

104TH CONGRESS
1ST SESSION

S. 39

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

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

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

A BILL

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

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

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—CONSERVATION AND MANAGEMENT

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

TITLE II—FISHERY MONITORING AND RESEARCH

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

TITLE III—FISHERIES STOCK RECOVERY FINANCING

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

1 **TITLE I—CONSERVATION AND**
 2 **MANAGEMENT**
 3 **SEC. 101. AMENDMENT OF MAGNUSON FISHERY CONSERVA-**
 4 **TION AND MANAGEMENT ACT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **SEC. 103. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(2) \$106,000,000 for fiscal year 1994;

2 “(3) \$143,000,000 for fiscal year 1995;

3 “(4) \$147,000,000 for fiscal year 1996;

4 “(5) \$151,000,000 for fiscal year 1997;

5 “(6) \$155,000,000 for fiscal year 1998; and

6 “(7) \$159,000,000 for fiscal year 1999.”.

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

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

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

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

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

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

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

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

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

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

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

7 “(b) APPLICATIONS AND PERMITS.—

8 “(1) ELIGIBILITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) by striking “(1)(B) or (C)” in paragraph
2 (3)(B) and inserting “(1)(A)(ii)”;

3 (5) by striking “(1)(B) or (C)” in paragraph
4 (4) and inserting “(1)(A)(ii)”;

5 (6)(A) by striking “and” at the end of para-
6 graph (5)(A);

7 (B) by striking the period at the end of para-
8 graph (5)(B) and inserting a semicolon and the
9 word “and”; and

10 (C) by adding at the end of paragraph (5) the
11 following:

12 “(C) be kept on file by the Secretary for
13 use in reviewing determinations under para-
14 graph (7)(B) and made available for public in-
15 spection at reasonable hours.”;

16 (7) by striking “(1)(B) or (C)” in paragraph
17 (6) and inserting “(1)(A)(ii)”;

18 (8) by redesignating paragraph (7) as (8) and
19 inserting after paragraph (6) the following:

20 “(7)(A) An affected individual required to dis-
21 close a financial interest under paragraph (2) shall
22 not vote on a Council decision which would have a
23 significant and predictable effect on such financial
24 interest. A Council decision shall be considered to
25 have a significant and predictable effect on a finan-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(e) PREPARATION BY THE SECRETARY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(f) INDIVIDUAL TRANSFERABLE QUOTAS.—

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

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

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

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

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

13 “(ii) promotes conservation,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(b) ACTION ON REGULATIONS.—

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

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

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

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

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

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

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

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

8 “(d) SECRETARIAL PLAN REVIEW.—

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

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

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

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

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

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

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

25 “(e) JUDICIAL REVIEW.—

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

10 “(A) section 705 of such title is not appli-
11 cable, and

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

16 “(2) The actions referred to in paragraph (1)
17 are actions that are taken by the Secretary under
18 regulations which implement a fishery management
19 plan, including but not limited to actions that estab-
20 lish the date of closure of a fishery to commercial or
21 recreational fishing.

22 “(3) (A) Notwithstanding any other provision
23 of law, the Secretary shall file a response to any
24 complaint filed in accordance with paragraph (1) not
25 later than 45 days after the date the Secretary is

1 served with that complaint, except that the appro-
2 priate court may extend the period for filing such a
3 response upon a showing by the Secretary of good
4 cause for that extension.

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

9 “(4) Upon a motion by the person who files a
10 complaint under this subsection, the appropriate
11 court shall assign the matter for hearing at the ear-
12 liest possible date and shall expedite the matter in
13 every possible way.

14 “(f) ESTABLISHMENT OF FEES.—

15 “(1) The Secretary shall by regulation establish
16 the level of any fees that are authorized to be
17 charged pursuant to section 303(b)(1). The Sec-
18 retary may enter into a cooperative agreement with
19 the States concerned under which the States admin-
20 ister the permit system and the agreement may pro-
21 vide that all or part of the fees collected under the
22 system shall accrue to the States. The level of fees
23 charged under this paragraph shall not exceed the
24 administrative costs incurred in issuing the permits.

1 “(2)(A) Notwithstanding paragraph (1), the
2 Secretary shall collect a fee from each person hold-
3 ing an individual transferable quota pursuant to a
4 limited access system established under section
5 303(b)(6). Fees assessed under this paragraph shall
6 be sufficient to recover the cost of managing the
7 fishery to which the quota applies, including reason-
8 able costs for salaries, training, data analysis and
9 other costs directly related to fishery management
10 and enforcement, up to—

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

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

19 “(B) The Secretary, in consultation with the
20 Councils, shall promulgate regulations, prescribing
21 the method of determining the value of fish author-
22 ized to be taken, the amount of each fee, and the
23 method of collecting fees. Fees collected under this
24 paragraph shall meet the requirements of section
25 9701(b) of title 31, United States Code. Fees col-

1 lected under this paragraph shall be an offsetting
2 collection and shall be available only to the Secretary
3 for the purposes of administering and implementing
4 this Act in the region in which the fees were col-
5 lected.

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

13 “(g) EFFECT OF CERTAIN LAWS ON CERTAIN TIME
14 REQUIREMENTS.—The Secretary shall comply with any
15 applicable provisions of chapter 35 of title 44, United
16 States Code, chapter 6 of title 5, United States Code, and
17 Executive Order Numbered 12866, dated September 30,
18 1993, within the time limitations specified in subsections
19 (a) and (b).

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

1 **SEC. 113. ECOSYSTEM MANAGEMENT.**

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

4 **“SEC. 305. ECOSYSTEM MANAGEMENT.**

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

21 “(b) FISHERY RECOVERY EFFORT.—

22 “(1) The Council shall take immediate action to
23 prepare a fishery management plan, a plan amend-
24 ment, or proposed regulations for fisheries under
25 such Council’s authority—

1 “(A) to prevent overfishing of a fishery
2 from occurring whenever such fishery is classi-
3 fied under subsection (a) as approaching an
4 overfished condition, or

5 “(B) to stop overfishing of a fishery when-
6 ever such fishery is classified under subsection
7 (a) as overfished, and to rebuild affected stocks
8 of fish.

9 “(2) The Council shall submit a fishery man-
10 agement plan, amendment or proposed regulations
11 required under paragraph (1) to the Secretary with-
12 in 1 year from the date of transmittal of the report
13 on the status of stocks under subsection (a). For a
14 fishery that is overfished, such fishery management
15 plan, amendment or proposed regulations shall speci-
16 fy a time period for stopping overfishing and re-
17 building the fishery. The time period shall be as
18 short as possible, taking into account the status and
19 biology of the overfished stock of fish, the needs of
20 fishery-dependent communities, and the interaction
21 of the overfished stock of fish within the marine eco-
22 system. The time period may not be more than 10
23 years, except under extraordinary circumstances.

24 “(3) During the development of a fishery man-
25 agement plan, a plan amendment, or proposed regu-

1 lations under this subsection, the Council may re-
2 quest that the Secretary promulgate emergency reg-
3 ulations under subsection (e)(2) to reduce
4 overfishing. Any request by the Council under this
5 paragraph shall be deemed an emergency.

