Comparison of H.R. 39\(^1\) and S. 39\(^2\)

to Amend the Magnuson Fishery Conservation and Management Act

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<tr>
<th>Issue</th>
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<tr>
<td>Bycatch</td>
<td>Defines as fish harvested but not sold or kept for personal use, including economic and regulatory discards. New national standard #8 to minimize bycatch. Adds reference in policy section. 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. Adds discretionary provision on assessing impacts of fisheries on non-targeted stocks and ecosystem. 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. Adds study on bycatch contributions to charitable organizations.</td>
<td>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.</td>
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| Voting Member Qualifications | Adds academic training, marine conservation advocacy and affiliation with non-user groups as selection criteria. | No change. |

| Conflict of Interest | 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. | 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. |

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

\(^2\)All page references are to original bill introduced on January 4, 1995.
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<tr>
<th>Issue</th>
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<tr>
<td>Mid-Atlantic Council Membership</td>
<td>Adds North Carolina and boosts membership by two, to 21. (pp. 12-13)</td>
<td>No change.</td>
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<tr>
<td>Council Member Compensation</td>
<td>Reduce to GS 15-1 effective 1-1-96. Reduces pay from $312.52 per day to $260.44. (pp. 13-14)</td>
<td>No change.</td>
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<tr>
<td>Council Procedures</td>
<td>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)</td>
<td>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)</td>
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<tr>
<td>Habitat</td>
<td>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)</td>
<td>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)</td>
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<tr>
<td>Fishery Dependent Communities (FDC)/ Community Development Quotas</td>
<td>Establishes CDQ authority for Bering Sea. (pp. 43-44)</td>
<td>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)</td>
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<tr>
<td>Fees</td>
<td>Requires observer fees for any observer program within 18 months. (pp. 22-23) Also see fees under ITQs.</td>
<td>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).</td>
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<tr>
<td>Overfishing</td>
<td>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)</td>
<td>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)</td>
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<tr>
<td>Review of Regulations</td>
<td>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)</td>
<td>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)</td>
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<tr>
<td>Emergency Actions</td>
<td>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)</td>
<td>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 not removed from unanimous vote. (pp. 61-64)</td>
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<tr>
<td>Transshipment Permits</td>
<td>SOC may issue a transshipment permit to a foreign vessel for transporting fish products at sea. (pp. 6-9)</td>
<td>Similar to H.R. 39. (pp. 10-15)</td>
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<tr>
<td>North Pacific Waste Reduction</td>
<td>North Pacific Fishery Management Council must submit measures to ensure total catch measurement by 1-1-97. (p. 23)</td>
<td>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)</td>
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<td>Individual Quotas</td>
<td>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)</td>
<td>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)</td>
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<tr>
<td>PFM C Tribal Member</td>
<td>No change.</td>
<td>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)</td>
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<tr>
<td>Pacific Region Stock</td>
<td>Establishes review group and assessment program for Pacific Council groundfish that may use private vessels. (pp. 37-38)</td>
<td>No change.</td>
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<td>Assessment</td>
<td>No change.</td>
<td>No change.</td>
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<tr>
<td>Fishery Impact Statements</td>
<td>FIS needs to be sent to Governors and House and Senate Committees. (pp. 24-25)</td>
<td>No change.</td>
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<tr>
<td>Negotiated Measures</td>
<td>No change.</td>
<td>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)</td>
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<tr>
<td>Gear Evaluation</td>
<td>Adds discretionary FMP provision for identifying and evaluating new gear technologies. (p. 24)</td>
<td>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)</td>
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<tr>
<td>Sustainable Fisheries/</td>
<td>Extensive provisions on voluntary fishing capacity reduction program</td>
<td>SOC may develop a sustainable development strategy for any overfished</td>
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<tr>
<td>Capacity Reduction Programs</td>
<td>funded by industry and fees not to exceed 5% of annual harvest value.</td>
<td>fishery or commercial fishery failure. Strategy to address fishery</td>
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<td>15-year limitation. Deposited in Fisheries Compensation and Restoration Fund. (pp. 57-64)</td>
<td>recovery effort, economic assistance to communities, alternative</td>
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<td>economic opportunities, long-term objectives for the fishery. SOC</td>
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<td>may implement a buy-out program for fishing vessels or permits. Non-</td>
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<td>federal share may come from industry fees not to exceed 5% annually</td>
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<td>of the value of fish harvested. Fees deposited in Ocean Conservation</td>
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<td>Trust Fund. (pp. 80-87)</td>
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<td>Disaster Relief</td>
<td>No change.</td>
<td>SOC to determine if there is a commercial fishery failure due to</td>
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<td>natural causes, man-made causes beyond the control of fishery managers</td>
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<td>or undetermined causes. SOC authorized to make money available to</td>
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<td>states, communities or SOC for assessing the effects of the failure,</td>
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<td>restoring the fishery and assisting a community. Federal share not to</td>
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<td>exceed 75 percent. (pp. 87-89)</td>
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<td>Monitoring and Research</td>
<td>No change.</td>
<td>SOC to develop proposal for a standardized fish vessel registration</td>
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<td>Research</td>
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<td>and data collection system on a regional basis for public comment and</td>
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<td>then congressional transmittal. SOC to promulgate regulations for</td>
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<td>fishing vessels required to carry observers and to establish observer</td>
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<td>training programs. (pp. 90-99) SOC must develop a strategic fisheries</td>
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<td>research plan within 1 year and update it every 3 years. (pp. 99-102)</td>
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<td>Stock Recovery Financing</td>
<td>No change.</td>
<td>Amends Merchant Marine Act to authorize SOC to guarantee obligations</td>
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<td>which aid in refinancing existing obligations for fishing vessels or</td>
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<td>facilities necessary because of fishery recovery efforts. (pp. 105-114)</td>
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<td>Highly Migratory Species (HMS)</td>
<td>SOC shall appoint plan development teams for each SOC FMP for HMS in</td>
<td>SOC shall appoint advisory panel for each HMS FMP in Atlantic and Gulf.</td>
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<td>Atlantic and Gulf. (pp. 25-27)</td>
<td>(p. 38) SOC shall manage if within authority of more than 1 council.</td>
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<tr>
<td>Driftnets</td>
<td>Modifies and updates section 206(e) on SOC reports to Congress. (pp.</td>
<td>Modifies section 206(e). (p. 15)</td>
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<tr>
<td>National Standard 5</td>
<td>No change.</td>
<td>Amends national standard 5 to require that measures consider (rather than promote) efficiency. (p. 15)</td>
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<tr>
<td>Safety</td>
<td>FMPs must take into account safety of human life at sea. (p. 22)</td>
<td>FMPs must consider and provide for safety of life and property at sea to the extent practicable. (p. 31)</td>
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<tr>
<td>Atlantic Herring and Mackerel</td>
<td>No foreign allocations can be made until FMP is implemented, and Council approval is required. (pp. 9-10)</td>
<td>Similar provision but date is 12-1-99.</td>
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<td>Incidental Catch in Gulf and South Atlantic</td>
<td>Eliminates time limit of 3 years on incidental research program and makes other changes. (pp. 28-29)</td>
<td>SOC must report on shrimp fishery bycatch research (pp. 102-103) Modifies language concerning incidental mortality reduction program. (p. 103)</td>
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<tr>
<td>Gulf of Mexico Fisheries</td>
<td>Provisions on fishing assessments and monitoring. (pp. 67-71)</td>
<td>No change.</td>
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<tr>
<td>Prohibited Acts</td>
<td>Prohibits failure to disclose financial information and addresses transshipments. (pp. 41-43)</td>
<td>Modifies prohibitions concerning observers, driftnets and transshipments. (pp. 65-67)</td>
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<tr>
<td>Enforcement</td>
<td>No change.</td>
<td>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)</td>
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<tr>
<td>Multi-Council Designation</td>
<td>No change.</td>
<td>Adds clarifying language in new subsection 303(d) on designating Council responsibility in multi-council fisheries. (pp. 35-40)</td>
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<td>Observers and Rights of Observers</td>
<td>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)</td>
<td>No change.</td>
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<tr>
<td>State Jurisdiction</td>
<td>Requires additional data on fish harvested by U.S. vessels in internal</td>
<td>Concerning internal waters, same as H.R. 39, but also requires a</td>
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<td>waters joint ventures (p. 40) Adds authority for extension of Alaska</td>
<td>hearing before state preemption if state requests. (p. 64) S. 39 does</td>
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<td>state jurisdiction into federal waters under specific conditions (p. 41)</td>
<td>not extend authority for Alaska.</td>
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<td>Civil Penalties</td>
<td>Secretary may also consider facts established on violator’s ability to</td>
<td>Revises procedure for judicial review. Expands use of permit</td>
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<td>pay. (p. 64)</td>
<td>sanctions. Fines to be deposited in fund and may be used for buyout</td>
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<td>programs (pp. 67-68).</td>
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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 and Management Amendments of 1995".

4 SEC. 2. AMENDMENT OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.
6 Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson Fishery Conservation 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 amended—
15 (1) in paragraph (2)—
16 (A) by striking "and (B)" and inserting "(B)"; and
17 (B) by inserting before the period at the end the following: "; and (C) losses of essential fishery habitat can diminish the ability of stocks of fish to survive";
(2) in paragraph (6) by inserting after "to insur
sure conservation," the following: "to provide long-
term conservation of essential fishery habitat;”; and
(3) by adding at the end the following:
"(9) Continuing loss of essential fishery habitat
poses a long-term threat to the viability of commer-
cial and recreational fisheries of the United States.
To conserve and manage the fishery resources of the
United States, increased attention must be given to
the protection of this habitat .”.
(b) PURPOSES.—Section 2(b) (16 U.S.C. 1801(b)) is
amended—
(1) by striking "and" after the semicolon at the
end of paragraph (5);
(2) by striking the period at the end of para-
graph (6) and inserting a semicolon; and
(3) by adding at the end the following:
"(7) to promote the conservation of essential
fishery habitat in the review of projects that affect
essential fishery habitat; and
"(8) to ensure that conservation and manage-
ment decisions with respect to the Nation's fishery
resources are made in a fair and equitable manner."
(c) POLICY.—Section 2(c)(3) (16 U.S.C. 1801(c)(3)) is amended by inserting after "practical measures that" the following: "minimize bycatch and".

SEC. 4. DEFINITIONS.

(a) EXECUTION OF PRIOR AMENDMENTS TO DEFINITIONS.—Notwithstanding section 308 of the Act entitled "An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary", approved March 9, 1992 (Public Law 102–251; 106 Stat. 66), section 301(b) of that Act (adding a definition of the term "special areas") shall take effect on the date of the enactment of this Act.

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

(1) in paragraph (4)—

(A) by striking "COLETERATA" from the heading of the list of corals and inserting "CNIDARIA"; and

(B) in the list appearing under the heading "CRUSTACEA", by striking "DEEP-SEA RED CRAB-GERYON QUINQUEDENS" and inserting "DEEP-SEA RED CRAB-CHACEON QUINQUEDENS";
(2) in paragraph (16) by striking "of one and one half miles" and inserting "of two and one-half kilometers";

(3) in paragraph (17) by striking "Pacific Marine Fisheries Commission" and inserting "Pacific States Marine Fisheries Commission";

(4) by amending paragraph (21) to read as follows:

"(21) The term 'optimum', with respect to yield from a fishery, means the amount of fish—

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

"(B)(i) which, subject to clause (ii), is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor; or

"(ii) which, in the case of a fishery which has been classified by the Secretary as overfished, is prescribed as such on the basis of the maximum sustainable yield as reduced to allow for the rebuilding of the fishery to a level
consistent with producing maximum sustainable
yield on a continuing basis.”

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

(6) by adding at the end the following:

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

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

“(36) The term ‘regulatory discards’ means fish
captured in a fishery which fishermen are required by
regulation to discard whenever caught, or are re-
quired by regulation to retain but not sell.
"(37) The term "essential fishery habitat" means those waters necessary to fish for spawning, breeding, or growth to maturity.

"(38) The term "overfishing" means a level or rate of fishing mortality that jeopardizes the ability of a stock of fish to produce maximum sustainable yield on a continuing basis.

"(39) The term "rebuilding program" means those conservation and management measures necessary to restore the ability of a stock of fish to produce maximum sustainable yield on a continuing basis.

"(40) The term "total allowable catch" means the total amount of fish in a fishery that may be harvested in a fishing season, as established in accordance with a fishery management plan for the fishery."

SEC. 5. FOREIGN FISHING.

(a) TRANSSHIPMENT PERMITS.—

(1) AUTHORITY TO OPERATE UNDER TRANSSHIPMENT PERMITS.—Section 201(a)(1) (16 U.S.C. 1821(a)(1)) is amended to read as follows:

"(1) is authorized under subsection (b) or (c) or under a permit issued under section 204(d);".
(2) AUTHORITY TO ISSUE TRANSShIPIMENT
PERMITS.—Section 204 (16 U.S.C. 1824) is amend-
ed by adding at the end the following:

“(d) TRANSshIPIMENT PERMITS.—

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

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

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

“(2) TRANSMITTAL.—Upon receipt of an appli-
cation for a permit under this subsection, the Sec-
retary shall promptly transmit copies of the applica-
tion to the Secretary of the department in which the
Coast Guard is operating, any appropriate Council,
and any interested State.
“(3) APPROVAL OF APPLICATION.—The Secretary may approve an application for a permit under this section if the Secretary determines that—

“(A) the transportation of fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this Act;

“(B) the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application;

“(C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and

“(D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

“(4) WHOLE OR PARTIAL APPROVAL.—The Secretary may approve all or any portion of an application under paragraph (3).
“(5) FAILURE TO APPROVE APPLICATION.—If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

“(6) CONDITIONS AND RESTRICTIONS.—The Secretary shall establish and include in each permit under this subsection conditions and restrictions which shall be complied with by the owner and operator of the vessel for which the permit is issued. The conditions and restrictions shall include the requirements, regulations, and restrictions set forth in subsection (b)(7).

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

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

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

May 30, 1995 (1:23 p.m.)
(2) **COUNCIL RECOMMENDATION REQUIRED TO APPROVE APPLICATION.**—Section 204(b)(6) (16 U.S.C. 1824(b)(6)) is amended—

(A) in subparagraph (A) by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”;

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

“(C)(i) The Secretary may not approve an application which proposes harvest of Atlantic mackerel or Atlantic herring by one or more foreign fishing vessels unless the appropriate Council has recommended that the Secretary approve the portion of the application making that proposal and the Secretary includes the appropriate conditions and restrictions recommended by the Council.

“(ii) For purposes of this subparagraph, the term ‘appropriate Council’ means the Mid-Atlantic Fishery Management Council with respect to Atlantic mackerel and the New England Fishery Management Council with respect to Atlantic herring.”.

(c) **PERIOD FOR CONGRESSIONAL REVIEW OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.**—Section 203 (16 U.S.C. 1823) is amended—
(1) in subsection (a) by striking “60 calendar days of continuous session of the Congress” and inserting “120 calendar days (excluding any days in a period for which the Congress is adjourned sine die);”;

(2) by striking subsection (c); and

(3) by redesignating subsection (d) as subsection (e).

(d) TECHNICAL CORRECTION.—

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

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

SEC. 6. LARGE-SCALE DRIFT NET FISHING.

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

“(e) REPORT.—Not later than March 17th of each year, the Secretary, after consultation with the Secretary
of State and the Secretary of the department in which the
Coast Guard is operating, shall submit to the Committee
on Commerce, Science, and Transportation of the Senate
and the Committee on Resources of the House of Rep-
representatives a list of those nations whose nationals or ves-
sels conduct, and of those nations that authorize their na-
tionals to conduct, large-scale drift net fishing beyond the
exclusive economic zone of any nation in a manner that
diminishes the effectiveness of, or is inconsistent with, any
international agreement governing large-scale drift net
fishing to which the United States is a party or otherwise
subscribes.”.

SEC. 7. NATIONAL STANDARD FOR FISHERY CONSERVA-
TION AND MANAGEMENT TO MINIMIZE
BYCATCH.

