:

9 “(1) \$114,000,000 for fiscal year 1996.

10 “(2) \$118,000,000 for fiscal year 1997.

11 “(3) \$122,000,000 for fiscal year 1998.

12 “(4) \$126,000,000 for fiscal year 1999.

13 “(5) \$130,000,000 for fiscal year 2000.”

14 (b) CLERICAL AMENDMENT.—The table of contents
15 in the first section of the Magnuson Fishery Conservation
16 and Management Act is amended by striking the items
17 relating to title IV and the sections in that title and insert-
18 ing the following:

“TITLE IV—MISCELLANEOUS PROVISIONS

“Sec. 401. Authorization of appropriations.”

19 SEC. 20. TECHNICAL CORRECTIONS.

20 (a) CORRECTION.—Section 304 of the Act entitled
21 “An Act to provide for the designation of the Flower Gar-
22 den Banks National Marine Sanctuary”, approved March
23 9, 1992 (Public Law 102–251; 106 Stat. 65), is repealed.

1 (b) CONFORMING AMENDMENT.—Section 3(15) of
2 the Marine Mammal Protection Act of 1972 (16 U.S.C.
3 1362(15)) is amended to read as follows:

4 “(15) The term ‘waters under the jurisdiction of the
5 United States means—

6 “(A) the territorial sea of the United States;

7 “(B) the waters included within a zone, contig-
8 uous to the territorial sea of the United States, of
9 which the inner boundary is a line coterminous with
10 the seaward boundary of each coastal State, and the
11 outer boundary is a line drawn in such a manner
12 that each point on it is 200 nautical miles from the
13 baseline from which the territorial sea is measured;
14 and

15 “(C) the areas referred to as eastern special
16 areas in Article 3(1) of the Agreement between the
17 United States of America and the Union of Soviet
18 Socialist Republics on the Maritime Boundary,
19 signed June 1, 1990; in particular, those areas east
20 of the maritime boundary, as defined in that Agree-
21 ment, that lie within 200 nautical miles of the base-
22 lines from which the breadth of the territorial sea of
23 Russia is measured but beyond 200 nautical miles of
24 the baselines from which the breadth of the terri-
25 torial sea of the United States is measured, except

1 that this subparagraph shall not apply before the
2 date on which the Agreement between the United
3 States and the Union of Soviet Socialist Republics
4 on the Maritime Boundary, signed June 1, 1990, en-
5 ters into force for the United States.”.

6 **SEC. 21. CLERICAL AMENDMENTS.**

7 The Magnuson Fishery Conservation and Manage-
8 ment Act (16 U.S.C. 1801 et seq.) is amended by striking
9 “Committee on Merchant Marine and Fisheries” each
10 place it appears and inserting “Committee on Resources”.

11 **SEC. 22. PROVISIONS RELATING TO GULF OF MEXICO.**

12 (a) **FISHERY ASSESSMENTS.**—Section 304(e) (16
13 U.S.C. 1854(e)) is amended by adding at the end the fol-
14 lowing new paragraph:

15 “(5) The Secretary shall develop and implement a
16 systematic program for the assessment and annual report-
17 ing to the public of the status of fisheries in the Gulf of
18 Mexico subject to management under this Act. Such pro-
19 gram shall—

20 “(A) provide for the use of peer-review panels
21 consisting of independent and external experts;

22 “(B) not exclude peer-reviewers merely because
23 they represent entities that may have an interest or
24 potential interest in the outcome, if that interest is
25 fully disclosed to the Secretary;

1 “(C) provide opportunity to become part of a
2 peer-review panel at a minimum by soliciting nomi-
3 nations through the Federal Register; and

4 “(D) ensure that all comment and opinions of
5 such peer-review panels are made available to the
6 public.”.

7 (b) FISHERY MONITORING.—Section 304 (16 U.S.C.
8 1854) is further amended by adding at the end the follow-
9 ing new subsection:

10 “(k) FISHERY MONITORING.—(1) The Secretary
11 shall develop a plan for the Gulf of Mexico region to col-
12 lect, assess, and report statistics concerning the fisheries
13 in each such region.

14 “(2) The plan under this subsection shall—

15 “(A) provide fishery managers and the public
16 with timely and accurate information concerning
17 harvests and fishing effort;

18 “(B) minimize paperwork and regulatory bur-
19 dens on fishermen and fish buyers;

20 “(C) minimize costs to Federal and State agen-
21 cies;

22 “(D) avoid duplication and inconsistencies in
23 the collection, assessment, and reporting of fishery
24 statistics; and

25 “(E) ensure the confidentiality of information.

1 “(3) The Secretary shall ensure that fishermen, fish
2 buyers, and other individuals potentially impacted by the
3 plan required under this subsection are actively involved
4 in all stages of the development of such plan and that ap-
5 propriate fishery management agencies are consulted.

6 “(4) No later than 9 months after the date of enact-
7 ment of the Fishery Conservation and Management
8 Amendments of 1995, the Secretary shall publish notice
9 of a proposed plan required under this subsection and pro-
10 vide the public with a reasonable opportunity to comment
11 on such proposed plan. The Secretary shall consider such
12 comments before submitting the plan under paragraph
13 (5).

14 “(5) No later than one year after the date of enact-
15 ment of the Fishery Conservation and Management
16 Amendments of 1995, the Secretary shall submit a final
17 plan under this subsection to the Committee on Resources
18 of the House of Representatives and the Committee on
19 Commerce, Science, and Transportation of the Senate.”.

20 (c) GULF OF MEXICO RED SNAPPER STOCK MAN-
21 AGEMENT STUDY.—

22 (1) IN GENERAL.—The Secretary of Commerce
23 shall have an independent analysis conducted that
24 will evaluate—

1 (A) the methods, data, and models used to
2 assess the status of Gulf of Mexico red snapper
3 stock assessments;

4 (B) the effectiveness of the fishery man-
5 agement plan in effect under the Magnuson
6 Fishery Conservation and Management Act that
7 applies to Gulf of Mexico red snapper, in terms
8 of the appropriateness of the management goal
9 and time frame given the available biological
10 data; and

11 (C) regulations in effect under that Act
12 that apply to Gulf of Mexico red snapper, in the
13 terms of the effectiveness of fairly controlling
14 fishing mortality.

15 (2) STUDY REQUIREMENTS.—The study shall—

16 (A) assess all alternatives that could pro-
17 vide a more balanced and practical approach to
18 managing the red snapper fishery in the Gulf of
19 Mexico;

20 (B) involve commercial and recreational
21 fishermen from the Gulf of Mexico in the collec-
22 tion of data and information and in the devel-
23 opment of an accurate assessment plan; and

24 (C) be completed and reported to the Con-
25 gress and the Gulf of Mexico Fishery Manage-

1 ment Council within 1 year after the date of the
2 enactment of this Act.

3 (3) USE OF REPORT.—It is expected for the re-
4 port on the study under this subsection to be used
5 as the foundation for any future management of red
6 snapper in the Gulf of Mexico by the Gulf of Mexico
7 Fishery Management Council or the National Ma-
8 rine Fisheries Service (or both). It is also expected
9 that the Council will suspend the implementation of
10 any individual fishing quota plan for red snapper in
11 the Gulf of Mexico until the study is completed and
12 until the Secretary of Commerce has completed
13 standards or guidelines.

14 (4) LIMITED IMMUNITY.—Individuals providing
15 credible information to receive the most accurate as-
16 sessments shall not be subject to any catch reporting
17 violations.

18 **SEC. 23. STUDY OF CONTRIBUTION OF BYCATCH TO CHARI-**
19 **TABLE ORGANIZATIONS.**

20 (a) STUDY.—The Secretary of Commerce shall con-
21 duct a study of the contribution of bycatch to charitable
22 organizations by commercial fishermen. The study shall
23 include determination of—

1 (1) the amount of bycatch that is contributed
2 each year to charitable organizations by commercial
3 fishermen;

4 (2) the economic benefits to commercial fisher-
5 man from those contributions; and

6 (3) the impact on fisheries of the availability of
7 those benefits.

8 (b) REPORT.—Not later than 1 year after the date
9 of the enactment of this Act, the Secretary of Commerce
10 shall submit to the Congress a report containing deter-
11 minations made in the study under subsection (a).

12 (c) BYCATCH DEFINED.—In this section the term
13 “bycatch” has the meaning given that term in section
14 3(34) of the Magnuson Fishery Conservation and Manage-
15 ment Act, as amended by section 4 of this Act.

104TH CONGRESS
1ST SESSION

S. 39

To amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. STEVENS (for himself, Mr. KERRY, and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Sustainable Fisheries Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CONSERVATION AND MANAGEMENT

- Sec. 101. Amendment of the Magnuson Fishery Conservation and Management Act.
- Sec. 102. Findings; purposes; policy.
- Sec. 103. Definitions.
- Sec. 104. Authorization of appropriations.
- Sec. 105. Highly migratory species.
- Sec. 106. Foreign fishing.
- Sec. 107. Permits for foreign fishing.
- Sec. 108. Large-scale driftnet fishing.
- Sec. 109. National standards.
- Sec. 110. Regional fishery management councils.
- Sec. 111. Fishery management plans.
- Sec. 112. Plan review and implementation.
- Sec. 113. Ecosystem management.
- Sec. 114. State jurisdiction.
- Sec. 115. Prohibited acts.
- Sec. 116. Civil penalties and permit sanctions.
- Sec. 117. Enforcement.
- Sec. 118. North Pacific fisheries conservation.
- Sec. 119. Transition to sustainable fisheries.

TITLE II—FISHERY MONITORING AND RESEARCH

- Sec. 201. Change of title.
- Sec. 202. Registration and data management.
- Sec. 203. Data collection.
- Sec. 204. Observers.
- Sec. 205. Fisheries research.
- Sec. 206. Incidental harvest research.
- Sec. 207. Repeal.
- Sec. 208. Clerical amendments.

TITLE III—FISHERIES STOCK RECOVERY FINANCING

- Sec. 301. Short title.
- Sec. 302. Fisheries stock recovery refinancing.
- Sec. 303. Federal financing bank relating to fishing vessels and fishery facilities.
- Sec. 304. Fees for guaranteeing obligations.
- Sec. 305. Sale of acquired collateral.

1 **TITLE I—CONSERVATION AND** 2 **MANAGEMENT**

3 **SEC. 101. AMENDMENT OF MAGNUSON FISHERY CONSERVA-** 4 **TION AND MANAGEMENT ACT.**

5 Except as otherwise expressly provided, whenever in
 6 this title an amendment or repeal is expressed in terms
 7 of an amendment to, or repeal of, a section or other provi-
 8 sion, the reference shall be considered to be made to a

1 section or other provision of the Magnuson Fishery Con-
2 servation and Management Act (16 U.S.C. 1801 et seq.).

3 **SEC. 102. FINDINGS; PURPOSES; POLICY.**

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

5 (1) by striking subsection (a)(2) and inserting the
6 following:

7 “(2) Certain stocks of fish have declined to the
8 point where their survival is threatened, and other
9 stocks of fish have been so substantially reduced in
10 number that they could become similarly threatened
11 as a consequence of (A) increased fishing pressure,
12 (B) the inadequacy of fishery resource conservation
13 and management practices and controls, or (C) di-
14 rect and indirect habitat losses which have resulted
15 in a diminished capacity to support existing fishing
16 levels.”;

17 (2) by inserting “to facilitate long-term protec-
18 tion of essential fish habitats,” in subsection (a)(6)
19 after “conservation,”;

20 (3) by adding at the end of subsection (a) the
21 following:

22 “(9) One of the greatest long-term threats to
23 the viability of commercial and recreational fisheries
24 is the continuing loss of marine, estuarine, and other
25 aquatic habitats on a national level. Habitat consid-

1 erations should receive increased attention for the
2 conservation and management of fishery resources of
3 the United States.”;

4 (4) by inserting “in a non-wasteful manner” in
5 subsection (b)(6) after “such development”; and

6 (5) by adding at the end of subsection (b) the
7 following:

8 “(7) to promote the protection of essential fish
9 habitat in the review of projects conducted under
10 Federal permits, licenses, or other authorities that
11 affect or have the potential to affect such habitat.”.

12 **SEC. 103. DEFINITIONS.**

13 Section 3 (16 U.S.C. 1802) is amended—

14 (1) by redesignating paragraphs (2) through
15 (32) as paragraphs (3) through (33) respectively,
16 and inserting after paragraph (1) the following:

17 “(2) The term ‘bycatch’ means fish which are
18 harvested by a fishing vessel, but which are not sold
19 or kept for personal use, including, but not limited
20 to, economic and regulatory discards.”;

21 (2) by redesignating paragraphs (7) through
22 (33) (as redesignated) as paragraphs (9) through
23 (35), respectively, and inserting after paragraph (6)
24 (as redesignated) the following:

1 “(7) The term ‘economic discards’ means fish
2 which are the target of a fishery, but which are not
3 retained by the fishing vessel which harvested them
4 because they are of an undesirable size, sex or qual-
5 ity, or for other economic reasons.

6 “(8) The term ‘essential fish habitat’ means
7 any area essential to the life cycle of a stock of fish,
8 or to the production of maximum sustainable yield
9 of one or more fisheries managed under this Act.”;

10 (3) by redesignating paragraphs (12) through
11 (35) (as redesignated) as paragraphs (13) through
12 (36), respectively, and inserting after paragraph
13 (11) (as redesignated) the following:

14 “(12) The term ‘fishery dependent community’
15 means a community which is substantially dependent
16 on the harvest of fishery resources to meet social
17 and economic needs.”;

18 (4) by redesignating paragraphs (19) through
19 (36) (as redesignated) as paragraphs (20) through
20 (37), respectively, and inserting after paragraph
21 (18) (as redesignated) the following:

22 “(19) The term ‘individual transferable quota’
23 means a revocable Federal authorization to harvest
24 or process a quantity of fish under a unit or quota
25 share that represents a percentage of the total allow-

1 able catch of a stock of fish, that may be received
2 or held by a specific person or persons for their ex-
3 clusive use, and that may be transferred in whole or
4 in part by the holder to another person or persons
5 for their exclusive use.”;

6 (5) by redesignating paragraphs (22) through
7 (37) (as redesignated) as paragraphs (23) through
8 (38), respectively, and inserting after paragraph
9 (21) (as redesignated) the following:

10 “(22) The term ‘limited access system’ means
11 any system for controlling fishing effort which in-
12 cludes such measures as license limitations, individ-
13 ual transferable quotas, and non-transferable
14 quotas.”;

15 (6) by striking “Pacific Marine Fisheries Com-
16 mission” in paragraph (23), as redesignated, and in-
17 serting “Pacific States Marine Fisheries Commis-
18 sion”;

19 (7) by striking paragraph (27), as redesignated,
20 and inserting the following:

21 “(27) The term ‘optimum’, with respect to the
22 yield from a fishery, means the amount of fish
23 which—

24 “(A) will provide the greatest overall bene-
25 fit to the Nation, with particular reference to

1 food production and recreational opportunities,
2 and taking into account the protection of ma-
3 rine ecosystems;

4 “(B) is prescribed on the basis of the max-
5 imum sustainable yield from a fishery, as modi-
6 fied by any relevant social, economic, or ecologi-
7 cal factor; and

8 “(C) provides for the rebuilding of an
9 overfished fishery to a level consistent with pro-
10 ducing the maximum sustainable yield.”;

11 (8) by redesignating paragraphs (28) through
12 (38) (as redesignated) as paragraphs (29) through
13 (39), respectively, and inserting after paragraph
14 (27) (as redesignated) the following:

15 “(28) The terms ‘overfishing’ and ‘overfished’
16 mean a level or rate of fishing mortality that jeop-
17 ardizes the capacity of a fishery to produce the max-
18 imum sustainable yield on a continuing basis.”;

19 (9) by redesignating paragraphs (30) through
20 (39) (as redesignated) as paragraphs (31) through
21 (40), respectively, and inserting after paragraph
22 (29) (as redesignated) the following:

23 “(30) The term ‘regulatory discards’ means fish
24 caught in a fishery which fishermen are required by

1 regulation to discard whenever caught, or are re-
2 quired by regulation to retain but not sell.”;

3 (10) by striking “for which a fishery manage-
4 ment plan prepared under title III or a preliminary
5 fishery management plan prepared under section
6 201(h) has been implemented” in paragraph (38), as
7 redesignated, and inserting “regulated under this
8 Act”; and

9 (11) by redesignating paragraph (40), as redes-
10 igned, as (41), and inserting after paragraph (39)
11 the following:

12 “(40) The term ‘vessel subject to the jurisdic-
13 tion of the United States’ has the same meaning as
14 in section 3(e) of the Maritime Drug Law Enforce-
15 ment Act (46 U.S.C. App. 1903(c)).”.

16 **SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

17 The Act is amended by inserting after section 3 the
18 following:

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

20 “There are authorized to be appropriated to the Sec-
21 retary for the purposes of carrying out the provisions of
22 this Act, not to exceed the following sums (of which 15
23 percent in each fiscal year shall be used for enforcement
24 activities):

25 “(1) \$102,000,000 for fiscal year 1993;

- 1 “(2) \$106,000,000 for fiscal year 1994;
2 “(3) \$143,000,000 for fiscal year 1995;
3 “(4) \$147,000,000 for fiscal year 1996;
4 “(5) \$151,000,000 for fiscal year 1997;
5 “(6) \$155,000,000 for fiscal year 1998; and
6 “(7) \$159,000,000 for fiscal year 1999.”.

7 **SEC. 105. HIGHLY MIGRATORY SPECIES.**

8 Section 102 (16 U.S.C. 1812) is amended by striking
9 “promoting the objective of optimum utilization” and in-
10 serting “shall promote the achievement of optimum yield”.

11 **SEC. 106. FOREIGN FISHING.**

12 Section 201 (16 U.S.C. 1821) is amended—

13 (1) by inserting a comma and “or is approved
14 under section 204(b)(6)(A)(ii)” before the semicolon
15 in subsection (a)(1);

16 (2) by striking “(g)” in subsection (a)(2) and
17 inserting “(f)”;

18 (3) by striking “(i)” in subsection (c)(2)(D)
19 and inserting “(h)”;

20 (4) by striking “, including any regulations pro-
21 mulgated to implement any applicable fishery man-
22 agement plan or any preliminary fishery manage-
23 ment plan” in subsection (c); and

1 (5) by striking subsection (f) and redesignating
2 subsections (g), (h), (i), and (j) as (f), (g), (h), and
3 (i), respectively.

4 **SEC. 107. PERMITS FOR FOREIGN FISHING.**

5 (a) So much of section 204(b) (16 U.S.C. 1824(b))
6 as precedes paragraph (2) is amended to read as follows:

7 “(b) APPLICATIONS AND PERMITS.—

8 “(1) ELIGIBILITY.—

9 “(A) Each foreign nation with which the
10 United States has entered into a governing
11 international fishery agreement shall submit an
12 application to the Secretary of State each year
13 for a permit for each of its fishing vessels that
14 wishes to engage in fishing described in sub-
15 section (a).

16 “(B) An owner of a vessel, other than a
17 vessel of the United States, who wishes to en-
18 gage in the transshipment at sea of fish prod-
19 ucts in the exclusive economic zone or within
20 the boundary of any State, may submit an ap-
21 plication to the Secretary each year for a per-
22 mit for a vessel belonging to that owner, wheth-
23 er or not such vessel is subject to an inter-
24 national fishery agreement described in section
25 201(b) or (c).

1 “(C) No permit issued under this section
2 may be valid for longer than a year. Section
3 558(c) of title 5, United States Code, does not
4 apply to the renewal of any such permit.”.