6 “(c) FISH HABITAT.—

7 “(1) The Secretary, in cooperation with the
8 Councils and the Secretary of the Interior, after no-
9 tice and public comment, shall identify the essential
10 fish habitat for each fishery for which a fishery
11 management plan is in effect. The identification
12 shall be based on the description of essential fish
13 habitat contained in the plan.

14 “(2) Each Council—

15 “(A) may comment on and make rec-
16 ommendations concerning any activity under-
17 taken, or proposed to be undertaken, by any
18 Federal or State agency that, in the view of the
19 Council, may have an adverse effect on essential
20 fish habitat of a fishery under its authority;
21 and

22 “(B) shall comment on and make rec-
23 ommendations to any Federal or State depart-
24 ment or agency concerning any such activity
25 that, in the view of the Council is likely to sub-

1 stantially affect the habitat of an anadromous
2 fishery resource under its jurisdiction.

3 “(3) If the Secretary receives information from
4 a Council or determines from other sources that an
5 action authorized, funded, carried out, or proposed
6 to be carried out by any Federal agency may result
7 in the destruction or adverse modification of any es-
8 sential fish habitat identified under paragraph (1),
9 the Secretary shall comment on and make rec-
10 ommendations to the Federal agency concerning that
11 action.

12 “(4) Within 45 days after receiving a comment
13 or recommendation under paragraphs (2) or (3)
14 from a Council or the Secretary, a Federal agency
15 shall provide a detailed response, in writing, to the
16 commenting Council and the Secretary regarding the
17 matter. The response shall include a description of
18 measures being considered by the agency for avoid-
19 ing, mitigating, or offsetting the impact of the activ-
20 ity on such habitat. In the case of a response that
21 is inconsistent with a recommendation from any
22 Council or the Secretary, the Federal agency shall
23 explain its reasons for not following the rec-
24 ommendations.

1 “(d) GEAR EVALUATION AND NOTIFICATION OF
2 ENTRY.—

3 “(1) Each Council shall submit to the Secretary
4 by June 1, 1996, information describing (A) all fish-
5 ing technologies employed under such Council’s au-
6 thority; and (B) all fisheries under the authority of
7 such Council. The Secretary shall compile such in-
8 formation, along with information to comply with
9 both (A) and (B) for fisheries to which section
10 302(a)(3) applies.

11 “(2) By July 15, 1996, the Secretary shall pub-
12 lish a proposed list of all technologies and fisheries,
13 for each Council and for fisheries to which section
14 302(a)(3) applies, in the Federal Register for a pub-
15 lic comment period of not less than 60 days. The
16 Secretary shall include with such list specific guide-
17 lines for determining when a technology or fishery is
18 sufficiently different from those listed as to require
19 notification under paragraph (3). Within 30 days
20 after the close of the public comment period the Sec-
21 retary shall publish in the Federal Register a final
22 list (including the guidelines), after taking into ac-
23 count any public comment received.

24 “(3) Beginning on the date that is 180 days
25 after the date of the publication of the final list re-

1 required under paragraph (2), no person or vessel
2 shall employ a fishing technology or engage in a
3 fishery that is not included on the final list for the
4 appropriate Council or for fisheries to which section
5 302(a)(3) applies without first giving 90 days ad-
6 vance written notice of the intent to employ such un-
7 listed technology or engage in such unlisted fishery
8 to the appropriate Council, or the Secretary with re-
9 spect to a fishery to which section 302(a)(3) applies.
10 Such notice shall be by first class mail, return re-
11 ceipt requested, and shall include information on the
12 use of the unlisted technology in other fisheries, if
13 any, and a detailed description, including drawings,
14 maps or diagrams if appropriate, of the unlisted
15 technology or unlisted fishery which such person or
16 vessel seeks to employ or engage in.

17 “(4) A Council may submit to the Secretary
18 amendments to the final list published under para-
19 graph (2) to reflect any substantial changes in the
20 fishing technologies employed or fisheries engaged in
21 under the authority of such Council. The Secretary
22 may submit any amendments for fisheries to which
23 section 302(a)(3) applies. The Secretary shall pub-
24 lish any such amendments in the Federal Register
25 as proposed amendments (along with any proposed

1 revisions to the guidelines) to the final list for a
2 public comment period of not less than 60 days.
3 Within 45 days of the close of the comment period,
4 the Secretary shall publish a revised final list incor-
5 porating such proposed amendments, after taking
6 into account any public comments received.

7 “(5) A Council may request the Secretary to
8 promulgate emergency regulations under subsection
9 (e) prohibiting any persons or vessels from employ-
10 ing an unlisted technology or engaging in an un-
11 listed fishery if the appropriate Council, or the Sec-
12 retary for fisheries to which section 302(a)(3) ap-
13 plies, determines that use of such technology or
14 entry into such fishery would compromise the effec-
15 tiveness of conservation and management efforts
16 under this Act.

17 “(6) If, after providing the notice required
18 under paragraph (3), no emergency regulations are
19 implemented under paragraph (5), the person or ves-
20 sel submitting notice under paragraph (3) may, after
21 the required 90 day period has lapsed, employ the
22 unlisted technology or enter the unlisted fishery to
23 which such notice applies. The signed return receipt
24 shall constitute adequate evidence of the submittal

1 of such notice and the date upon which the 90-day
2 period begins.

3 “(7) A violation of this subsection shall be con-
4 sidered a violation of section 307, punishable under
5 section 308.

6 “(e) EMERGENCY ACTIONS.—

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

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

16 “(A) the Secretary shall promulgate emer-
17 gency regulations under paragraph (1) to ad-
18 dress the emergency if the Council, by unani-
19 mous vote of the voting members of the Coun-
20 cil, requests the taking of such action; and

21 “(B) the Secretary may promulgate emer-
22 gency regulations under paragraph (1) to ad-
23 dress the emergency if the Council, by less than
24 a unanimous vote, requests the taking of such
25 action.

1 “(3) Any emergency regulation which changes
2 an existing fishery management plan shall be treated
3 as an amendment to such plan for the period in
4 which such regulation is in effect. Any emergency
5 regulation promulgated under this subsection—

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

8 “(B) shall, except as provided in subpara-
9 graph (C), remain in effect for not more than
10 180 days after the date of publication, and may
11 be extended by publication in the Federal Reg-
12 ister for an additional period of not more than
13 180 days, provided the public has had an op-
14 portunity to comment on the emergency regula-
15 tion, and, in the case of a Council recommenda-
16 tion for emergency regulations, the Council is
17 actively preparing a fishery management plan,
18 amendment, or proposed regulations to address
19 the emergency on a permanent basis;

20 “(C) that responds to a public health
21 emergency may remain in effect until the cir-
22 cumstances that created the emergency no
23 longer exist, provided that the Secretary of
24 Health and Human Services concurs with the
25 Secretary’s action and the public has an oppor-

1 tunity to comment after the regulation is pub-
2 lished;

3 “(D) that reduces overfishing may be ap-
4 proved without regard to the requirements of
5 section 301(a)(1); and

6 “(E) may be terminated by the Secretary
7 at an earlier date by publication in the Federal
8 Register of a notice of termination, except for
9 emergency regulations promulgated under para-
10 graph (2) in which case such early termination
11 may be made only upon the agreement of the
12 Secretary and the Council concerned.