Section 301(a) (16 U.S.C. 1851(a)) is amended by
adding at the end the following:
“(8) Conservation and management measures
shall, to the maximum extent practicable, minimize
bycatch.”.

SEC. 8. REGIONAL FISHERY MANAGEMENT COUNCILS.

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

May 30, 1995 (1:23 p.m.)
by striking "and Virginia" and inserting "Virginia, and North Carolina";

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

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

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

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

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

"(6) The Secretary shall remove any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) if the member violates section 307(1)(O)."

(c) COMPENSATION.—

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

(A) by striking "each Council," and inserting "each Council who are required to be appointed by the Secretary and"; and
(B) by striking "shall, until January 1, 1992," and all that follows through "GS–16" and inserting the following: "shall receive compensation at a daily rate equivalent to the lowest rate of pay payable for GS–15."

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

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

"(5) At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes required under subsection (j)(2)(E) and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote."

(e) COMMUNICATIONS WITH FEDERAL AGENCIES REGARDING ESSENTIAL AND OTHER FISHERY HABITAT.—Section 302(i) (16 U.S.C. 1852(i)) is amended—

(1) in paragraph (1), by striking "and" after the semicolon at the end of subparagraph (A) and
striking the period at the end of subparagraph (B) and inserting "; and";

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

"(C) shall notify the Secretary regarding, and may comment on and make recommendations to any State or Federal agency concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may have a detrimental effect on the essential fishery habitat of a fishery under the authority of the Council."; and

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

"(2) Within 15 days after receiving a comment or recommendation under paragraph (1) from a Council regarding the effects of an activity on essential fishery habitat, a Federal agency shall provide to the Council a detailed response in writing. The response shall include a description of measures being considered by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Council, the Federal agency shall explain its reasons for not following the recommendations.".
(h) **PROCEDURAL MATTERS.**—Section 302(j)(2) (16 U.S.C. 1852(j)(2)) is amended—

(1) by striking "guidelines" and inserting "shall";

(2) in subparagraph (C), by inserting after "fishery)" the following: "sufficiently in advance of the meeting to allow meaningful public participation in the meeting;";

(3) by adding at the end of subparagraph (D) the following: "The written statement or oral testimony shall include a brief description of the background and interests of the person on the subject of the written statement or oral testimony."

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

"(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council. The Chairman shall certify the accuracy of the minutes of each meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction."; and
by adding at the end the following:

"(G) A Council member may add an item to the agenda of a meeting of a Council or of a committee or advisory panel of a Council by presenting to the Chairman of the Council, committee, or panel, at least 21 days before the date of the meeting, a written description of the item signed by 2 or more voting members of the Council."

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

(1) in the heading by inserting "AND RECUSAL"

before the period;

(2) in paragraph (1)—

(A) in subparagraph (A) by inserting "or"

after the semicolon at the end;

(B) in subparagraph (B) by striking "; or"

at the end and inserting a period; and

(C) by striking subparagraph (C);

(3) in paragraph (3)(B) by striking "or (C)");

(4) in paragraph (5)—

(A) in subparagraph (A) by striking "and"

at the end;

(B) in subparagraph (B) by striking the period at the end and inserting "; and"; and
(C) by adding at the end the following:

"(C) be kept on file by the Secretary for use in reviewing Council actions and made available by the Secretary for public inspection at reasonable hours."

(5) in paragraph (6) by striking "or (C)"

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

(7) by adding at the end the following:

"(8) The Secretary, in consultation with the Councils, and by not later than 1 year after the date of the enactment of the Fishery Conservation and Management Amendments of 1995, shall establish rules which prohibit an affected individual from voting on a matter in which the individual or any other person described in paragraph (2) with respect to the individual has an interest that would be significantly affected. The rules may include provisions which take into account the differences in fisheries.

"(9) A voting member of a Council shall recuse himself or herself from voting if—

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

"(B) the General Counsel of the National Oceanic and Atmospheric Administration (or a designee of the General Counsel under paragraph (10)(C)(ii)) determines under paragraph (10) that voting by the
member would violate the rules established under paragraph (8).

"(10)(A) Before any vote held by a Council on any matter, a voting member of the Council may, at a meeting of the Council, request the General Counsel of the National Oceanic and Atmospheric Administration (or a designee of the General Counsel under subparagraph (C)(ii)) to determine whether voting on the matter by the member, or by any other member of the Council, would violate the rules established under paragraph (8).

"(B) Upon a request under subparagraph (A) regarding voting on a matter by a member—

"(i) the General Counsel of the National Oceanic and Atmospheric Administration (or a designee of the General Counsel under subparagraph (C)(ii)) shall determine and state whether the voting would violate the rules established under paragraph (8), at the meeting at which the request is made; and

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

"(C) The General Counsel of the National Oceanic and Atmospheric Administration shall—

"(i) attend each meeting of a Council; or
“(ii) designate an individual to attend each
meeting of a Council for purposes of this paragraph.
“(11) For the purposes of this subsection, the term
an interest that would be significantly affected’ means a
personal financial interest which would be augmented by
voting on the matter and which would only be shared by
a minority of other persons within the same industry sec-
tor or gear group whose activity would be directly affected
by a Council’s action.”.

(j) CONFORMING AMENDMENT.—Section
302(k)(1)(A) (16 U.S.C. 1852(k)(1)(A)) is amended to
read as follows:
“(A) is nominated by the Governor of a State
for appointment as a voting member of a Council in
accordance with subsection (b)(2) or is designated
by the Governor of a State under subsection
(b)(1)(A) and is not an employee of the State;”.

SEC. 9. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) REQUIRED PROVISIONS.—

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

(A) in paragraph (5) by striking “and the
estimated processing capacity of, and the actual
processing capacity utilized by, United States
fish processors,” and inserting the following:
"the amount and species of bycatch taken on
board a fishing vessel based on a standardized
reporting methodology established by the Counci
for that fishery, and the estimated process-
cing capacity of, and the actual processing ca-
pacity utilized by, United States fish proc-

essors;”;

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

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

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

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

(E) by adding at the end the following:

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

“(11) include conservation and management
measures necessary to minimize bycatch to the maxi-
mum extent practicable;
“(12) to the extent practicable, minimize mortality caused by economic discards and regulatory discards in the fishery;

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

“(14) in the case of any plan which under subsection (b)(8) requires that observers be carried on board vessels—

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

“(B) be consistent with other applicable laws;

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

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

(2) AMENDMENT OF PLANS.—Not later than 18 months after the date of enactment of this Act, each Regional Fishery Management Council established under the Magnuson Fishery Conservation and Management Act shall submit to the Secretary of Commerce an amendment to each fishery management
plan in effect under that Act to comply with the amendments made by paragraph (1).

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

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

(1) in paragraph (8) in the matter preceding the first semicolon, by striking "require that observers" and inserting "require that one or more observers";

(2) in paragraph (9) by striking "and" after the semicolon;

(3) by redesignating paragraph (10) as paragraph (14); and

(4) by inserting after paragraph (9) the following:

"(10) assess and specify the effect which conservation and management measures of the plan will have on stocks of fish in the ecosystem of the fishery which are not part of the fishery;"
“(11) include incentives and harvest preferences within fishing gear groups to promote the avoidance of bycatch;

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

“(13) reserve a portion of the allowable biological catch of the fishery for use for scientific research purposes;

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

(c) REQUIREMENT TO SUBMIT FISHERY IMPACT STATEMENTS TO AFFECTED STATES AND THE CONGRESS.—Section 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1533), as amended by section 16(b), is further amended by adding at the end the following new subsection:

“(h) SUBMISSION OF FISHERY IMPACT STATEMENTS TO INTERESTED STATES AND THE CONGRESS.—Not later than the date a fishery management plan prepared by a Council or the Secretary takes effect under section 304,
the Council or the Secretary, respectively, shall submit the
fishery impact statement required in the plan under sub-
section (a)(9) to—

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

"(2) the Committee on Resources of the House
of Representatives and the Committee on Commerce,
Science, and Transportation of the Senate."

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

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

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

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

(2) in paragraph (3)(C)(ii) by inserting before
the semicolon the following: "and the plan develop-
ment team established under paragraph (4)";
(3) in paragraph (3)(E), strike "allocation or quota" each place it appears and insert "allocation, quota, or fishing mortality level";

(4) in paragraph (3)(F)(ii) by inserting "and the plan development team established under paragraph (4)" before the semicolon;

(5) by adding at the end the following:

"(4)(A) The Secretary shall establish a plan development team for each highly migratory species fishery over which the Secretary has authority under paragraph (3)(A), to advise the Secretary on and participate in the development of each fishery management plan or amendment to a plan for the fishery under this subsection.

"(B) The plan development team shall—

"(i) consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species and from other interested persons;
“(ii) be balanced in its representation of commercial, recreational, and other interests; and

“(iii) participate in all aspects of the development of the plan or amendment.

“(C) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any plan development team established under this paragraph.”; and

(6) in paragraph (3)(D) by striking clauses (ii) and (iii) and inserting the following:

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

“(iii) promote international conservation;

“(iv) minimize the establishment of regulations that require the discarding of Atlantic highly migratory species which cannot be returned to the sea alive; and

“(v) promote the implementation of scientific research programs that include to the extent practicable, the tag, and release of Atlantic highly migratory species.”.

(c) LIMITED ACCESS.—Section 304(c)(3) (16 U.S.C. 1864(c)(3)) is amended by inserting “or advisory committee appointed under laws implementing relevant inter-
national fishery agreements to which the United States
is a party" before the period at the end.
(d) INCIDENTAL HARVEST RESEARCH.—Section
304(g) (16 U.S.C. 1854(g)) is amended—
(1) in paragraph (1) by striking “3-year”;
(2) by striking paragraph (4) and inserting the
following:
“(4) No later than 12 months after the enactment
of the Fishery Conservation and Management Amend-
ments of 1995, the Secretary shall, in cooperation with
affected interests and based upon the best scientific infor-
mation available, complete a program to—
“(A) develop technological devices and other
changes in fishing operations to minimize the inci-
dental mortality of nontargeted fishery resources in
the course of shrimp trawl activity to the extent
practicable from the level of mortality at the date of
enactment of the Fishery Conservation and Manage-
ment Amendments of 1990;
“(B) evaluate the ecological impacts and the
benefits and costs of such devices and changes in
fishing operations; and
“(C) assess whether it is practicable to utilize
those nontargeted fishery resources which are not
avoidable.”;
(3) in paragraph (6)(B) by striking “April 1, 1994” and inserting “the submission under paragraph (5) of the detailed report on the program described in paragraph (4).”; and

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

“(7) Any measure implemented under this Act to reduce the incidental mortality of nontargeted fishery resources in the course of shrimp trawl fishing shall apply to such fishing throughout the range of the nontargeted fishery resource concerned.”.

(e) ESSENTIAL FISHERY HABITAT; OVERFISHING.— Section 304 (16 U.S.C. 1854) is further amended by adding at the end the following:

“(h) ACTIONS BY THE SECRETARY ON ESSENTIAL FISHERY HABITAT.—(1) Within one year after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall—

(A) establish guidelines to assist the Councils in the description of essential fishery habitat in fishery management plans; and

(B) establish a schedule for the amendment of fishery management plans to describe essential fish habitats.
“(2) The Secretary, in cooperation with the Secretary of the Interior, shall identify the essential fishery habitat for each fishery for which a fishery management plan is in effect. The identification shall be based on the description of essential fishery habitat contained in the plan.

“(3) Each Federal agency shall consult with the Secretary with respect to any action proposed to be authorized, funded, or carried out by such agency that the head of the agency has reason to believe, or the Secretary believes, may result in the destruction or adverse modification of any essential fishery habitat identified by the Secretary under paragraph (2). If the Secretary finds that the proposed action would result in destruction or adverse modifications of such essential fishery habitat, the Secretary shall comment on and make recommendations to the agency concerning that action.

“(4) Within 15 days after receiving recommendations from the Secretary under paragraph (3) with respect to a proposed action, the head of a Federal agency shall provide a detailed, written response to the Secretary which describes the measures proposed by the agency to avoid, mitigate, or offset the adverse impact of the proposed action on the essential fishery habitat. In the case of a response that is inconsistent with the recommendation of the
Secretary, the agency shall explain its reasons for not fol-
lowing the recommendations.

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

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

"(i) ACTION BY THE SECRETARY ON
OVERFISHING.—(1) In addition to the authority granted
to the Secretary under subsection (c), if the Secretary
finds at any time that overfishing is occurring or has oc-
curred in any fishery, the Secretary shall immediately no-
tify the appropriate Council and request that action be
taken to end overfishing in the fishery and to establish
a rebuilding program for the fishery. The Secretary shall
publish each notice under this paragraph in the Federal
Register.
"(2) If the Council does not submit to the Secretary before the end of the 1-year period beginning on the date of notification under paragraph (1) a fishery management plan, or an amendment to the appropriate existing fishery management plan, which is intended to address overfishing in the fishery and to establish any necessary rebuilding program, then the Secretary shall within 9 months after the end of that period prepare under subsection (c) a fishery management plan, or an amendment to an existing management plan, to end overfishing in the fishery and to establish any necessary rebuilding program.

"(3) If the Secretary finds that overfishing is occurring in any fishery for which a fishery management plan prepared by the Secretary is in effect, the Secretary shall—

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

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

"(4) Any rebuilding program under this subsection shall specify the time period within which the fishery is expected to be rebuilt. The time period shall be as short as possible, taking into account the biology and natural variability of the stock of fish, other environmental factors
or conditions which would affect the rebuilding program, and the needs of the fishing industry. The time period may not exceed 10 years, except in cases where the biology of the stock of fish or other environmental factors dictates otherwise.

"(5) If the Secretary finds that the action of any Federal agency has caused or contributed to the decline of a fishery below maximum sustainable yield, the Secretary shall notify the agency of the Secretary's finding and recommend steps that can be taken by the agency to reverse that decline.

"(6)(A) The Secretary shall review the progress of any rebuilding program required under this subsection beginning in the third year in which the plan is in effect, and annually thereafter.

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

"(i) reassess the goals of the program;
"(ii) determine, based on the best available scientific information, whether revision to the program is needed; and

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

"(C) If the Secretary finds as a result of the review that the rebuilding program is not meeting its specified goals for reasons other than those described in subparagraph (B), the Secretary shall direct the Council that established the program to make revisions to the program, or in the case of a program established by the Secretary, make such revisions.

"(7)(A) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographic area of authority and identify those fisheries that are approaching a condition of being overfished.

"(B) For each fishery that is subject to a fishery management plan, the status of the fishery shall be determined for purposes of subparagraph (A) in accordance with the determination of what constitutes overfishing in the fishery included in the plan under section 303(a)(10).
“(C) The Secretary shall identify a fishery under subparagraph (A) as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary determines that the fishery is likely to become overfished within 2 years.

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

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

“(ii) make specific recommendations to the appropriate Council regarding actions that should be taken to prevent that condition from being reached.”.

(f) ACTION ON CERTAIN IMPLEMENTING REGULATIONS PROPOSED BY COUNCILS.—Section 304 (16 U.S.C. 1854) is further amended by adding at the end the following:

“(j) ACTION ON COVERED IMPLEMENTING REGULATIONS PROPOSED BY A COUNCIL.—(1) After the receipt date of a covered implementing regulation submitted by a Council, the Secretary shall—

“(A) immediately commence a review of the covered implementing regulation to determine wheth-
er it is consistent with the fishery management plan
it would implement, the national standards, the
other provisions of this Act, and any other applicable
law; and

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

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

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

"(B) decline to publish a final regulation.

"The Secretary shall provide to the Council in writing an
explanation of the reasons for the Secretary's action.

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

"(A) 'receipt date' means the 5th day after the
day on which a Council submits to the Secretary a
covered implementing regulation that the Council
characterizes as a final covered implementing regula-
tion; and

"(B) 'covered implementing regulation'—
"(i) means a proposed amendment to existing regulations implementing a fishery management plan in effect under this Act, which does not have the effect of amending the plan; and

"(ii) does not include any proposed regulation submitted with a plan or amendment to a plan under section 303(c)."