5 (b) Section 204(b)(4) (16 U.S.C. 1824(b)(4)) is
6 amended—

7 (1) by inserting “(A)” after the caption;

8 (2) by inserting “submitted under paragraph
9 (1)(A)” after “any application”;

10 (3) by redesignating subparagraphs (A), (B),
11 and (C) as clauses (i), (ii), and (iii), respectively;
12 and

13 (4) by inserting at the end thereof the follow-
14 ing:

15 “(B) Upon receipt of any application sub-
16 mitted under paragraph (1)(B) which complies
17 with the requirements of paragraph (3), the
18 Secretary shall promptly transmit copies of the
19 application or summary as indicated under sub-
20 paragraphs (A)(ii) and (iii), and shall also
21 promptly transmit such application or summary
22 to States bordering the exclusive economic zone
23 where such transshipment is proposed to
24 occur.”.

1 (c) Section 204(b)(5) (16 U.S.C. 1824(b)(5)) is
2 amended by striking “under paragraph (4)(C)” and in-
3 serting “submitted under paragraph (1)”.

4 (d) Section 204(b)(6) (16 U.S.C. 1824(b)(6)) is
5 amended—

6 (1) by striking “transmitted under paragraph
7 (4)(A)” in subparagraph (A) and inserting “submit-
8 ted under paragraph (1)(A)”;

9 (2) by inserting “(i)” before “After” in sub-
10 paragraph (A); and

11 (3) by inserting before subparagraph (B) the
12 following:

13 “(ii) In the case of any application
14 submitted under paragraph (1)(B), the
15 Secretary, after taking into consideration
16 any comments submitted by the Council
17 under paragraph (5) or any affected State,
18 may approve the application upon deter-
19 mining that the activity described in the
20 application will be in the interest of the
21 United States and will meet the applicable
22 requirements of this Act, and that the
23 owners or operators have agreed to comply
24 with requirements set forth in section
25 201(c)(2) and have established any bonds

1 or financial assurances that may be re-
2 quired by the Secretary; or the Secretary
3 may disapprove all or any portion of the
4 application.”.

5 (e) Section 204(b)(8) (16 U.S.C. 1824(b)(8)) is
6 amended—

7 (1) by inserting a comma and “or the agent for
8 the foreign vessel owner for any application submit-
9 ted under paragraph (1)(B)” before the semicolon at
10 the end of subparagraph (A); and

11 (2) by inserting “and any affected State” be-
12 fore the period at the end of subparagraph (C).

13 (f) Section 204(b)(9) (16 U.S.C. 1824(b)(9)) is
14 amended—

15 (1) by inserting “paragraph (1)(A) of” after
16 “by a foreign nation under”;

17 (2) by inserting “(A)” after the heading in
18 paragraph (9); and

19 (3) by adding at the end thereof the following:

20 “(B) If the Secretary does not approve any
21 application submitted by a foreign vessel owner
22 under paragraph (1)(B) of this subsection, the
23 Secretary shall promptly inform the vessel
24 owner of the disapproval and the reasons there-
25 fore. The owner, after taking into consideration

1 the reasons for disapproval, may submit a re-
2 vised application under this subsection.”.

3 (g) Section 204(b)(11) (16 U.S.C. 1824(b)(11)) is
4 amended—

5 (1) by inserting “(A)” after the paragraph
6 heading,

7 (2) by inserting “submitting an application
8 under paragraph (1)(A)” after “If a foreign nation”;
9 and

10 (3) adding at the end thereof the following:

11 “(B) If the vessel owner submitting an ap-
12 plication under paragraph (1)(B) notifies the
13 Secretary of acceptance of the conditions and
14 restrictions established by the Secretary under
15 paragraph (7), and upon payment of the appli-
16 cable fees established pursuant to paragraph
17 (10) and confirmation of any bonds or financial
18 assurances that may be required for such trans-
19 shipment of fish, the Secretary shall thereupon
20 issue a permit for the vessel.”.

21 (h) Section 204 (16 U.S.C. 1824) is amended by add-
22 ing at the end thereof the following:

23 “(d) PROHIBITION ON PERMIT ISSUANCE.—Notwith-
24 standing any other provision of this Act, the Secretary is
25 prohibited from issuing, before December 1, 1999, any

1 permit to authorize the catching, taking, or harvesting of
2 Atlantic mackerel or Atlantic herring by foreign fishing
3 vessels within the exclusive economic zone. This subsection
4 shall not apply to permits to authorize foreign fish proc-
5 essing vessels to process Atlantic mackerel or Atlantic her-
6 ring harvested by fishing vessels of the United States.”.

7 **SEC. 108. LARGE-SCALE DRIFTNET FISHING.**

8 (a) Section 206(e) (16 U.S.C. 1826(e)) is amended
9 by striking paragraphs (3) and (4), and redesignating
10 paragraphs (5) and (6) as (3) and (4), respectively.

11 (b) Section 206(f) (16 U.S.C. 1826(f)) is amended
12 by striking “(6)” and inserting “(4)”.

13 **SEC. 109. NATIONAL STANDARDS.**

14 (a) Paragraph (1) of section 301(a) (16 U.S.C.
15 1851(a)) is amended to read as follows:

16 “(1) Conservation and management measures
17 shall prevent overfishing and rebuild overfished fish-
18 ery resources while achieving, on a continuing basis,
19 the optimum yield from each fishery.”.

20 (b) Section 301(a)(5) (16 U.S.C. 1851(a)(5)) is
21 amended by striking “promote” and inserting “consider”.

22 (c) Section 301(a) (16 U.S.C. 1851(a)) is amended
23 by adding at the end thereof the following:

24 “(8) Conservation and management measures
25 shall take into account the importance of the harvest

1 of fishery resources to fishery dependent commu-
2 nities.”.

3 **SEC. 110. REGIONAL FISHERY MANAGEMENT COUNCILS.**

4 (a) Section 302(a) (16 U.S.C. 1852(a)) is amended—

5 (1) by inserting “(1)” after the subsection
6 heading;

7 (2) by redesignating paragraphs (1) through
8 (7) as subparagraphs (A) through (H);

9 (3) by striking “section 304(f)(3)” wherever it
10 appears and inserting in lieu thereof “paragraph
11 (3)”;

12 (4) by striking paragraph (1)(F), as redesign-
13 nated, and inserting the following:

14 “(F) PACIFIC COUNCIL.—The Pacific Fish-
15 ery Management Council shall consist of the
16 States of California, Oregon, Washington, and
17 Idaho and shall have authority over the fish-
18 eries in the Pacific Ocean seaward of such
19 States. The Pacific Council shall have 13 voting
20 members, including 7 appointed by the Sec-
21 retary in accordance with subsection (b)(2) (at
22 least one of whom shall be appointed from each
23 such State), and including one appointed from
24 an Indian tribe with Federally recognized fish-

1 ing rights from California, Oregon, Washington,
2 or Idaho in accordance with subsection (b)(5).”;

3 (5) by indenting the sentence at the end thereof
4 and inserting “(2)” in front of “Each Council”, and
5 by inserting “The Secretary shall establish the
6 boundaries between the geographical areas of au-
7 thority of adjacent Councils.” after “authority.”;
8 and

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

10 “(3) The Secretary shall have authority over
11 any highly migratory species fishery that is within
12 the geographical area of authority of more than one
13 of the following Councils: New England Council,
14 Mid-Atlantic Council, South Atlantic Council, Gulf
15 Council, and Caribbean Council.”.

16 (b) Section 302(b) (16 U.S.C. 1852(b)) is amended—

17 (1) by striking subparagraph (C) of subsection
18 (b)(1) and inserting the following:

19 “(C) The members required to be ap-
20 pointed by the Secretary in accordance with
21 subsections (b)(2) and (5).”;

22 (2) by redesignating paragraph (5) as para-
23 graph (6), and inserting after paragraph (4) the
24 following:

1 “(5)(A) The Secretary shall appoint to the Pa-
2 cific Fishery Management Council one representative
3 of an Indian tribe with Federally recognized fishing
4 rights from California, Oregon, Washington, or
5 Idaho, from a list of not less than 3 individuals sub-
6 mitted by the tribal governments. The representative
7 shall serve for a term of 3 years and may not serve
8 more than 3 consecutive terms. The Secretary, in
9 consultation with the Secretary of the Interior and
10 tribal governments, shall establish by regulation the
11 procedure for submitting lists under this subpara-
12 graph.

13 “(B) Representation shall be rotated among the
14 tribes taking into consideration—

15 “(i) the qualifications of the individuals on
16 the list referred to in subparagraph (A),

17 “(ii) the various treaty rights of the Indian
18 tribes involved and judicial cases that set forth
19 how those rights are to be exercised, and

20 “(iii) the geographic area in which the
21 tribe of the representative is located.

22 “(C) A vacancy occurring prior to the expira-
23 tion of any term shall be filled in the same manner
24 set out in subparagraphs (A) and (B), except that

1 the Secretary may use the list from which the
2 vacating representative was chosen.”; and,

3 (3) by striking “subsection (b)(2)” in para-
4 graph (6), as redesignated, and inserting “sub-
5 sections (b)(2) and (5)”.

6 (c) Section 302(e) (16 U.S.C. 1852(e)) is amended
7 by adding at the end the following:

8 “(5) At the request of any voting member of a
9 Council, the Council shall hold a roll call vote on any
10 matter before the Council. The official minutes and
11 other appropriate records of any Council meeting
12 shall identify all roll call votes held, the name of
13 each voting member present during each roll call
14 vote, and how each member voted on each roll call
15 vote.”.

16 (d) Section 302(g) (16 U.S.C. 1852(g)) is amended
17 by redesignating paragraph (4) as (5), and by inserting
18 after paragraph (3) the following:

19 “(4) The Secretary shall establish advisory pan-
20 els to assist in—

21 “(A) the collection and evaluation of infor-
22 mation relevant to the development of or
23 amendment to any fishery management plan
24 under section 303(e)(2); and

1 “(B) carrying out the purposes of section
2 303(f).”.

3 (e) Section 302(h) (16 U.S.C. 1852(h)) is amended—

4 (1) by striking “section 304(f)(3)” in para-
5 graphs (1) and (5) and inserting “subsection
6 (a)(3)”; and

7 (2) by striking “204(b)(4)(C)” in paragraph (2)
8 and inserting “204(b)(4)(A)(iii)”.

9 (f) Section 302(i) (16 U.S.C. 1852(i)) is amended to
10 read as follows:

11 “(i) NEGOTIATED CONSERVATION AND MANAGE-
12 MENT MEASURES.—

13 “(1) A Council may, in consultation with the
14 Secretary, establish a negotiation panel to assist in
15 the development of specific conservation and man-
16 agement measures for a fishery under authority of
17 such Council. In making the decision to establish
18 such panel, the Council shall consider whether—

19 “(A) there are a finite number of identifi-
20 able interests that will be significantly affected
21 by the development of such measures;

22 “(B) there is a reasonable likelihood that
23 a negotiation panel can be convened with a bal-
24 anced representation of persons who—

1 “(i) can adequately represent the in-
2 terests identified under subparagraph (A);
3 and

4 “(ii) are willing to act in good faith to
5 reach a consensus on the development of
6 such measures;

7 “(C) there is reasonable likelihood that a
8 negotiation panel will contribute to the develop-
9 ment of such measures within a fixed period of
10 time; and

11 “(D) the process under this subsection will
12 not unreasonably delay the development of any
13 conservation and management measure or its
14 submission to the Secretary.

15 “(2) If the Council decides to establish a nego-
16 tiation panel it shall notify all identifiable interests
17 of its intention to convene such panel at least 30 cal-
18 endar days prior to the appointment of members.
19 Such notification shall be published in accordance
20 with subsection (j)(2)(C) of this section and shall
21 include—

22 “(A) a description of the subject and scope
23 of the measures to be developed and the issues
24 to be considered;

1 “(B) a list of interests likely to be signifi-
2 cantly affected by the measures to be developed;

3 “(C) a list of the persons proposed to rep-
4 resent such interests, the person or persons
5 proposed to represent the Council, and the per-
6 son or persons proposed to be nominated as
7 facilitator;

8 “(D) an explanation of how a person may
9 apply or nominate another person for member-
10 ship on the negotiation panel; and

11 “(E) a proposed agenda and schedule for
12 completing the work of the negotiation panel.

13 “(3) No more than 45 calendar days after pro-
14 viding this notification the Council shall make ap-
15 pointments to the negotiation panel in such a man-
16 ner as to achieve balanced representation of all sig-
17 nificant interests to the conservation and manage-
18 ment measures. Such interests shall include, where
19 appropriate, representatives from the fishing indus-
20 try, consumer groups, the scientific community, trib-
21 al organizations, conservation organizations and
22 other public interest organizations, and Federal and
23 State fishery managers.

24 “(4) Each negotiation panel established under
25 this section shall attempt to reach a consensus con-

1 cerning specific conservation and management meas-
2 ures and any other issue such panel determines is
3 relevant to such measures. The Council, to the maxi-
4 mum extent possible consistent with its legal obliga-
5 tions and the best scientific information available,
6 will use the consensus of the negotiation panel, with
7 respect to such measures, as the basis for the devel-
8 opment of the conservation and management meas-
9 ures to be adopted by the Council for submission by
10 the Council to the Secretary in accordance with this
11 Act.

12 “(5) The person or persons representing the
13 Council on a negotiation panel shall participate in
14 the deliberations and activities of such panel with
15 the same rights and responsibilities as other panel
16 members.

17 “(6) Any facilitator nominated by the Council
18 to a negotiation panel must be approved by the
19 panel by consensus. If the panel does not approve a
20 facilitator nominated by the Council the panel shall
21 select by consensus another person to serve as
22 facilitator. No person appointed by the Council to
23 the negotiation panel to represent any interest on
24 the Council may serve as facilitator or otherwise
25 chair such panel.

1 “(7) A facilitator approved or selected by a ne-
2 gotiation panel shall—

3 “(A) chair the meetings of such panel in
4 an impartial manner;

5 “(B) impartially assist the panel members
6 in conducting discussions and negotiations; and

7 “(C) manage the keeping of any minutes
8 or records, (except that any personal notes and
9 materials of the facilitator or the panel mem-
10 bers shall not be subject to disclosure, except
11 upon order of a court).

12 “(8) A negotiation panel may adopt any addi-
13 tional procedures for the operation of the negotiation
14 panel not in conflict with those specified in this sec-
15 tion.

16 “(9) At the conclusion of the negotiation proc-
17 ess, if the negotiation panel reaches a consensus on
18 proposed conservation and management measures,
19 such panel shall transmit to the Council, and
20 present to the Council at the next scheduled meeting
21 of the Council, a report containing the proposed con-
22 servation and management measures. If the negotia-
23 tion panel does not reach consensus on proposed
24 conservation and management measures, such panel
25 shall transmit to the Council, and present to the

1 Council at the next scheduled meeting of the Coun-
2 cil, a report specifying its recommendations and de-
3 scribing the areas in which the negotiation panel
4 reached consensus and the areas in which consensus
5 was not achieved. The negotiation panel may include
6 in a report any other information or materials that
7 such panel considers appropriate. Any panel member
8 may include, as an addendum to the report, addi-
9 tional information or materials.

10 “(10) A negotiation panel shall terminate upon
11 transmittal and presentation to the Council of the
12 report required under paragraph (9) unless the
13 Council in consultation with the panel specifies an
14 alternative termination date.

15 “(11) For the purposes of this subsection—

16 “(A) The term ‘negotiation panel’ means
17 an advisory panel established by a Council
18 under section (g)(2) to assist in the develop-
19 ment of specific conservation and management
20 measures through the process established under
21 this subsection.

22 “(B) The term ‘consensus’ means general
23 but not unanimous concurrence among the in-
24 terests represented unless such panel—

1 “(i) agrees by consensus to define
2 such term to mean a unanimous concu-
3 rence; or

4 “(ii) agrees by consensus upon an-
5 other specified definition.

6 “(C) The term ‘facilitator’ means a person
7 experienced or trained in group mediation and
8 negotiation who impartially aids in the discus-
9 sions and negotiations among the members of a
10 negotiation panel.

11 “(D) The term ‘interest’ means, with re-
12 spect to this subsection, multiple persons or
13 parties who have a similar point of view or
14 which are likely to be affected in a similar man-
15 ner.”.

16 (g) Section 302(j) (16 U.S.C. 1852(j)) is amended—

17 (1) by striking “of the Councils” in paragraph
18 (1) and inserting “established under subsection (g)”;
19 and

20 (2) by striking “of a Council:” in paragraph (2)
21 and inserting “established under subsection (g):”.

22 (3) by adding the following at the end of para-
23 graph (2)(C): “Interested persons may propose to
24 modify the published agenda of a meeting by sub-
25 mitting to a Council, panel or committee within 14

1 calendar days of the published date of the meeting
2 a notice containing a written description of the pro-
3 posed modification signed by not less than two
4 Council members.”;

5 (4) by adding the following at the end of para-
6 graph (2)(D): “All written data submitted to a
7 Council by an interested person shall include a state-
8 ment of the source and date of such information.
9 Any oral or written statement shall include a brief
10 description of the qualifications and interests of the
11 person in the subject of the oral or written state-
12 ment.”;

13 (5) by amending paragraph (2)(E) to read as
14 follows:

15 “(E) Detailed minutes of each meeting of
16 the Council shall be kept and shall contain a
17 record of the persons present, a complete and
18 accurate description of matters discussed and
19 conclusions reached, and copies of all state-
20 ments filed, issued, or approved by the Council.
21 The Chairman shall certify the accuracy of the
22 minutes of each meeting and submit a copy
23 thereof to the Secretary. The minutes shall be
24 made available to any court of competent juris-
25 diction.”; and

1 (6) by striking “303(d)” in paragraph (2)(F)
2 and inserting “402(b)”.

3 (g) Section 302(k) (16 U.S.C. 1852(k)) is amended—

4 (1) by inserting “and recusal” in the subsection
5 heading;

6 (2) by striking paragraph (1) and inserting the
7 following:

8 “(1) For the purposes of this subsection—

9 “(A) the term ‘affected individual’ means
10 an individual who—

11 “(i) is nominated by the Governor of
12 a State for appointment as a voting mem-
13 ber of a Council in accordance with sub-
14 section (b)(2); or

15 “(ii) is a voting member of a Council
16 appointed under subsection (b)(2); and

17 “(B) the term ‘designated official’ means a
18 person with expertise in Federal conflict-of-in-
19 terest requirements who is designated by the
20 Secretary, with the concurrence of a majority of
21 the voting members of the Council, to attend
22 Council meetings and make determinations
23 under paragraph (7)(B).”;

24 (3) by striking “(1)(A)” in paragraph (3)(A)
25 and inserting “(1)(A)(i)”;

1 (4) by striking "(1)(B) or (C)" in paragraph
2 (3)(B) and inserting "(1)(A)(ii)";
3 (5) by striking "(1)(B) or (C)" in paragraph
4 (4) and inserting "(1)(A)(ii)";
5 (6)(A) by striking "and" at the end of para-
6 graph (5)(A);
7 (B) by striking the period at the end of para-
8 graph (5)(B) and inserting a semicolon and the
9 word "and"; and
10 (C) by adding at the end of paragraph (5) the
11 following:
12 "(C) be kept on file by the Secretary for
13 use in reviewing determinations under para-
14 graph (7)(B) and made available for public in-
15 spection at reasonable hours";
16 (7) by striking "(1)(B) or (C)" in paragraph
17 (6) and inserting "(1)(A)(ii)";
18 (8) by redesignating paragraph (7) as (8) and
19 inserting after paragraph (6) the following:
20 "(7)(A) An affected individual required to dis-
21 close a financial interest under paragraph (2) shall
22 not vote on a Council decision which would have a
23 significant and predictable effect on such financial
24 interest. A Council decision shall be considered to
25 have a significant and predictable effect on a finan-

1 cial interest if there is a close causal link between
2 the Council decision and an expected and dispropor-
3 tionate benefit, shared only by a minority of persons
4 within the same industry sector or gear group, to
5 the financial interest. An affected individual who
6 may not vote may participate in Council delibera-
7 tions relating to the decision after notifying the
8 Council of the voting recusal and identifying the fi-
9 nancial interest that would be affected.