13 “(4) The Secretary may, pursuant to guidelines
14 established by a Council in a fishery management
15 plan, close or restrict a particular fishery covered by
16 such fishery management plan in order to prevent
17 overfishing or reduce bycatch. Any such guidelines
18 shall specify appropriate means for providing timely
19 notice to fishermen of any closure or restriction. In
20 exercising the authority granted under this para-
21 graph, the Secretary shall not be required to provide
22 an opportunity for notice and comment if such clo-
23 sure or restriction is done in accordance with the
24 fishery management plan guidelines and does not ex-
25 tend beyond the end of the current fishing period es-

1 established for that fishery by the fishery management
2 plan.”.

3 **SEC. 114. STATE JURISDICTION.**

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

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

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

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

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

16 (3) by inserting after subparagraph (B) the fol-
17 lowing:

18 “(C) the owner or operator of the vessel
19 submits reports on the tonnage of fish received
20 from U.S. vessels and the locations from which
21 such fish were harvested, in accordance with
22 such procedures as the Secretary by regulation
23 shall prescribe.”.

1 **SEC. 115. PROHIBITED ACTS.**

2 (a) Section 307(1)(J)(i) (16 U.S.C. 1857(1)(J)(i)) is
3 amended by striking “American Lobster Fishery Manage-
4 ment Plan, as implemented by” and “, or any successor
5 to that plan, implemented under this title”.

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

8 “(L) to forcibly assault, resist, oppose, im-
9 pede, intimidate, sexually harass, or interfere
10 with any observer on a vessel under this Act, or
11 any data collector employed by or under con-
12 tract to the National Marine Fisheries Serv-
13 ice;”.

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

16 “(M) to engage in large-scale driftnet fish-
17 ing on a vessel of the United States or a vessel
18 subject to the jurisdiction of the United States
19 upon the high seas beyond the exclusive eco-
20 nomic zone of any nation or within the exclusive
21 economic zone of the United States, (and any
22 vessel that is shoreward of the outer boundary
23 of the exclusive economic zone of the United
24 States or beyond the exclusive economic zone of
25 any nation, and that has onboard gear that is
26 capable of use for large-scale driftnet fishing,

1 shall be presumed to be engaged in such fish-
2 ing, but that presumption may be rebutted);
3 or”.

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

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

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

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

12 “(iii) transshipment at sea of fish
13 products within the boundaries of any
14 State in accordance with a permit ap-
15 proved under section 204(b)(6)(A)(ii);”.

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

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

20 “(3) for any vessel of the United States, and
21 for the owner or operator of any vessel of the United
22 States, to transfer at sea directly or indirectly, or at-
23 tempt to so transfer at sea, any United States har-
24 vested fish to any foreign fishing vessel, while such
25 foreign vessel is within the exclusive economic zone

1 or within the boundaries of any State except to the
2 extent that the foreign fishing vessel has been per-
3 mitted under section 204(b)(6)(B) or section 306(c)
4 to receive such fish;”.

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

8 **SEC. 116. CIVIL PENALTIES AND PERMIT SANCTIONS.**

9 (a) The first sentence of section 308(b) (16 U.S.C.
10 1858(b)) is amended to read as follows: “Any person
11 against whom a civil penalty is assessed under subsection
12 (a), or against whom a permit sanction is imposed under
13 subsection (g) (other than a permit suspension for
14 nonpayment of penalty or fine), may obtain review thereof
15 in the United States district court for the appropriate dis-
16 trict by filing a complaint against the Secretary in such
17 court within 30 days from the date of such order.”.

18 (b) Section 308(g)(1)(C) (16 U.S.C. 1858(g)(1)(C))
19 is amended by striking the matter from “(C) any” through
20 “overdue,” and inserting the following: “(C) any amount
21 in settlement of a civil forfeiture imposed on a vessel or
22 other property, or any civil penalty or criminal fine im-
23 posed on a vessel or owner or operator of a vessel or any
24 other person who has been issued or has applied for a per-

1 mit under any marine resource law enforced by the Sec-
2 retary, has not been paid and is overdue.”.

3 (c) Section 308(16 U.S.C. 1858) is amended by in-
4 serting at the end thereof the following:

5 “(h) After deduction for any administrative or en-
6 forcement costs incurred or other expenditures authorized
7 under this Act, all funds collected under this section shall
8 be deposited in a separate account of the Ocean Conserva-
9 tion Trust Fund established under section 315.”.

10 **SEC. 117. ENFORCEMENT.**

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

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

15 (2) by inserting “of not less than 20 percent of
16 the penalty collected” after “reward” in subpara-
17 graph (B), and

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

20 “(E) claims of parties in interest to prop-
21 erty disposed of under section 612(b) of the
22 Tariff Act of 1930 (19 U.S.C. 1612(b)), as
23 made applicable by section 310(c) of this Act or
24 by any other marine resource law enforced by
25 the Secretary, to seizures made by the Sec-

1 retary, in amounts determined by the Secretary
2 to be applicable to such claims at the time of
3 seizure; and”.

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

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

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

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

24 “(1) an analysis of the adequacy of federal per-
25 sonnel and funding resources related to the enforce-

1 ment of fishery management plans and regulations
2 to implement such plans; and

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

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

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

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

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

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

18 “(f) REDUCTION OF WASTE.—

19 “(1) No later than June 1, 1996, the North Pa-
20 cific Fishery Management Council shall include in
21 each fishery management plan under its jurisdiction
22 conservation and management measures, including
23 fees or other incentives, to reduce bycatch in each
24 fishery. Notwithstanding section 304(d), in imple-
25 menting this subsection the Council may rec-

1 ommend, and the Secretary may approve and imple-
2 ment any such recommendation, consistent with the
3 other provisions of this Act, a system of fees to pro-
4 vide an incentive to reduce bycatch, and, in particu-
5 lar, economic and regulatory discards. Any such sys-
6 tem of fees or incentives shall be fair and equitable
7 to all fishermen and United States fish processors,
8 and shall not have economic allocation as its sole
9 purpose.

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

20 “(3) Beginning on January 1, 1998, such con-
21 servation and management measures shall include a
22 harvest preference or other incentives to fishing and
23 processing practices within each gear group that re-
24 sult in the lowest levels of economic discards, proc-
25 essing waste, regulatory discards, and other bycatch.

1 In determining which practices shall be given prior-
2 ity, the reduction of economic discards shall be given
3 the greatest weight, followed by processing waste
4 (where applicable), regulatory discards and other
5 bycatch, in that order.

6 “(4) In determining the level of target species
7 catch, economic discards, regulatory discards, other
8 bycatch, and processing waste, the Council and Sec-
9 retary shall base such determinations on observer
10 data or the best available information.

11 “(5) In the case of fisheries occurring under an
12 individual transferable quota system under the juris-
13 diction of the North Pacific Fishery Management
14 Council after January 1, 1998—

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

18 “(B) the Council may not recommend, and
19 the Secretary may not approve, any assignment
20 or allocation of individual transferable quotas
21 for regulatory discards, or non-target species
22 for those fisheries, other than for each individ-
23 ual fishing season on an annual basis pursuant
24 to subparagraph (C) of this paragraph; and

1 “(C) any harvest preference required under
2 paragraph (3) shall be implemented by giving
3 priority in the allocation of quotas for regu-
4 latory discards and non-target species and to
5 fishing practices that result in the lowest levels
6 of economic discards, regulatory discards, proc-
7 essing waste, and other bycatch.