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

"(k) PACIFIC REGION STOCK ASSESSMENT.—(1) Not later than 120 days after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall, in consultation with the Pacific Fishery Management Council and the States of California, Oregon, and Washington, establish a Pacific Region Scientific Review Group (in this subsection referred to as the ‘Group’) consisting of representatives of the National Marine Fisheries Service, each of the States of California, Oregon, and Washington, universities located in those States, commercial and recreational fishermen and shore-based processors located in those States, and environmental organizations. Individuals appointed to serve on the Group shall be selected from among individuals who are knowledgeable or experienced in the harvesting, proc-
essing, biology, or ecology of the fish stocks of fish that
are managed under the Pacific Fisheries Management
Council Pacific Coast Groundfish Plan (in this subsection
referred to as the 'covered Pacific stocks').

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

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

"(4) The Secretary may offset the cost of carrying
out the plan by entering into agreements with vessel own-
ers or shore-based fish processors to provide vessel owners
or shore-based fish processors with a portion of the total
allowable catch reserved for research purposes under sec-
tion 303(b)."
SEC. 11. EMERGENCY ACTIONS.

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

(1) in paragraph (2)(A), by inserting "under section 302(b)(1)(A) and (C)" after "voting members";

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

"(B) shall remain in effect for not more than 180 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council and after notice and an opportunity for submission of comments by the public, be effective for 1 additional period of not more than 180 days; and"; and

(3) by adding at the end the following:

"(4) The Secretary may promulgate emergency regulations under this subsection to protect the public health. Notwithstanding paragraph (3), regulations promulgated under this paragraph shall remain in effect until withdrawn by the Secretary. The Secretary shall promptly withdraw regulations under this paragraph when the circumstances requiring the regulations no longer exist. The Secretary shall provide an opportunity for submission of comments by the public after regulations are promulgated under this paragraph."
"(5) An emergency regulation promulgated under this subsection that closes an area to fishing shall not remain in effect for an additional period under paragraph (3)(B) unless before the beginning of the additional period the Council having jurisdiction over the area, in conjunction with the Secretary, publishes a report on the status of the fishery in the area that includes an analysis of the costs and benefits of the closure."

SEC. 12. STATE JURISDICTION.

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

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following:

"(C) the owner or operator of the vessel submits to the appropriate Council and the Secretary, in a manner prescribed by the Secretary, periodic reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested."

(b) STATE AUTHORITY.—Section 306(b) (16 U.S.C. 1856(b)) is amended by adding at the end the following:
“(3) For any fishery occurring off the coasts of Alaska for which there is no Federal fishery management plan approved and implemented pursuant to this Act, or pursuant to delegation to a State in a fishery management plan, a State may enforce its laws or regulations pertaining to the taking of fish in the exclusive economic zone off that State or the landing of fish caught in the exclusive economic zone providing there is a legitimate State interest in the conservation and management of that fishery, until a Federal fishery management plan is implemented. Fisheries currently managed pursuant to a Federal fishery management plan shall not be removed from Federal management and placed under State authority without the unanimous consent (except for the Regional Director of the National Marine Fisheries Service) of the Council which developed the fishery management plan.”.

SEC. 13. PROHIBITED ACTS.

(a) PROHIBITION ON DAMAGING GEAR.—Section 307(1)(K) (16 U.S.C. 1857(1)(K)) is amended by striking “to knowingly steal, or without authorization, to” and inserting “to steal, or to negligently”.

(b) FAILURE TO DISCLOSE FINANCIAL INFORMATION.—Section 307(1) (16 U.S.C. 1857(1)) is amended—
(1) by striking "or" at the end of subparagraph (M);

(2) by striking the period at the end of subparagraph (N) and inserting "; or"; and

(3) by adding at the end the following:

"(O) to knowingly and willfully fail to disclose or falsely disclose any financial interest as required under section 302(k) or to knowingly violate any rule established under section 302(k)(8)."

(c) **Prohibited Fishing.**—

(1) **In General.**—Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is amended to read as follows:

"(B) in fishing, except recreational fishing permitted under section 201(j), within the exclusive economic zone or within the special areas, or for any anadromous species or Continental Shelf fishery resources beyond such zone or areas, or in fishing consisting of transporting fish products from a point within the boundaries of any State or the exclusive economic zone or the special areas, unless such fishing is authorized under, and conducted in accordance with, a valid and applicable permit issued under section 204, except that this sub-
paragraph shall not apply to fishing within the special areas before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States; or”.

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

SEC. 14. HAROLD SPARCK BERG SEA COMMUNITY DEVELOPMENT QUOTA PROGRAM.

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

“(f) BERG SEA COMMUNITY DEVELOPMENT QUOTA PROGRAM.—(1) The North Pacific Fishery Management Council and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to western Alaska communities that participate in the program.

“(2) To be eligible to participate in the western Alaska community development quota program under paragraph (1), a community must—
“(A) be located within 50 nautical miles from
the baseline from which the breadth of the territorial
sea is measured along the Bering Sea coast from the
Bering Strait to the western most of the Aleutian Is-
lands, or on an island within the Bering Sea;
“(B) not be located on the Gulf of Alaska coast
of the north Pacific Ocean;
“(C) meet criteria developed by the Governor of
Alaska, approved by the Secretary, and published in
the Federal Register;
“(D) be certified by the Secretary of the Inte-
rior pursuant to the Alaska Native Claims Settle-
ment Act to be a Native village;
“(E) consist of residents who conduct more
than one-half of their current commercial or subsist-
ence fishing effort in the waters of the Bering Sea
and Aleutian Islands management area; and
“(F) not have previously developed harvesting
or processing capability sufficient to support sub-
stantial participation in the groundfish fisheries in
the Bering Sea, unless the community can show that
the benefits from an approved Community Develop-
ment Plan would be the only way for the community
to realize a return from previous investments.”
SEC. 15. OBSERVERS.

Title III (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

"SEC. 315. RIGHTS OF OBSERVERS.

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

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

SEC. 16. INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS.

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

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

(A) in developing such system, the Councils and the Secretary take into account—
"(i) the need to promote conservation;
(ii) present participation in the fishery,
(iii) historical fishing practices in, and dependence on, the fishery,
(iv) the economics of the fishery,
(v) the capability of fishing vessels used in the fishery to engage in other fisheries,
(vi) the cultural and social framework relevant to the fishery and local coastal communities, and
(vii) any other relevant considerations; and
(B) in the case of such a system that provides for the allocation and issuance of individual quotas (as that term is defined in subsection (g)), the plan complies with subsection (g)."

(b) REQUIREMENTS.—Section 303 is further amended by adding at the end the following new subsection:

"(g) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA SYSTEMS.—(1) A fishery management plan which establishes an individual quota system for a fishery—
"(A) shall provide for administration of the system by the Secretary in accordance with the terms of the plan;

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

"(C) shall include provisions which establish procedures and requirements for each Council having authority over the fishery, for—

"(i) reviewing and revising the terms of the plan that establish the system; and

"(ii) renewing, reallocating, and reissuing individual quotas if determined appropriate by each Council;

"(D) shall include provisions to—

"(i) provide for fair and equitable allocation of individual quotas under the system, and minimize negative social and economic impacts of the system on local coastal communities;

"(ii) ensure adequate enforcement of the system, including the use of observers where appropriate; and

"(iii) provide for monitoring the temporary or permanent transfer of individual quotas under the system; and
“(E) include provisions that prevent any person
from acquiring an excessive share of individual
quotas issued for a fishery.
“(2) An individual quota issued under an individual
quota system established by a fishery management plan—
“(A) shall be considered a grant, to the holder
of the individual quota, of permission to engage in
activities permitted by the individual quota;
“(B) may be revoked or limited at any time by
the Secretary or the Council having authority over
the fishery for which it is issued, if necessary for the
conservation and management of the fishery (includ-
ing as a result of a violation of this Act or any regu-
lation prescribed under this Act);
“(C) if revoked or limited by the Secretary or
a Council, shall not confer any right of compensation
to the holder of the individual quota;
“(D) may be received, held, or transferred in
accordance with regulations prescribed by the Sec-
retary under this Act;
“(E) shall, except in the case of an individual
quota allocated under an individual quota system es-
established before the date of enactment of the Fish-
ery Conservation and Management Amendments of
1995, expire not later than 7 years after the date it
is issued, in accordance with the terms of the fishery
management plan; and

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

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

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

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

"(4) Any fishery management plan that establishes
an individual quota system for a fishery may include provi-
sions that—
“(A) allocate individual quotas under the system among categories of vessels; and

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

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

“(6) As used in this subsection:

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

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

(c) Fees.—Section 304(d) is amended—

(1) by inserting “(1)” before “The Secretary shall”; and
(2) by adding at the end the following new paragraph:

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

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

"(i) An initial allocation fee in an amount, determined by the Secretary, equal to 1 percent of the value of fish authorized to be harvested in one year under an individual quota, which shall be collected from the person to whom the individual quota is first issued.

"(ii) An annual fee in an amount, determined by the Secretary, not to exceed 4 percent of the value of fish authorized to be harvested each year under an individual quota share, which shall be collected from the holder of the individual quota share.

"(iii) A transfer fee in an amount, determined by the Secretary, equal to 1 percent of the value of fish authorized to be harvested each year under an individual quota share, which shall be collected from
a person who permanently transfers the individual
quota share to another person.

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

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

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

"(F) The Secretary may not assess or collect any fee
under this paragraph with respect to an individual quota
system established before the date of enactment of the
Fishery Conservation and Management Amendments of
1995, during the 5-year period beginning on that date of
enactment.".
(d) Approval of Fishery Management Plans

Establishing Individual Quota Systems.—Section 304 (16 U.S.C. 1854) is further amended by adding after subsection (k) (as added by section 10 of this Act) the following new subsection:

"(l) Action on Limited Access Systems.—(1) In addition to the other requirements of this Act, the Secretary may not approve a fishery management plan that establishes a limited access system that provides for the allocation of individual quotas (in this subsection referred to as an 'individual quota system') unless the plan complies with section 303(g).

(2) Within 1 year after receipt of recommendations from the review panel established under paragraph (3), the Secretary shall issue regulations which establish requirements for establishing an individual quota system. The regulations shall be developed in accordance with the recommendations. The regulations shall—

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

(B) ensure that any individual quota system is consistent with the requirements of sections 303(b) and 303(g), and require the collection of fees in accordance with subsection (d)(2);
"(C) provide for appropriate penalties for violations of individual quotas systems, including the revocation of individual quotas for such violations;

"(D) include recommendations for potential management options related to individual quotas, including the authorization of individual quotas that may not be transferred by the holder, and the use of leases or auctions by the Federal Government in the establishment or allocation of individual quotas;

and

"(E) establish a central lien registry system for the identification, perfection, and determination of lien priorities, and nonjudicial foreclosure of encumbrances, on individual quotas.

"(3)(A) Not later than 6 months after the date of the enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall establish a review panel to evaluate fishery management plans in effect under this Act that establish a system for limiting access to a fishery, including individual quota systems, and other limited access systems, with particular attention to—

"(i) the success of the systems in conserving and managing fisheries;
"(ii) the costs of implementing and enforcing the systems;

"(iii) the economic effects of the systems on local communities; and

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

"(B) The review panel shall consist of—

"(i) the Secretary or a designee of the Secretary;

"(ii) a representative of each Council, selected by the Council;

"(iii) 3 representatives of the commercial fishing and processing industry; and

"(iv) one at large representative who is selected by reason of occupational or other experience, scientific expertise, or training, and who is knowledgeable regarding the conservation and management or the commercial or recreational harvest of fishery resources.

"(C) Based on the evaluation required under sub-paragraph (A), the review panel shall, by September 30, 1997, submit recommendations—
“(i) to the Councils and the Secretary with respect to the revision of individual quota systems that were established under this Act prior to June 1, 1995; and

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

(e) **Restriction on New Individual Quota Systems Pending Regulations.**—

(1) **Restriction.**—The Secretary of Commerce may not approve any covered quota system plan, and no covered quota system plan shall take effect, under title III of the Magnuson Fishery Conservation and Management Act before the effective date of regulations issued by the Secretary under section 304(k) of that Act, as added by subsection (d).

(2) **Covered Quota System Plan Defined.**—In this subsection, the term “covered quota system plan” means a fishery management plan or amendment to a fishery management plan, that—

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

May 30, 1995 (1:23 p.m.)
(B) is submitted to the Secretary after May 1, 1995.

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.

"(a) AUTHORITY TO CONDUCT PROGRAM.—The Secretary, with the concurrence of the Council having authority over a fishery, may conduct a voluntary fishing capacity reduction program for a fishery in accordance with this section, if—

"(1) the Secretary—

"(A) determines that the program is necessary for rebuilding, preventing overfishing, or generally improving conservation and management 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, the Secretary shall—
   "(1) 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) make payments to—
      "(A) scrap or otherwise render permanently unusable for fishing in the United States, vessels that operate in the fishery; and
      "(B) acquire the Federal fishing permits that authorize participation in the fishery;
   "(3) 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;

"(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) identify sources of funding for the program in addition to the amounts referred to in subsection (f)(2)(A), (B), (C), and (D).

"(e) 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).

"(3) LIMITATION ON TOTAL AMOUNT OF PAYMENTS FOR FISHERY.—The total amount of pay-
ments under paragraph (1) for a fishery may not exceed the total amount the Secretary projects will be deposited into the Fund from fees that apply to the fishery under subsection (d).

“(d) FEES.—

“(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 authority over a fishery for which a fishing capacity reduction program is conducted under this section, may establish an annual fee on holders of Federal fishing 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 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 ap-
pointed by the Secretary and shall include represent-
atives of—

"(A) the Department of Commerce,

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

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

"(D) appropriate States affected by such
programs.

"(f) FISHERIES CONSERVATION AND RESTORATION
FUND.—

"(1) ESTABLISHMENT.—There is established in
the Treasury of the United States a separate ac-
count which shall be known as the Fisheries Con-
servation and Restoration Fund (in this section re-
ferred 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

"(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) any 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 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) EXPIRATION OF ACQUIRED PERMITS.—Permits acquired by the Secretary 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)), popu-

larly 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”.

SEC. 18. CONSIDERATION OF ABILITY TO PAY PENALTIES.

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

(1) in the last sentence by striking “ability to

pay,”; and

(2) by adding at the end the following new sen-
tence: “In assessing such penalty, the Secretary may

also consider facts relating to the ability of the viola-
tor to pay that are established by the violator in a

timely manner.”.
SEC. 19. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—Title IV (90 Stat. 359–361) is amended to read as follows:

"TITLE IV—MISCELLANEOUS PROVISIONS

"SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Secretary, for carrying out this Act, the following:

"(1) $114,000,000 for fiscal year 1996.
"(2) $118,000,000 for fiscal year 1997.
"(3) $122,000,000 for fiscal year 1998.
"(4) $126,000,000 for fiscal year 1999.
"(5) $130,000,000 for fiscal year 2000."

(b) Clerical Amendment.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by striking the items relating to title IV and the sections in that title and inserting the following:

"TITLE IV—MISCELLANEOUS PROVISIONS

"Sec. 401. Authorization of appropriations."

SEC. 20. TECHNICAL CORRECTIONS.

(a) Correction.—Section 304 of the Act entitled "An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary", approved March 9, 1992 (Public Law 102–251; 106 Stat. 65), is repealed.
(b) CONFORMING AMENDMENT.—Section 3(15) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)) is amended to read as follows:

"(15) The term ‘waters under the jurisdiction of the United States means—

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except
that this subparagraph shall not apply before the
date on which the Agreement between the United
States and the Union of Soviet Socialist Republics
on the Maritime Boundary, signed June 1, 1990, en-
ters into force for the United States.”.

SEC. 21. CLERICAL AMENDMENTS.

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

SEC. 22. PROVISIONS RELATING TO GULF OF MEXICO.