10 “(B) At the request of an affected individual, or
11 at the initiative of the appropriate designated offi-
12 cial, the designated official shall make a determina-
13 tion for the record whether a Council decision would
14 have a significant and predictable effect on a finan-
15 cial interest.

16 “(C) Any Council member may submit a writ-
17 ten request to the Secretary to review any deter-
18 mination by the designated official under subpara-
19 graph (B) within 10 days of such determination.
20 Such review shall be completed within 30 days of re-
21 ceipt of the request.

22 “(D) Any affected individual who does not par-
23 ticipate in a Council decision in accordance with this
24 subsection shall state for the record how he or she

1 would have voted on such decision if he or she had
2 voted.

3 “(E) If the Council makes a decision before the
4 Secretary has reviewed a determination under sub-
5 paragraph (C), the eventual ruling may not be treat-
6 ed as cause for the invalidation or reconsideration by
7 the Secretary of such decision.

8 “(F) No later than December 1, 1995, the Sec-
9 retary, in consultation with the Councils, shall issue
10 guidelines with respect to voting recusals under sub-
11 paragraph (A) and the making of determinations
12 under subparagraph (B).”; and

13 (9) by striking “(1)(B) or (C)” in paragraph
14 (8), as redesignated, and inserting “(1)(A)(ii)”.

15 **SEC. 111. FISHERY MANAGEMENT PLANS.**

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

17 (1) by striking paragraph (6) and inserting the
18 following:

19 “(6) consider and provide for, after consultation
20 with the Coast Guard and persons participating in
21 the fishery and to the extent practicable without ad-
22 versely affecting conservation efforts in other fish-
23 eries or discriminating among participants in the af-
24 fected fishery—

25 “(A) safety of life and property at sea;

1 “(B) temporary adjustments regarding ac-
2 cess to the fishery for vessels otherwise pre-
3 vented from harvesting because of weather or
4 other ocean conditions affecting the safe con-
5 duct of the fishery; and

6 “(C) effective enforcement measures (in-
7 cluding an estimate of the resources necessary
8 for such measures).”;

9 (2) by striking paragraph (7) and inserting the
10 following:

11 “(7) facilitate the protection of essential fish
12 habitat by—

13 “(A) summarizing available information on
14 the significance of such habitat to the fishery
15 and the effects of changes to such habitat on
16 the fishery; and

17 “(B) identifying Federal actions that
18 should be considered to promote the long-term
19 protection of essential fish habitats.”;

20 (3) by striking “and” at the end of paragraph
21 (8);

22 (4) by striking the period at the end of para-
23 graph (9) and inserting a semicolon; and

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

1 “(10) specify objective and measurable criteria
2 for classifying when the fishery to which the plan
3 applies would be or is overfished, with an analysis of
4 how the criteria were determined and the relation-
5 ship of the criteria to the reproductive potential of
6 stocks of fish in that fishery;

7 “(11) assess the level of bycatch occurring in
8 the fishery, and to the extent practicable, assess and
9 specify the effect of the fishery on stocks of fish to
10 which the plan does not apply, but which are associ-
11 ated with the ecosystem of the fishery; and

12 “(12) to the extent practicable, minimize mor-
13 tality caused by economic and regulatory discards in
14 the fishery.”.

15 (b) Section 303(b) (16 U.S.C. 1853(b)) is amended—

16 (1) by striking paragraph (6) and inserting the
17 following:

18 “(6) establish a limited access system for the
19 fishery in order to achieve optimum yield if—

20 “(A) in developing such system, the Coun-
21 cil and the Secretary take into account present
22 participation in the fishery, historical fishing
23 practices in and dependence on the fishery, the
24 economics of the fishery, the capability of fish-
25 ing vessels used in the fishery to engage in

1 other fisheries, the cultural and social frame-
2 work relevant to the fishery and fishery depend-
3 ent communities, and any other relevant consid-
4 erations; and

5 “(B) in the case of any system that pro-
6 vides for individual transferable quotas, such
7 system also complies with the guidelines and fee
8 requirements established under section 303(f);”
9 and

10 (2) by striking “and” at the end of paragraph
11 (9);

12 (3) by striking the period at the end of para-
13 graph (10) and inserting a semicolon and “and”;
14 and

15 (4) by adding at the end the following:

16 “(11) include, consistent with the other provi-
17 sions of this Act, conservation and management
18 measures that provide a harvest preference or other
19 incentives for fishing vessels within each gear group
20 that employ fishing practices resulting in lower levels
21 of bycatch.”.

22 (c) Section 303 (16 U.S.C. 1853) is amended by
23 striking subsection (c) and all thereafter and inserting the
24 following:

1 “(c) REGULATIONS TO IMPLEMENT A FISHERY MAN-
2 AGEMENT PLAN.—Proposed regulations which the Council
3 deems necessary or appropriate for the purposes of imple-
4 menting a fishery management plan or amendment to a
5 plan may be submitted to the Secretary for action under
6 section 304—

7 “(1) simultaneously with submission of the plan
8 or amendment to the Secretary for action under sec-
9 tion 304; or

10 “(2) at any time after the plan or amendment
11 is approved.

12 “(d) FISHERIES UNDER AUTHORITY OF MORE THAN
13 ONE COUNCIL.—

14 “(1) Except as provided in section 302(a)(3), if
15 any fishery extends beyond the geographical area of
16 authority of any one Council, the Secretary may—

17 “(A) designate which Council shall prepare
18 the fishery management plan for such fishery
19 and any amendment to such plan, as well as
20 any proposed regulations for such fishery; or

21 “(B) require that the plan, amendment,
22 and proposed regulations be prepared jointly by
23 the Councils concerned.

24 “(2) No jointly prepared fishery management
25 plan, amendment, or proposed regulations may be

1 submitted to the Secretary unless approved by a ma-
2 jority of the voting members, present and voting, of
3 each Council concerned.

4 “(e) PREPARATION BY THE SECRETARY.—

5 “(1) The Secretary shall prepare a fishery man-
6 agement plan with respect to any fishery (other than
7 a fishery to which section 302(a)(3) applies), or any
8 amendment to any such plan, in accordance with the
9 national standards, the other provisions of this Act,
10 and any other applicable law, if—

11 “(A) the appropriate Council fails to de-
12 velop and submit to the Secretary, after a rea-
13 sonable period of time, a fishery management
14 plan for such fishery, or any necessary amend-
15 ment to such plan, if such fishery requires con-
16 servation and management and the Secretary
17 provides written notice to the Council of the
18 need for such conservation and management;

19 “(B) the Secretary disapproves or partially
20 disapproves any such plan or amendment, or
21 disapproves a revised plan or amendment, and
22 the Council involved fails, after a reasonable pe-
23 riod of time, to take final action on a revised
24 or further revised plan or amendment, as the
25 case may be; or

1 “(C) the Secretary determines that the ap-
2 propriate Council has failed to take sufficient
3 action on a fishery management plan, a plan
4 amendment or proposed regulations to rebuild
5 an overfished fishery pursuant to section 305(b)
6 within 1 year after determining that such fish-
7 ery is overfished.

8 “(2) The Secretary shall prepare a fishery man-
9 agement plan with respect to any highly migratory
10 species fishery to which section 302(a)(3) applies
11 that requires conservation and management, or any
12 amendment to any such plan, in accordance with the
13 national standards, the other provisions of this Act,
14 and any other applicable law. In preparing and im-
15 plementing any such plan or amendment, the Sec-
16 retary shall—

17 “(A) conduct public hearings, at appro-
18 priate times and in appropriate locations in the
19 geographical areas concerned, so as to allow in-
20 terested persons an opportunity to be heard in
21 the preparation and amendment of the plan and
22 any regulations implementing the plan;

23 “(B) consult with and consider the com-
24 ments and views of affected Councils, as well as
25 commissioners and advisory groups appointed

1 under Acts implementing relevant international
2 fishery agreements pertaining to highly migra-
3 tory species;

4 “(C) establish an advisory panel under sec-
5 tion 302(g) for each fishery management plan
6 to be prepared under this paragraph, which
7 shall consist of a balanced number of represent-
8 atives (but not less than 7) who are knowledge-
9 able and experienced with respect to the fishery
10 concerned selected from among members of ad-
11 visory groups appointed under Acts implement-
12 ing relevant international fishery agreements
13 pertaining to highly migratory species and other
14 interested parties;

15 “(D) evaluate the likely effects, if any, of
16 conservation and management measures on par-
17 ticipants in the affected fisheries and minimize,
18 to the extent practicable, any disadvantage to
19 United States fishermen in relation to foreign
20 competitors;

21 “(E) with respect to a highly migratory
22 species for which the United States is author-
23 ized to harvest an allocation or quota or fishing
24 mortality level under a relevant international
25 fishery agreement, provide fishing vessels of the

1 United States with a reasonable opportunity to
2 harvest such allocation, quota, or fishing mor-
3 tality level;

4 “(F) review, on a continuing basis (and
5 promptly whenever a recommendation pertain-
6 ing to fishing for highly migratory species has
7 been made under a relevant international fish-
8 ery agreement), and revise as appropriate, the
9 conservation and management measures in-
10 cluded in the plan;

11 “(G) diligently pursue, through inter-
12 national entities (such as the International
13 Commission for the Conservation of Atlantic
14 Tunas), comparable international fishery man-
15 agement measures with respect to fishing for
16 highly migratory species; and

17 “(H) ensure that conservation and man-
18 agement measures adopted under this para-
19 graph—

20 “(i) promote international conserva-
21 tion of the affected fishery;

22 “(ii) take into consideration tradi-
23 tional fishing patterns of fishing vessels of
24 the United States and the operating re-
25 quirements of the fisheries; and

1 “(iii) are fair and equitable in allocat-
2 ing fishing privileges among United States
3 fishermen and not have economic allocation
4 as the sole purpose.

5 “(3) In preparing any plan or amendment
6 under this subsection, the Secretary shall consult
7 with the Secretary of State with respect to foreign
8 fishing and with the Secretary of the department in
9 which the Coast Guard is operating with respect to
10 enforcement at sea.

11 “(4) The Secretary may not include in any fish-
12 ery management plan, or any amendment to any
13 such plan, prepared by the Secretary under para-
14 graph (1), a provision establishing a limited access
15 system, unless such system is first approved by a
16 majority of the voting members of each appropriate
17 Council.

18 “(f) INDIVIDUAL TRANSFERABLE QUOTAS.—

19 “(1) The Secretary may not approve a fishery
20 management plan that includes individual transfer-
21 able quotas until the Secretary has promulgated
22 guidelines under paragraph (2). Thereafter, the Sec-
23 retary may approve a fishery management plan or
24 amendment that includes individual transferable
25 quotas only if the plan or amendment is consistent

1 with the guidelines promulgated under paragraph
2 (2).

3 “(2) The Secretary shall promulgate, after con-
4 sultation with the Councils and public notice and
5 comment, mandatory guidelines for the establish-
6 ment of any individual transferable quota system.
7 The guidelines shall—

8 “(A) ensure that any individual transfer-
9 able quota system—

10 “(i) is consistent with the require-
11 ments for limited access systems under
12 section 303(b)(6),

13 “(ii) promotes conservation,

14 “(iii) requires collection of fees from
15 holders of individual transferable quotas
16 under section 304(f)(2),

17 “(iv) provides for the fair and equi-
18 table allocation of fishing privileges, and
19 minimizes negative social and economic im-
20 pacts on fishery dependent communities;

21 “(v) establishes a national lien reg-
22 istry system for the identification, perfec-
23 tion, determination of lien priorities, and
24 nonjudicial foreclosure of encumbrances or
25 individual transferable quotas; and

1 “(vi) facilitates a reduction in exces-
2 sive fishing capacity in the fishery;

3 “(B) address the characteristics of fish-
4 eries that are relevant to the design of suitable
5 individual transferable quota systems, the na-
6 ture and extent of the privilege established
7 under an individual transferable quota system,
8 factors in making initial allocations and deter-
9 mining eligibility for ownership of individual
10 transferable quotas, limitations on the consoli-
11 dation of individual transferable quotas, and
12 methods of providing for new entrants, includ-
13 ing, in fisheries where appropriate, mechanisms
14 to provide a portion of the annual harvest for
15 entry-level fishermen or small vessel owners who
16 do not hold individual transferable quotas;

17 “(C) provide for effective monitoring and
18 enforcement of individual transferable quota
19 systems, including providing for the inspection
20 of fish harvested under such systems before the
21 fish is transported beyond the geographic area
22 under a Council’s jurisdiction or the jurisdiction
23 of the United States;

24 “(D) provide for appropriate penalties for
25 violations of individual transferable quota sys-

1 tems, including the revocation of individual
2 transferable quotas for such violations; and

3 “(E) include recommendations for poten-
4 tial management options related to individual
5 transferable quotas, including the authorization
6 of individual units or quotas that may not be
7 transferred by the holder, and the use of leases
8 or auctions by the Federal government in the
9 establishment or allocation of individual trans-
10 ferable or nontransferable units or quotas.

11 “(3) Any fishery management plan which in-
12 cludes individual transferable quotas that the Sec-
13 retary approved on or before the date of enactment
14 of the Sustainable Fisheries Act shall be amended
15 within 3 years after that date to be consistent with
16 this subsection and any other applicable provisions
17 of this Act.

18 “(4) No later than 60 days after the date of en-
19 actment of the Sustainable Fisheries Act, the Sec-
20 retary shall establish an advisory panel on individual
21 transferable quotas under section 302(g)(3) which
22 shall be comprised of fishery scientists and rep-
23 resentatives of the Councils, representatives of af-
24 fected States and fishery dependent communities,
25 fishery participants and conservation organizations.

1 Such advisory panel shall provide recommendations
2 on the guidelines required under paragraph (2), a
3 list of all United States fisheries that may be suited
4 for the development of limited access systems that
5 include individual transferable quotas, and other in-
6 formation as the Secretary or the advisory panel
7 deem appropriate.

8 “(5) An individual transferable quota does not
9 constitute a property right. Nothing in this section
10 or in any other provision of law shall be construed
11 to limit the authority of the Secretary to terminate
12 or limit such individual transferable quota at any
13 time and without compensation to the holder of such
14 quota. The term ‘holder of an individual transferable
15 quota’ includes (A) fishing vessel owners, fishermen,
16 crew members or other citizens of the United States,
17 and (B) United States fish processors.”

18 **SEC. 112. PLAN REVIEW AND IMPLEMENTATION.**

19 Section 304 (16 U.S.C. 1854) is amended to read as
20 follows:

21 **“SEC. 304. PLAN REVIEW AND IMPLEMENTATION.**

22 “(a) ACTION BY THE SECRETARY AFTER RECEIPT
23 OF PLAN.—

1 “(1) Upon transmittal by the Council to the
2 Secretary of a fishery management plan, or amend-
3 ment to such plan, the Secretary shall—

4 “(A) immediately commence a review of
5 the management plan or amendment to deter-
6 mine whether it is consistent with the national
7 standards, the other provisions of this Act, and
8 any other applicable law; and

9 “(B) immediately publish in the Federal
10 Register a notice stating that the plan or
11 amendment is available and that written data,
12 views, or comments of interested persons on the
13 document or amendment may be submitted to
14 the Secretary during the 60-day period begin-
15 ning on the date the notice is published.

16 “(2) In undertaking the review required under
17 paragraph (1), the Secretary shall—

18 “(A) take into account the data, views, and
19 comments received from interested persons;

20 “(B) consult with the Secretary of State
21 with respect to foreign fishing; and

22 “(C) consult with the Secretary of the de-
23 partment in which the Coast Guard is operating
24 with respect to enforcement at sea and to fish-

1 ery access adjustments referred to in section
2 303(a)(6).

3 “(3) The Secretary shall approve, disapprove,
4 or partially approve a plan or amendment within 30
5 days of the end of the comment period under para-
6 graph (1) by written notice to the Council. A notice
7 of disapproval or partial approval shall specify—

8 “(A) the applicable law with which the
9 plan or amendment is inconsistent;

10 “(B) the nature of such inconsistencies;
11 and

12 “(C) recommendations concerning the ac-
13 tions that could be taken by the Council to con-
14 form such plan or amendment to the require-
15 ments of applicable law.

16 “(4) If the Secretary disapproves or partially
17 approves a plan or amendment, the Council may
18 submit a revised plan or amendment to the Sec-
19 retary for review under this subsection.

20 “(b) ACTION ON REGULATIONS.—

21 “(1) Upon transmittal by the Council to the
22 Secretary of proposed regulations prepared under
23 section 303(c), the Secretary shall immediately initi-
24 ate an evaluation of the proposed regulations to de-
25 termine whether they are consistent with the fishery

1 management plan, this Act and other applicable law.
2 Within 15 days of initiating such evaluation the Sec-
3 retary shall make a determination and—

4 “(A) if that determination is affirmative,
5 the Secretary shall publish such regulations,
6 with such technical changes as may be nec-
7 essary for clarity and an explanation of those
8 changes, in the Federal Register for a public
9 comment period of 15 to 60 days; or

10 “(B) if that determination is negative, the
11 Secretary shall notify the Council in writing of
12 the inconsistencies and provide recommenda-
13 tions on revisions that would make the proposed
14 regulations consistent with the fishery manage-
15 ment plan, this Act, and other applicable law.

16 “(2) Upon receiving a notification under para-
17 graph (1)(B), the Council may revise the proposed
18 regulations and submit them to the Secretary for re-
19 evaluation under paragraph (1).

20 “(3) The Secretary shall promulgate final regu-
21 lations within 30 days after the end of the comment
22 period under paragraph (1)(A). The Secretary shall
23 consult with the Council before making any revisions
24 to the proposed regulations, and must publish in the

1 Federal Register an explanation of any differences
2 between the proposed and final regulations.

3 “(c) DEFINITION.— For purposes of subsections (a)
4 and (b), the term ‘immediately’ means on or before the
5 5th day after the day on which a Council transmits to
6 the Secretary a plan, amendment, or proposed regulation
7 that the Council characterizes as final.

8 “(d) SECRETARIAL PLAN REVIEW.—

9 “(1)(A) Whenever, under section 303(e), the
10 Secretary prepares a fishery management plan or
11 amendment, the Secretary shall immediately—

12 “(i) for a plan or amendment prepared
13 under section 303(e)(1), submit such plan or
14 amendment to the appropriate Council for con-
15 sideration and comment; and

16 “(ii) publish in the Federal Register a no-
17 tice stating that the plan or amendment is
18 available and that written data, views, or com-
19 ments of interested persons on the plan or
20 amendment may be submitted to the Secretary
21 during the 60-day period beginning on the date
22 the notice is published.

23 “(B) Whenever a plan or amendment is submit-
24 ted under subsection (1)(A)(i), the appropriate
25 Council must submit its comments and recommenda-

1 tions, if any, regarding the plan or amendment to
2 the Secretary before the close of the 60-day period
3 referred to in subparagraph (A)(ii). After the close
4 of such 60-day period, the Secretary, after taking
5 into account any such comments and recommenda-
6 tions, as well as any views, data, or comments sub-
7 mitted under subparagraph (A)(ii), may adopt such
8 plan or amendment.

9 “(2) The Secretary may propose regulations in
10 the Federal Register to implement any plan or
11 amendment prepared by the Secretary. The com-
12 ment period on proposed regulations shall be 60
13 days, except that the Secretary may shorten the
14 comment period on minor revisions to existing regu-
15 lations.

16 “(3) The Secretary shall promulgate final regu-
17 lations within 30 days after the end of the comment
18 period under paragraph (3). The Secretary must
19 publish in the Federal Register an explanation of
20 any substantive differences between the proposed
21 and final rules. All final regulations must be consist-
22 ent with the plan, with the national standards and
23 other provisions of this Act, and with any other ap-
24 plicable law.