8 “(6) Nothing in this section shall be construed
9 to preclude the North Pacific Fishery Management
10 Council from allocating a portion of any quota for
11 a directed fishery for use as bycatch in another fish-
12 ery or fisheries, if the Council determines such allo-
13 cation is necessary to prosecute a fishery, after tak-
14 ing into account the requirements of this section re-
15 garding reduction of bycatch and processing waste.

16 “(g) FULL RETENTION AND FULL UTILIZATION.—

17 “(1) The North Pacific Fishery Management
18 Council shall, consistent with the other provisions of
19 this Act, submit to the Secretary by January 1,
20 1997, a plan to phase-in by January 1, 2000, to the
21 maximum extent practicable, fishery management
22 plan amendments to require full retention by fishing
23 vessels and full utilization by United States fish
24 processors of all fishery resources, except regulatory
25 discards, caught under the jurisdiction of such

1 Council if such fishery resources cannot be quickly
2 returned alive to the sea with the expectation of ex-
3 tended survival.

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

10 “(3) In determining the maximum extent prac-
11 ticable, the North Pacific Fishery Management
12 Council shall consider—

13 “(A) the state of available technology;

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

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

20 “(D) the impact of different processing
21 practices on the price paid to fishermen and
22 processors;

23 “(E) the nature and economic costs of
24 each specific fishery; and

1 “(F) the effect of a full retention or full
2 utilization requirement in a given fishery on
3 other fisheries when compared with the bene-
4 ficial effect of reducing economic discards and
5 processing waste.

6 “(4) Notwithstanding section 304(f), the North
7 Pacific Fishery Management Council may propose,
8 and the Secretary may approve and implement any
9 such recommendation, consistent with the other pro-
10 visions of this Act, a system of fines or other incen-
11 tives to implement this section. Any such fines or in-
12 centive system shall be fair and equitable to all fish-
13 ing vessels and United States fish processors, and
14 shall not have economic allocation as its sole pur-
15 pose.

16 “(h) REGULATORY DISCARDS.—

17 “(1) Regulatory discards shall not be consid-
18 ered an economic discard for purposes of this sec-
19 tion, however, the North Pacific Fishery Manage-
20 ment Council shall seek to reduce the incidental
21 catch of regulatory discards to the maximum extent
22 practicable while allowing for the prosecution of fish-
23 eries under its jurisdiction.

24 “(2) Not later than June 1, 1996, the North
25 Pacific Fishery Management Council shall propose,

1 and the Secretary may approve and implement any
2 such recommendation, consistent with the other pro-
3 visions of this Act, for each groundfish fishery under
4 the Council's jurisdiction, conservation and manage-
5 ment measures to reduce the incidental harvest of
6 regulatory discards to the minimum level necessary
7 to prosecute directed fisheries for designated target
8 species, and to otherwise meet the requirements of
9 this section. Notwithstanding section 304(f), such
10 conservation and management measures may include
11 a system of fines, caps, or other incentives to reduce
12 the incidental harvest of regulatory discards. Any
13 system of fines or incentives under this section shall
14 be fair and equitable to all fishing vessels and Unit-
15 ed States fish processors, and shall not have eco-
16 nomic allocation as its sole purpose.

17 “(3) The North Pacific Fishery Management
18 Council shall establish for each fishery which inci-
19 dentally harvests regulatory discards under the
20 Council's jurisdiction a cap which prevents such reg-
21 ulatory discards from being overfished or from being
22 placed in risk of being overfished. Upon reaching
23 such cap, the commercial fishery in which such regu-
24 latory discards are incidentally caught shall be
25 closed for that season.

1 “(i) OBSERVER PROGRAM.—

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

5 “(A) 100 percent observer coverage on all
6 fishing vessels which can safely accommodate
7 an observer or observers, and at all United
8 States fish processors to the extent that fund-
9 ing for such coverage is available, and

10 “(B) for vessels which cannot safely ac-
11 commodate an observer, statistically reliable
12 sampling of a fishing vessel’s effort in each
13 fishery in which that fishing vessel participates,
14 when such vessel or processor is fishing in a fishery
15 under the North Pacific Fishery Management Coun-
16 cil’s jurisdiction. In implementing subparagraph (A)
17 the North Pacific Fishery Management Council shall
18 require that more than one observer be stationed on
19 a fishing vessel or at a United States fish processor
20 whenever the Council determines that more than one
21 such observer is necessary to accurately monitor that
22 vessel or processor’s operation.

23 “(2) Observers stationed on fishing vessels or at
24 United States fish processors under the authority of
25 this section shall be paid by the Secretary using

1 funds deposited in the North Pacific Fishery Ob-
2 server Fund. Such payment shall not make an ob-
3 server an employee of the Federal Government, un-
4 less such observer is otherwise employed by an agen-
5 cy of the United States.

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

15 “(4) Notwithstanding sections 304(f) and sub-
16 section (b), the Secretary is authorized to recover
17 from vessels participating in a fishery under an indi-
18 vidual fishing quota regime or other limited access
19 program established by the North Pacific Fishery
20 Management Council, the full cost of any observers
21 stationed on such vessel (including all costs for sala-
22 ries, expenses, equipment, food and lodging, trans-
23 portation, insurance, and analysis of observer data,
24 plus reasonable costs for training and administrative
25 overhead). Each participant in an individual fishing

1 quota regime shall only be required to contribute the
2 same proportion of the costs as that participant's
3 quota shares represent to the total number of quota
4 shares in such regime. To the extent that the costs
5 recovered under this paragraph exceed the fee estab-
6 lished by the Council under subsection (b), the Sec-
7 retary shall deduct any payment by a vessel under
8 subsection (b) from the amount owed by such vessel
9 under this paragraph. The Secretary shall deposit
10 any fees collected under this paragraph in the North
11 Pacific Fishery Observer Fund account in the Unit-
12 ed States Treasury.

13 “(j) INDUSTRY ASSISTANCE.—

14 “(1) The Secretary shall submit a plan by Jan-
15 uary 1, 1996, to the Committee on Commerce,
16 Science, and Transportation of the Senate and the
17 Committee on Resources of the House of Represent-
18 atives to develop jointly with industry accurate
19 methods of weighing the fish harvested by United
20 States fishing vessels in fisheries under the jurisdic-
21 tion of the North Pacific Fishery Management
22 Council. Such plan shall include methods for assess-
23 ing contributions from industry to fund such devel-
24 opment, as well as recommendations from the Sec-

1 retary concerning the level of funds needed to suc-
2 cessfully implement the plan in fiscal year 1997.

3 “(2) The Secretary shall submit by January 1,
4 1996, to the Committee on Commerce, Science, and
5 Transportation of the Senate and the Committee on
6 Resources of the House of Representatives a plan to
7 develop markets and harvesting and processing tech-
8 niques for arrowtooth flounder. The Secretary shall
9 include in such plan recommendations concerning
10 the level of funds needed to successfully implement
11 the plan in fiscal year 1997.

12 “(3) For fiscal years 1996, 1997, 1998, and
13 1999, \$50,000 is authorized to be appropriated for
14 the purposes of implementing paragraph (1), and
15 \$250,000 is authorized to be appropriated for pro-
16 grams to implement paragraph (2).