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

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

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

“(B) not exclude peer-reviewers merely because
they represent entities that may have an interest or
potential interest in the outcome, if that interest is
fully disclosed to the Secretary;
“(C) provide opportunity to become part of a peer-review panel at a minimum by soliciting nominations through the Federal Register; and

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

(b) FISHERY MONITORING.—Section 304 (16 U.S.C. 1854) is further amended by adding at the end the following new subsection:

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

“(2) The plan under this subsection shall—

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

“(B) minimize paperwork and regulatory burdens on fishermen and fish buyers;

“(C) minimize costs to Federal and State agencies;

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

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

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

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

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

(1) IN GENERAL.—The Secretary of Commerce
shall have an independent analysis conducted that
will evaluate—
(A) the methods, data, and models used to assess the status of Gulf of Mexico red snapper stock assessments;

(B) the effectiveness of the fishery management plan in effect under the Magnuson Fishery Conservation and Management Act that applies to Gulf of Mexico red snapper, in terms of the appropriateness of the management goal and time frame given the available biological data; and

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

(2) STUDY REQUIREMENTS.—The study shall—

(A) assess all alternatives that could provide a more balanced and practical approach to managing the red snapper fishery in the Gulf of Mexico;

(B) involve commercial and recreational fishermen from the Gulf of Mexico in the collection of data and information and in the development of an accurate assessment plan; and

(C) be completed and reported to the Congress and the Gulf of Mexico Fishery Manage-
ment Council within 1 year after the date of the
enactment of this Act.

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

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

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

(a) STUDY.—The Secretary of Commerce shall con-
duct a study of the contribution of bycatch to charitable
organizations by commercial fishermen. The study shall
include determination of—
(1) the amount of bycatch that is contributed each year to charitable organizations by commercial fishermen;

(2) the economic benefits to commercial fisherman from those contributions; and

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

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

(c) BYCATCH DEFINED.—In this section the term "bycatch" has the meaning given that term in section 3(34) of the Magnuson Fishery Conservation and Management Act, as amended by section 4 of this Act.
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. 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 MANAGEMENT

3 SEC. 101. AMENDMENT OF MAGNUSON FISHERY CONSERVA-

4 TION AND MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in
this title an amendment or repeal is expressed in terms
of an amendment to, or repeal of, a section or other provi-

8 s 39 is
section or other provision of the Magnuson Fishery Con-
ervation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 102. FINDINGS; PURPOSES; POLICY.

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

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

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

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

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

“(9) One of the greatest long-term threats to
the viability of commercial and recreational fisheries
is the continuing loss of marine, estuarine, and other
aquatic habitats on a national level. Habitat consid-
erations should receive increased attention for the
conservation and management of fishery resources of
the United States.”;
(4) by inserting “in a non-wasteful manner” in
subsection (b)(6) after “such development”; and
(5) by adding at the end of subsection (b) the
following:
“(7) to promote the protection of essential fish
habitat in the review of projects conducted under
Federal permits, licenses, or other authorities that
affect or have the potential to affect such habitat.”.

SEC. 103. DEFINITIONS.

Section 3 (16 U.S.C. 1802) is amended—
(1) by redesignating paragraphs (2) through
(32) as paragraphs (3) through (33) respectively,
and inserting after paragraph (1) the following:
“(2) The term ‘bycatch’ means fish which are
harvested by a fishing vessel, but which are not sold
or kept for personal use, including, but not limited
to, economic and regulatory discards.”;
(2) by redesignating paragraphs (7) through
(33) (as redesignated) as paragraphs (9) through
(35), respectively, and inserting after paragraph (6)
(as redesignated) the following:
"(7) The term 'economic discards' means fish which are the target of a fishery, but which are not retained by the fishing vessel which harvested them because they are of an undesirable size, sex or quality, or for other economic reasons.

"(8) The term 'essential fish habitat' means any area essential to the life cycle of a stock of fish, or to the production of maximum sustainable yield of one or more fisheries managed under this Act."

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

"(12) The term 'fishery dependent community' means a community which is substantially dependent on the harvest of fishery resources to meet social and economic needs."

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

"(19) The term 'individual transferable quota' means a revocable Federal authorization to harvest or process a quantity of fish under a unit or quota share that represents a percentage of the total allow-
able catch of a stock of fish, that may be received
or held by a specific person or persons for their ex-
clusive use, and that may be transferred in whole or
in part by the holder to another person or persons
for their exclusive use.”;

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

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

(6) by striking “Pacific Marine Fisheries Com-
mission” in paragraph (23), as redesignated, and in-
serting “Pacific States Marine Fisheries Commiss-
ion”;

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

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

“(A) will provide the greatest overall bene-
fit to the Nation, with particular reference to
food production and recreational opportunities, and taking into account the protection of marine ecosystems;

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

"(C) provides for the rebuilding of an overfished fishery to a level consistent with producing the maximum sustainable yield.”;

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

"(28) The terms ‘overfishing’ and ‘overfished’ mean a level or rate of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.”;

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

"(30) The term ‘regulatory discards’ means fish caught in a fishery which fishermen are required by
regulation to discard whenever caught, or are required by regulation to retain but not sell.”;

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

(11) by redesignating paragraph (40), as redesignated, as (41), and inserting after paragraph (39) the following:

“(40) The term ‘vessel subject to the jurisdiction of the United States’ has the same meaning as in section 3(e) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(e)).”.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

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

“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act, not to exceed the following sums (of which 15 percent in each fiscal year shall be used for enforcement activities):

“(1) $102,000,000 for fiscal year 1993;
“(2) $106,000,000 for fiscal year 1994;
“(3) $143,000,000 for fiscal year 1995;
“(4) $147,000,000 for fiscal year 1996;
“(5) $151,000,000 for fiscal year 1997;
“(6) $155,000,000 for fiscal year 1998; and
“(7) $159,000,000 for fiscal year 1999.”.

SEC. 105. HIGHLY MIGRATORY SPECIES.

Section 102 (16 U.S.C. 1812) is amended by striking “promoting the objective of optimum utilization” and inserting “shall promote the achievement of optimum yield”.

SEC. 106. FOREIGN FISHING.

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

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

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

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

(4) by striking “, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan” in subsection (c); and
(5) by striking subsection (f) and redesignating
subsections (g), (h), (i), and (j) as (f), (g), (h), and
(i), respectively.

SEC. 107. PERMITS FOR FOREIGN FISHING.

(a) So much of section 204(b) (16 U.S.C. 1824(b))
as precedes paragraph (2) is amended to read as follows:
“(b) APPLICATIONS AND PERMITS.—

“(1) ELIGIBILITY.—

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

“(B) An owner of a vessel, other than a
vessel of the United States, who wishes to en-
geage in the transshipment at sea of fish prod-
ucts in the exclusive economic zone or within
the boundary of any State, may submit an ap-
lication to the Secretary each year for a per-
mit for a vessel belonging to that owner, whether
or not such vessel is subject to an inter-
national fishery agreement described in section
201(b) or (e).
“(C) No permit issued under this section may be valid for longer than a year. Section 558(c) of title 5, United States Code, does not apply to the renewal of any such permit.”.

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

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

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

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

and

(4) by inserting at the end thereof the following:

“(B) Upon receipt of any application submitted under paragraph (1)(B) which complies with the requirements of paragraph (3), the Secretary shall promptly transmit copies of the application or summary as indicated under subparagraphs (A)(ii) and (iii), and shall also promptly transmit such application or summary to States bordering the exclusive economic zone where such transshipment is proposed to occur.”.
(c) Section 204(b)(5) (16 U.S.C. 1824(b)(5)) is amended by striking "under paragraph (4)(C)" and inserting "submitted under paragraph (1)".

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

(1) by striking "transmitted under paragraph (4)(A)" in subparagraph (A) and inserting "submitted under paragraph (1)(A)";

(2) by inserting "(i)" before "After" in subparagraph (A); and

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

"(ii) In the case of any application submitted under paragraph (1)(B), the Secretary, after taking into consideration any comments submitted by the Council under paragraph (5) or any affected State, may approve the application upon determining that the activity described in the application will be in the interest of the United States and will meet the applicable requirements of this Act, and that the owners or operators have agreed to comply with requirements set forth in section 201(c)(2) and have established any bonds"
or financial assurances that may be re-
quired by the Secretary; or the Secretary
may disapprove all or any portion of the
application.”.
(e) Section 204(b)(8) (16 U.S.C. 1824(b)(8)) is
amended—
(1) by inserting a comma and “or the agent for
the foreign vessel owner for any application submit-
ted under paragraph (1)(B)” before the semicolon at
the end of subparagraph (A); and
(2) by inserting “and any affected State” be-
fore the period at the end of subparagraph (C).
(f) Section 204(b)(9) (16 U.S.C. 1824(b)(9)) is
amended—
(1) by inserting “paragraph (1)(A) of” after
“by a foreign nation under”;
(2) by inserting “(A)” after the heading in
paragraph (9); and
(3) by adding at the end thereof the following:
“(B) If the Secretary does not approve any
application submitted by a foreign vessel owner
under paragraph (1)(B) of this subsection, the
Secretary shall promptly inform the vessel
owner of the disapproval and the reasons there-
fore. The owner, after taking into consideration
the reasons for disapproval, may submit a revised application under this subsection.”.

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

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

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

(3) adding at the end thereof the following:

“(B) If the vessel owner submitting an application under paragraph (1)(B) notifies the Secretary of acceptance of the conditions and restrictions established by the Secretary under paragraph (7), and upon payment of the applicable fees established pursuant to paragraph (10) and confirmation of any bonds or financial assurances that may be required for such transshipment of fish, the Secretary shall thereupon issue a permit for the vessel.”.

(h) Section 204 (16 U.S.C. 1824) is amended by adding at the end thereof the following:

“(d) PROHIBITION ON PERMIT ISSUANCE.—Notwithstanding any other provision of this Act, the Secretary is prohibited from issuing, before December 1, 1999, any
permit to authorize the catching, taking, or harvesting of
Atlantic mackerel or Atlantic herring by foreign fishing
vessels within the exclusive economic zone. This subsection
shall not apply to permits to authorize foreign fish proc-
cessing vessels to process Atlantic mackerel or Atlantic her-
ing harvested by fishing vessels of the United States.”.
SEC. 108. LARGE-SCALE DRIFTNET FISHING.
(a) Section 206(e) (16 U.S.C. 1826(e)) is amended
by striking paragraphs (3) and (4), and redesignating
paragraphs (5) and (6) as (3) and (4), respectively.
(b) Section 206(f) (16 U.S.C. 1826(f)) is amended
by striking “(6)” and inserting “(4)”.
SEC. 109. NATIONAL STANDARDS.
(a) Paragraph (1) of section 301(a) (16 U.S.C.
1851(a)) is amended to read as follows:
“(1) Conservation and management measures
shall prevent overfishing and rebuild overfished fish-
ery resources while achieving, on a continuing basis,
the optimum yield from each fishery.”.
(b) Section 301(a)(5) (16 U.S.C. 1851(a)(5)) is
amended by striking “promote” and inserting “consider”.
(c) Section 301(a) (16 U.S.C. 1851(a)) is amended
by adding at the end thereof the following:
“(8) Conservation and management measures
shall take into account the importance of the harvest
of fishery resources to fishery dependent commu-
nities.”.

SEC. 110. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) Section 302(a) (16 U.S.C. 1852(a)) is amended—
(1) by inserting “(1)” after the subsection
heading;
(2) by redesignating paragraphs (1) through
(7) as subparagraphs (A) through (H);
(3) by striking “section 304(f)(3)” wherever it
appears and inserting in lieu thereof “paragraph
(3)”;
(4) by striking paragraph (1)(F), as redesig-
nated, and inserting the following:

“(F) PACIFIC COUNCIL.—The Pacific Fish-
ery Management Council shall consist of the
States of California, Oregon, Washington, and
Idaho and shall have authority over the fish-
eries in the Pacific Ocean seaward of such
States. The Pacific Council shall have 13 voting
members, including 7 appointed by the Sec-
retary in accordance with subsection (b)(2) (at
least one of whom shall be appointed from each
such State), and including one appointed from
an Indian tribe with Federally recognized fish-
ing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).”; 

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

(6) by adding at the end the following:

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

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

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

“(C) The members required to be appointed by the Secretary in accordance with subsections (b)(2) and (5).”;

(2) by redesignating paragraph (5) as paragraph (6), and inserting after paragraph (4) the following:
“(5)(A) The Secretary shall appoint to the Pacific Fishery Management Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho, from a list of not less than 3 individuals submitted by the tribal governments. The representative shall serve for a term of 3 years and may not serve more than 3 consecutive terms. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting lists under this subparagraph.

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

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

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

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

“(C) A vacancy occurring prior to the expiration of any term shall be filled in the same manner set out in subparagraphs (A) and (B), except that
the Secretary may use the list from which the
vacating representative was chosen.”; and,

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

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

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

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

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

“(A) the collection and evaluation of infor-
mation relevant to the development of or
amendment to any fishery management plan
under section 303(e)(2); and
"(B) carrying out the purposes of section 303(f)."

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

(1) by striking "section 304(f)(3)" in paragraphs (1) and (5) and inserting "subsection (a)(3)"; and

(2) by striking "204(b)(4)(C)" in paragraph (2) and inserting "204(b)(4)(A)(iii)".

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

"(i) NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES.—

"(1) A Council may, in consultation with the Secretary, establish a negotiation panel to assist in the development of specific conservation and management measures for a fishery under authority of such Council. In making the decision to establish such panel, the Council shall consider whether—

"(A) there are a finite number of identifiable interests that will be significantly affected by the development of such measures;

"(B) there is a reasonable likelihood that a negotiation panel can be convened with a balanced representation of persons who—"
"(i) can adequately represent the interests identified under subparagraph (A); and

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

"(C) there is reasonable likelihood that a negotiation panel will contribute to the development of such measures within a fixed period of time; and

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

"(2) If the Council decides to establish a negotiation panel it shall notify all identifiable interests of its intention to convene such panel at least 30 calendar days prior to the appointment of members. Such notification shall be published in accordance with subsection (j)(2)(C) of this section and shall include—

"(A) a description of the subject and scope of the measures to be developed and the issues to be considered;
“(B) a list of interests likely to be significantly affected by the measures to be developed;

“(C) a list of the persons proposed to represent such interests, the person or persons proposed to represent the Council, and the person or persons proposed to be nominated as facilitator;

“(D) an explanation of how a person may apply or nominate another person for membership on the negotiation panel; and

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

“(3) No more than 45 calendar days after providing this notification the Council shall make appointments to the negotiation panel in such a manner as to achieve balanced representation of all significant interests to the conservation and management measures. Such interests shall include, where appropriate, representatives from the fishing industry, consumer groups, the scientific community, tribal organizations, conservation organizations and other public interest organizations, and Federal and State fishery managers.

“(4) Each negotiation panel established under this section shall attempt to reach a consensus con-
cerning specific conservation and management measures and any other issue such panel determines is relevant to such measures. The Council, to the maximum extent possible consistent with its legal obligations and the best scientific information available, will use the consensus of the negotiation panel, with respect to such measures, as the basis for the development of the conservation and management measures to be adopted by the Council for submission by the Council to the Secretary in accordance with this Act.

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

"(6) Any facilitator nominated by the Council to a negotiation panel must be approved by the panel by consensus. If the panel does not approve a facilitator nominated by the Council the panel shall select by consensus another person to serve as facilitator. No person appointed by the Council to the negotiation panel to represent any interest on the Council may serve as facilitator or otherwise chair such panel."
"(7) A facilitator approved or selected by a negotiation panel shall—

"(A) chair the meetings of such panel in an impartial manner;

"(B) impartially assist the panel members in conducting discussions and negotiations; and

"(C) manage the keeping of any minutes or records, (except that any personal notes and materials of the facilitator or the panel members shall not be subject to disclosure, except upon order of a court).

"(8) A negotiation panel may adopt any additional procedures for the operation of the negotiation panel not in conflict with those specified in this section.