25 “(e) JUDICIAL REVIEW.—

1 “(1) Regulations promulgated by the Secretary
2 under this Act and actions described in paragraph
3 (2) shall be subject to judicial review to the extent
4 authorized by, and in accordance with, chapter 7 of
5 title 5, United States Code, if a complaint for such
6 review is filed within 30 days after the date on
7 which the regulations are promulgated or the action
8 is published in the Federal Register, as applicable;
9 except that—

10 “(A) section 705 of such title is not appli-
11 cable, and

12 “(B) the appropriate court shall only set
13 aside any such regulation or action on a ground
14 specified in section 706(2)(A), (B), (C), or (D)
15 of such title.

16 “(2) The actions referred to in paragraph (1)
17 are actions that are taken by the Secretary under
18 regulations which implement a fishery management
19 plan, including but not limited to actions that estab-
20 lish the date of closure of a fishery to commercial or
21 recreational fishing.

22 “(3) (A) Notwithstanding any other provision
23 of law, the Secretary shall file a response to any
24 complaint filed in accordance with paragraph (1) not
25 later than 45 days after the date the Secretary is

1 served with that complaint, except that the appro-
2 priate court may extend the period for filing such a
3 response upon a showing by the Secretary of good
4 cause for that extension.

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

9 “(4) Upon a motion by the person who files a
10 complaint under this subsection, the appropriate
11 court shall assign the matter for hearing at the ear-
12 liest possible date and shall expedite the matter in
13 every possible way.

14 “(f) ESTABLISHMENT OF FEES.—

15 “(1) The Secretary shall by regulation establish
16 the level of any fees that are authorized to be
17 charged pursuant to section 303(b)(1). The Sec-
18 retary may enter into a cooperative agreement with
19 the States concerned under which the States admin-
20 ister the permit system and the agreement may pro-
21 vide that all or part of the fees collected under the
22 system shall accrue to the States. The level of fees
23 charged under this paragraph shall not exceed the
24 administrative costs incurred in issuing the permits.

1 “(2)(A) Notwithstanding paragraph (1), the
2 Secretary shall collect a fee from each person hold-
3 ing an individual transferable quota pursuant to a
4 limited access system established under section
5 303(b)(6). Fees assessed under this paragraph shall
6 be sufficient to recover the cost of managing the
7 fishery to which the quota applies, including reason-
8 able costs for salaries, training, data analysis and
9 other costs directly related to fishery management
10 and enforcement, up to—

11 “(i) four percent annually of the value of
12 fish harvested or processed in that year under
13 the individual transferable quota; and

14 “(ii) an additional 1 percent of the value
15 of fish authorized to be harvested or processed
16 for that year under the individual transferable
17 quota to be assessed on a person receiving an
18 initial quota or transferring a quota.

19 “(B) The Secretary, in consultation with the
20 Councils, shall promulgate regulations, prescribing
21 the method of determining the value of fish author-
22 ized to be taken, the amount of each fee, and the
23 method of collecting fees. Fees collected under this
24 paragraph shall meet the requirements of section
25 9701(b) of title 31, United States Code. Fees col-

1 lected under this paragraph shall be an offsetting
2 collection and shall be available only to the Secretary
3 for the purposes of administering and implementing
4 this Act in the region in which the fees were col-
5 lected.

6 “(C) Persons holding individual transferable
7 quota pursuant to limited access systems established
8 in the surf clam and ocean quahog fishery or in the
9 wreckfish fishery are exempt from the collection of
10 fees under this paragraph for a period ending 5
11 years after the date of enactment of the Sustainable
12 Fisheries Act.

13 “(g) EFFECT OF CERTAIN LAWS ON CERTAIN TIME
14 REQUIREMENTS.—The Secretary shall comply with any
15 applicable provisions of chapter 35 of title 44, United
16 States Code, chapter 6 of title 5, United States Code, and
17 Executive Order Numbered 12866, dated September 30,
18 1993, within the time limitations specified in subsections
19 (a) and (b).

20 “(h) RESPONSIBILITY OF THE SECRETARY.—The
21 Secretary shall have general responsibility to carry out the
22 provisions of this Act. The Secretary may promulgate such
23 regulations, in accordance with section 553 of title 5,
24 United States Code, as may be necessary to discharge
25 such responsibility.”

1 **SEC. 113. ECOSYSTEM MANAGEMENT.**

2 Section 305 (16 U.S.C. 1855) is amended to read as
3 follows:

4 **"SEC. 305. ECOSYSTEM MANAGEMENT.**

5 "(a) **REPORT ON STATUS OF FISHERIES.**—The Sec-
6 retary shall report annually to the Congress and the Coun-
7 cils on the status of fisheries within each Council's geo-
8 graphical area of authority and identify those fisheries
9 that are approaching a condition of being overfished or
10 are overfished. For those fisheries managed under a fish-
11 ery management plan, the status shall be assessed using
12 the criteria for overfishing specified by the appropriate
13 Council under section 303(a)(10). A fishery shall be classi-
14 fied as approaching a condition of being overfished if,
15 based on trends in fishing effort, fishery resource size, and
16 other appropriate factors, the Secretary estimates that the
17 fishery will become overfished within 2 years. Any fishery
18 determined to be a commercial fishery failure under sec-
19 tion 316, shall be deemed to be overfished for the purposes
20 of subsections (a) and (b).

21 **"(b) FISHERY RECOVERY EFFORT.**—

22 "(1) The Council shall take immediate action to
23 prepare a fishery management plan, a plan amend-
24 ment, or proposed regulations for fisheries under
25 such Council's authority—

1 “(A) to prevent overfishing of a fishery
2 from occurring whenever such fishery is classi-
3 fied under subsection (a) as approaching an
4 overfished condition, or

5 “(B) to stop overfishing of a fishery when-
6 ever such fishery is classified under subsection
7 (a) as overfished, and to rebuild affected stocks
8 of fish.

9 “(2) The Council shall submit a fishery man-
10 agement plan, amendment or proposed regulations
11 required under paragraph (1) to the Secretary with-
12 in 1 year from the date of transmittal of the report
13 on the status of stocks under subsection (a). For a
14 fishery that is overfished, such fishery management
15 plan, amendment or proposed regulations shall speci-
16 fy a time period for stopping overfishing and re-
17 building the fishery. The time period shall be as
18 short as possible, taking into account the status and
19 biology of the overfished stock of fish, the needs of
20 fishery-dependent communities, and the interaction
21 of the overfished stock of fish within the marine eco-
22 system. The time period may not be more than 10
23 years, except under extraordinary circumstances.

24 “(3) During the development of a fishery man-
25 agement plan, a plan amendment, or proposed regu-

1 lations under this subsection, the Council may re-
2 quest that the Secretary promulgate emergency reg-
3 ulations under subsection (e)(2) to reduce
4 overfishing. Any request by the Council under this
5 paragraph shall be deemed an emergency.

6 “(c) FISH HABITAT.—

7 “(1) The Secretary, in cooperation with the
8 Councils and the Secretary of the Interior, after no-
9 tice and public comment, shall identify the essential
10 fish habitat for each fishery for which a fishery
11 management plan is in effect. The identification
12 shall be based on the description of essential fish
13 habitat contained in the plan.

14 “(2) Each Council—

15 “(A) may comment on and make rec-
16 ommendations concerning any activity under-
17 taken, or proposed to be undertaken, by any
18 Federal or State agency that, in the view of the
19 Council, may have an adverse effect on essential
20 fish habitat of a fishery under its authority;
21 and

22 “(B) shall comment on and make rec-
23 ommendations to any Federal or State depart-
24 ment or agency concerning any such activity
25 that, in the view of the Council is likely to sub-

1 stantially affect the habitat of an anadromous
2 fishery resource under its jurisdiction.

3 “(3) If the Secretary receives information from
4 a Council or determines from other sources that an
5 action authorized, funded, carried out, or proposed
6 to be carried out by any Federal agency may result
7 in the destruction or adverse modification of any es-
8 sential fish habitat identified under paragraph (1),
9 the Secretary shall comment on and make rec-
10 ommendations to the Federal agency concerning that
11 action.

12 “(4) Within 45 days after receiving a comment
13 or recommendation under paragraphs (2) or (3)
14 from a Council or the Secretary, a Federal agency
15 shall provide a detailed response, in writing, to the
16 commenting Council and the Secretary regarding the
17 matter. The response shall include a description of
18 measures being considered by the agency for avoid-
19 ing, mitigating, or offsetting the impact of the activ-
20 ity on such habitat. In the case of a response that
21 is inconsistent with a recommendation from any
22 Council or the Secretary, the Federal agency shall
23 explain its reasons for not following the rec-
24 ommendations.

1 “(d) GEAR EVALUATION AND NOTIFICATION OF
2 ENTRY.—

3 “(1) Each Council shall submit to the Secretary
4 by June 1, 1996, information describing (A) all fish-
5 ing technologies employed under such Council’s au-
6 thority; and (B) all fisheries under the authority of
7 such Council. The Secretary shall compile such in-
8 formation, along with information to comply with
9 both (A) and (B) for fisheries to which section
10 302(a)(3) applies.

11 “(2) By July 15, 1996, the Secretary shall pub-
12 lish a proposed list of all technologies and fisheries,
13 for each Council and for fisheries to which section
14 302(a)(3) applies, in the Federal Register for a pub-
15 lic comment period of not less than 60 days. The
16 Secretary shall include with such list specific guide-
17 lines for determining when a technology or fishery is
18 sufficiently different from those listed as to require
19 notification under paragraph (3). Within 30 days
20 after the close of the public comment period the Sec-
21 retary shall publish in the Federal Register a final
22 list (including the guidelines), after taking into ac-
23 count any public comment received.

24 “(3) Beginning on the date that is 180 days
25 after the date of the publication of the final list re-

1 quired under paragraph (2), no person or vessel
2 shall employ a fishing technology or engage in a
3 fishery that is not included on the final list for the
4 appropriate Council or for fisheries to which section
5 302(a)(3) applies without first giving 90 days ad-
6 vance written notice of the intent to employ such un-
7 listed technology or engage in such unlisted fishery
8 to the appropriate Council, or the Secretary with re-
9 spect to a fishery to which section 302(a)(3) applies.
10 Such notice shall be by first class mail, return re-
11 ceipt requested, and shall include information on the
12 use of the unlisted technology in other fisheries, if
13 any, and a detailed description, including drawings,
14 maps or diagrams if appropriate, of the unlisted
15 technology or unlisted fishery which such person or
16 vessel seeks to employ or engage in.

17 “(4) A Council may submit to the Secretary
18 amendments to the final list published under para-
19 graph (2) to reflect any substantial changes in the
20 fishing technologies employed or fisheries engaged in
21 under the authority of such Council. The Secretary
22 may submit any amendments for fisheries to which
23 section 302(a)(3) applies. The Secretary shall pub-
24 lish any such amendments in the Federal Register
25 as proposed amendments (along with any proposed

1 revisions to the guidelines) to the final list for a
2 public comment period of not less than 60 days.
3 Within 45 days of the close of the comment period,
4 the Secretary shall publish a revised final list incor-
5 porating such proposed amendments, after taking
6 into account any public comments received.

7 “(5) A Council may request the Secretary to
8 promulgate emergency regulations under subsection
9 (e) prohibiting any persons or vessels from employ-
10 ing an unlisted technology or engaging in an un-
11 listed fishery if the appropriate Council, or the Sec-
12 retary for fisheries to which section 302(a)(3) ap-
13 plies, determines that use of such technology or
14 entry into such fishery would compromise the effec-
15 tiveness of conservation and management efforts
16 under this Act.

17 “(6) If, after providing the notice required
18 under paragraph (3), no emergency regulations are
19 implemented under paragraph (5), the person or ves-
20 sel submitting notice under paragraph (3) may, after
21 the required 90 day period has lapsed, employ the
22 unlisted technology or enter the unlisted fishery to
23 which such notice applies. The signed return receipt
24 shall constitute adequate evidence of the submittal

1 of such notice and the date upon which the 90-day
2 period begins.

3 “(7) A violation of this subsection shall be con-
4 sidered a violation of section 307, punishable under
5 section 308.

6 “(e) EMERGENCY ACTIONS.—

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

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

16 “(A) the Secretary shall promulgate emer-
17 gency regulations under paragraph (1) to ad-
18 dress the emergency if the Council, by unani-
19 mous vote of the voting members of the Coun-
20 cil, requests the taking of such action; and

21 “(B) the Secretary may promulgate emer-
22 gency regulations under paragraph (1) to ad-
23 dress the emergency if the Council, by less than
24 a unanimous vote, requests the taking of such
25 action.

1 “(3) Any emergency regulation which changes
2 an existing fishery management plan shall be treated
3 as an amendment to such plan for the period in
4 which such regulation is in effect. Any emergency
5 regulation promulgated under this subsection—

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

8 “(B) shall, except as provided in subpara-
9 graph (C), remain in effect for not more than
10 180 days after the date of publication, and may
11 be extended by publication in the Federal Reg-
12 ister for an additional period of not more than
13 180 days, provided the public has had an op-
14 portunity to comment on the emergency regula-
15 tion, and, in the case of a Council recommenda-
16 tion for emergency regulations, the Council is
17 actively preparing a fishery management plan,
18 amendment, or proposed regulations to address
19 the emergency on a permanent basis;

20 “(C) that responds to a public health
21 emergency may remain in effect until the cir-
22 cumstances that created the emergency no
23 longer exist, provided that the Secretary of
24 Health and Human Services concurs with the
25 Secretary’s action and the public has an oppor-

1 tunity to comment after the regulation is pub-
2 lished;

3 “(D) that reduces overfishing may be ap-
4 proved without regard to the requirements of
5 section 301(a)(1); and

6 “(E) may be terminated by the Secretary
7 at an earlier date by publication in the Federal
8 Register of a notice of termination, except for
9 emergency regulations promulgated under para-
10 graph (2) in which case such early termination
11 may be made only upon the agreement of the
12 Secretary and the Council concerned.

13 “(4) The Secretary may, pursuant to guidelines
14 established by a Council in a fishery management
15 plan, close or restrict a particular fishery covered by
16 such fishery management plan in order to prevent
17 overfishing or reduce bycatch. Any such guidelines
18 shall specify appropriate means for providing timely
19 notice to fishermen of any closure or restriction. In
20 exercising the authority granted under this para-
21 graph, the Secretary shall not be required to provide
22 an opportunity for notice and comment if such clo-
23 sure or restriction is done in accordance with the
24 fishery management plan guidelines and does not ex-
25 tend beyond the end of the current fishing period es-

1 established for that fishery by the fishery management
2 plan.”.

3 **SEC. 114. STATE JURISDICTION.**

4 (a) Section 306(b) (16 U.S.C. 1856(b)) is amended
5 by adding at the end the following:

6 “(3) If the State involved requests that a hear-
7 ing be held pursuant to paragraph (1), the Secretary
8 shall conduct such hearing prior to taking any action
9 under paragraph (1).”.

10 (b) Section 306(c)(1) (16 U.S.C. 1856(c)(1)) is
11 amended—

12 (1) by striking “and” in subparagraph (A);

13 (2) by striking the period at the end of sub-
14 paragraph (B) and inserting a semicolon and the
15 word “and”; and

16 (3) by inserting after subparagraph (B) the fol-
17 lowing:

18 “(C) the owner or operator of the vessel
19 submits reports on the tonnage of fish received
20 from U.S. vessels and the locations from which
21 such fish were harvested, in accordance with
22 such procedures as the Secretary by regulation
23 shall prescribe.”.

1 **SEC. 115. PROHIBITED ACTS.**

2 (a) Section 307(1)(J)(i) (16 U.S.C. 1857(1)(J)(i)) is
3 amended by striking "American Lobster Fishery Manage-
4 ment Plan, as implemented by" and ", or any successor
5 to that plan, implemented under this title".

6 (b) Section 307(1)(L) (16 U.S.C. 1857(1)(L)) is
7 amended to read as follows:

8 " (L) to forcibly assault, resist, oppose, im-
9 pede, intimidate, sexually harass, or interfere
10 with any observer on a vessel under this Act, or
11 any data collector employed by or under con-
12 tract to the National Marine Fisheries Serv-
13 ice;"

14 (c) Section 307(1)(M) (16 U.S.C. 1857(1)(M)) is
15 amended to read as follows:

16 " (M) to engage in large-scale driftnet fish-
17 ing on a vessel of the United States or a vessel
18 subject to the jurisdiction of the United States
19 upon the high seas beyond the exclusive eco-
20 nomic zone of any nation or within the exclusive
21 economic zone of the United States, (and any
22 vessel that is shoreward of the outer boundary
23 of the exclusive economic zone of the United
24 States or beyond the exclusive economic zone of
25 any nation, and that has onboard gear that is
26 capable of use for large-scale driftnet fishing,

1 shall be presumed to be engaged in such fish-
2 ing, but that presumption may be rebutted);
3 or”.

4 (d) Section 307(2)(A) (16 U.S.C. 1857(2)(A)) is
5 amended to read as follows:

6 “(A) in fishing within the boundaries of
7 any State, except—

8 “(i) recreational fishing permitted
9 under section 201(i),

10 “(ii) fish processing permitted under
11 section 306(c), or

12 “(iii) transshipment at sea of fish
13 products within the boundaries of any
14 State in accordance with a permit ap-
15 proved under section 204(b)(6)(A)(ii);”.

16 (e) Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is
17 amended by striking “201(j)” and inserting “201(i)”.

18 (f) Section 307(3) (16 U.S.C. 1857(3)) is amended
19 to read as follows:

20 “(3) for any vessel of the United States, and
21 for the owner or operator of any vessel of the United
22 States, to transfer at sea directly or indirectly, or at-
23 tempt to so transfer at sea, any United States har-
24 vested fish to any foreign fishing vessel, while such
25 foreign vessel is within the exclusive economic zone

1 or within the boundaries of any State except to the
2 extent that the foreign fishing vessel has been per-
3 mitted under section 204(b)(6)(B) or section 306(c)
4 to receive such fish;”.

5 (g) Section 307(4) (16 U.S.C. 1857(4)) is amended
6 by inserting “or within the boundaries of any State” after
7 “zone”.

8 **SEC. 116. CIVIL PENALTIES AND PERMIT SANCTIONS.**

9 (a) The first sentence of section 308(b) (16 U.S.C.
10 1858(b)) is amended to read as follows: “Any person
11 against whom a civil penalty is assessed under subsection
12 (a), or against whom a permit sanction is imposed under
13 subsection (g) (other than a permit suspension for
14 nonpayment of penalty or fine), may obtain review thereof
15 in the United States district court for the appropriate dis-
16 trict by filing a complaint against the Secretary in such
17 court within 30 days from the date of such order.”.

18 (b) Section 308(g)(1)(C) (16 U.S.C. 1858(g)(1)(C))
19 is amended by striking the matter from “(C) any” through
20 “overdue,” and inserting the following: “(C) any amount
21 in settlement of a civil forfeiture imposed on a vessel or
22 other property, or any civil penalty or criminal fine im-
23 posed on a vessel or owner or operator of a vessel or any
24 other person who has been issued or has applied for a per-

1 mit under any marine resource law enforced by the Sec-
2 retary, has not been paid and is overdue,”.

3 (c) Section 308(16 U.S.C. 1858) is amended by in-
4 serting at the end thereof the following:

5 “(h) After deduction for any administrative or en-
6 forcement costs incurred or other expenditures authorized
7 under this Act, all funds collected under this section shall
8 be deposited in a separate account of the Ocean Conserva-
9 tion Trust Fund established under section 315.”.