17 “(k) DEFINITION.—For the purposes of this section,
18 ‘processing waste’ means that portion of a fish which is
19 processed and which could be used for human consump-
20 tion or other commercial use, but which is not so used.”.

21 **SEC. 119. TRANSITION TO SUSTAINABLE FISHERIES.**

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

24 **“SEC. 315. TRANSITION TO SUSTAINABLE FISHERIES.**

25 “(a) SUSTAINABLE DEVELOPMENT STRATEGY.—

1 “(1) At the discretion of the Secretary or at the
2 request of the Governor of an affected State or a
3 fishery dependent community, the Secretary, in con-
4 sultation with the Councils and Federal agencies, as
5 appropriate, may work with regional authorities, af-
6 fected States, fishery dependent communities, the
7 fishing industry, conservation organizations, and
8 other interested parties, to develop a sustainable de-
9 velopment strategy for any fishery classified as
10 overfished under section 305(a) or determined to be
11 a commercial fishery failure under section 316.

12 “(2) Such sustainable development strategy
13 shall—

14 “(A) take into consideration the economic,
15 social, and ecological factors affecting the fish-
16 ery and provide recommendations for address-
17 ing such factors in the development of a fishery
18 recovery effort under section 305(b);

19 “(B) identify Federal and State programs
20 which can be used to provide assistance to fish-
21 ery dependent communities during development
22 and implementation of a fishery recovery effort;

23 “(C) develop a balanced and comprehensive
24 long-term plan to guide the transition to a sus-
25 tainable fishery, identifying alternative eco-

1 nomic opportunities and establishing long-term
2 objectives for the fishery including vessel types
3 and sizes, harvesting and processing capacity,
4 and optimal fleet size;

5 “(D) establish procedures to implement
6 such a plan and facilitate consensus and coordi-
7 nation in regional decision-making; and

8 “(E) include any program established
9 under subsection (b) to reduce the number of
10 vessels or level of capital investment in the fish-
11 ery.

12 “(2) REPORT.—The Secretary shall complete
13 and submit to the Congress a report on any sustain-
14 able development strategy developed under this sec-
15 tion within 6 months and annually thereafter.

16 “(b) BUY-OUT PROGRAM.—

17 “(1) The Secretary, in consultation with the ap-
18 propriate Council, may develop and implement a
19 buy-out program for fishing vessels or permits in a
20 fishery for the purpose of reducing the number of
21 fishing vessels and fishing effort in such fishery, if
22 the Secretary, with the concurrence of the majority
23 of the voting members of such Council, determines
24 that a buy-out program is necessary for the develop-

1 ment and implementation of a fishery recovery effort
2 under section 305(b).

3 “(2) Any buy-out program developed or imple-
4 mented in a fishery shall—

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

10 “(B) require fishing vessels or permits ac-
11 quired under such program to be disposed of in
12 a manner ensuring that such vessels or permits
13 do not re-enter the fishery or contribute to ex-
14 cess fishing effort in other fisheries;

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

19 “(i) any strategy developed under sub-
20 section (a);

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

23 “(iii) the need to minimize program
24 costs;

1 “(D) establish procedures (such as submis-
2 sion of owner bid under an auction system or
3 fair market-value assessment) to be used in de-
4 termining the level of payment for fishing ves-
5 sels or permits acquired under the program;
6 and

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

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

18 “(4) Notwithstanding section 305(f)(1), the
19 Secretary, with the concurrence of a majority of the
20 voting members of the affected Council, may estab-
21 lish a fee system to collect those funds required for
22 the non-Federal share of such program that are not
23 available from other non-Federal sources. Under
24 such fee system, the Secretary may assess an annual
25 fee on holders of fishing permits in the fishery for

1 which the buy-out program is established which may
2 not exceed 5 percent annually of the value of the
3 fish harvested under the fishing permit. Assessments
4 may not be used to pay any costs of administrative
5 overhead or other costs not directly incurred in car-
6 rying out the specific buy-out program under which
7 they are collected. Assessments shall be deposited in
8 the Ocean Conservation Trust fund established
9 under subsection (d) and shall be considered part of
10 the non-Federal share of the cost of a buyout pro-
11 gram.

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

16 “(i) submit the proposed program and reg-
17 ulations necessary for its implementation to the
18 appropriate Council for consideration and com-
19 ment; and

20 “(ii) publish in the Federal Register a no-
21 tice stating that the proposed program and reg-
22 ulations are available and that written data,
23 views, or comments of interested persons on the
24 proposed program and regulations may be sub-
25 mitted to the Secretary during the 60-day pe-

1 riod beginning on the date the notice is pub-
2 lished.

3 “(B) During the 60-day public comment pe-
4 riod—

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

8 “(ii) the appropriate Council shall submit
9 its comments and recommendations, if any, re-
10 garding the proposed program and regulations.

11 “(C) Within 45 days after the close of the pub-
12 lic comment period, the Secretary, in consultation
13 with the affected Council, shall analyze the public
14 comment received and publish a final buy-out pro-
15 gram and regulations for its implementation. The
16 Secretary shall include an explanation of any sub-
17 stantive differences between the proposed and final
18 program and regulations.

19 “(c) TASK FORCE.—The Secretary shall establish a
20 task force to assist in the development of a sustainable
21 development strategy or a buy-out program under this sec-
22 tion. Such task force shall, at a minimum, consist of mem-
23 bers of the affected communities and individuals with ex-
24 pertise in fishery management and conservation, econom-
25 ics, and sociology. Members of the task force are author-

1 ized to receive per diem and travel expenses consistent
2 with section 302 of this Act.

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

14 **“SEC. 316. FISHERIES DISASTER RELIEF.**

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

21 “(1) natural causes;

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

25 “(3) undetermined causes.

1 “(b) ECONOMIC ASSISTANCE.—

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

8 “(A) assessing the economic and social ef-
9 fects of the commercial fishery failure; and

10 “(B) any activity that the Secretary deter-
11 mines is appropriate to restore the fishery or
12 prevent a similar failure in the future and to
13 assist a fishery dependent community affected
14 by such failure.

15 “(2) Before making funds available for an ac-
16 tivity authorized under this section, the Secretary
17 shall make a determination that such activity will
18 not expand the size or scope of the commercial fish-
19 ery failure into other fisheries or other geographic
20 regions.

21 “(c) FEDERAL COST-SHARING.—The Federal share
22 of the cost of any activity carried out under the authority
23 of this section shall not exceed 75 percent of the cost of
24 that activity.

1 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary such
3 sums as are necessary for each of the fiscal years 1995,
4 1996, 1997, 1998 and 1999, provided that such sums are
5 designated by Congress as an emergency requirement pur-
6 suant to section 251(b)(2)(D)(i) of the Balanced Budget
7 and Emergency Deficit Control Act of 1985.”.

8 (b) Section 2(b)(1)(A) of the Act of August 11, 1939
9 (15 U.S.C. 713c-3(b)(1)(A)) is amended—

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

11 and

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

14 “(iii) to fund the Federal share of a
15 buy-out program established under section
16 315(b) of the Magnuson Fishery Conserva-
17 tion and Management Act.”.