"(9) At the conclusion of the negotiation process, if the negotiation panel reaches a consensus on proposed conservation and management measures, such panel shall transmit to the Council, and present to the Council at the next scheduled meeting of the Council, a report containing the proposed conservation and management measures. If the negotiation panel does not reach consensus on proposed conservation and management measures, such panel shall transmit to the Council, and present to the
Council at the next scheduled meeting of the Council, a report specifying its recommendations and describing the areas in which the negotiation panel reached consensus and the areas in which consensus was not achieved. The negotiation panel may include in a report any other information or materials that such panel considers appropriate. Any panel member may include, as an addendum to the report, additional information or materials.

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

“(11) For the purposes of this subsection—

“(A) The term ‘negotiation panel’ means an advisory panel established by a Council under section (g)(2) to assist in the development of specific conservation and management measures through the process established under this subsection.

“(B) The term ‘consensus’ means general but not unanimous concurrence among the interests represented unless such panel—
“(i) agrees by consensus to define such term to mean a unanimous concur-
rence; or
“(ii) agrees by consensus upon an-
other specified definition.
“(C) The term ‘facilitator’ means a person experienced or trained in group mediation and negotiation who impartially aids in the discus-
sions and negotiations among the members of a negotiation panel.
“(D) The term ‘interest’ means, with re-
spect to this subsection, multiple persons or parties who have a similar point of view or which are likely to be affected in a similar man-
ner.”.

(g) Section 302(j) (16 U.S.C. 1852(j)) is amended—
(1) by striking “of the Councils” in paragraph (1) and inserting “established under subsection (g)”; and
(2) by striking “of a Council:” in paragraph (2) and inserting “established under subsection (g):”.
(3) by adding the following at the end of para-
graph (2)(C): “Interested persons may propose to modify the published agenda of a meeting by sub-
mitting to a Council, panel or committee within 14
calendar days of the published date of the meeting a notice containing a written description of the proposed modification signed by not less than two Council members.”;

(4) by adding the following at the end of paragraph (2)(D): “All written data submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the qualifications and interests of the person in the subject of the oral or written statement.”;

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

“(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed, issued, or approved by the Council. The Chairman shall certify the accuracy of the minutes of each meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.”; and
(6) by striking "303(d)" in paragraph (2)(F) and inserting "402(b)".

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

(1) by inserting "and recusal" in the subsection heading;

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

"(1) For the purposes of this subsection—

"(A) the term 'affected individual' means an individual who—

"(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or

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

"(B) the term 'designated official' means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, with the concurrence of a majority of the voting members of the Council, to attend Council meetings and make determinations under paragraph (7)(B).";

(3) by striking "(1)(A)" in paragraph (3)(A) and inserting "(1)(A)(i)";
have a significant and predictable effect on a person's interest. A Council decision shall be considered to have a significant and predictable effect on such financial interest if it would have a detrimental effect on the financial interest of a person who would have an economic interest in the decision being considered. This decision shall be made available for public information and use in determining determinations under the following: (5) Py Repealing the period of the Secretary for the Secretary to keep on file the Secretary for the Secretary of the period at the end of the period.
cial interest if there is a close causal link between
the Council decision and an expected and disproport-
ionate benefit, shared only by a minority of persons
within the same industry sector or gear group, to
the financial interest. An affected individual who
may not vote may participate in Council deliber-
ations relating to the decision after notifying the
Council of the voting recusal and identifying the fi-
nancial interest that would be affected.

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

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

"(D) Any affected individual who does not par-
ticipate in a Council decision in accordance with this
subsection shall state for the record how he or she
would have voted on such decision if he or she had voted.

"(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph (C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.

"(F) No later than December 1, 1995, the Secretary, in consultation with the Councils, shall issue guidelines with respect to voting recusals under subparagraph (A) and the making of determinations under subparagraph (B)."; and

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

SEC. 111. FISHERY MANAGEMENT PLANS.

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

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

"(6) consider and provide for, after consultation with the Coast Guard and persons participating in the fishery and to the extent practicable without adversely affecting conservation efforts in other fisheries or discriminating among participants in the affected fishery—

"(A) safety of life and property at sea;
"(B) temporary adjustments regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; and

"(C) effective enforcement measures (including an estimate of the resources necessary for such measures).”;

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

"(7) facilitate the protection of essential fish habitat by—

"(A) summarizing available information on the significance of such habitat to the fishery and the effects of changes to such habitat on the fishery; and

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

(3) by striking "and" at the end of paragraph (8);

(4) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(5) by adding at the end the following:
“(10) specify objective and measurable criteria for classifying when the fishery to which the plan applies would be or is overfished, with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery;

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

“(12) to the extent practicable, minimize mortality caused by economic and regulatory discards in the fishery.”.

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

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

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

“(A) in developing such system, the Council and the Secretary take into account present participation in the fishery, historical fishing practices in and dependence on the fishery, the economics of the fishery, the capability of fishing vessels used in the fishery to engage in
other fisheries, the cultural and social framework relevant to the fishery and fishery dependent communities, and any other relevant considerations; and

"(B) in the case of any system that provides for individual transferable quotas, such system also complies with the guidelines and fee requirements established under section 303(f);”;

and

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

(3) by striking the period at the end of paragraph (10) and inserting a semicolon and “and”;

and

(4) by adding at the end the following:

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

(c) Section 303 (16 U.S.C. 1853) is amended by striking subsection (c) and all thereafter and inserting the following:
“(c) REGULATIONS TO IMPLEMENT A FISHERY MANAGEMENT PLAN.—Proposed regulations which the Council deems necessary or appropriate for the purposes of implementing a fishery management plan or amendment to a plan may be submitted to the Secretary for action under section 304—

“(1) simultaneously with submission of the plan or amendment to the Secretary for action under section 304; or

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

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

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

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

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

“(2) No jointly prepared fishery management plan, amendment, or proposed regulations may be
submitted to the Secretary unless approved by a majority of the voting members, present and voting, of each Council concerned.

“(e) PREPARATION BY THE SECRETARY.—

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

“(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such plan, if such fishery requires conservation and management and the Secretary provides written notice to the Council of the need for such conservation and management;

“(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails, after a reasonable period of time, to take final action on a revised or further revised plan or amendment, as the case may be; or
"(C) the Secretary determines that the appropriate Council has failed to take sufficient action on a fishery management plan, a plan amendment or proposed regulations to rebuild an overfished fishery pursuant to section 305(b) within 1 year after determining that such fishery is overfished.

"(2) The Secretary shall prepare a fishery management plan with respect to any highly migratory species fishery to which section 302(a)(3) applies that requires conservation and management, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law. In preparing and implementing any such plan or amendment, the Secretary shall—

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

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

“(C) establish an advisory panel under section 302(g) for each fishery management plan
to be prepared under this paragraph, which
shall consist of a balanced number of representa-
tives (but not less than 7) who are knowledgeable and experienced with respect to the fishery
concerned selected from among members of ad-
visory groups appointed under Acts implement-
ing relevant international fishery agreements
pertaining to highly migratory species and other
interested parties;

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

“(E) with respect to a highly migratory
species for which the United States is author-
ized to harvest an allocation or quota or fishing
mortality level under a relevant international
fishery agreement, provide fishing vessels of the
United States with a reasonable opportunity to
harvest such allocation, quota, or fishing mort-
tality level;

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

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

"(H) ensure that conservation and man-
agement measures adopted under this para-
graph—

"(i) promote international conserva-
tion of the affected fishery;

"(ii) take into consideration tradi-
tional fishing patterns of fishing vessels of
the United States and the operating re-
quirements of the fisheries; and
“(iii) are fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose.

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

“(4) The Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by the Secretary under paragraph (1), a provision establishing a limited access system, unless such system is first approved by a majority of the voting members of each appropriate Council.

“(f) INDIVIDUAL TRANSFERABLE QUOTAS.—

“(1) The Secretary may not approve a fishery management plan that includes individual transferable quotas until the Secretary has promulgated guidelines under paragraph (2). Thereafter, the Secretary may approve a fishery management plan or amendment that includes individual transferable quotas only if the plan or amendment is consistent
with the guidelines promulgated under paragraph (2).

“(2) The Secretary shall promulgate, after consultation with the Councils and public notice and comment, mandatory guidelines for the establishment of any individual transferable quota system. The guidelines shall—

“(A) ensure that any individual transferable quota system—

“(i) is consistent with the requirements for limited access systems under section 303(b)(6),

“(ii) promotes conservation,

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

“(iv) provides for the fair and equitable allocation of fishing privileges, and minimizes negative social and economic impacts on fishery dependent communities;

“(v) establishes a national lien registry system for the identification, perfection, determination of lien priorities, and nonjudicial foreclosure of encumbrances or individual transferable quotas; and
“(vi) facilitates a reduction in excessive fishing capacity in the fishery;

“(B) address the characteristics of fisheries that are relevant to the design of suitable individual transferable quota systems, the nature and extent of the privilege established under an individual transferable quota system, factors in making initial allocations and determining eligibility for ownership of individual transferable quotas, limitations on the consolidation of individual transferable quotas, and methods of providing for new entrants, including, in fisheries where appropriate, mechanisms to provide a portion of the annual harvest for entry-level fishermen or small vessel owners who do not hold individual transferable quotas;

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

“(D) provide for appropriate penalties for violations of individual transferable quota sys-
tems, including the revocation of individual transferable quotas for such violations; and

"(E) include recommendations for potential management options related to individual transferable quotas, including the authorization of individual units or quotas that may not be transferred by the holder, and the use of leases or auctions by the Federal government in the establishment or allocation of individual transferable or nontransferable units or quotas.

"(3) Any fishery management plan which includes individual transferable quotas that the Secretary approved on or before the date of enactment of the Sustainable Fisheries Act shall be amended within 3 years after that date to be consistent with this subsection and any other applicable provisions of this Act.

"(4) No later than 60 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an advisory panel on individual transferable quotas under section 302(g)(3) which shall be comprised of fishery scientists and representatives of the Councils, representatives of affected States and fishery dependent communities, fishery participants and conservation organizations.
Such advisory panel shall provide recommendations on the guidelines required under paragraph (2), a list of all United States fisheries that may be suited for the development of limited access systems that include individual transferable quotas, and other information as the Secretary or the advisory panel deem appropriate.

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

SEC. 112. PLAN REVIEW AND IMPLEMENTATION.

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

“SEC. 304. PLAN REVIEW AND IMPLEMENTATION.

“(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.—
“(1) Upon transmittal by the Council to the Secretary of a fishery management plan, or amendment to such plan, the Secretary shall—

“(A) immediately commence a review of the management plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

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

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

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

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

“(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fish-
very access adjustments referred to in section 303(a)(6).

"(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

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

"(B) the nature of such inconsistencies; and

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

"(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

"(b) ACTION ON REGULATIONS.—

"(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery
management plan, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

"(A) if that determination is affirmative, the Secretary shall publish such regulations, with such technical changes as may be necessary for clarity and an explanation of those changes, in the Federal Register for a public comment period of 15 to 60 days; or

"(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, this Act, and other applicable law.

"(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for re-evaluation under paragraph (1).

"(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the
Federal Register an explanation of any differences between the proposed and final regulations.

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

"(d) SECRETARIAL PLAN REVIEW.—

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

"(i) for a plan or amendment prepared under section 303(e)(1), submit such plan or amendment to the appropriate Council for consideration and comment; and

"(ii) publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

"(B) Whenever a plan or amendment is submitted under subsection (1)(A)(i), the appropriate Council must submit its comments and recommenda-
tions, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in subparagraph (A)(ii). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, data, or comments submitted under subparagraph (A)(ii), may adopt such plan or amendment.

"(2) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

"(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (3). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the plan, with the national standards and other provisions of this Act, and with any other applicable law.

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

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

“(B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2)(A), (B), (C), or (D) of such title.

“(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing.

“(3) (A) Notwithstanding any other provision of law, the Secretary shall file a response to any complaint filed in accordance with paragraph (1) not later than 45 days after the date the Secretary is
served with that complaint, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

"(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

"(4) Upon a motion by the person who files a complaint under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.

"(f) ESTABLISHMENT OF FEES.—

"(1) The Secretary shall by regulation establish the level of any fees that are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this paragraph shall not exceed the administrative costs incurred in issuing the permits.
“(2)(A) Notwithstanding paragraph (1), the Secretary shall collect a fee from each person holding an individual transferable quota pursuant to a limited access system established under section 303(b)(6). Fees assessed under this paragraph shall be sufficient to recover the cost of managing the fishery to which the quota applies, including reasonable costs for salaries, training, data analysis and other costs directly related to fishery management and enforcement, up to—

“(i) four percent annually of the value of fish harvested or processed in that year under the individual transferable quota; and

“(ii) an additional 1 percent of the value of fish authorized to be harvested or processed for that year under the individual transferable quota to be assessed on a person receiving an initial quota or transferring a quota.

“(B) The Secretary, in consultation with the Councils, shall promulgate regulations, prescribing the method of determining the value of fish authorized to be taken, the amount of each fee, and the method of collecting fees. Fees collected under this paragraph shall meet the requirements of section 9701(b) of title 31, United States Code. Fees col-
lected under this paragraph shall be an offsetting
collection and shall be available only to the Secretary
for the purposes of administering and implementing
this Act in the region in which the fees were col-
lected.

“(C) Persons holding individual transferable
quota pursuant to limited access systems established
in the surf clam and ocean quahog fishery or in the
wreckfish fishery are exempt from the collection of
fees under this paragraph for a period ending 5
years after the date of enactment of the Sustainable
Fisheries Act.

“(g) EFFECT OF CERTAIN LAWS ON CERTAIN TIME
REQUIREMENTS.—The Secretary shall comply with any
applicable provisions of chapter 35 of title 44, United
States Code, chapter 6 of title 5, United States Code, and
Executive Order Numbered 12866, dated September 30,
1993, within the time limitations specified in subsections
(a) and (b).

“(h) RESPONSIBILITY OF THE SECRETARY.—The
Secretary shall have general responsibility to carry out the
provisions of this Act. The Secretary may promulgate such
regulations, in accordance with section 553 of title 5,
United States Code, as may be necessary to discharge
such responsibility.”.
SEC. 113. ECOSYSTEM MANAGEMENT.

Section 305 (16 U.S.C. 1855) is amended to read as
follows:

"SEC. 305. ECOSYSTEM MANAGEMENT.

(a) REPORT ON STATUS OF FISHERIES.—The Sec-
retary shall report annually to the Congress and the Coun-
cils on the status of fisheries within each Council’s geo-
graphical area of authority and identify those fisheries
that are approaching a condition of being overfished or
are overfished. For those fisheries managed under a fish-
ery management plan, the status shall be assessed using
the criteria for overfishing specified by the appropriate
Council under section 303(a)(10). A fishery shall be classi-
fied as approaching a condition of being overfished if,
based on trends in fishing effort, fishery resource size, and
other appropriate factors, the Secretary estimates that the
fishery will become overfished within 2 years. Any fishery
determined to be a commercial fishery failure under sec-
tion 316, shall be deemed to be overfished for the purposes
of subsections (a) and (b).

(b) FISHERY RECOVERY EFFORT.—

(1) The Council shall take immediate action to
prepare a fishery management plan, a plan amend-
ment, or proposed regulations for fisheries under
such Council’s authority—
“(A) to prevent overfishing of a fishery from occurring whenever such fishery is classified under subsection (a) as approaching an overfished condition, or

“(B) to stop overfishing of a fishery whenever such fishery is classified under subsection (a) as overfished, and to rebuild affected stocks of fish.

“(2) The Council shall submit a fishery management plan, amendment or proposed regulations required under paragraph (1) to the Secretary within 1 year from the date of transmittal of the report on the status of stocks under subsection (a). For a fishery that is overfished, such fishery management plan, amendment or proposed regulations shall specify a time period for stopping overfishing and rebuilding the fishery. The time period shall be as short as possible, taking into account the status and biology of the overfished stock of fish, the needs of fishery-dependent communities, and the interaction of the overfished stock of fish within the marine ecosystem. The time period may not be more than 10 years, except under extraordinary circumstances.

“(3) During the development of a fishery management plan, a plan amendment, or proposed regu-
lations under this subsection, the Council may request that the Secretary promulgate emergency regulations under subsection (e)(2) to reduce overfishing. Any request by the Council under this paragraph shall be deemed an emergency.