10 **SEC. 117. ENFORCEMENT.**

11 (a) Section 311(e)(1) (16 U.S.C. 1861(e)(1)) is
12 amended—

13 (1) by striking “fishery” each place it appears
14 and inserting “marine”;

15 (2) by inserting “of not less than 20 percent of
16 the penalty collected” after “reward” in subpara-
17 graph (B), and

18 (3) by striking subparagraph (E) and inserting
19 the following:

20 “(E) claims of parties in interest to prop-
21 erty disposed of under section 612(b) of the
22 Tariff Act of 1930 (19 U.S.C. 1612(b)), as
23 made applicable by section 310(c) of this Act or
24 by any other marine resource law enforced by
25 the Secretary, to seizures made by the Sec-

1 retary, in amounts determined by the Secretary
2 to be applicable to such claims at the time of
3 seizure; and”.

4 (b) Section 311(e)(2) (16 U.S.C. 1861(e)(2)) is
5 amended to read as follows:

6 “(2) Any person found in an administrative or
7 judicial proceeding to have violated this Act or any
8 other marine resource law enforced by the Secretary
9 shall be liable for the cost incurred in the sale, stor-
10 age, care, and maintenance of any fish or other
11 property lawfully seized in connection with the viola-
12 tion.”.

13 (c) Section 311 (16 U.S.C. 1861) is amended by re-
14 designating subsection (f) as subsection (h), and by insert-
15 ing the following after subsection (e):

16 “(f) ANNUAL REPORT ON ENFORCEMENT.—Each
17 year at the time the President’s budget is submitted to
18 the Congress, the Secretary and the Secretary of the De-
19 partment in which the Coast Guard is operating shall,
20 after consultation with the Councils, submit a report on
21 the effectiveness of the enforcement of fishery manage-
22 ment plans and regulations to implement such plans under
23 the jurisdiction of each Council, including—

24 “(1) an analysis of the adequacy of federal per-
25 sonnel and funding resources related to the enforce-

1 ment of fishery management plans and regulations
2 to implement such plans; and

3 “(2) recommendations to improve enforcement
4 that should be considered in developing amendments
5 to plans or to regulations implementing such plans.

6 “(g) FISHERMEN’S INFORMATION NETWORKS.—The
7 Secretary, in consultation with the Secretary of the de-
8 partment in which the Coast Guard is operating, shall con-
9 duct a program to encourage the formation of volunteer
10 networks, to be designated as Fishermen’s Information
11 Networks, to advise on and assist in the monitoring, re-
12 porting, and prevention of violations of this Act.”.

13 **SEC. 118. NORTH PACIFIC FISHERIES CONSERVATION.**

14 Section 313 (16 U.S.C. 1862) is amended—

15 (1) by striking “research plan” in the section
16 heading and inserting “conservation”; and

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

18 “(f) REDUCTION OF WASTE.—

19 “(1) No later than June 1, 1996, the North Pa-
20 cific Fishery Management Council shall include in
21 each fishery management plan under its jurisdiction
22 conservation and management measures, including
23 fees or other incentives, to reduce bycatch in each
24 fishery. Notwithstanding section 304(d), in imple-
25 menting this subsection the Council may rec-

1 ommend, and the Secretary may approve and imple-
2 ment any such recommendation, consistent with the
3 other provisions of this Act, a system of fees to pro-
4 vide an incentive to reduce bycatch, and, in particu-
5 lar, economic and regulatory discards. Any such sys-
6 tem of fees or incentives shall be fair and equitable
7 to all fishermen and United States fish processors,
8 and shall not have economic allocation as its sole
9 purpose.

10 “(2) Not later than January 1, 1997, the North
11 Pacific Fishery Management Council shall rec-
12 ommend, and the Secretary may approve and imple-
13 ment any such recommendation, consistent with the
14 other provisions of this Act, conservation and man-
15 agement measures to ensure total catch measure-
16 ment in each fishery under the Council’s jurisdic-
17 tion. Such conservation and management measures
18 shall ensure the accurate enumeration of target spe-
19 cies, economic discards, and regulatory discards.

20 “(3) Beginning on January 1, 1998, such con-
21 servation and management measures shall include a
22 harvest preference or other incentives to fishing and
23 processing practices within each gear group that re-
24 sult in the lowest levels of economic discards, proc-
25 essing waste, regulatory discards, and other bycatch.

1 In determining which practices shall be given prior-
2 ity, the reduction of economic discards shall be given
3 the greatest weight, followed by processing waste
4 (where applicable), regulatory discards and other
5 bycatch, in that order.

6 “(4) In determining the level of target species
7 catch, economic discards, regulatory discards, other
8 bycatch, and processing waste, the Council and Sec-
9 retary shall base such determinations on observer
10 data or the best available information.

11 “(5) In the case of fisheries occurring under an
12 individual transferable quota system under the juris-
13 diction of the North Pacific Fishery Management
14 Council after January 1, 1998—

15 “(A) the Council shall designate non-target
16 species, bycatch species, and regulatory discards
17 for each such fishery;

18 “(B) the Council may not recommend, and
19 the Secretary may not approve, any assignment
20 or allocation of individual transferable quotas
21 for regulatory discards, or non-target species
22 for those fisheries, other than for each individ-
23 ual fishing season on an annual basis pursuant
24 to subparagraph (C) of this paragraph; and

1 “(C) any harvest preference required under
2 paragraph (3) shall be implemented by giving
3 priority in the allocation of quotas for regu-
4 latory discards and non-target species and to
5 fishing practices that result in the lowest levels
6 of economic discards, regulatory discards, proc-
7 essing waste, and other bycatch.

8 “(6) Nothing in this section shall be construed
9 to preclude the North Pacific Fishery Management
10 Council from allocating a portion of any quota for
11 a directed fishery for use as bycatch in another fish-
12 ery or fisheries, if the Council determines such allo-
13 cation is necessary to prosecute a fishery, after tak-
14 ing into account the requirements of this section re-
15 garding reduction of bycatch and processing waste.

16 “(g) FULL RETENTION AND FULL UTILIZATION.—

17 “(1) The North Pacific Fishery Management
18 Council shall, consistent with the other provisions of
19 this Act, submit to the Secretary by January 1,
20 1997, a plan to phase-in by January 1, 2000, to the
21 maximum extent practicable, fishery management
22 plan amendments to require full retention by fishing
23 vessels and full utilization by United States fish
24 processors of all fishery resources, except regulatory
25 discards, caught under the jurisdiction of such

1 Council if such fishery resources cannot be quickly
2 returned alive to the sea with the expectation of ex-
3 tended survival.

4 “(2) The plan shall include conservation and
5 management measures to minimize processing waste
6 and ensure the optimum utilization of target species,
7 including standards setting minimum percentages of
8 target species harvest which must be processed for
9 human consumption.

10 “(3) In determining the maximum extent prac-
11 ticable, the North Pacific Fishery Management
12 Council shall consider—

13 “(A) the state of available technology;

14 “(B) the extent to which species brought
15 on board can be safely returned alive, with the
16 expectation of extended survival, to the sea;

17 “(C) the extent to which each species is
18 fully utilized as a target species by United
19 States fishermen;

20 “(D) the impact of different processing
21 practices on the price paid to fishermen and
22 processors;

23 “(E) the nature and economic costs of
24 each specific fishery; and

1 “(F) the effect of a full retention or full
2 utilization requirement in a given fishery on
3 other fisheries when compared with the bene-
4 ficial effect of reducing economic discards and
5 processing waste.

6 “(4) Notwithstanding section 304(f), the North
7 Pacific Fishery Management Council may propose,
8 and the Secretary may approve and implement any
9 such recommendation, consistent with the other pro-
10 visions of this Act, a system of fines or other incen-
11 tives to implement this section. Any such fines or in-
12 centive system shall be fair and equitable to all fish-
13 ing vessels and United States fish processors, and
14 shall not have economic allocation as its sole pur-
15 pose.

16 “(h) REGULATORY DISCARDS.—

17 “(1) Regulatory discards shall not be consid-
18 ered an economic discard for purposes of this sec-
19 tion, however, the North Pacific Fishery Manage-
20 ment Council shall seek to reduce the incidental
21 catch of regulatory discards to the maximum extent
22 practicable while allowing for the prosecution of fish-
23 eries under its jurisdiction.

24 “(2) Not later than June 1, 1996, the North
25 Pacific Fishery Management Council shall propose,

1 and the Secretary may approve and implement any
2 such recommendation, consistent with the other pro-
3 visions of this Act, for each groundfish fishery under
4 the Council's jurisdiction, conservation and manage-
5 ment measures to reduce the incidental harvest of
6 regulatory discards to the minimum level necessary
7 to prosecute directed fisheries for designated target
8 species, and to otherwise meet the requirements of
9 this section. Notwithstanding section 304(f), such
10 conservation and management measures may include
11 a system of fines, caps, or other incentives to reduce
12 the incidental harvest of regulatory discards. Any
13 system of fines or incentives under this section shall
14 be fair and equitable to all fishing vessels and Unit-
15 ed States fish processors, and shall not have eco-
16 nomic allocation as its sole purpose.

17 “(3) The North Pacific Fishery Management
18 Council shall establish for each fishery which inci-
19 dentally harvests regulatory discards under the
20 Council's jurisdiction a cap which prevents such reg-
21 ulatory discards from being overfished or from being
22 placed in risk of being overfished. Upon reaching
23 such cap, the commercial fishery in which such regu-
24 latory discards are incidentally caught shall be
25 closed for that season.

1 “(i) OBSERVER PROGRAM.—

2 “(1) Beginning June 1, 1996, the North Pacific
3 Fishery Management Council shall require under the
4 authority granted to it by subsection (a)—

5 “(A) 100 percent observer coverage on all
6 fishing vessels which can safely accommodate
7 an observer or observers, and at all United
8 States fish processors to the extent that fund-
9 ing for such coverage is available, and

10 “(B) for vessels which cannot safely ac-
11 commodate an observer, statistically reliable
12 sampling of a fishing vessel’s effort in each
13 fishery in which that fishing vessel participates,
14 when such vessel or processor is fishing in a fishery
15 under the North Pacific Fishery Management Coun-
16 cil’s jurisdiction. In implementing subparagraph (A)
17 the North Pacific Fishery Management Council shall
18 require that more than one observer be stationed on
19 a fishing vessel or at a United States fish processor
20 whenever the Council determines that more than one
21 such observer is necessary to accurately monitor that
22 vessel or processor’s operation.

23 “(2) Observers stationed on fishing vessels or at
24 United States fish processors under the authority of
25 this section shall be paid by the Secretary using

1 funds deposited in the North Pacific Fishery Ob-
2 server Fund. Such payment shall not make an ob-
3 server an employee of the Federal Government, un-
4 less such observer is otherwise employed by an agen-
5 cy of the United States.

6 “(3) Failure to pay the fee established by the
7 North Pacific Fishery Management Council under
8 subsection (a) shall be a considered a violation of
9 section 307, punishable under section 308. Any fines
10 collected pursuant to the authority granted by this
11 subsection shall be deposited in the North Pacific
12 Fishery Observer Fund account in the United States
13 Treasury, and shall remain available until expended
14 under the terms of that fund.

15 “(4) Notwithstanding sections 304(f) and sub-
16 section (b), the Secretary is authorized to recover
17 from vessels participating in a fishery under an indi-
18 vidual fishing quota regime or other limited access
19 program established by the North Pacific Fishery
20 Management Council, the full cost of any observers
21 stationed on such vessel (including all costs for sala-
22 ries, expenses, equipment, food and lodging, trans-
23 portation, insurance, and analysis of observer data,
24 plus reasonable costs for training and administrative
25 overhead). Each participant in an individual fishing

1 quota regime shall only be required to contribute the
2 same proportion of the costs as that participant's
3 quota shares represent to the total number of quota
4 shares in such regime. To the extent that the costs
5 recovered under this paragraph exceed the fee estab-
6 lished by the Council under subsection (b), the Sec-
7 retary shall deduct any payment by a vessel under
8 subsection (b) from the amount owed by such vessel
9 under this paragraph. The Secretary shall deposit
10 any fees collected under this paragraph in the North
11 Pacific Fishery Observer Fund account in the Unit-
12 ed States Treasury.

13 "(j) INDUSTRY ASSISTANCE.—

14 "(1) The Secretary shall submit a plan by Jan-
15 uary 1, 1996, to the Committee on Commerce,
16 Science, and Transportation of the Senate and the
17 Committee on Resources of the House of Represent-
18 atives to develop jointly with industry accurate
19 methods of weighing the fish harvested by United
20 States fishing vessels in fisheries under the jurisdic-
21 tion of the North Pacific Fishery Management
22 Council. Such plan shall include methods for assess-
23 ing contributions from industry to fund such devel-
24 opment, as well as recommendations from the Sec-

1 retary concerning the level of funds needed to suc-
2 cessfully implement the plan in fiscal year 1997.

3 “(2) The Secretary shall submit by January 1,
4 1996, to the Committee on Commerce, Science, and
5 Transportation of the Senate and the Committee on
6 Resources of the House of Representatives a plan to
7 develop markets and harvesting and processing tech-
8 niques for arrowtooth flounder. The Secretary shall
9 include in such plan recommendations concerning
10 the level of funds needed to successfully implement
11 the plan in fiscal year 1997.

12 “(3) For fiscal years 1996, 1997, 1998, and
13 1999, \$50,000 is authorized to be appropriated for
14 the purposes of implementing paragraph (1), and
15 \$250,000 is authorized to be appropriated for pro-
16 grams to implement paragraph (2).

17 “(k) DEFINITION.—For the purposes of this section,
18 ‘processing waste’ means that portion of a fish which is
19 processed and which could be used for human consump-
20 tion or other commercial use, but which is not so used.”.

21 **SEC. 119. TRANSITION TO SUSTAINABLE FISHERIES.**

22 (a) The Act is amended by adding at the end of title
23 III the following:

24 **“SEC. 315. TRANSITION TO SUSTAINABLE FISHERIES.**

25 “(a) SUSTAINABLE DEVELOPMENT STRATEGY.—

1 “(1) At the discretion of the Secretary or at the
2 request of the Governor of an affected State or a
3 fishery dependent community, the Secretary, in con-
4 sultation with the Councils and Federal agencies, as
5 appropriate, may work with regional authorities, af-
6 fected States, fishery dependent communities, the
7 fishing industry, conservation organizations, and
8 other interested parties, to develop a sustainable de-
9 velopment strategy for any fishery classified as
10 overfished under section 305(a) or determined to be
11 a commercial fishery failure under section 316.

12 “(2) Such sustainable development strategy
13 shall—

14 “(A) take into consideration the economic,
15 social, and ecological factors affecting the fish-
16 ery and provide recommendations for address-
17 ing such factors in the development of a fishery
18 recovery effort under section 305(b);

19 “(B) identify Federal and State programs
20 which can be used to provide assistance to fish-
21 ery dependent communities during development
22 and implementation of a fishery recovery effort;

23 “(C) develop a balanced and comprehensive
24 long-term plan to guide the transition to a sus-
25 tainable fishery, identifying alternative eco-

1 nomic opportunities and establishing long-term
2 objectives for the fishery including vessel types
3 and sizes, harvesting and processing capacity,
4 and optimal fleet size;

5 “(D) establish procedures to implement
6 such a plan and facilitate consensus and coordi-
7 nation in regional decision-making; and

8 “(E) include any program established
9 under subsection (b) to reduce the number of
10 vessels or level of capital investment in the fish-
11 ery.

12 “(2) REPORT.—The Secretary shall complete
13 and submit to the Congress a report on any sustain-
14 able development strategy developed under this sec-
15 tion within 6 months and annually thereafter.

16 “(b) BUY-OUT PROGRAM.—

17 “(1) The Secretary, in consultation with the ap-
18 propriate Council, may develop and implement a
19 buy-out program for fishing vessels or permits in a
20 fishery for the purpose of reducing the number of
21 fishing vessels and fishing effort in such fishery, if
22 the Secretary, with the concurrence of the majority
23 of the voting members of such Council, determines
24 that a buy-out program is necessary for the develop-

1 ment and implementation of a fishery recovery effort
2 under section 305(b).

3 “(2) Any buy-out program developed or imple-
4 mented in a fishery shall—

5 “(A) require a fishery management plan to
6 be in place for such fishery that is adequate to
7 limit access to the fishery and prevent the re-
8 placement of fishing effort removed by the buy-
9 out program;

10 “(B) require fishing vessels or permits ac-
11 quired under such program to be disposed of in
12 a manner ensuring that such vessels or permits
13 do not re-enter the fishery or contribute to ex-
14 cess fishing effort in other fisheries;

15 “(C) establish criteria for determining
16 types and numbers of vessels which are eligible
17 for participation in such program consistent
18 with—

19 “(i) any strategy developed under sub-
20 section (a);

21 “(ii) the requirements of applicable
22 fishery management plans; and

23 “(iii) the need to minimize program
24 costs;

1 “(D) establish procedures (such as submis-
2 sion of owner bid under an auction system or
3 fair market-value assessment) to be used in de-
4 termining the level of payment for fishing ves-
5 sels or permits acquired under the program;
6 and

7 “(E) identify Federal and non-Federal
8 mechanisms for funding the buy-out program,
9 consistent with paragraphs (3) and (4).

10 “(3) The Federal share of the cost of a buy-out
11 program implemented under this section shall not
12 exceed 50 percent of the cost of that program. Such
13 Federal share may be provided from monies depos-
14 ited in the Ocean Conservation Trust Fund under
15 section 308(h) or monies made available under sec-
16 tion 316(b) of this Act or under section 2(b) of the
17 Act of August 11, 1939 (15 U.S.C. 713c-3(b)).

18 “(4) Notwithstanding section 305(f)(1), the
19 Secretary, with the concurrence of a majority of the
20 voting members of the affected Council, may estab-
21 lish a fee system to collect those funds required for
22 the non-Federal share of such program that are not
23 available from other non-Federal sources. Under
24 such fee system, the Secretary may assess an annual
25 fee on holders of fishing permits in the fishery for

1 which the buy-out program is established which may
2 not exceed 5 percent annually of the value of the
3 fish harvested under the fishing permit. Assessments
4 may not be used to pay any costs of administrative
5 overhead or other costs not directly incurred in car-
6 rying out the specific buy-out program under which
7 they are collected. Assessments shall be deposited in
8 the Ocean Conservation Trust fund established
9 under subsection (d) and shall be considered part of
10 the non-Federal share of the cost of a buyout pro-
11 gram.

12 “(5)(A) Upon completion of a proposal for a
13 buy-out program (including any fee system to be es-
14 tablished under this subsection), the Secretary shall
15 immediately—

16 “(i) submit the proposed program and reg-
17 ulations necessary for its implementation to the
18 appropriate Council for consideration and com-
19 ment; and

20 “(ii) publish in the Federal Register a no-
21 tice stating that the proposed program and reg-
22 ulations are available and that written data,
23 views, or comments of interested persons on the
24 proposed program and regulations may be sub-
25 mitted to the Secretary during the 60-day pe-

1 riod beginning on the date the notice is pub-
2 lished.

3 “(B) During the 60-day public comment pe-
4 riod—

5 “(i) the Secretary shall conduct a public
6 hearing in each State affected by the proposed
7 buy-out program; and

8 “(ii) the appropriate Council shall submit
9 its comments and recommendations, if any, re-
10 garding the proposed program and regulations.

11 “(C) Within 45 days after the close of the pub-
12 lic comment period, the Secretary, in consultation
13 with the affected Council, shall analyze the public
14 comment received and publish a final buy-out pro-
15 gram and regulations for its implementation. The
16 Secretary shall include an explanation of any sub-
17 stantive differences between the proposed and final
18 program and regulations.

19 “(c) TASK FORCE.—The Secretary shall establish a
20 task force to assist in the development of a sustainable
21 development strategy or a buy-out program under this sec-
22 tion. Such task force shall, at a minimum, consist of mem-
23 bers of the affected communities and individuals with ex-
24 pertise in fishery management and conservation, econom-
25 ics, and sociology. Members of the task force are author-

1 ized to receive per diem and travel expenses consistent
2 with section 302 of this Act.