18 **TITLE II—FISHERY MONITORING** 19 **AND RESEARCH**

20 **SEC. 201. CHANGE OF TITLE.**

21 The heading of title IV (16 U.S.C. 1881 et seq.) is
22 amended to read as follows:

1 **“TITLE IV—FISHERY**
2 **MONITORING AND RESEARCH”.**

3 **SEC. 202. REGISTRATION AND DATA MANAGEMENT.**

4 Title IV (16 U.S.C. 1881 et seq.) is amended by in-
5 serting after the title heading the following:

6 **“SEC. 401. REGISTRATION AND DATA MANAGEMENT.**

7 “(a) STANDARDIZED FISHING VESSEL REGISTRA-
8 TION AND DATA MANAGEMENT SYSTEM.—The Secretary
9 shall, in cooperation with the Secretary of the department
10 in which the Coast Guard is operating, the States, the
11 Councils, and Marine Fisheries Commissions, develop rec-
12 ommendations for implementation of a standardized fish-
13 ing vessel registration and data management system on
14 a regional basis. The proposed system shall be developed
15 after consultation with interested governmental and non-
16 governmental parties and shall—

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

22 “(2) integrate programs under existing fishery
23 management plans into a nonduplicative data collec-
24 tion and management system;

1 “(3) avoid duplication of existing state, tribal,
2 or federal systems (other than a federal system
3 under paragraph (1)) and utilize, to the maximum
4 extent practicable, information collected from exist-
5 ing systems;

6 “(4) provide for implementation through coop-
7 erative agreements with appropriate State, regional,
8 or tribal entities and Marine Fisheries Commissions;

9 “(5) establish standardized units of measure-
10 ment, nomenclature, and formats for the collection
11 and submission of information;

12 “(6) minimize the paperwork required for ves-
13 sels registered under the system;

14 “(7) include all species of fish within the geo-
15 graphic areas of authority of the Councils and all
16 fishing vessels, except for private recreational fishing
17 vessels used exclusively for pleasure; and

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

21 “(b) FISHING VESSEL INFORMATION.—The registra-
22 tion and data management system should, at a minimum,
23 obtain the following information for each fishing vessel—

1 “(1) the name and official number or other
2 identification, together with the name and address of
3 the owner or operator or both;

4 “(2) vessel capacity, type and quantity of fish-
5 ing gear, mode of operation (catcher, catcher proc-
6 essor or other), and such other pertinent information
7 with respect to vessel characteristics as the Sec-
8 retary may require;

9 “(3) identification of the fisheries in which the
10 fishing vessel participates;

11 “(4) estimated amounts of fish caught, and
12 processed (if applicable) in each fishery; and

13 “(5) the geographic area of operations and the
14 season or period during which the fishing vessel op-
15 erates.

16 “(c) FISHERY INFORMATION.—The registration and
17 data management system should, at a minimum, provide
18 basic fisheries performance data for each fishery, includ-
19 ing—

20 “(1) the number of vessels participating in the
21 fishery;

22 “(2) the time period in which the fishery oc-
23 curs;

24 “(3) the approximate geographic location, or of-
25 ficial reporting area where the fishery occurs;

1 “(4) a description of fishery gear used in the
2 fishery, including the amount of such gear and the
3 appropriate unit of fishery effort;

4 “(5) catch and ex-vessel value of the catch for
5 each stock of fish in the fishery; and

6 “(6) the amount and types of economic and
7 regulatory discards, and an estimate of any other
8 bycatch.

9 “(d) PUBLIC COMMENT.—Within one year after the
10 date of enactment of the Sustainable Fisheries Act, the
11 Secretary shall publish in the Federal Register for a 60-
12 day public comment period, a proposal that would provide
13 for implementation of a standardized fishing vessel reg-
14 istration and data collection system that meets the re-
15 quirements of subsections (a) through (c). The proposal
16 shall include—

17 “(1) a description of the arrangements for con-
18 sultation and cooperation with the department in
19 which the Coast Guard is operating, the States, the
20 Councils, Marine Fisheries Commissions, the fishing
21 industry and other interested parties; and

22 “(2) proposed regulations and legislation nec-
23 essary to implement the proposal.

24 “(e) CONGRESSIONAL TRANSMITTAL.—Within 60
25 days after the end of the comment period and after consid-

1 eration of comments received under subsection (d), the
2 Secretary shall transmit to the Committee on Commerce,
3 Science, and Transportation of the Senate and the Com-
4 mittee on Resources of the House of Representatives a
5 proposal for implementation of a national fishing vessel
6 registration system that includes—

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

9 “(2) a proposed implementation schedule; and

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

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

24 **SEC. 203. DATA COLLECTION.**

25 Section 402 is amended to read as follows:

1 **“SEC. 402. DATA COLLECTION.**

2 “(a) COUNCIL REQUESTS.—If a Council determines
3 that additional information and data (other than informa-
4 tion and data that would disclose proprietary or confiden-
5 tial commercial or financial information regarding fishing
6 operations or fish processing operations) would be bene-
7 ficial for developing, implementing, or revising a fishery
8 management plan or for determining whether a fishery is
9 in need of management, the Council may request that the
10 Secretary implement a data collection program for the
11 fishery which would provide the types of information and
12 data (other than information and data that would disclose
13 proprietary or confidential commercial or financial infor-
14 mation regarding fishing operations or fish processing op-
15 erations) specified by the Council. The Secretary shall ap-
16 prove such a data collection program if he determines that
17 the need is justified, and shall promulgate regulations to
18 implement the program within 60 days after such deter-
19 mination is made. If the Secretary determines that the
20 need for a data collection program is not justified, the Sec-
21 retary shall inform the Council of the reasons for such
22 determination in writing. The determinations of the Sec-
23 retary under this subsection regarding a Council request
24 shall be made within a reasonable period of time after re-
25 ceipt of that request.

1 “(b) CONFIDENTIALITY OF INFORMATION.—Any in-
2 formation submitted to the Secretary by any person in
3 compliance with any requirement under this Act shall be
4 confidential and shall not be disclosed if disclosure would
5 significantly impair the commercial interests of the person
6 from whom the information was obtained, except—

7 “(1) to Federal employees and Council employ-
8 ees who are responsible for fishery management plan
9 development and monitoring;

10 “(2) to State or Marine Fisheries Commission
11 employees pursuant to an agreement with the Sec-
12 retary that prevents public disclosure of the identity
13 or business of any person;

14 “(3) when required by court order;

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

18 “(5) unless the Secretary has obtained written
19 authorization from the person submitting such infor-
20 mation to release such information and such release
21 does not violate other requirements of this sub-
22 section.

23 The Secretary shall, by regulation, prescribe such proce-
24 dures as may be necessary to preserve such confidentiality,
25 except that the Secretary may release or make public any

1 such information in any aggregate or summary form
2 which does not directly or indirectly disclose the identity
3 or business of any person who submits such information.
4 Nothing in this subsection shall be interpreted or con-
5 strued to prevent the use for conservation and manage-
6 ment purposes by the Secretary, or with the approval of
7 the Secretary, the Council, of any information submitted
8 in compliance with regulations promulgated under this
9 Act.

10 “(c) RESTRICTION ON USE OF CERTAIN DATA.—

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

22 “(2) The Secretary may not require the submis-
23 sion of a Federal or State income tax return or
24 statement as a prerequisite for issuance of a Federal
25 fishing permit until such time as the Secretary has

1 promulgated regulations to ensure the confidentiality
2 of information contained in such return or state-
3 ment, to limit the information submitted to that nec-
4 essary to achieve a demonstrated conservation and
5 management purpose, and to provide appropriate
6 penalties for violation of such regulations.”.