"(c) Fish Habitat.—

"(1) The Secretary, in cooperation with the Councils and the Secretary of the Interior, after notice and public comment, shall identify the essential fish habitat for each fishery for which a fishery management plan is in effect. The identification shall be based on the description of essential fish habitat contained in the plan.

"(2) Each Council—

"(A) may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any Federal or State agency that, in the view of the Council, may have an adverse effect on essential fish habitat of a fishery under its authority; and

"(B) shall comment on and make recommendations to any Federal or State department or agency concerning any such activity that, in the view of the Council is likely to sub-
stantially affect the habitat of an anadromous fishery resource under its jurisdiction.

“(3) If the Secretary receives information from a Council or determines from other sources that an action authorized, funded, carried out, or proposed to be carried out by any Federal agency may result in the destruction or adverse modification of any essential fish habitat identified under paragraph (1), the Secretary shall comment on and make recommendations to the Federal agency concerning that action.

“(4) Within 45 days after receiving a comment or recommendation under paragraphs (2) or (3) from a Council or the Secretary, a Federal agency shall provide a detailed response, in writing, to the commenting Council and the Secretary regarding the matter. The response shall include a description of measures being considered by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with a recommendation from any Council or the Secretary, the Federal agency shall explain its reasons for not following the recommendations.
“(d) Gear Evaluation and Notification of Entry.—

“(1) Each Council shall submit to the Secretary by June 1, 1996, information describing (A) all fishing technologies employed under such Council’s authority; and (B) all fisheries under the authority of such Council. The Secretary shall compile such information, along with information to comply with both (A) and (B) for fisheries to which section 302(a)(3) applies.

“(2) By July 15, 1996, the Secretary shall publish a proposed list of all technologies and fisheries, for each Council and for fisheries to which section 302(a)(3) applies, in the Federal Register for a public comment period of not less than 60 days. The Secretary shall include with such list specific guidelines for determining when a technology or fishery is sufficiently different from those listed as to require notification under paragraph (3). Within 30 days after the close of the public comment period the Secretary shall publish in the Federal Register a final list (including the guidelines), after taking into account any public comment received.

“(3) Beginning on the date that is 180 days after the date of the publication of the final list re-
required under paragraph (2), no person or vessel
shall employ a fishing technology or engage in a
fishery that is not included on the final list for the
appropriate Council or for fisheries to which section
302(a)(3) applies without first giving 90 days ad-
ance written notice of the intent to employ such un-
listed technology or engage in such unlisted fishery
to the appropriate Council, or the Secretary with re-
spect to a fishery to which section 302(a)(3) applies.
Such notice shall be by first class mail, return re-
cipient requested, and shall include information on the
use of the unlisted technology in other fisheries, if
any, and a detailed description, including drawings,
maps or diagrams if appropriate, of the unlisted
technology or unlisted fishery which such person or
vessel seeks to employ or engage in.

"(4) A Council may submit to the Secretary
amendments to the final list published under para-
graph (2) to reflect any substantial changes in the
fishing technologies employed or fisheries engaged in
under the authority of such Council. The Secretary
may submit any amendments for fisheries to which
section 302(a)(3) applies. The Secretary shall pub-
lish any such amendments in the Federal Register
as proposed amendments (along with any proposed
revisions to the guidelines) to the final list for a public comment period of not less than 60 days. Within 45 days of the close of the comment period, the Secretary shall publish a revised final list incorporating such proposed amendments, after taking into account any public comments received.

“(5) A Council may request the Secretary to promulgate emergency regulations under subsection (e) prohibiting any persons or vessels from employing an unlisted technology or engaging in an unlisted fishery if the appropriate Council, or the Secretary for fisheries to which section 302(a)(3) applies, determines that use of such technology or entry into such fishery would compromise the effectiveness of conservation and management efforts under this Act.

“(6) If, after providing the notice required under paragraph (3), no emergency regulations are implemented under paragraph (5), the person or vessel submitting notice under paragraph (3) may, after the required 90 day period has lapsed, employ the unlisted technology or enter the unlisted fishery to which such notice applies. The signed return receipt shall constitute adequate evidence of the submittal
of such notice and the date upon which the 90-day period begins.

"(7) A violation of this subsection shall be considered a violation of section 307, punishable under section 308.

"(e) EMERGENCY ACTIONS.—

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

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

"(A) the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the voting members of the Council, requests the taking of such action; and

"(B) the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, requests the taking of such action.
“(3) Any emergency regulation which changes an existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection—

“(A) shall be published in the Federal Register together with the reasons therefor;

“(B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for an additional period of not more than 180 days, provided the public has had an opportunity to comment on the emergency regulation, and, in the case of a Council recommendation for emergency regulations, the Council is actively preparing a fishery management plan, amendment, or proposed regulations to address the emergency on a permanent basis;

“(C) that responds to a public health emergency may remain in effect until the circumstances that created the emergency no longer exist, provided that the Secretary of Health and Human Services concurs with the Secretary’s action and the public has an oppor-
tunity to comment after the regulation is published;

"(D) that reduces overfishing may be approved without regard to the requirements of section 301(a)(1); and

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

"(4) The Secretary may, pursuant to guidelines established by a Council in a fishery management plan, close or restrict a particular fishery covered by such fishery management plan in order to prevent overfishing or reduce bycatch. Any such guidelines shall specify appropriate means for providing timely notice to fishermen of any closure or restriction. In exercising the authority granted under this paragraph, the Secretary shall not be required to provide an opportunity for notice and comment if such closure or restriction is done in accordance with the fishery management plan guidelines and does not extend beyond the end of the current fishing period es-
established for that fishery by the fishery management plan.”.

SEC. 114. STATE JURISDICTION.

(a) Section 306(b) (16 U.S.C. 1856(b)) is amended by adding at the end the following:

“(3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).”.

(b) Section 306(c)(1) (16 U.S.C. 1856(c)(1)) is amended—

(1) by striking “and” in subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting a semicolon and the word “and”; and

(3) by inserting after subparagraph (B) the following:

“(C) the owner or operator of the vessel submits reports on the tonnage of fish received from U.S. vessels and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.”.
SEC. 115. PROHIBITED ACTS.

(a) Section 307(1)(J)(i) (16 U.S.C. 1857(1)(J)(i)) is amended by striking "American Lobster Fishery Management Plan, as implemented by" and ", or any successor to that plan, implemented under this title".

(b) Section 307(1)(L) (16 U.S.C. 1857(1)(L)) is amended to read as follows:

"(L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, or interfere with any observer on a vessel under this Act, or any data collector employed by or under contract to the National Marine Fisheries Service;”.

(c) Section 307(1)(M) (16 U.S.C. 1857(1)(M)) is amended to read as follows:

"(M) to engage in large-scale driftnet fishing on a vessel of the United States or a vessel subject to the jurisdiction of the United States upon the high seas beyond the exclusive economic zone of any nation or within the exclusive economic zone of the United States, (and any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has onboard gear that is capable of use for large-scale driftnet fishing,"
shall be presumed to be engaged in such fishing, but that presumption may be rebutted);

or”.

(d) Section 307(2)(A) (16 U.S.C. 1857(2)(A)) is amended to read as follows:

“(A) in fishing within the boundaries of any State, except—

“(i) recreational fishing permitted under section 201(i),

“(ii) fish processing permitted under section 306(c), or

“(iii) transshipment at sea of fish products within the boundaries of any State in accordance with a permit approved under section 204(b)(6)(A)(ii);”.

(e) Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is amended by striking “201(j)” and inserting “201(i)”.

(f) Section 307(3) (16 U.S.C. 1857(3)) is amended to read as follows:

“(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone
or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(b)(6)(B) or section 306(c) to receive such fish;

(g) Section 307(4) (16 U.S.C. 1857(4)) is amended by inserting “or within the boundaries of any State” after “zone”.

SEC. 116. CIVIL PENALTIES AND PERMIT SANCTIONS.

(a) The first sentence of section 308(b) (16 U.S.C. 1858(b)) is amended to read as follows: “Any person against whom a civil penalty is assessed under subsection (a), or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine), may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order.”.

(b) Section 308(g)(1)(C) (16 U.S.C. 1858(g)(1)(C)) is amended by striking the matter from “(C) any” through “overdue,” and inserting the following: “(C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a per-
mit under any marine resource law enforced by the Secretary, has not been paid and is overdue,”.

(c) Section 308(16 U.S.C. 1858) is amended by inserting at the end thereof the following:

“(h) After deduction for any administrative or enforcement costs incurred or other expenditures authorized under this Act, all funds collected under this section shall be deposited in a separate account of the Ocean Conservation Trust Fund established under section 315.”.

SEC. 117. ENFORCEMENT.

(a) Section 311(e)(1) (16 U.S.C. 1861(e)(1)) is amended—

(1) by striking “fishery” each place it appears and inserting “marine”;

(2) by inserting “of not less than 20 percent of the penalty collected” after “reward” in subparagraph (B), and

(3) by striking subparagraph (E) and inserting the following:

“(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), as made applicable by section 310(c) of this Act or by any other marine resource law enforced by the Secretary, to seizures made by the Sec-
retary, in amounts determined by the Secretary
to be applicable to such claims at the time of
seizure; and”.

(b) Section 311(e)(2) (16 U.S.C. 1861(e)(2)) is
amended to read as follows:

“(2) Any person found in an administrative or
judicial proceeding to have violated this Act or any
other marine resource law enforced by the Secretary
shall be liable for the cost incurred in the sale, stor-
age, care, and maintenance of any fish or other
property lawfully seized in connection with the viola-
tion.”.

(c) Section 311 (16 U.S.C. 1861) is amended by re-
designating subsection (f) as subsection (h), and by insert-
ing the following after subsection (e):

“(f) ANNUAL REPORT ON ENFORCEMENT.—Each
year at the time the President’s budget is submitted to
the Congress, the Secretary and the Secretary of the De-
partment in which the Coast Guard is operating shall,
after consultation with the Councils, submit a report on
the effectiveness of the enforcement of fishery manage-
ment plans and regulations to implement such plans under
the jurisdiction of each Council, including—

“(1) an analysis of the adequacy of federal per-
sonnel and funding resources related to the enforce-
ment of fishery management plans and regulations
to implement such plans; and

"(2) recommendations to improve enforcement
that should be considered in developing amendments
to plans or to regulations implementing such plans.

"(g) **FISHERMEN’S INFORMATION NETWORKS.**—The
Secretary, in consultation with the Secretary of the de-
partment in which the Coast Guard is operating, shall con-
duct a program to encourage the formation of volunteer
networks, to be designated as Fishermen’s Information
Networks, to advise on and assist in the monitoring, re-
porting, and prevention of violations of this Act.”

**SEC. 118. NORTH PACIFIC FISHERIES CONSERVATION.**

Section 313 (16 U.S.C. 1862) is amended—

(1) by striking “research plan” in the section
heading and inserting “conservation”; and

(b) by adding at the end the following:

"(f) **REDUCTION OF WASTE.**—

"(1) No later than June 1, 1996, the North Pa-
cific Fishery Management Council shall include in
each fishery management plan under its jurisdiction
conservation and management measures, including
fees or other incentives, to reduce bycatch in each
fishery. Notwithstanding section 304(d), in imple-
menting this subsection the Council may rec-
ommend, and the Secretary may approve and imple-
ment any such recommendation, consistent with the
other provisions of this Act, a system of fees to pro-
vide an incentive to reduce bycatch, and, in particu-
lar, economic and regulatory discards. Any such sys-
tem of fees or incentives shall be fair and equitable
to all fishermen and United States fish processors,
and shall not have economic allocation as its sole
purpose.

“(2) Not later than January 1, 1997, the North
Pacific Fishery Management Council shall rec-
ommend, and the Secretary may approve and imple-
ment any such recommendation, consistent with the
other provisions of this Act, conservation and man-
agement measures to ensure total catch measure-
ment in each fishery under the Council’s jurisdicti-
on. Such conservation and management measures
shall ensure the accurate enumeration of target spe-
cies, economic discards, and regulatory discards.

“(3) Beginning on January 1, 1998, such con-
servation and management measures shall include a
harvest preference or other incentives to fishing and
processing practices within each gear group that re-
sult in the lowest levels of economic discards, proc-
essing waste, regulatory discards, and other bycatch.
In determining which practices shall be given priority, the reduction of economic discards shall be given the greatest weight, followed by processing waste (where applicable), regulatory discards and other bycatch, in that order.

"(4) In determining the level of target species catch, economic discards, regulatory discards, other bycatch, and processing waste, the Council and Secretary shall base such determinations on observer data or the best available information.

"(5) In the case of fisheries occurring under an individual transferable quota system under the jurisdiction of the North Pacific Fishery Management Council after January 1, 1998—

"(A) the Council shall designate non-target species, bycatch species, and regulatory discards for each such fishery;

"(B) the Council may not recommend, and the Secretary may not approve, any assignment or allocation of individual transferable quotas for regulatory discards, or non-target species for those fisheries, other than for each individual fishing season on an annual basis pursuant to subparagraph (C) of this paragraph; and
“(C) any harvest preference required under paragraph (3) shall be implemented by giving priority in the allocation of quotas for regulatory discards and non-target species and to fishing practices that result in the lowest levels of economic discards, regulatory discards, processing waste, and other bycatch.

“(6) Nothing in this section shall be construed to preclude the North Pacific Fishery Management Council from allocating a portion of any quota for a directed fishery for use as bycatch in another fishery or fisheries, if the Council determines such allocation is necessary to prosecute a fishery, after taking into account the requirements of this section regarding reduction of bycatch and processing waste.

“(g) FULL RETENTION AND FULL UTILIZATION.—

“(1) The North Pacific Fishery Management Council shall, consistent with the other provisions of this Act, submit to the Secretary by January 1, 1997, a plan to phase-in by January 1, 2000, to the maximum extent practicable, fishery management plan amendments to require full retention by fishing vessels and full utilization by United States fish processors of all fishery resources, except regulatory discards, caught under the jurisdiction of such
Council if such fishery resources cannot be quickly returned alive to the sea with the expectation of extended survival.

"(2) The plan shall include conservation and management measures to minimize processing waste and ensure the optimum utilization of target species, including standards setting minimum percentages of target species harvest which must be processed for human consumption.

"(3) In determining the maximum extent practicable, the North Pacific Fishery Management Council shall consider—

"(A) the state of available technology;

"(B) the extent to which species brought on board can be safely returned alive, with the expectation of extended survival, to the sea;

"(C) the extent to which each species is fully utilized as a target species by United States fishermen;

"(D) the impact of different processing practices on the price paid to fishermen and processors;

"(E) the nature and economic costs of each specific fishery; and
“(F) the effect of a full retention or full utilization requirement in a given fishery on other fisheries when compared with the beneficial effect of reducing economic discards and processing waste.

“(4) Notwithstanding section 304(f), the North Pacific Fishery Management Council may propose, and the Secretary may approve and implement any such recommendation, consistent with the other provisions of this Act, a system of fines or other incentives to implement this section. Any such fines or incentive system shall be fair and equitable to all fishing vessels and United States fish processors, and shall not have economic allocation as its sole purpose.

“(h) REGULATORY DISCARDS.—

“(1) Regulatory discards shall not be considered an economic discard for purposes of this section, however, the North Pacific Fishery Management Council shall seek to reduce the incidental catch of regulatory discards to the maximum extent practicable while allowing for the prosecution of fisheries under its jurisdiction.

“(2) Not later than June 1, 1996, the North Pacific Fishery Management Council shall propose,
and the Secretary may approve and implement any
such recommendation, consistent with the other pro-
visions of this Act, for each groundfish fishery under
the Council’s jurisdiction, conservation and manage-
ment measures to reduce the incidental harvest of
regulatory discards to the minimum level necessary
to prosecute directed fisheries for designated target
species, and to otherwise meet the requirements of
this section. Notwithstanding section 304(f), such
conservation and management measures may include
a system of fines, caps, or other incentives to reduce
the incidental harvest of regulatory discards. Any
system of fines or incentives under this section shall
be fair and equitable to all fishing vessels and Unit-
ed States fish processors, and shall not have eco-
monic allocation as its sole purpose.