3 “(d) OCEAN CONSERVATION TRUST FUND.—There is
4 established in the Treasury an Ocean Conservation Trust
5 Fund. The Fund shall be available, without appropriation
6 or fiscal year limitation, only to the Secretary for the pur-
7 pose of carrying out the provisions of this section subject
8 to the restrictions of this Act. This fund shall consist of
9 all monies deposited into it in accordance with this section
10 and section 308(h). Sums in the Fund that are not cur-
11 rently needed for the purpose of this section shall be kept
12 on deposit or invested in obligations of, or guaranteed by,
13 the United States.

14 **“SEC. 316. FISHERIES DISASTER RELIEF.**

15 “(a) DETERMINATION OF FAILURE.—At the discre-
16 tion of the Secretary or at the request of the Governor
17 of an affected State or a fishery dependent community,
18 the Secretary shall determine whether there is a commer-
19 cial fishery failure due to a fishery resource disaster as
20 a result of—

21 “(1) natural causes;

22 “(2) man-made causes beyond the control of
23 fishery managers to mitigate through conservation
24 and management measures; or

25 “(3) undetermined causes.

1 “(b) ECONOMIC ASSISTANCE.—

2 “(1) Upon the determination under subsection
3 (a) that there is a commercial fishery failure, the
4 Secretary is authorized to make sums available to be
5 used by the affected State, fishery dependent com-
6 munity, or by the Secretary in cooperation with the
7 affected State or fishery dependent community for—

8 “(A) assessing the economic and social ef-
9 fects of the commercial fishery failure; and

10 “(B) any activity that the Secretary deter-
11 mines is appropriate to restore the fishery or
12 prevent a similar failure in the future and to
13 assist a fishery dependent community affected
14 by such failure.

15 “(2) Before making funds available for an ac-
16 tivity authorized under this section, the Secretary
17 shall make a determination that such activity will
18 not expand the size or scope of the commercial fish-
19 ery failure into other fisheries or other geographic
20 regions.

21 “(c) FEDERAL COST-SHARING.—The Federal share
22 of the cost of any activity carried out under the authority
23 of this section shall not exceed 75 percent of the cost of
24 that activity.

1 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary such
3 sums as are necessary for each of the fiscal years 1995,
4 1996, 1997, 1998 and 1999, provided that such sums are
5 designated by Congress as an emergency requirement pur-
6 suant to section 251(b)(2)(D)(i) of the Balanced Budget
7 and Emergency Deficit Control Act of 1985.”.

8 (b) Section 2(b)(1)(A) of the Act of August 11, 1939
9 (15 U.S.C. 713c-3(b)(1)(A)) is amended—

10 (1) by striking “and” at the end of clause (ii);

11 and

12 (2) by adding at the end the following new
13 clause:

14 “(iii) to fund the Federal share of a
15 buy-out program established under section
16 315(b) of the Magnuson Fishery Conserva-
17 tion and Management Act.”.

18 **TITLE II—FISHERY MONITORING** 19 **AND RESEARCH**

20 **SEC. 201. CHANGE OF TITLE.**

21 The heading of title IV (16 U.S.C. 1881 et seq.) is
22 amended to read as follows:

1 **“TITLE IV—FISHERY**
2 **MONITORING AND RESEARCH”.**

3 **SEC. 202. REGISTRATION AND DATA MANAGEMENT.**

4 Title IV (16 U.S.C. 1881 et seq.) is amended by in-
5 serting after the title heading the following:

6 **“SEC. 401. REGISTRATION AND DATA MANAGEMENT.**

7 “(a) **STANDARDIZED FISHING VESSEL REGISTRA-**
8 **TION AND DATA MANAGEMENT SYSTEM.**—The Secretary
9 shall, in cooperation with the Secretary of the department
10 in which the Coast Guard is operating, the States, the
11 Councils, and Marine Fisheries Commissions, develop rec-
12 ommendations for implementation of a standardized fish-
13 ing vessel registration and data management system on
14 a regional basis. The proposed system shall be developed
15 after consultation with interested governmental and non-
16 governmental parties and shall—

17 “(1) be designed to standardize the require-
18 ments of vessel registration and data collection sys-
19 tems required by this Act, the Marine Mammal Pro-
20 tection Act (16 U.S.C. 1361 et seq.), and any other
21 marine resource law implemented by the Secretary;

22 “(2) integrate programs under existing fishery
23 management plans into a nonduplicative data collec-
24 tion and management system;

1 “(3) avoid duplication of existing state, tribal,
2 or federal systems (other than a federal system
3 under paragraph (1)) and utilize, to the maximum
4 extent practicable, information collected from exist-
5 ing systems;

6 “(4) provide for implementation through coop-
7 erative agreements with appropriate State, regional,
8 or tribal entities and Marine Fisheries Commissions;

9 “(5) establish standardized units of measure-
10 ment, nomenclature, and formats for the collection
11 and submission of information;

12 “(6) minimize the paperwork required for ves-
13 sels registered under the system;

14 “(7) include all species of fish within the geo-
15 graphic areas of authority of the Councils and all
16 fishing vessels, except for private recreational fishing
17 vessels used exclusively for pleasure; and

18 “(8) prescribe procedures necessary to ensure
19 the confidentiality of information collected under
20 this section.

21 “(b) FISHING VESSEL INFORMATION.—The registra-
22 tion and data management system should, at a minimum,
23 obtain the following information for each fishing vessel—

1 “(1) the name and official number or other
2 identification, together with the name and address of
3 the owner or operator or both;

4 “(2) vessel capacity, type and quantity of fish-
5 ing gear, mode of operation (catcher, catcher proc-
6 essor or other), and such other pertinent information
7 with respect to vessel characteristics as the Sec-
8 retary may require;

9 “(3) identification of the fisheries in which the
10 fishing vessel participates;

11 “(4) estimated amounts of fish caught, and
12 processed (if applicable) in each fishery; and

13 “(5) the geographic area of operations and the
14 season or period during which the fishing vessel op-
15 erates.

16 “(c) FISHERY INFORMATION.—The registration and
17 data management system should, at a minimum, provide
18 basic fisheries performance data for each fishery, includ-
19 ing—

20 “(1) the number of vessels participating in the
21 fishery;

22 “(2) the time period in which the fishery oc-
23 curs;

24 “(3) the approximate geographic location, or of-
25 ficial reporting area where the fishery occurs;

1 “(4) a description of fishery gear used in the
2 fishery, including the amount of such gear and the
3 appropriate unit of fishery effort;

4 “(5) catch and ex-vessel value of the catch for
5 each stock of fish in the fishery; and

6 “(6) the amount and types of economic and
7 regulatory discards, and an estimate of any other
8 bycatch.

9 “(d) PUBLIC COMMENT.—Within one year after the
10 date of enactment of the Sustainable Fisheries Act, the
11 Secretary shall publish in the Federal Register for a 60-
12 day public comment period, a proposal that would provide
13 for implementation of a standardized fishing vessel reg-
14 istration and data collection system that meets the re-
15 quirements of subsections (a) through (c). The proposal
16 shall include—

17 “(1) a description of the arrangements for con-
18 sultation and cooperation with the department in
19 which the Coast Guard is operating, the States, the
20 Councils, Marine Fisheries Commissions, the fishing
21 industry and other interested parties; and

22 “(2) proposed regulations and legislation nec-
23 essary to implement the proposal.

24 “(e) CONGRESSIONAL TRANSMITTAL.—Within 60
25 days after the end of the comment period and after consid-

1 eration of comments received under subsection (d), the
2 Secretary shall transmit to the Committee on Commerce,
3 Science, and Transportation of the Senate and the Com-
4 mittee on Resources of the House of Representatives a
5 proposal for implementation of a national fishing vessel
6 registration system that includes—

7 “(1) any modifications made after comment and
8 consultation;

9 “(2) a proposed implementation schedule; and

10 “(3) recommendations for any such additional
11 legislation as the Secretary considers necessary or
12 desirable to implement the proposed system.

13 “(f) **REPORT TO CONGRESS.**—Within 15 months
14 after the date of enactment of the Sustainable Fisheries
15 Act, the Secretary shall report to Congress on the need
16 to include private recreational fishing vessels used exclu-
17 sively for pleasure into a national fishing vessel registra-
18 tion and data collection system. In preparing its report,
19 the Secretary shall cooperate with the Secretary of the de-
20 partment in which the Coast Guard is operating, the
21 States, the Councils, and Marine Fisheries Commissions,
22 and consult with governmental and nongovernmental par-
23 ties.”.

24 **SEC. 203. DATA COLLECTION.**

25 Section 402 is amended to read as follows:

1 **"SEC. 402. DATA COLLECTION.**

2 “(a) COUNCIL REQUESTS.—If a Council determines
3 that additional information and data (other than informa-
4 tion and data that would disclose proprietary or confiden-
5 tial commercial or financial information regarding fishing
6 operations or fish processing operations) would be bene-
7 ficial for developing, implementing, or revising a fishery
8 management plan or for determining whether a fishery is
9 in need of management, the Council may request that the
10 Secretary implement a data collection program for the
11 fishery which would provide the types of information and
12 data (other than information and data that would disclose
13 proprietary or confidential commercial or financial infor-
14 mation regarding fishing operations or fish processing op-
15 erations) specified by the Council. The Secretary shall ap-
16 prove such a data collection program if he determines that
17 the need is justified, and shall promulgate regulations to
18 implement the program within 60 days after such deter-
19 mination is made. If the Secretary determines that the
20 need for a data collection program is not justified, the Sec-
21 retary shall inform the Council of the reasons for such
22 determination in writing. The determinations of the Sec-
23 retary under this subsection regarding a Council request
24 shall be made within a reasonable period of time after re-
25 ceipt of that request.

1 “(b) CONFIDENTIALITY OF INFORMATION.—Any in-
2 formation submitted to the Secretary by any person in
3 compliance with any requirement under this Act shall be
4 confidential and shall not be disclosed if disclosure would
5 significantly impair the commercial interests of the person
6 from whom the information was obtained, except—

7 “(1) to Federal employees and Council employ-
8 ees who are responsible for fishery management plan
9 development and monitoring;

10 “(2) to State or Marine Fisheries Commission
11 employees pursuant to an agreement with the Sec-
12 retary that prevents public disclosure of the identity
13 or business of any person;

14 “(3) when required by court order;

15 “(4) when such information is used to verify
16 catch under an individual transferable quota system;
17 or

18 “(5) unless the Secretary has obtained written
19 authorization from the person submitting such infor-
20 mation to release such information and such release
21 does not violate other requirements of this sub-
22 section.

23 The Secretary shall, by regulation, prescribe such proce-
24 dures as may be necessary to preserve such confidentiality,
25 except that the Secretary may release or make public any

1 such information in any aggregate or summary form
2 which does not directly or indirectly disclose the identity
3 or business of any person who submits such information.
4 Nothing in this subsection shall be interpreted or con-
5 strued to prevent the use for conservation and manage-
6 ment purposes by the Secretary, or with the approval of
7 the Secretary, the Council, of any information submitted
8 in compliance with regulations promulgated under this
9 Act.

10 “(c) RESTRICTION ON USE OF CERTAIN DATA.—

11 “(1) The Secretary shall promulgate regulations
12 to restrict the use, in civil enforcement or criminal
13 proceedings under this Act, the Marine Mammal
14 Protection Act of 1972 (16 U.S.C. 1361 et seq.), or
15 the Endangered Species Act (16 U.S.C. 1531 et
16 seq.), of information collected by voluntary fishery
17 data collectors, including sea samplers, while aboard
18 any vessel for conservation and management pur-
19 poses if the presence of such a fishery data collector
20 aboard is not required by any of such Acts or regu-
21 lations thereunder.

22 “(2) The Secretary may not require the submis-
23 sion of a Federal or State income tax return or
24 statement as a prerequisite for issuance of a Federal
25 fishing permit until such time as the Secretary has

1 promulgated regulations to ensure the confidentiality
2 of information contained in such return or state-
3 ment, to limit the information submitted to that nec-
4 essary to achieve a demonstrated conservation and
5 management purpose, and to provide appropriate
6 penalties for violation of such regulations.”.

7 **SEC. 204. OBSERVERS.**

8 Title IV of the Act (16 U.S.C. 1882) is amended by
9 adding the following new section 403:

10 **“SEC. 403. OBSERVERS.**

11 **“(a) GUIDELINES FOR CARRYING OBSERVERS.—**

12 Within one year of the date of enactment of the Sustain-
13 able Fisheries Act, the Secretary shall promulgate regula-
14 tions, after notice and public comment, for fishing vessels
15 that are required to carry observers. The regulations shall
16 include guidelines for determining—

17 **“(1) when a vessel is not required to carry an**
18 **observer on board because the facilities of such ves-**
19 **sel for the quartering of an observer, or for carrying**
20 **out observer functions, are so inadequate or unsafe**
21 **that the health or safety of the observer or the safe**
22 **operation of the vessel would be jeopardized; and**

23 **“(2) actions which vessel owners or operators**
24 **may reasonably be asked to take to render such fa-**
25 **ilities adequate and safe.**

1 “(b) TRAINING.—The Secretary, in cooperation with
2 State programs and the National Sea Grant College Pro-
3 gram, shall—

4 “(1) establish programs to ensure that each ob-
5 server receives adequate training in collecting and
6 analyzing data necessary for the conservation and
7 management purposes of the fishery to which such
8 observer is assigned; and

9 “(2) require that an observer demonstrate com-
10 petence in fisheries science and statistical analysis at
11 a level sufficient to enable such person to fulfill the
12 responsibilities of the position.

13 “(c) WAGES AS MARITIME LIENS.—Claims for ob-
14 servers’ wages shall be considered maritime liens against
15 the vessel and be accorded the same priority as seamen’s
16 liens under admiralty and general maritime law.”.

17 **SEC. 205. FISHERIES RESEARCH.**

18 Section 404 is amended to read as follows:

19 **“SEC. 404. FISHERIES RESEARCH.**

20 “(a) IN GENERAL.—The Secretary shall initiate and
21 maintain, in cooperation with the Councils, a comprehen-
22 sive program of fishery research to carry out and further
23 the purposes, policy, and provisions of this Act. Such pro-
24 gram shall be designed to acquire knowledge and informa-

1 tion, including statistics, on fishery conservation and man-
2 agement and on the economics of the fisheries.

3 “(b) STRATEGIC PLAN.—Within one year after the
4 date of enactment of the Sustainable Fisheries Act, and
5 at least every 3 years thereafter, the Secretary shall de-
6 velop and publish in the Federal Register a strategic plan
7 for fisheries research for the five years immediately follow-
8 ing such publication. The plan shall—

9 “(1) identify and describe a comprehensive pro-
10 gram with a limited number of priority objectives for
11 research in each of the areas specified in subsection
12 (c);

13 “(2) indicate the goals and timetables for the
14 program described in paragraph (1); and

15 “(3) provide a role for commercial fishermen in
16 such research, including involvement in field testing.

17 “(c) AREAS OF RESEARCH.—The areas of research
18 referred to in subsection (a) are as follows:

19 “(1) Research to support fishery conservation
20 and management, including but not limited to, re-
21 search on the economics of fisheries and biological
22 research concerning the abundance and life history
23 parameters of stocks of fish, the interdependence of
24 fisheries or stocks of fish, the identification of essen-
25 tial fish habitat, the impact of pollution on fish pop-

1 ulations, the impact of wetland and estuarine deg-
2 radation, and other matters bearing upon the abun-
3 dance and availability of fish.

4 “(2) Conservation engineering research, includ-
5 ing the study of fish behavior and the development
6 and testing of new gear technology and fishing tech-
7 niques to minimize bycatch and any adverse effects
8 on essential fish habitat and promote efficient har-
9 vest of target species.

10 “(3) Information management research, includ-
11 ing the development of a fishery information base
12 and an information management system that will
13 permit the full use of data in the support of effective
14 fishery conservation and management.

15 “(d) PUBLIC NOTICE.—In developing the plan re-
16 quired under subsection (a), the Secretary shall consult
17 with relevant Federal, State, and international agencies,
18 scientific and technical experts, and other interested per-
19 sons, public and private, and shall publish a proposed plan
20 in the Federal Register for the purpose of receiving public
21 comment on the plan. The Secretary shall ensure that af-
22 fected commercial fishermen are actively involved in the
23 development of the portion of the plan pertaining to con-
24 servation engineering research. Upon final publication in
25 the Federal Register, the plan shall be submitted by the

1 Secretary to the Committee on Commerce, Science, and
2 Transportation of the Senate and the Committee on Re-
3 sources of the House of Representatives.”.

4 **SEC. 206. INCIDENTAL HARVEST RESEARCH.**

5 Section 405 is amended to read as follows:

6 **“SEC. 405. INCIDENTAL HARVEST RESEARCH.**

7 “(a) **COLLECTION OF DATA.**—Within 9 months after
8 the date of enactment of the Sustainable Fisheries Act,
9 the Secretary shall, after consultation with the Gulf of
10 Mexico Fishery Management Council and South Atlantic
11 Fishery Management Council, conclude the collection of
12 data in the program to assess the impact on fishery re-
13 sources of incidental harvest by the shrimp trawl fishery
14 within the authority of such Councils. Within the same
15 time period, the Secretary shall make available to the pub-
16 lic aggregated summaries of data collected prior to June
17 30, 1994 under such program.

18 “(b) **IDENTIFICATION OF STOCK.**—The program con-
19 cluded pursuant to subsection (a) shall provide for the
20 identification of stocks of fish which are subject to signifi-
21 cant incidental harvest in the course of normal shrimp
22 trawl fishing activity.

23 “(c) **COLLECTION AND ASSESSMENT OF SPECIFIC**
24 **STOCK DATA.**—For stocks of fish identified pursuant to
25 subsection (b), with priority given to stocks which (based

1 upon the best available scientific information) are consid-
2 ered to be overfished, the Secretary shall conduct—

3 “(1) a program to collect and evaluate data on
4 the nature and extent (including the spatial and
5 temporal distribution) of incidental mortality of such
6 stocks as a direct result of shrimp trawl fishing ac-
7 tivities;

8 “(2) an assessment of the status and condition
9 of such stocks, including collection of information
10 which would allow the estimation of life history pa-
11 rameters with sufficient accuracy and precision to
12 support sound scientific evaluation of the effects of
13 various management alternatives on the status of
14 such stocks; and

15 “(3) a program of data collection and evalua-
16 tion for such stocks on the magnitude and distribu-
17 tion of fishing mortality and fishing effort by
18 sources of fishing mortality other than shrimp trawl
19 fishing activity.

20 “(d) INCIDENTAL MORTALITY REDUCTION PRO-
21 GRAM.—The Secretary shall, in cooperation with affected
22 interests, commence a program to design and evaluate the
23 efficacy of technological devices and other changes in fish-
24 ing technology for the reduction of incidental mortality of
25 nontarget fishery resources in the course of shrimp trawl

1 fishing activity which are designed to be inexpensive to
2 operate and which cause insignificant loss of shrimp. Such
3 program shall take into account local conditions and in-
4 clude evaluation of any reduction in incidental mortality,
5 as well as any reduction or increase in the retention of
6 shrimp in the course of normal fishing activity.

7 “(e) REPORT TO THE CONGRESS.—The Secretary
8 shall, within one year of completing the programs required
9 by this subsection, submit a detailed report on the results
10 of such programs to the Committee on Commerce,
11 Science, and Transportation of the Senate and the Com-
12 mittee on Resources of the House of Representatives.

13 “(f) IMPLEMENTATION CRITERIA.—Any measure im-
14 plemented under this Act to reduce the incidental mortal-
15 ity of nontarget fishery resources in the course of shrimp
16 trawl fishing shall, to the extent practicable—

17 “(1) apply to such fishing throughout the range
18 of the nontarget fishery resource concerned; and

19 “(2) be implemented first in those areas and at
20 those times where the greatest reduction of such in-
21 cidental mortality can be achieved.”.