7 **SEC. 204. OBSERVERS.**

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

10 **“SEC. 403. OBSERVERS.**

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

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

23 “(2) actions which vessel owners or operators
24 may reasonably be asked to take to render such fa-
25 cilities adequate and safe.

1 “(b) TRAINING.—The Secretary, in cooperation with
2 State programs and the National Sea Grant College Pro-
3 gram, shall—

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

9 “(2) require that an observer demonstrate com-
10 petence in fisheries science and statistical analysis at
11 a level sufficient to enable such person to fulfill the
12 responsibilities of the position.

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

17 **SEC. 205. FISHERIES RESEARCH.**

18 Section 404 is amended to read as follows:

19 **“SEC. 404. FISHERIES RESEARCH.**

20 “(a) IN GENERAL.—The Secretary shall initiate and
21 maintain, in cooperation with the Councils, a comprehen-
22 sive program of fishery research to carry out and further
23 the purposes, policy, and provisions of this Act. Such pro-
24 gram shall be designed to acquire knowledge and informa-

1 tion, including statistics, on fishery conservation and man-
2 agement and on the economics of the fisheries.

3 “(b) STRATEGIC PLAN.—Within one year after the
4 date of enactment of the Sustainable Fisheries Act, and
5 at least every 3 years thereafter, the Secretary shall de-
6 velop and publish in the Federal Register a strategic plan
7 for fisheries research for the five years immediately follow-
8 ing such publication. The plan shall—

9 “(1) identify and describe a comprehensive pro-
10 gram with a limited number of priority objectives for
11 research in each of the areas specified in subsection
12 (c);

13 “(2) indicate the goals and timetables for the
14 program described in paragraph (1); and

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

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

19 “(1) Research to support fishery conservation
20 and management, including but not limited to, re-
21 search on the economics of fisheries and biological
22 research concerning the abundance and life history
23 parameters of stocks of fish, the interdependence of
24 fisheries or stocks of fish, the identification of essen-
25 tial fish habitat, the impact of pollution on fish pop-

1 ulations, the impact of wetland and estuarine deg-
2 radation, and other matters bearing upon the abun-
3 dance and availability of fish.

4 “(2) Conservation engineering research, includ-
5 ing the study of fish behavior and the development
6 and testing of new gear technology and fishing tech-
7 niques to minimize bycatch and any adverse effects
8 on essential fish habitat and promote efficient har-
9 vest of target species.

10 “(3) Information management research, includ-
11 ing the development of a fishery information base
12 and an information management system that will
13 permit the full use of data in the support of effective
14 fishery conservation and management.

15 “(d) PUBLIC NOTICE.—In developing the plan re-
16 quired under subsection (a), the Secretary shall consult
17 with relevant Federal, State, and international agencies,
18 scientific and technical experts, and other interested per-
19 sons, public and private, and shall publish a proposed plan
20 in the Federal Register for the purpose of receiving public
21 comment on the plan. The Secretary shall ensure that af-
22 fected commercial fishermen are actively involved in the
23 development of the portion of the plan pertaining to con-
24 servation engineering research. Upon final publication in
25 the Federal Register, the plan shall be submitted by the

1 Secretary to the Committee on Commerce, Science, and
2 Transportation of the Senate and the Committee on Re-
3 sources of the House of Representatives.”.

4 **SEC. 206. INCIDENTAL HARVEST RESEARCH.**

5 Section 405 is amended to read as follows:

6 **“SEC. 405. INCIDENTAL HARVEST RESEARCH.**

7 “(a) COLLECTION OF DATA.—Within 9 months after
8 the date of enactment of the Sustainable Fisheries Act,
9 the Secretary shall, after consultation with the Gulf of
10 Mexico Fishery Management Council and South Atlantic
11 Fishery Management Council, conclude the collection of
12 data in the program to assess the impact on fishery re-
13 sources of incidental harvest by the shrimp trawl fishery
14 within the authority of such Councils. Within the same
15 time period, the Secretary shall make available to the pub-
16 lic aggregated summaries of data collected prior to June
17 30, 1994 under such program.

18 “(b) IDENTIFICATION OF STOCK.—The program con-
19 cluded pursuant to subsection (a) shall provide for the
20 identification of stocks of fish which are subject to signifi-
21 cant incidental harvest in the course of normal shrimp
22 trawl fishing activity.

23 “(c) COLLECTION AND ASSESSMENT OF SPECIFIC
24 STOCK DATA.—For stocks of fish identified pursuant to
25 subsection (b), with priority given to stocks which (based

1 upon the best available scientific information) are consid-
2 ered to be overfished, the Secretary shall conduct—

3 “(1) a program to collect and evaluate data on
4 the nature and extent (including the spatial and
5 temporal distribution) of incidental mortality of such
6 stocks as a direct result of shrimp trawl fishing ac-
7 tivities;

8 “(2) an assessment of the status and condition
9 of such stocks, including collection of information
10 which would allow the estimation of life history pa-
11 rameters with sufficient accuracy and precision to
12 support sound scientific evaluation of the effects of
13 various management alternatives on the status of
14 such stocks; and

15 “(3) a program of data collection and evalua-
16 tion for such stocks on the magnitude and distribu-
17 tion of fishing mortality and fishing effort by
18 sources of fishing mortality other than shrimp trawl
19 fishing activity.

20 “(d) INCIDENTAL MORTALITY REDUCTION PRO-
21 GRAM.—The Secretary shall, in cooperation with affected
22 interests, commence a program to design and evaluate the
23 efficacy of technological devices and other changes in fish-
24 ing technology for the reduction of incidental mortality of
25 nontarget fishery resources in the course of shrimp trawl

1 fishing activity which are designed to be inexpensive to
2 operate and which cause insignificant loss of shrimp. Such
3 program shall take into account local conditions and in-
4 clude evaluation of any reduction in incidental mortality,
5 as well as any reduction or increase in the retention of
6 shrimp in the course of normal fishing activity.

7 “(e) REPORT TO THE CONGRESS.—The Secretary
8 shall, within one year of completing the programs required
9 by this subsection, submit a detailed report on the results
10 of such programs to the Committee on Commerce,
11 Science, and Transportation of the Senate and the Com-
12 mittee on Resources of the House of Representatives.

13 “(f) IMPLEMENTATION CRITERIA.—Any measure im-
14 plemented under this Act to reduce the incidental mortal-
15 ity of nontarget fishery resources in the course of shrimp
16 trawl fishing shall, to the extent practicable—

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

19 “(2) be implemented first in those areas and at
20 those times where the greatest reduction of such in-
21 cidental mortality can be achieved.”.

22 **SEC. 207. REPEAL.**

23 Section 406 (16 U.S.C. 1882) is repealed.

1 **SEC. 208. CLERICAL AMENDMENTS.**

2 The table of contents is amended by striking the mat-
3 ter relating to title IV and inserting the following:

“Sec. 315. Transition to sustainable fisheries.
“Sec. 316. Fisheries disaster relief.