“(3) The North Pacific Fishery Management
Council shall establish for each fishery which inci-
dently harvests regulatory discards under the
Council’s jurisdiction a cap which prevents such reg-
ulatory discards from being overfished or from being
placed in risk of being overfished. Upon reaching
such cap, the commercial fishery in which such regu-
latory discards are incidentally caught shall be
closed for that season.
“(i) OBSERVER PROGRAM.—

“(1) Beginning June 1, 1996, the North Pacific Fishery Management Council shall require under the authority granted to it by subsection (a)—

“(A) 100 percent observer coverage on all fishing vessels which can safely accommodate an observer or observers, and at all United States fish processors to the extent that funding for such coverage is available, and

“(B) for vessels which cannot safely accommodate an observer, statistically reliable sampling of a fishing vessel’s effort in each fishery in which that fishing vessel participates, when such vessel or processor is fishing in a fishery under the North Pacific Fishery Management Council’s jurisdiction. In implementing subparagraph (A) the North Pacific Fishery Management Council shall require that more than one observer be stationed on a fishing vessel or at a United States fish processor whenever the Council determines that more than one such observer is necessary to accurately monitor that vessel or processor’s operation.

“(2) Observers stationed on fishing vessels or at United States fish processors under the authority of this section shall be paid by the Secretary using
funds deposited in the North Pacific Fishery Observer Fund. Such payment shall not make an observer an employee of the Federal Government, unless such observer is otherwise employed by an agency of the United States.

"(3) Failure to pay the fee established by the North Pacific Fishery Management Council under subsection (a) shall be a considered a violation of section 307, punishable under section 308. Any fines collected pursuant to the authority granted by this subsection shall be deposited in the North Pacific Fishery Observer Fund account in the United States Treasury, and shall remain available until expended under the terms of that fund.

"(4) Notwithstanding sections 304(f) and subsection (b), the Secretary is authorized to recover from vessels participating in a fishery under an individual fishing quota regime or other limited access program established by the North Pacific Fishery Management Council, the full cost of any observers stationed on such vessel (including all costs for salaries, expenses, equipment, food and lodging, transportation, insurance, and analysis of observer data, plus reasonable costs for training and administrative overhead). Each participant in an individual fishing
quota regime shall only be required to contribute the same proportion of the costs as that participant’s quota shares represent to the total number of quota shares in such regime. To the extent that the costs recovered under this paragraph exceed the fee established by the Council under subsection (b), the Secretary shall deduct any payment by a vessel under subsection (b) from the amount owed by such vessel under this paragraph. The Secretary shall deposit any fees collected under this paragraph in the North Pacific Fishery Observer Fund account in the United States Treasury.

“(j) INDUSTRY ASSISTANCE.—

“(1) The Secretary shall submit a plan by January 1, 1996, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Represent- atives to develop jointly with industry accurate methods of weighing the fish harvested by United States fishing vessels in fisheries under the jurisdiction of the North Pacific Fishery Management Council. Such plan shall include methods for assessing contributions from industry to fund such develop- ment, as well as recommendations from the Sec-
retary concerning the level of funds needed to successfully implement the plan in fiscal year 1997.

"(2) The Secretary shall submit by January 1, 1996, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a plan to develop markets and harvesting and processing techniques for arrowtooth flounder. The Secretary shall include in such plan recommendations concerning the level of funds needed to successfully implement the plan in fiscal year 1997.

"(3) For fiscal years 1996, 1997, 1998, and 1999, $50,000 is authorized to be appropriated for the purposes of implementing paragraph (1), and $250,000 is authorized to be appropriated for programs to implement paragraph (2).

"(k) DEFINITION.—For the purposes of this section, 'processing waste' means that portion of a fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.”.

SEC. 119. TRANSITION TO SUSTAINABLE FISHERIES.

(a) The Act is amended by adding at the end of title III the following:

“SEC. 315. TRANSITION TO SUSTAINABLE FISHERIES.

“(a) SUSTAINABLE DEVELOPMENT STRATEGY.—
“(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishery dependent community, the Secretary, in consultation with the Councils and Federal agencies, as appropriate, may work with regional authorities, affected States, fishery dependent communities, the fishing industry, conservation organizations, and other interested parties, to develop a sustainable development strategy for any fishery classified as overfished under section 305(a) or determined to be a commercial fishery failure under section 316.

“(2) Such sustainable development strategy shall—

“(A) take into consideration the economic, social, and ecological factors affecting the fishery and provide recommendations for addressing such factors in the development of a fishery recovery effort under section 305(b);

“(B) identify Federal and State programs which can be used to provide assistance to fishery dependent communities during development and implementation of a fishery recovery effort;

“(C) develop a balanced and comprehensive long-term plan to guide the transition to a sustainable fishery, identifying alternative eco-
nomic opportunities and establishing long-term objectives for the fishery including vessel types and sizes, harvesting and processing capacity, and optimal fleet size;

"(D) establish procedures to implement such a plan and facilitate consensus and coordination in regional decision-making; and

"(E) include any program established under subsection (b) to reduce the number of vessels or level of capital investment in the fishery.

"(2) REPORT.—The Secretary shall complete and submit to the Congress a report on any sustainable development strategy developed under this section within 6 months and annually thereafter.

"(b) BUY-OUT PROGRAM.—

"(1) The Secretary, in consultation with the appropriate Council, may develop and implement a buy-out program for fishing vessels or permits in a fishery for the purpose of reducing the number of fishing vessels and fishing effort in such fishery, if the Secretary, with the concurrence of the majority of the voting members of such Council, determines that a buy-out program is necessary for the develop-
ment and implementation of a fishery recovery effort under section 305(b).

“(2) Any buy-out program developed or implemented in a fishery shall—

“(A) require a fishery management plan to be in place for such fishery that is adequate to limit access to the fishery and prevent the replacement of fishing effort removed by the buy-out program;

“(B) require fishing vessels or permits acquired under such program to be disposed of in a manner ensuring that such vessels or permits do not re-enter the fishery or contribute to excess fishing effort in other fisheries;

“(C) establish criteria for determining types and numbers of vessels which are eligible for participation in such program consistent with—

“(i) any strategy developed under subsection (a);

“(ii) the requirements of applicable fishery management plans; and

“(iii) the need to minimize program costs;
“(D) establish procedures (such as submission of owner bid under an auction system or
fair market-value assessment) to be used in determining the level of payment for fishing vessels or permits acquired under the program; and

“(E) identify Federal and non-Federal mechanisms for funding the buy-out program, consistent with paragraphs (3) and (4).

“(3) The Federal share of the cost of a buy-out program implemented under this section shall not exceed 50 percent of the cost of that program. Such Federal share may be provided from monies deposited in the Ocean Conservation Trust Fund under section 308(h) or monies made available under section 316(b) of this Act or under section 2(b) of the Act of August 11, 1939 (15 U.S.C. 713c–3(b)).

“(4) Notwithstanding section 305(f)(1), the Secretary, with the concurrence of a majority of the voting members of the affected Council, may establish a fee system to collect those funds required for the non-Federal share of such program that are not available from other non-Federal sources. Under such fee system, the Secretary may assess an annual fee on holders of fishing permits in the fishery for
which the buy-out program is established which may not exceed 5 percent annually of the value of the fish harvested under the fishing permit. Assessments may not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the specific buy-out program under which they are collected. Assessments shall be deposited in the Ocean Conservation Trust fund established under subsection (d) and shall be considered part of the non-Federal share of the cost of a buyout program.

“(5)(A) Upon completion of a proposal for a buy-out program (including any fee system to be established under this subsection), the Secretary shall immediately—

“(i) submit the proposed program and regulations necessary for its implementation to the appropriate Council for consideration and comment; and

“(ii) publish in the Federal Register a notice stating that the proposed program and regulations are available and that written data, views, or comments of interested persons on the proposed program and regulations may be submitted to the Secretary during the 60-day pe-
period beginning on the date the notice is published.

"(B) During the 60-day public comment period—

"(i) the Secretary shall conduct a public hearing in each State affected by the proposed buy-out program; and

"(ii) the appropriate Council shall submit its comments and recommendations, if any, regarding the proposed program and regulations.

"(C) Within 45 days after the close of the public comment period, the Secretary, in consultation with the affected Council, shall analyze the public comment received and publish a final buy-out program and regulations for its implementation. The Secretary shall include an explanation of any substantive differences between the proposed and final program and regulations.

"(c) TASK FORCE.—The Secretary shall establish a task force to assist in the development of a sustainable development strategy or a buy-out program under this section. Such task force shall, at a minimum, consist of members of the affected communities and individuals with expertise in fishery management and conservation, economics, and sociology. Members of the task force are author-
ized to receive per diem and travel expenses consistent
with section 302 of this Act.

"(d) OCEAN CONSERVATION TRUST FUND.—There is
established in the Treasury an Ocean Conservation Trust
Fund. The Fund shall be available, without appropriation
or fiscal year limitation, only to the Secretary for the pur-
pose of carrying out the provisions of this section subject
to the restrictions of this Act. This fund shall consist of
all monies deposited into it in accordance with this section
and section 308(h). Sums in the Fund that are not cur-
rently needed for the purpose of this section shall be kept
on deposit or invested in obligations of, or guaranteed by,
the United States.

"SEC. 316. FISHERIES DISASTER RELIEF.

"(a) DETERMINATION OF FAILURE.—At the discre-
tion of the Secretary or at the request of the Governor
of an affected State or a fishery dependent community,
the Secretary shall determine whether there is a commer-
cial fishery failure due to a fishery resource disaster as
a result of—

"(1) natural causes;

"(2) man-made causes beyond the control of
fishery managers to mitigate through conservation
and management measures; or

"(3) undetermined causes.
“(b) ECONOMIC ASSISTANCE.—

“(1) Upon the determination under subsection (a) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishery dependent community, or by the Secretary in cooperation with the affected State or fishery dependent community for—

“(A) assessing the economic and social effects of the commercial fishery failure; and

“(B) any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishery dependent community affected by such failure.

“(2) Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure into other fisheries or other geographic regions.

“(c) FEDERAL COST-SHARING.—The Federal share of the cost of any activity carried out under the authority of this section shall not exceed 75 percent of the cost of that activity.
“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 1995, 1996, 1997, 1998 and 1999, provided that such sums are designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.”.

(b) Section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c–3(b)(1)(A)) is amended—

(1) by striking “and” at the end of clause (ii); and

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

“(iii) to fund the Federal share of a buy-out program established under section 315(b) of the Magnuson Fishery Conservation and Management Act.”.

TITLE II—FISHERY MONITORING AND RESEARCH

SEC. 201. CHANGE OF TITLE.

The heading of title IV (16 U.S.C. 1881 et seq.) is amended to read as follows:
"TITLE IV—FISHERY
MONITORING AND RESEARCH".

SEC. 202. REGISTRATION AND DATA MANAGEMENT.

Title IV (16 U.S.C. 1881 et seq.) is amended by inser-
ting after the title heading the following:

"SEC. 401. REGISTRATION AND DATA MANAGEMENT.

"(a) STANDARDIZED FISHING VESSEL REGIS-
RATION AND DATA MANAGEMENT SYSTEM.—The Secretary
shall, in cooperation with the Secretary of the department
in which the Coast Guard is operating, the States, the
Councils, and Marine Fisheries Commissions, develop rec-
ommendations for implementation of a standardized fish-
ing vessel registration and data management system on
a regional basis. The proposed system shall be developed
after consultation with interested governmental and non-
governmental parties and shall—

"(1) be designed to standardize the require-
ments of vessel registration and data collection sys-
tems required by this Act, the Marine Mammal Pro-
tection Act (16 U.S.C. 1361 et seq.), and any other
marine resource law implemented by the Secretary;

"(2) integrate programs under existing fishery
management plans into a nonduplicative data collec-
tion and management system;
(3) avoid duplication of existing state, tribal, or federal systems (other than a federal system under paragraph (1)) and utilize, to the maximum extent practicable, information collected from existing systems;

(4) provide for implementation through cooperative agreements with appropriate State, regional, or tribal entities and Marine Fisheries Commissions;

(5) establish standardized units of measurement, nomenclature, and formats for the collection and submission of information;

(6) minimize the paperwork required for vessels registered under the system;

(7) include all species of fish within the geographic areas of authority of the Councils and all fishing vessels, except for private recreational fishing vessels used exclusively for pleasure; and

(8) prescribe procedures necessary to ensure the confidentiality of information collected under this section.

(b) Fishing Vessel Information.—The registration and data management system should, at a minimum, obtain the following information for each fishing vessel—
“(1) the name and official number or other identification, together with the name and address of the owner or operator or both;
“(2) vessel capacity, type and quantity of fishing gear, mode of operation (catcher, catcher processor or other), and such other pertinent information with respect to vessel characteristics as the Secretary may require;
“(3) identification of the fisheries in which the fishing vessel participates;
“(4) estimated amounts of fish caught, and processed (if applicable) in each fishery; and
“(5) the geographic area of operations and the season or period during which the fishing vessel operates.
“(c) FISHERY INFORMATION.—The registration and data management system should, at a minimum, provide basic fisheries performance data for each fishery, including—
“(1) the number of vessels participating in the fishery;
“(2) the time period in which the fishery occurs;
“(3) the approximate geographic location, or official reporting area where the fishery occurs;
"(4) a description of fishery gear used in the fishery, including the amount of such gear and the appropriate unit of fishery effort;  
"(5) catch and ex-vessel value of the catch for each stock of fish in the fishery; and  
"(6) the amount and types of economic and regulatory discards, and an estimate of any other bycatch.  
"(d) PUBLIC COMMENT.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register for a 60-day public comment period, a proposal that would provide for implementation of a standardized fishing vessel registration and data collection system that meets the requirements of subsections (a) through (c). The proposal shall include—  
"(1) a description of the arrangements for consultation and cooperation with the department in which the Coast Guard is operating, the States, the Councils, Marine Fisheries Commissions, the fishing industry and other interested parties; and  
"(2) proposed regulations and legislation necessary to implement the proposal.  
"(e) CONGRESSIONAL TRANSMITTAL.—Within 60 days after the end of the comment period and after consid-
eration of comments received under subsection (d), the
Secretary shall transmit to the Committee on Commerce,
Science, and Transportation of the Senate and the Com-
mittee on Resources of the House of Representatives a
proposal for implementation of a national fishing vessel
registration system that includes—

“(1) any modifications made after comment and
consultation;

“(2) a proposed implementation schedule; and

“(3) recommendations for any such additional
legislation as the Secretary considers necessary or
desirable to implement the proposed system.

“(f) REPORT TO CONGRESS.—Within 15 months
after the date of enactment of the Sustainable Fisheries
Act, the Secretary shall report to Congress on the need
to include private recreational fishing vessels used exclu-
sively for pleasure into a national fishing vessel registra-
tion and data collection system. In preparing its report,
the Secretary shall cooperate with the Secretary of the de-
partment in which the Coast Guard is operating, the
States, the Councils, and Marine Fisheries Commissions,
and consult with governmental and nongovernmental par-
ties.”.

SEC. 203. DATA COLLECTION.

Section 402 is amended to read as follows:
SEC. 402. DATA COLLECTION.

(a) COUNCIL REQUESTS.—If a Council determines that additional information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement a data collection program for the fishery which would provide the types of information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall approve such a data collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for a data collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after receipt of that request.
“(b) CONFIDENTIALITY OF INFORMATION.—Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed if disclosure would significantly impair the commercial interests of the person from whom the information was obtained, except—

“(1) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

“(2) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

“(3) when required by court order;

“(4) when such information is used to verify catch under an individual transferable quota system; or

“(5) unless the Secretary has obtained written authorization from the person submitting such information to release such information and such release does not violate other requirements of this subsection.