22 **SEC. 207. REPEAL.**

23 Section 406 (16 U.S.C. 1882) is repealed.

1 **SEC. 208. CLERICAL AMENDMENTS.**

2 The table of contents is amended by striking the mat-
3 ter relating to title IV and inserting the following:

“Sec. 315. Transition to sustainable fisheries.

“Sec. 316. Fisheries disaster relief.

“TITLE IV—FISHERY MONITORING AND RESEARCH

“Sec. 401. Registration.

“Sec. 402. Data collection.

“Sec. 403. Observers.

“Sec. 404. Fisheries research.

“Sec. 405. Incidental harvest research.”.

4 **TITLE III—FISHERIES STOCK**
5 **RECOVERY FINANCING**

6 **SEC. 301. SHORT TITLE.**

7 This title may be cited as the “Fisheries Stock Recov-
8 ery Financing Act”.

9 **SEC. 302. FISHERIES STOCK RECOVERY REFINANCING.**

10 Title XI of the Merchant Marine Act, 1936 (46
11 U.S.C. 1271 et seq.), is amended by adding at the end
12 the following new section:

13 “Sec. 1111. (a) Pursuant to the authority granted
14 under section 1103(a) of this title, the Secretary shall,
15 under such terms and conditions as the Secretary shall
16 prescribe by regulation, guarantee and make commitments
17 to guarantee the principal of, and interest on, obligations
18 which aid in refinancing, in a manner consistent with the
19 reduced cash flows available to obligors because of reduced
20 harvesting allocations during implementation of a fishery
21 recovery effort, existing obligations relating to fishing ves-

1 sels or fishery facilities. Guarantees under this section
2 shall be subject to all other provisions of this title not in-
3 consistent with the provisions of this section. The provi-
4 sions of this section shall, notwithstanding any other pro-
5 visions of this title, apply to guarantees under this section.

6 “(b) Obligations eligible to be refinanced under this
7 section shall include all obligations which financed or refi-
8 nanced any expenditures associated with the ownership or
9 operation of fishing vessels or fishery facilities, including
10 but not limited to expenditures for reconstructing, recon-
11 ditioning, purchasing, equipping, maintaining, repairing,
12 supplying, or any other aspect whatsoever of operating
13 fishing vessels or fishery facilities, excluding only such
14 obligations—

15 “(1) which were not in existence prior to the
16 time the Secretary approved a fishery recovery effort
17 eligible for guarantees under this section and whose
18 purpose, in whole or in part, involved expenditures
19 which resulted in increased vessel harvesting capaci-
20 ty; and

21 “(2) as may be owed by an obligor either to any
22 stockholder, partner, guarantor, or other principal of
23 such obligor or to any unrelated party if the purpose
24 of such obligation had been to pay an obligor’s pre-

1 existing obligation to such stockholder, partner,
2 guarantor, or other principal of such obligor.

3 “(c) The Secretary shall refinance up to 100 percent
4 of the principal of, and interest on, such obligations, but,
5 in no event, shall the Secretary refinance an amount ex-
6 ceeding 75 percent of the unencumbered (after deducting
7 the amount to be refinanced by guaranteed obligations
8 under this section) market value, as determined by an
9 independent marine surveyor, of the fishing vessel or fish-
10 ery facility to which such obligations relate plus 75 percent
11 of the unencumbered (including but not limited to home-
12 stead exemptions) market value, as determined by an inde-
13 pendent marine surveyor, of all other supplementary col-
14 lateral. The Secretary shall do so regardless of—

15 “(1) any fishing vessel or fishery facility’s ac-
16 tual cost or depreciated actual cost; and

17 “(2) any limitations elsewhere in this title on
18 the amount of obligations to be guaranteed or such
19 amount’s relationship to actual cost or depreciated
20 actual cost.

21 “(d) Obligations guaranteed under this section shall
22 have such maturity dates and other provisions as are con-
23 sistent with the intent and purpose of this section (includ-
24 ing but not limited to provisions for obligors to pay only
25 the interest accruing on the principal of such obligations

1 during the period in which fisheries stocks are recovering,
2 with the principal and interest accruing thereon being
3 fully amortized between the date stock recovery is pro-
4 jected to be completed and the maturity date of such obli-
5 gations).

6 “(e) No provision of section 1104A(d) of this title
7 shall apply to obligations guaranteed under this section.

8 “(f) The Secretary shall neither make commitments
9 to guarantee nor guarantee obligations under this section
10 unless—

11 “(1) the Secretary has first approved the fish-
12 ery recovery effort, for the fishery in which vessels
13 eligible for the guarantee of obligations under this
14 section are participants; and

15 “(2) the Secretary has considered such factors
16 as—

17 “(A) the projected degree and duration of
18 reduced fisheries allocations;

19 “(B) the projected reduction in fishing ves-
20 sel and fishery facility cash flows;

21 “(C) the projected severity of the impact
22 on fishing vessels and fishery facilities;

23 “(D) the projected effect of the fishery re-
24 covery effort;

1 “(E) the provisions of any related fishery
2 management plan under the Magnuson Fishery
3 Conservation and Management Act (16 U.S.C.
4 1801 et seq.); and

5 “(F) the need for and advisability of guar-
6 antees under this section;

7 “(3) the Secretary finds that the obligation to
8 be guaranteed will, considering the projected effect
9 of the fishery recovery effort involved and all other
10 aspects of the obligor, project, property, collateral,
11 and any other aspects whatsoever of the obligation
12 involved, constitute, in the Secretary’s opinion, a
13 reasonable prospect of full repayment; and

14 “(4) the obligors agree to provide such security
15 and meet such other terms and conditions as the
16 Secretary may, pursuant to regulations prescribed
17 under this section, require to protect the interest of
18 the United States and carry out the purpose of this
19 section.

20 “(g) All obligations guaranteed under this section
21 shall be accounted for separately, in a subaccount of the
22 Federal Ship Financing Fund to be known as the Fishery
23 Recovery Refinancing Account, from all other obligations
24 guaranteed under the other provisions of this title and the
25 assets and liabilities of the Federal Ship Financing Fund

1 and the Fishery Recovery Refinancing Account shall be
2 segregated accordingly.

3 “(h) For the purposes of this section, the term ‘fish-
4 ery recovery effort’ means a fishery management plan,
5 amendment, or regulations required under section 305(b)
6 of the Magnuson Fishery Conservation and Management
7 Act (16 U.S.C. 1854(b)) to rebuild a fishery which the
8 Secretary has determined to be a commercial fishery fail-
9 ure under section 316 of such Act.”.

10 **SEC. 303. FEDERAL FINANCING BANK RELATING TO FISH-**
11 **ING VESSELS AND FISHERY FACILITIES.**

12 Section 1104A(b)(2) of the Merchant Marine Act,
13 1936 (46 U.S.C. 1274(b)(2)), is amended by striking
14 “*Provided, further*, That in the case of a fishing vessel or
15 fishery facility, the obligation shall be in an aggregate
16 principal amount equal to 80 percent of the actual cost
17 or depreciated actual cost of the fishing vessel or fishery
18 facility, except that no debt may be placed under this pro-
19 viso through the Federal Financing Bank:” and inserting
20 the following: “*Provided, further*, That in the case of a
21 fishing vessel or fishery facility, the obligation shall be in
22 an aggregate principal amount not to exceed 80 percent
23 of the actual cost or depreciated actual cost of the fishing
24 vessel or fishery facility, and obligations related to fishing
25 vessels and fishery facilities under this title shall be placed

1 through the Federal Financing Bank unless placement
2 through the Federal Financing Bank is not reasonably
3 available or placement elsewhere is available at a lower
4 annual effective yield than placement through the Federal
5 Financing Bank:".

6 **SEC. 304. FEES FOR GUARANTEEING OBLIGATIONS.**

7 Section 1104A(e) of the Merchant Marine Act, 1936
8 (46 U.S.C. 1274(e)), is amended to read as follows:

9 "(e)(1) The Secretary is authorized to fix a fee for
10 the guarantee of obligations under this title. Obligors shall
11 pay all such fees to the Secretary when moneys are first
12 advanced under guaranteed obligations and at least 60
13 days prior to each anniversary date thereafter. All such
14 fees shall be computed and shall be payable to the Sec-
15 retary under such regulations as the Secretary may pre-
16 scribe.

17 "(2) For fishing vessels and fishery facilities, such
18 fee shall—

19 "(A) if the obligation will not be purchased by
20 the Federal Financing Bank, be in an amount equal
21 to 1 percent per year of the average principal
22 amount of the obligation outstanding (unless such
23 obligation is issued under section 1111 of this title,
24 in which case such fee shall be 1 and one-half per-
25 cent per year of such average principal amount; and

1 “(B) if the obligation will be purchased by the
2 Federal Financing Bank, be in an amount equal to
3 2 percent per year of the average principal amount
4 of the obligation outstanding (unless such obligation
5 is issued under section 1111 of this title, in which
6 case such fee shall be 2 and one-half percent per
7 year of such average principal amount), less any fee
8 the Federal Financing Bank customarily charges for
9 its services with respect to federally guaranteed obli-
10 gations purchased by it and less the amount, if any,
11 by which the interest rate on such obligation (which
12 shall be fixed at the time the Federal Financing
13 Bank commits to purchase such obligation) exceeds
14 the current new issue rate on outstanding market-
15 able obligations of the United States of comparable
16 maturity.

17 “(3) For everything other than fishing vessels and
18 fishery facilities, such fee shall—

19 “(A) if the security for the guarantee of an ob-
20 ligation under this title relates to a delivered vessel,
21 not be less than one-half of 1 percent per year nor
22 more than 1 percent per year of the average prin-
23 cipal amount of such obligation outstanding, exclud-
24 ing the average amount (except interest) on deposit

1 in an escrow fund created under section 1108 of this
2 title; and

3 “(B) if the security for the guarantee of an ob-
4 ligation under this title relates to a vessel to be con-
5 structed, reconstructed, or reconditioned, not be less
6 than one-quarter of 1 percent per year nor more
7 than one-half of 1 percent per year of the average
8 principal amount of such obligation outstanding, ex-
9 cluding the average amount (except interest) on de-
10 posit in an escrow fund created under section 1108
11 of this title. For the purposes of this subsection, if
12 the security for the guarantee of an obligation under
13 this title relates both to a delivered vessel or vessels
14 and to a vessel or vessels to be constructed, recon-
15 structed, or reconditioned, the principal amount of
16 such obligation shall be prorated in accordance with
17 regulations prescribed by the Secretary. The regula-
18 tions to be prescribed by the Secretary under this
19 subsection shall provide a formula for determining
20 the creditworthiness of obligors under which the
21 most creditworthy obligors pay a fee computed on
22 the lowest allowable percentage and the least credit-
23 worthy obligors pay a fee which may be computed on
24 the highest allowable percentage (the range of cred-

1 itworthiness to be based on obligors which have ac-
2 tually issued guaranteed obligations).”.

3 **SEC. 305. SALE OF ACQUIRED COLLATERAL.**

4 Section 1104A(a)(3) of the Merchant Marine Act,
5 1936 (46 U.S.C. 1274(a)(3)), is amended by inserting
6 after “financing” the following: “(without requiring sub-
7 sidy cost ceiling or other authorization under the Federal
8 Credit Reform Act of 1990)”.

○

New England Fishery Management Council

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Chairman
Joseph M. BrancialeoneExecutive Director
Douglas G. Marshall**New England Fishery Management Council
Positions on Amendments
to the Magnuson Fishery Conservation and Management Act
Council Chairmen's Meeting, July 11, 1995**

The following comments reflect New England Fishery Management Council positions on the H.R. 39 Discussion Draft dated May 30, 1995. They add to previous testimony provided to the House Subcommittee on Fisheries, Wildlife and Oceans in February and the Senate Subcommittee on Oceans and Fisheries in March, 1995.

Stock Rebuilding

We reiterate our previous position concerning the term "*rebuilding program*" in which we suggested an alternative definition. The suggested change refers to page 6, lines 8-12, and would read "*those conservation and management measures necessary to eliminate overfishing over a time period defined in a fishery management plan.*" Maximum sustainable yield is used often as a goal in fishery management plans and refers to a single stock of fish. Since the 602 Guidelines fully discuss and clarify the term, we question its usefulness in legislation and how it may affect, or even unduly hamper, the management of a multispecies fishery.

Voting Members

The proposal to extend Council membership to include "*other individuals selected for their fisheries expertise as demonstrated by their academic training, marine conservation advocacy, consumer advocacy or other affiliation with non-user groups*" (page 13, lines 7-12) is unnecessary. Any of the groups identified can be nominated under the current Act. If a fair and equitable balance of six types of participants is required, Congress will undermine a system which calls for and benefits from the informed participation of those who are experienced in the harvesting practices which must be regulated.

Compensation

We continue to oppose the proposal to reduce appointed Council member compensation to a level equivalent to the lowest rate of pay at the G.S. 15 level (page 14, lines 1-5). Such a change, we maintain, would send a message to appointed members, and to others, regarding the importance of the Council process and could preclude some qualified people from participation. We recommend, therefore, no reduction from the current level of compensation given the enormous workload and great responsibility associated with Council membership.

Conflict of Interest

We have serious reservations about NOAA General Counsel or a designee making on-the-spot determinations about violations of conflict of interest rules at Council meetings (page 19, lines 13-18) when potentially important background information may not be readily available. Such a process, if misused, could cause inordinate delays in making management decisions.

Contents of Fishery Management Plans - Bycatch

The Council agrees with the concept of assessing levels of bycatch, but given limited staff and funding, but we are concerned about a *requirement* to monitor bycatch amount and species (page 21, lines 1-7). Moreover, producing the estimated and actual processing capacity for those affected fisheries may not be practical.

Contents of Fishery Management Plans - Amendments

It is unrealistic to require the submission of amendments to all fishery management plans within 18 months of enactment of the bill (page 22, line 20) and to specify that each will include programs to monitor and minimize bycatch and to minimize economic and regulatory discards, provide a description of essential fishery habitat, define overfishing and an appropriate rebuilding program, take into account safety at sea and, among other things, be fair and equitable. We propose that Councils be required to address these issues in any new FMP or new amendment to an existing FMP following enactment of this bill.

Individual Quota Limited Access Programs

We support the provision that an individual who is not a citizen of the United States should not hold an individual quota issued under a fishery management plan (page 49, lines 14-16).

Fees

The Council has maintained that the Secretary should be required to establish a system to collect fees at levels specified by Councils in fishery management plans (FMPs). We previously recommended that use of fees be limited solely to the purposes envisioned in a plan or to improve the FMP process. We further recommended that such FMP-specific fees be protected by statute from being used to offset appropriated funding. We believe this protection should apply to all limited access fisheries and not only to fisheries managed under individual quotas as stated the discussion draft (page 52, lines 14-18).

Consideration of Ability to Pay Penalties

The Council opposes the provision which allows the Secretary to consider facts relating to the ability of a violator to pay fines levied for violations of fishing regulations (page 64, lines 20-24). The existing Magnuson Act language allows for ample flexibility in the assessment of penalties. Any mechanism to weaken, delay or otherwise challenge legitimate sanctions would not serve the process or the fishermen who abide by the regulations.

Study of Contribution of Bycatch To Charitable Organizations

The intent of the provision which calls for a determination of the economic benefits accrued to commercial fishermen for their contributions of bycatch to charitable organizations (page 72, line 4) is unclear. Since the next provision in the discussion document calls for a determination of the impact on fisheries of the availability of those benefits, we speculate that an objective of the study is to determine if there is any economic incentive for fishermen to contribute their bycatch to charitable organizations. We recommend clarification.

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FINAL

Testimony of Joseph Brancaleone
New England Fishery Management Council
On Behalf of the
Chairman of the Eight Fishery Management Councils
Before the House Subcommittee on
Fisheries, Wildlife and Oceans
February 23, 1995

Mr. Chairman and Members of the Subcommittee:

I am here today on behalf of the Chairmen of all eight of the management Councils. The Chairmen have not met since HR 39 was introduced and my own Council, even now, does not have Senate Bill S.39.

However, over the last two years the Chairmen have considered a number of draft bills and proposed changes to the Magnuson Act. Following our May 1994 meeting, we prepared testimony covering a wide range of proposed amendments. I think the testimony was never delivered to the Subcommittee but I am submitting it today as our most recent agreed position. Keep in mind that the Chairmen have reached consensus on that testimony but it does not necessarily reflect a full consensus of the eight Councils themselves, even though there is substantial agreement by the Councils to most of it.

The general view of the Chairmen is that Magnuson is a good law and does not need basic revision, although minor adjustments may be helpful. We believe the perception of conflicts of interest on the Councils is greater than any actual conflict. We are opposed to mandatory recusal and to NOAA General Counsel determining when a conflict exists. We urge you to consider the alternative language proposed in our draft 1994 testimony.

We believe Councils should have discretionary authority to establish fees related to data collection programs and limited entry programs. A requirement for bycatch data (as in HR 39) would make fees even more necessary.

The Chairmen do not believe lowering compensation for appointed members is appropriate, but if compensation is lowered to the GS-15 level, it should be set at the top step of that grade level.

We are all concerned about possible habitat degradation but believe that a requirement to define or identify essential habitat would burden Councils beyond the limits of their funding and staffs.

Likewise, we are gravely concerned about overfishing but we doubt that defining overfishing in the Act would be helpful. The 602 guidelines are adequate in this regard. Overfishing and rebuilding issues are best dealt with at the Council level with NMFS guidance.

We support a 180 day period for emergency actions and for extensions of such actions.

We are in favor of reducing the time required to implement regulations for fishery management plans. I believe the 60 day time limit in HR 39 on secretarial review of proposed regulations is a step in that direction.

Mr. Chairman, this is clearly a very brief summary of our views. We did not specifically consider the HR 39 proposal that all persons presenting oral or written statements must state their interest and their qualifications. Neither did we consider the adding of items to a Council's agenda upon the request of two members or the defining of Fisheries Dependent Communities. Our view, however, was that flexibility and latitude within the parameters of Magnuson are preferable to very detailed prescriptions and proscriptions in the Act. The Councils were created to exercise judgement.

I expect that in the next several weeks most, if not all, of the Councils will consider HR 39 and submit specific comments on that bill. I will be happy to answer any questions that I can.

Thank you for inviting me here today.

House Committee on Appropriations
Members of
Commerce, Justice, State, the Judiciary, and Related
Agencies Subcommittee

Republicans (5)

1. ROGERS (R-KY)
Chairman
2. KOLBE (R-AZ)
3. TAYLOR, CHARLES (R-NC)
4. REGULA (R-OH)
5. FORBES (R-NY)
- * LIVINGSTON (R-LA)

Democrats (3)

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Ranking Minority Member
2. SKAGGS (D-CO)
3. DIXON, JULIAN (D-CA)
- * OBEY (D-WI)

* Ex-officio, voting member

Staff -- Sally Chadbourne

Staff -- Liz White

Senate Committee on Appropriations
Members of
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Agencies Subcommittee

Republicans (6)

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Chairman
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1. HOLLINGS (D-SC)
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3. BUMPERS (D-AR)
4. LAUTENBERG (D-NJ)
5. KERREY, BOB (D-NE)
- * BYRD, ROBERT (D-WV)

* Ex-officio, voting member

Majority Staff -- David Taylor

Minority Staff -- Scott Gudes

PROPOSED TESTIMONY FOR LEE ANDERSON ON BEHALF OF THE CHAIRS OF THE EIGHT REGIONAL FISHERY MANAGEMENT COUNCILS BEFORE A POSSIBLE HEARING OF THE HOUSE OF REPRESENTATIVES FISHERY MANAGEMENT SUBCOMMITTEE

COUNCIL COMPOSITION/CONFLICT OF INTEREST

The 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. They also oppose the Gilchrest bill requirement for 25% of appointed members to have university, environmental or other non-user group affiliation. The Governors and the Secretary can nominate and appoint from a broad variety of interests. Advisory Panels and Scientific and Statistical Committees also provide input from diverse backgrounds.

The Chairmen 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:

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 Assistant Administrator shall be required to act not later than 30 days after receiving the grievance.

OTHER COUNCIL PROCEDURES

The Council Chairmen agree with proposal to amend compensating rates to reflect new Federal compensation levels, that is, the fact that there is no longer a grade 16.

They agreed that Councils should be allowed to retain independent legal counsel.

They oppose the proposed requirement for a minimum number of Scientific and Statistical Committee and Advisory Panel meetings. This should be left to each Council to determine

according to their agenda, the issues being discussed, and budget concerns.

They also opposed the 2/3 vote proposal and the proposal to require roll call votes on all decisions.

OVERFISHING/RECOVERY PLANS

Council Chairmen agreed that the current overfishing definition in 602 Guidelines is sufficient. The 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.

The 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

Regarding the Gilchrest amendments, The Council Chairmen believe the Councils already have the authority to initiate observer plans. It is not necessary to amend Act.

HABITAT

Council Chairmen believe the Magnuson Act should allow for discretionary (rather than mandatory) designation of essential habitat in FMPs. If essential habitat is designated in an 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 should be required to be consistent with FMPs and the Act; activities would be audited at least biannually.

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

The Council Chairmen concluded that Councils should be allowed 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 the Secretary imposes fees, a substantial amount of the fees collected in a region should go to that region's programs and the fees collected from foreign imports could be used wherever needed in that particular budget cycle. If the Secretary imposes fees, Councils should have input as to the collection and use of the fees.

BYCATCH/WASTE

The Chairmen favored the bycatch demonstration program. They felt that options to reduce bycatch, waste, and high-grading should be included in the discretionary part of Act.

The Chairmen 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

The Council Chairmen believe 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 AND CITIZEN PETITIONS

The Council Chairmen concluded that providing for citizen suits and citizen petitions in the Magnuson Act is not necessary. Citizens already have a myriad of ways to have input into the fishery management process.

FMP IMPLEMENTATION

The Council Chairmen recommend that the Magnuson Act be amended to extend authority to impose emergency rule to 180 days, with one 180 day extension. The Administration's suggestion of 90 days followed by 270 days would not solve the problem. If the first period is 180 days, 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, should compel the Secretary to act.

The Act should be amended to impose 60 day time limit for Secretarial action on regulatory amendments and require written response detailing reasons, if disapproved. In general, the Council Chairmen would like some kind of time frame for processing and implementing regulatory actions, similar to FMP amendments.

Additionally, FMPs and amendments should be exempt from the impact analyses required by other applicable law. If exemption is not possible, require consistent reviews and time schedules for MFCMA/NEPA. In other words, facilitate review and approval of amendments by having the MFCMA and NEPA (and other) review periods concurrent.

OVERCAPITALIZATION

The Council Chairmen believe the Councils need the tools to deal with overcapitalization, but should not be required to take specific action. Give the 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.

ALLOCATIONS

The Chairmen agreed that Congress should not take a position on whether or not ITQs, CDQs, or other allocative programs should be allowed, but rather section 303(b)(6) should be amended to give the 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.

GEAR

Council Chairmen voiced concern that gear 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 protection yet allow new gears to be tested.

FISHERIES UNDER MORE THAN ONE COUNCIL JURISDICTION

The Chairmen of 3 out of 5 affected Councils recommend return of Highly Migratory Species in the Atlantic EEZ to the Councils. Those opposed cited budget concerns as the reason to leave authority with NMFS. Four out of 5 affected Councils recommend that actions be approved by a simple majority of voting members of all 5 Councils combined.

BEST SCIENTIFIC INFORMATION AVAILABLE

The Council Chairmen concluded that no action is required in this area. The Secretary may already disapprove actions based on whether or not the best scientific information was utilized. The Gilcrest 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

The Chairmen supported a limit on 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

Council Chairmen made no recommendations concerning changes to the Atlantic Tunas Convention Act.

FOREIGN FISHING PERMITS FOR TRANSSHIPMENT

The Chairmen had no recommendation in the area of foreign fishing permits for transshipment, but stressed the need for NMFS to consider specific requirements in their areas, that is, vessel tracking systems.

ECONOMIC DATA FROM PROCESSORS

With regard to the proposal that processors be required to submit economic data, the Council Chairmen felt that this information was very specifically exempted from the Act to protect confidential economic data.

3-YEAR LIMIT ON CONFIDENTIALITY OF STATISTICS

The Council Chairmen oppose the recommendation that statistics not be considered confidential after three years. Disclosure of any confidential information, particularly after only three years, could deter fishermen and 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.

NATIONAL DATA COLLECTION PROGRAM

Concerning the NMFS proposal for a National data collection program, the Council Chairmen concluded that the Councils already have the authority to initiate data

collection programs, and 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

The Chairmen agreed on no recommendations on the issue of requiring data from internal waters processing operations.

ASSAULT AGAINST DATA COLLECTORS

The Council Chairmen did not oppose the proposal to protect data collectors.

LARGE SCALE DRIFTNETS

The Chairmen did not oppose to the proposal concerning large scale driftnets.

PERMIT SANCTIONS

There were no recommendations or comments on the permit sanctions proposals.

PENALTY AND FORFEITURE FUND

There were no recommendations or comments on the penalty and forfeiture fund proposal.

PACIFIC COUNCIL SEAT FOR TREATY INDIAN

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.

STREAMLINED FISHERY MANAGEMENT PLANS

The 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.

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Chairman
Joseph M. BrancaleoneExecutive Director
Douglas G. Marshall

DATE: April 12, 1995

TO: Other Executive Directors

FROM: Douglas G. Marshall, Executive Director 

SUBJECT: Magnuson

After our trip to D.C. where Joe Brancaleone spoke for the Chairmen, our Groundfish Committee Chairman, Phil Coates, testified at a Senate subcommittee hearing in Rockport, Maine. We also got additional written questions from the House subcommittee. Joe Brancaleone has also responded to those questions. I am sending you Phil's testimony and Joe's answers (as well as the written House questions).

At our March 30 meeting the Council adopted positions on a number of amendment issues and we have forwarded to the subcommittees in both houses the enclosed package of comments. I hope they may be of use to you -- or at least of interest. (Identical letters to both chairmen and ranking minority member in both house and senate).

See you in July.

Attachments

dgm/pwc

Joseph M. Brancaleone responds to additional questions from the Hon. Peter Torkildsen to both Rollie Schmitten and Mr. Brancaleone. (Feb. 23, 1995)

- Q. 1. Is it your view that Georges Bank will remain closed after Amendment #7 regulations are passed? If so, for what period of time? Please provide me with a detailed outline of the proposed long-term plan for Georges Bank.
- A. Mr. Brancaleone: Yes it will. We can't say yet for how long but Amendment #7 will contain a timetable or a mechanism for reopening the bank at an appropriate time. There is not a detailed long-term plan for Georges Bank. Amendment #7 will be that. We haven't yet decided all details of the amendment.
- Q. 2. Is the Council considering support for aquaculture as a viable component to any long term plan?
- A. Mr. Brancaleone: Not actively but the possibility is not precluded.
- Q. 3. When will NMFS and NOAA brief the EPA and the Army Corps of Engineers of their commitment to aquaculture in an effort to expedite the application process?
- A. Mr. Brancaleone: The Council cannot speak for NOAA or NMFS. That is Mr. Schmitten's prerogative.

Other Questions to Mr. Brancaleone

- Q. 1. You feel that there is only a perceived conflict on the Councils. How do you think this "perceived conflict" should be addressed?
- A. The Council is sending a letter to the Subcommittee with numerous comments on proposed changes to the Act. We will address that question in our letter.
- Q. 2. Do you feel that Council members should ever refrain from voting on an issue that might affect their personal finances?
- A. Yes. It has been a continuing practice for most, if not all, of the Council's existence for members not to vote on issues that directly affect them financially beyond the degree to which all participants in a fishery are affected. Members have generally erred on the side of caution where there has been any gray areas of doubt.
- Q. 3. Why are you opposed to the NOAA General Counsel making a determination on conflict?
- A. It seems to me personally that it is better for the Council itself to decide such matters.

- Q. 8. In Lee Anderson's paper from the last Congress, there is a request that the Magnuson Act be amended to allow an emergency action to be voted on without the Regional Director voting. In your opinion, does the Secretarial review of an emergency action unnecessarily delay the implementation of the action? Can you give any examples?**
- A. Secretarial review of a Council request for emergency action may result in emergency action not being taken at all. It is discretionary for the Secretary if the Council vote is less than unanimous. See section 305(c)(2)(B). Regional Directors have standing orders from NMFS headquarters to always vote against requests by Councils for emergency action. This leaves the decision of whether or not to implement emergency rules to the Secretary. That makes section 305(c)(2)(A) essentially meaningless.**
- Q. 9. Do you know of any instance where a Regional Director has voted with the rest of the Council for a unanimous vote on an emergency action?**
- A. Virtually never. There may have been one case where NMFS instructed the Regional Director to ask the Council to request an emergency action and where the R.D. then voted yes on the request by the Council.**

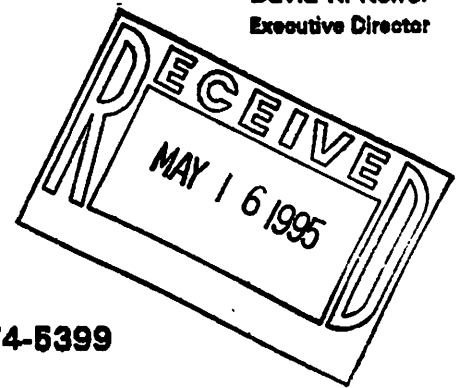
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Dr. Lee G. Anderson
Chairman

Anthony D. DiLernia
Vice Chairman

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NO. OF PAGES FOLLOWING: 0
COMMENTS:

There are some members of the Mid-Atlantic and New England Councils concerned about how the 3 consecutive terms and you are out rule gets applied to persons appointed to fill unexpired terms. They would like Magnuson amended to make the limitation 3 full terms. The word they are getting is that, given the status of H.R. 39, this change can only be made at the direction of your Congressman. I was asked to inform you of the situation. I have no idea if this is an issue with members of other Councils.

I am waiting to hear from our Chair and Vice-Chair on the Chairmen's agenda we got yesterday. Will FAX you a response as soon as I hear from them.

June 16, 1995



To: Dave Whaley
Jean Flemma
Trevor McCabe
Penny Dalton

From: Peter Leipzig, Executive Director

Re: Buy-back language in Magnuson reauthorization

I am extremely pleased to see the House version of the Magnuson reauthorization now contains provisions to establish a buy-back program. This continues to be the highest priority of the West Coast Groundfish fleet for future groundfish management. As I did with the draft buy-back language a couple of months ago, I have taken the current language and made some suggested changes. Some of my current suggestions are similar, or may be identical, to earlier suggestions. I have enclosed a copy of my proposed changes for your review.

My suggestions generally are intended to provide for a greater role for the Councils in the establishment of the buy-back program, to provide greater flexibility, or clarify where I felt the language was unclear. I am not introducing new concepts and I would be glad to discuss any of the proposed changes with you in greater depth. My following numbered comments refer to the numbers which I have written into the left margin of the suggested changes. I hope this will clarify the intent of my suggestions.

1) Changing the may to shall really only applies to when requested to establish a program by a Council. The Secretary already has a discretionary point when determining if the program is necessary. I believe if a Council requests the program the Secretary should implement it.

2) Improving the economics of the fishery (rationalizing a fishery) should be justification for a buy-back program. Leaving it out throws in questions whether the term improved management encompassed economic benefit.

3) In this section I am suggesting that the duties be divided between the Secretary and the Councils.

- 4) The flexibility to buy boats and/or permits should be provided. This may be the most critical and important comment I am making. In some fisheries it may be very important to buy both the permit and vessel. However, requiring to buy both the permit and vessel as the current language reads would greatly increase the cost of a program without any necessary benefit. In the West Coast groundfish fishery the Limited Entry program issues permits. A fisherman may not fish without a permit. If his permit is purchased he may well use his boat in some other fishery. But then even if his boat and permit had been purchased through a buy-back program, nothing would stop him from taking his money and buying a new boat to operate in the other fishery anyway. Flexibility is the key here to establish what ever works.
- 5) These are the duties that I broke out from above for the Council to perform.
- 6) I am suggesting striking the Secretary here and leaving the responsibility for making the projection open some to provide the opportunity for the Council to have a role in making the projection.
- 7) This change and those later in this section clarify that the fees involved may take different forms.
- 8) I am striking the provisions for Advisory Panels because I feel that it is redundant. The Council can perform this function. An alternative could be that if a Council had no interest in providing advice to the Secretary then the Secretary could appoint a Advisory Panel.

Struck-out text is deleted

Shaded text is new

SEC. 17 FISHING CAPACITY REDUCTION PROGRAMS.

(a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.) is further amended by adding after section 315 (as added by section 15 of this Act) the following new section:

"SEC. 316. FISHING CAPACITY REDUCTION PROGRAMS.

① "(a) AUTHORITY TO CONDUCT PROGRAM.—The Secretary, with the concurrence of the Council having authority over a fishery, may ~~shall~~ conduct a voluntary fishing capacity reduction program for a fishery in accordance with this section, if--

"(1) the Secretary--

② "(A) determines that the program is necessary for rebuilding, preventing overfishing, or generally improve the conservation, and management ~~and economic benefit~~ of the fishery; or

"(B) is requested to do so by the Council with authority over the fishery;

and

"(2) there is in effect under section 304 a fishery management plan that--

"(A) limits access to the fishery through a Federal fishing permit required by a limited access system established under section 303(b)(6); and

"(B) prevents the replacement of fishing capacity eliminated by the program through --

(i) a moratorium on the issuance of new Federal fishing permits for the duration of the repayment period; and

(ii) restrictions on fishing vessel capacity upgrading.

(b) PROGRAM REQUIREMENTS.—Under a fishing capacity reduction program conducted under this section for a fishery,

③ (1) the Secretary shall--

"(1) (A) seek to permanently reduce the maximum effective fishing capacity at the least cost and in the shortest period of time through the removal of vessels and permits from the fishery;

"(2) (B) make payments to--

④ "(A) (i) scrap or otherwise render permanently unusable for fishing in the United States, vessels that operate in the fishery; and/or

"(B) (ii) acquire the Federal fishing permits that authorize participation in the fishery ;

"(3) (C) provide for the funding of those payments by persons that participate in the fishery, by establishing and imposing fees on holders of Federal fishing permits under this Act that authorize that participation;

~~"(4) establish criteria for determining the types of vessels and permits--~~

~~which are eligible to participate in the program, that--~~
~~"(A) assess vessel impact on the fishery; and~~
~~"(B) minimize program costs; and~~
~~"(C) take into consideration--~~
~~"(i) previous fishing capacity reduction programs; and~~
~~"(ii) the characteristics of the fishery;~~
~~"(5) establish procedures for determining the amount of payments under paragraph (1); and~~
~~"(6) (D) identify sources of funding for the program in addition to the amounts referred to in subsection (f)(2)(A), (B), (C), and (D).~~

(5) ~~(2) the Council shall --~~

~~"(A) establish criteria for determining the types and numbers of vessels which are required to participate in the program; and~~
~~"(B) establish procedures for determining the amount of payments under paragraph (1);~~

"(c) PAYMENTS.--

"(1) IN GENERAL;--As part of a fishing capacity reduction program under this section, and subject to paragraph (2) the Secretary shall make payments under subsection (b)(2).

"(2) ESTABLISHMENT OF FEE REQUIRED--

The Secretary may not make any payment under paragraph (1) for a fishery unless there is in effect for the fishery a fee under subsection (d).

(6) "(3) LIMITATION ON TOTAL AMOUNT OF PAYMENTS FOR FISHERY.--The total amount of payments under paragraph (1) for a fishery may not exceed the total amount the Secretary projects ~~projected~~ will be deposited into the Fund from fees that apply to the fishery under subsection (d).

"(d) FEES. --

(7) "(1) IN GENERAL.-- Notwithstanding any other provision of law, the Secretary, with the concurrence of a majority of the voting members of a Council having jurisdiction over a fishery for which a fishing capacity reduction program is conducted under this section, may establish an annual fee on holders of Federal permits authorizing participation in the fishery.

"(2) AMOUNT OF FEE. -- The amount of a fee established under this subsection for a fishery described in paragraph (1) --

(A) shall be adequate to ensure that the total amount collected in the form of the fee will not be less than the amount the Secretary determines is necessary for payments under subsection (b)(1) to reduce fishing capacity in the fishery to a level that will ensure the long-term health of the fishery;

"(B) shall be based on --

"(i) the value of the fishery;

"(ii) the projected number of participants in the fishery;

"(iii) the projected catch in the fishery; and

"(iv) the direct costs of implementing a fishing capacity reduction program under this section for the fishery; and

"(C) may either be a fixed amount or a percentage of the value of the harvest, however it may not exceed, for any permit holder, 5 percent of the value of fish harvested under the permit each year.

"(3) EFFECTIVE PERIOD.--A fee under this subsection may not be in effect for more than 15 years.

"(4) USE OF AMOUNTS RECEIVED.--Amounts received by the United States as fees under this subsection--

"(A) shall be deposited into the Fund; and

"(B) may not be used to pay any administrative overhead or other costs not directly incurred in implementing this section with respect to the fishery.

~~"(e) Advisory Panels.--~~

~~"(1) IN GENERAL.-- The Secretary shall establish for each fishery for which a fishing capacity reduction program is conducted under this section an advisory panel to advise the Secretary regarding that program.~~

~~"(2) Membership.-- Each advisory panel under this subsection shall consist of individuals appointed by the Secretary and shall include representatives of--~~

~~"(A) the Department of Commerce;~~

~~"(B) Councils having authority over fisheries for which the panel is established;~~

~~"(C) appropriate sectors of the fishing industry affected by fishing capacity reduction programs under this section; and~~

~~"(D) appropriate States affected by such programs.~~

"(f) ~~(e)~~ FISHERIES CONSERVATION AND RESTORATION FUND.--

"(1) ESTABLISHMENT.--There is established in the Treasury of the United States a separate account which shall be known as the Fisheries Conservation and Restoration Fund (in this section referred to as the 'Fund').

"(2) DEPOSITS INTO THE FUND.--There shall be deposited into the Fund--

"(A) amounts appropriated under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A)), popularly known as the Saltonstall-Kennedy Act;

"(B) amounts paid to the United States Government as fees established under subsection (d);

"(C) any other amounts appropriated for fisheries disaster that the Secretary determines should be used for fishing capacity reduction programs under this section; and

"(D) such other amounts appropriated for making payments under subsection (b)(1).

"(3) AVAILABILITY.--

"(A) IN GENERAL.-- Amounts in the Fund shall be available to the Secretary without fiscal year limitation, as provided by appropriations Act, for making payments under subsection (b)(1).

"(B) MANAGEMENT OF UNNEEDED BALANCE.-- Amounts in the Fund that are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

"(g)(1) EXPIRATION OF ACQUIRED PERMITS.-- Permits acquired by the Board under subsection (b)(1)(B)--

"(1) shall not be effective after the date of that acquisition and

"(2) may not be reissued or replaced.

(b) USE OF AMOUNTS TRANSFERRED UNDER SALTONSTALL KENNEDY ACT.--Section 2(b)(1) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)), popularly known as the Saltonstall-Kennedy Act, is amended in subparagraph (A) by striking "and" after the semicolon at the end of clause (ii), by striking the period at the end of clause (iii) and inserting "and", and by adding at the end the following new clause:

"(iv) to fund fishing capacity reduction programs under section 316 of the Magnuson Fishery Conservation and Management Act, by depositing a portion of amounts transferred into the Fisheries Conservation and Restoration Fund established by that section; and".