The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any
such information in any aggregate or summary form
which does not directly or indirectly disclose the identity
or business of any person who submits such information.
Nothing in this subsection shall be interpreted or con-
strued to prevent the use for conservation and manage-
ment purposes by the Secretary, or with the approval of
the Secretary, the Council, of any information submitted
in compliance with regulations promulgated under this
Act.

"(c) RESTRICTION ON USE OF CERTAIN DATA.—

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

"(2) The Secretary may not require the submis-
sion of a Federal or State income tax return or
statement as a prerequisite for issuance of a Federal
fishing permit until such time as the Secretary has
promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.”

SEC. 204. OBSERVERS.

Title IV of the Act (16 U.S.C. 1882) is amended by adding the following new section 403:

“SEC. 403. OBSERVERS.

“(a) GUIDELINES FOR CARRYING OBSERVERS.—Within one year of the date of enactment of the Sustain-
able Fisheries Act, the Secretary shall promulgate regulations, after notice and public comment, for fishing vessels that are required to carry observers. The regulations shall include guidelines for determining—

“(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

“(2) actions which vessel owners or operators may reasonably be asked to take to render such fa-
cilities adequate and safe.
“(b) TRAINING.—The Secretary, in cooperation with State programs and the National Sea Grant College Program, shall—

“(1) establish programs to ensure that each observer receives adequate training in collecting and analyzing data necessary for the conservation and management purposes of the fishery to which such observer is assigned; and

“(2) require that an observer demonstrate competence in fisheries science and statistical analysis at a level sufficient to enable such person to fulfill the responsibilities of the position.

“(c) WAGES AS MARITIME LIENS.—Claims for observers’ wages shall be considered maritime liens against the vessel and be accorded the same priority as seamen’s liens under admiralty and general maritime law.”.

SEC. 205. FISHERIES RESEARCH.

Section 404 is amended to read as follows:

“SEC. 404. FISHERIES RESEARCH.

“(a) IN GENERAL.—The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and informa-
tion, including statistics, on fishery conservation and management and on the economics of the fisheries.

"(b) STRATEGIC PLAN.—Within one year after the date of enactment of the Sustainable Fisheries Act, and at least every 3 years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

"(1) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in subsection (c);

"(2) indicate the goals and timetables for the program described in paragraph (1); and

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

"(c) AREAS OF RESEARCH.—The areas of research referred to in subsection (a) are as follows:

"(1) Research to support fishery conservation and management, including but not limited to, research on the economics of fisheries and biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish, the identification of essential fish habitat, the impact of pollution on fish pop-
ulations, the impact of wetland and estuarine degrada-

tion, and other matters bearing upon the abundance and availability of fish.

"(2) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species.

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

"(d) PUBLIC NOTICE.—In developing the plan required under subsection (a), the Secretary shall consult with relevant Federal, State, and international agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the
Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.”.

SEC. 206. INCIDENTAL HARVEST RESEARCH.

Section 405 is amended to read as follows:

"SEC. 405. INCIDENTAL HARVEST RESEARCH.

(a) COLLECTION OF DATA.—Within 9 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall, after consultation with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, conclude the collection of data in the program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils. Within the same time period, the Secretary shall make available to the public aggregated summaries of data collected prior to June 30, 1994 under such program.

(b) IDENTIFICATION OF STOCK.—The program concluded pursuant to subsection (a) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

(c) COLLECTION AND ASSESSMENT OF SPECIFIC STOCK DATA.—For stocks of fish identified pursuant to subsection (b), with priority given to stocks which (based
upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

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

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

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

"(d) INCIDENTAL MORTALITY REDUCTION PROGRAM.—The Secretary shall, in cooperation with affected interests, commence a program to design and evaluate the efficacy of technological devices and other changes in fishing technology for the reduction of incidental mortality of nontarget fishery resources in the course of shrimp trawl
fishing activity which are designed to be inexpensive to operate and which cause insignificant loss of shrimp. Such program shall take into account local conditions and include evaluation of any reduction in incidental mortality, as well as any reduction or increase in the retention of shrimp in the course of normal fishing activity.

"(e) REPORT TO THE CONGRESS.—The Secretary shall, within one year of completing the programs required by this subsection, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

"(f) IMPLEMENTATION CRITERIA.—Any measure implemented under this Act to reduce the incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing shall, to the extent practicable—

"(1) apply to such fishing throughout the range of the nontarget fishery resource concerned; and

"(2) be implemented first in those areas and at those times where the greatest reduction of such incidental mortality can be achieved.”.

SEC. 207. REPEAL.

Section 406 (16 U.S.C. 1882) is repealed.
SEC. 208. CLERICAL AMENDMENTS.

The table of contents is amended by striking the matter 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."

TITLE III—FISHERIES STOCK RECOVERY FINANCING

SEC. 301. SHORT TITLE.

This title may be cited as the "Fisheries Stock Recovery Financing Act."

SEC. 302. FISHERIES STOCK RECOVERY REFINANCING.

Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271 et seq.), is amended by adding at the end the following new section:

"Sec. 1111. (a) Pursuant to the authority granted under section 1103(a) of this title, the Secretary shall, under such terms and conditions as the Secretary shall prescribe by regulation, guarantee and make commitments to guarantee the principal of, and interest on, obligations which aid in refinancing, in a manner consistent with the reduced cash flows available to obligors because of reduced harvesting allocations during implementation of a fishery recovery effort, existing obligations relating to fishing ves-
sels or fishery facilities. Guarantees under this section shall be subject to all other provisions of this title not inconsistent with the provisions of this section. The provisions of this section shall, notwithstanding any other provisions of this title, apply to guarantees under this section.

"(b) Obligations eligible to be refinanced under this section shall include all obligations which financed or refinanced any expenditures associated with the ownership or operation of fishing vessels or fishery facilities, including but not limited to expenditures for reconstructing, reconditioning, purchasing, equipping, maintaining, repairing, supplying, or any other aspect whatsoever of operating fishing vessels or fishery facilities, excluding only such obligations—

"(1) which were not in existence prior to the time the Secretary approved a fishery recovery effort eligible for guarantees under this section and whose purpose, in whole or in part, involved expenditures which resulted in increased vessel harvesting capacity; and

"(2) as may be owed by an obligor either to any stockholder, partner, guarantor, or other principal of such obligor or to any unrelated party if the purpose of such obligation had been to pay an obligor's pre-
existing obligation to such stockholder, partner, guarantor, or other principal of such obligor.

"(c) The Secretary shall refinance up to 100 percent of the principal of, and interest on, such obligations, but, in no event, shall the Secretary refinance an amount exceeding 75 percent of the unencumbered (after deducting the amount to be refinanced by guaranteed obligations under this section) market value, as determined by an independent marine surveyor, of the fishing vessel or fishery facility to which such obligations relate plus 75 percent of the unencumbered (including but not limited to homestead exemptions) market value, as determined by an independent marine surveyor, of all other supplementary collateral. The Secretary shall do so regardless of—

"(1) any fishing vessel or fishery facility's actual cost or depreciated actual cost; and

"(2) any limitations elsewhere in this title on the amount of obligations to be guaranteed or such amount's relationship to actual cost or depreciated actual cost.

"(d) Obligations guaranteed under this section shall have such maturity dates and other provisions as are consistent with the intent and purpose of this section (including but not limited to provisions for obligors to pay only the interest accruing on the principal of such obligations
during the period in which fisheries stocks are recovering, with the principal and interest accruing thereon being fully amortized between the date stock recovery is projected to be completed and the maturity date of such obligations).

"(e) No provision of section 1104A(d) of this title shall apply to obligations guaranteed under this section.

"(f) The Secretary shall neither make commitments to guarantee nor guarantee obligations under this section unless—

"(1) the Secretary has first approved the fishery recovery effort, for the fishery in which vessels eligible for the guarantee of obligations under this section are participants; and

"(2) the Secretary has considered such factors as—

"(A) the projected degree and duration of reduced fisheries allocations;

"(B) the projected reduction in fishing vessel and fishery facility cash flows;

"(C) the projected severity of the impact on fishing vessels and fishery facilities;

"(D) the projected effect of the fishery recovery effort;
“(E) the provisions of any related fishery management plan under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

“(F) the need for and advisability of guarantees under this section;

“(3) the Secretary finds that the obligation to be guaranteed will, considering the projected effect of the fishery recovery effort involved and all other aspects of the obligor, project, property, collateral, and any other aspects whatsoever of the obligation involved, constitute, in the Secretary’s opinion, a reasonable prospect of full repayment; and

“(4) the obligors agree to provide such security and meet such other terms and conditions as the Secretary may, pursuant to regulations prescribed under this section, require to protect the interest of the United States and carry out the purpose of this section.

“(g) All obligations guaranteed under this section shall be accounted for separately, in a subaccount of the Federal Ship Financing Fund to be known as the Fishery Recovery Refinancing Account, from all other obligations guaranteed under the other provisions of this title and the assets and liabilities of the Federal Ship Financing Fund.
and the Fishery Recovery Refinancing Account shall be segregated accordingly.

"(h) For the purposes of this section, the term ‘fishery recovery effort’ means a fishery management plan, amendment, or regulations required under section 305(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(b)) to rebuild a fishery which the Secretary has determined to be a commercial fishery failure under section 316 of such Act.”

SEC. 303. FEDERAL FINANCING BANK RELATING TO FISHING VESSELS AND FISHERY FACILITIES.

Section 1104A(b)(2) of the Merchant Marine Act, 1936 (46 U.S.C. 1274(b)(2)), is amended by striking “Provided, further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount equal to 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank:” and inserting the following: “Provided, further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount not to exceed 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, and obligations related to fishing vessels and fishery facilities under this title shall be placed
through the Federal Financing Bank unless placement through the Federal Financing Bank is not reasonably available or placement elsewhere is available at a lower annual effective yield than placement through the Federal Financing Bank:”.

SEC. 304. FEES FOR GUARANTEEING OBLIGATIONS.

Section 1104A(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1274(e)), is amended to read as follows:

“(e)(1) The Secretary is authorized to fix a fee for the guarantee of obligations under this title. Obligors shall pay all such fees to the Secretary when moneys are first advanced under guaranteed obligations and at least 60 days prior to each anniversary date thereafter. All such fees shall be computed and shall be payable to the Secretary under such regulations as the Secretary may prescribe.

“(2) For fishing vessels and fishery facilities, such fee shall—

“(A) if the obligation will not be purchased by the Federal Financing Bank, be in an amount equal to 1 percent per year of the average principal amount of the obligation outstanding (unless such obligation is issued under section 1111 of this title, in which case such fee shall be 1 and one-half percent per year of such average principal amount; and
“(B) if the obligation will be purchased by the Federal Financing Bank, be in an amount equal to 2 percent per year of the average principal amount of the obligation outstanding (unless such obligation is issued under section 1111 of this title, in which case such fee shall be 2 and one-half percent per year of such average principal amount), less any fee the Federal Financing Bank customarily charges for its services with respect to federally guaranteed obligations purchased by it and less the amount, if any, by which the interest rate on such obligation (which shall be fixed at the time the Federal Financing Bank commits to purchase such obligation) exceeds the current new issue rate on outstanding marketable obligations of the United States of comparable maturity.

“(3) For everything other than fishing vessels and fishery facilities, such fee shall—

“(A) if the security for the guarantee of an obligation under this title relates to a delivered vessel, not be less than one-half of 1 percent per year nor more than 1 percent per year of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit
in an escrow fund created under section 1108 of this title; and

"(B) if the security for the guarantee of an obligation under this title relates to a vessel to be constructed, reconstructed, or reconditioned, not be less than one-quarter of 1 percent per year nor more than one-half of 1 percent per year of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1108 of this title. For the purposes of this subsection, if the security for the guarantee of an obligation under this title relates both to a delivered vessel or vessels and to a vessel or vessels to be constructed, reconstructed, or reconditioned, the principal amount of such obligation shall be prorated in accordance with regulations prescribed by the Secretary. The regulations to be prescribed by the Secretary under this subsection shall provide a formula for determining the creditworthiness of obligors under which the most creditworthy obligors pay a fee computed on the lowest allowable percentage and the least creditworthy obligors pay a fee which may be computed on the highest allowable percentage (the range of cred-
itworthiness to be based on obligors which have actually issued guaranteed obligations).”.

SEC. 305. SALE OF ACQUIRED COLLATERAL.

Section 1104A(a)(3) of the Merchant Marine Act, 1936 (46 U.S.C. 1274(a)(3)), is amended by inserting after “financing” the following: “(without requiring subsidy cost ceiling or other authorization under the Federal Credit Reform Act of 1990)”.

○
New England Fishery Management Council
Positions on Amendments
to the Magnuson Fishery Conservation and Management Act
Council Chairman's Meeting, July 11, 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.
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)

* Ex-officio, voting member

Staff -- Sally Chadbourne
Staff -- Liz White

Democrats (3)

1. MOLLOHAN (D-WV)
   Ranking Minority Member
2. SKAGGS (D-CO)
3. DIXON, JULIAN (D-CA)
   * OBEY (D-WI)

Senate Committee on Appropriations
Members of
Commerce, Justice, State, the Judiciary, and Related Agencies Subcommittee

Republicans (6)

1. GRAMM, PHIL (R-TX)
   Chairman
2. STEVENS (R-AK)
3. HATFIELD (R-OR)
4. DOMENICI (R-NM)
5. MCCONNELL (R-KY)
6. GREGG (R-NH)

* Ex-officio, voting member

Majority Staff -- David Taylor
Minority Staff -- Scott Gudes

Democrats (5)

1. HOLLINGS (D-SC)
   Ranking Minority Member
2. INOUYE (D-HI)
3. BUMPERS (D-AR)
4. LAUTENBERG (D-NJ)
5. KERREY, BOB (D-NE)
   * BYRD, ROBERT (D-WV)
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 Gilchrist 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 C02 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 Gilchrist 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 bases 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.

502 GUIDELINES

The Council Chairmen believe the 502 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 Gilchrist 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 Chairman 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 Chairman 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 Chairman 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 quotes, etc., with sufficient guidelines to protect the national interest, existing participants in the fisheries, and conservation of the resource.

GEAR

Council Chairman 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 Chairman of 3 out of 5 affected Council 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 Council 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 Gilchrest amendment indicates any scientist, not just members of the Scientific and Statistical Committees, could object to Council recommendations and the Secretary would be compelled to disapprove.

OTHER ISSUES

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 Tuna Convention Act.

FOREIGN FISHING PERMITS FOR TRANSSHIPMENT

The Chairman 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 Chairman agreed on no recommendations on the issue of requiring data from internal waters processing operations.

ASSAULT AGAINST DATA COLLECTORS

The Council Chairman did not oppose the proposal to protect data collectors.

LARGE SCALE DRIFTNETS

The Chairman 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.
DATE: April 12, 1995

TO: Other Executive Directors

FROM: Douglas G. Marshall, Executive Director

SUBJECT: Magnuson

After our trip to D.C. where Joe Brancalleone 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 Brancalleone 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 responses 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.

JMB/pwc
Corres./Saxton.Ques.3.21.95
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 is 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 any way. 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.
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.

"(a) AUTHORITY TO CONDUCT PROGRAM.—The Secretary, with the concurrence of the Council having authority over a fishery, may conduct a voluntary fishing capacity reduction program for a fishery in accordance with this section, if—

"(1) the Secretary—

"(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—

(1) a moratorium on the issuance of new Federal fishing permits for the duration of the repayment period; and

(2) restrictions on fishing vessel capacity upgrading.

(b) PROGRAM REQUIREMENTS.—Under a fishing capacity reduction program conducted under this section for a fishery,

"(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—

"(A) scrap or otherwise render permanently unusable for fishing in the United States, vessels that operate in the fishery; and/or

"(B) 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) pervious fishing capacity reduction programs; and

(ii) the characteristics of the fishery;

(5) establish procedures for determining the amount of payments under paragraph (4); and

(6) identify sources of funding for the program in addition to the amounts referred to in subsection (f)(2)(A), (B), (C), and (D).

(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).

"(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 will be deposited into the Fund from fees that apply to the fishery under subsection (d).

"(d) FEES. —"

"(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) any other factors the Secretary determines to be appropriate.
"(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) 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".