“TITLE IV—FISHERY MONITORING AND RESEARCH

“Sec. 401. Registration.
“Sec. 402. Data collection.
“Sec. 403. Observers.
“Sec. 404. Fisheries research.
“Sec. 405. Incidental harvest research.”.

4 **TITLE III—FISHERIES STOCK**
5 **RECOVERY FINANCING**

6 **SEC. 301. SHORT TITLE.**

7 This title may be cited as the “Fisheries Stock Recov-
8 ery Financing Act”.

9 **SEC. 302. FISHERIES STOCK RECOVERY REFINANCING.**

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

13 “Sec. 1111. (a) Pursuant to the authority granted
14 under section 1103(a) of this title, the Secretary shall,
15 under such terms and conditions as the Secretary shall
16 prescribe by regulation, guarantee and make commitments
17 to guarantee the principal of, and interest on, obligations
18 which aid in refinancing, in a manner consistent with the
19 reduced cash flows available to obligors because of reduced
20 harvesting allocations during implementation of a fishery
21 recovery effort, existing obligations relating to fishing ves-

1 sels or fishery facilities. Guarantees under this section
2 shall be subject to all other provisions of this title not in-
3 consistent with the provisions of this section. The provi-
4 sions of this section shall, notwithstanding any other pro-
5 visions of this title, apply to guarantees under this section.

6 “(b) Obligations eligible to be refinanced under this
7 section shall include all obligations which financed or refi-
8 nanced any expenditures associated with the ownership or
9 operation of fishing vessels or fishery facilities, including
10 but not limited to expenditures for reconstructing, recon-
11 ditioning, purchasing, equipping, maintaining, repairing,
12 supplying, or any other aspect whatsoever of operating
13 fishing vessels or fishery facilities, excluding only such
14 obligations—

15 “(1) which were not in existence prior to the
16 time the Secretary approved a fishery recovery effort
17 eligible for guarantees under this section and whose
18 purpose, in whole or in part, involved expenditures
19 which resulted in increased vessel harvesting capaci-
20 ty; and

21 “(2) as may be owed by an obligor either to any
22 stockholder, partner, guarantor, or other principal of
23 such obligor or to any unrelated party if the purpose
24 of such obligation had been to pay an obligor’s pre-

1 existing obligation to such stockholder, partner,
2 guarantor, or other principal of such obligor.

3 “(c) The Secretary shall refinance up to 100 percent
4 of the principal of, and interest on, such obligations, but,
5 in no event, shall the Secretary refinance an amount ex-
6 ceeding 75 percent of the unencumbered (after deducting
7 the amount to be refinanced by guaranteed obligations
8 under this section) market value, as determined by an
9 independent marine surveyor, of the fishing vessel or fish-
10 ery facility to which such obligations relate plus 75 percent
11 of the unencumbered (including but not limited to home-
12 stead exemptions) market value, as determined by an inde-
13 pendent marine surveyor, of all other supplementary col-
14 lateral. The Secretary shall do so regardless of—

15 “(1) any fishing vessel or fishery facility’s ac-
16 tual cost or depreciated actual cost; and

17 “(2) any limitations elsewhere in this title on
18 the amount of obligations to be guaranteed or such
19 amount’s relationship to actual cost or depreciated
20 actual cost.

21 “(d) Obligations guaranteed under this section shall
22 have such maturity dates and other provisions as are con-
23 sistent with the intent and purpose of this section (includ-
24 ing but not limited to provisions for obligors to pay only
25 the interest accruing on the principal of such obligations

1 during the period in which fisheries stocks are recovering,
2 with the principal and interest accruing thereon being
3 fully amortized between the date stock recovery is pro-
4 jected to be completed and the maturity date of such obli-
5 gations).

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

8 “(f) The Secretary shall neither make commitments
9 to guarantee nor guarantee obligations under this section
10 unless—

11 “(1) the Secretary has first approved the fish-
12 ery recovery effort, for the fishery in which vessels
13 eligible for the guarantee of obligations under this
14 section are participants; and

15 “(2) the Secretary has considered such factors
16 as—

17 “(A) the projected degree and duration of
18 reduced fisheries allocations;

19 “(B) the projected reduction in fishing ves-
20 sel and fishery facility cash flows;

21 “(C) the projected severity of the impact
22 on fishing vessels and fishery facilities;

23 “(D) the projected effect of the fishery re-
24 covery effort;

1 “(E) the provisions of any related fishery
2 management plan under the Magnuson Fishery
3 Conservation and Management Act (16 U.S.C.
4 1801 et seq.); and

5 “(F) the need for and advisability of guar-
6 antees under this section;

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

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

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

1 and the Fishery Recovery Refinancing Account shall be
2 segregated accordingly.

3 “(h) For the purposes of this section, the term ‘fish-
4 ery recovery effort’ means a fishery management plan,
5 amendment, or regulations required under section 305(b)
6 of the Magnuson Fishery Conservation and Management
7 Act (16 U.S.C. 1854(b)) to rebuild a fishery which the
8 Secretary has determined to be a commercial fishery fail-
9 ure under section 316 of such Act.”.

10 **SEC. 303. FEDERAL FINANCING BANK RELATING TO FISH-**
11 **ING VESSELS AND FISHERY FACILITIES.**

12 Section 1104A(b)(2) of the Merchant Marine Act,
13 1936 (46 U.S.C. 1274(b)(2)), is amended by striking
14 “*Provided, further,* That in the case of a fishing vessel or
15 fishery facility, the obligation shall be in an aggregate
16 principal amount equal to 80 percent of the actual cost
17 or depreciated actual cost of the fishing vessel or fishery
18 facility, except that no debt may be placed under this pro-
19 viso through the Federal Financing Bank:” and inserting
20 the following: “*Provided, further,* That in the case of a
21 fishing vessel or fishery facility, the obligation shall be in
22 an aggregate principal amount not to exceed 80 percent
23 of the actual cost or depreciated actual cost of the fishing
24 vessel or fishery facility, and obligations related to fishing
25 vessels and fishery facilities under this title shall be placed

1 through the Federal Financing Bank unless placement
2 through the Federal Financing Bank is not reasonably
3 available or placement elsewhere is available at a lower
4 annual effective yield than placement through the Federal
5 Financing Bank:”.

6 **SEC. 304. FEES FOR GUARANTEEING OBLIGATIONS.**

7 Section 1104A(e) of the Merchant Marine Act, 1936
8 (46 U.S.C. 1274(e)), is amended to read as follows:

9 “(e)(1) The Secretary is authorized to fix a fee for
10 the guarantee of obligations under this title. Obligors shall
11 pay all such fees to the Secretary when moneys are first
12 advanced under guaranteed obligations and at least 60
13 days prior to each anniversary date thereafter. All such
14 fees shall be computed and shall be payable to the Sec-
15 retary under such regulations as the Secretary may pre-
16 scribe.

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

19 “(A) if the obligation will not be purchased by
20 the Federal Financing Bank, be in an amount equal
21 to 1 percent per year of the average principal
22 amount of the obligation outstanding (unless such
23 obligation is issued under section 1111 of this title,
24 in which case such fee shall be 1 and one-half per-
25 cent per year of such average principal amount; and

1 “(B) if the obligation will be purchased by the
2 Federal Financing Bank, be in an amount equal to
3 2 percent per year of the average principal amount
4 of the obligation outstanding (unless such obligation
5 is issued under section 1111 of this title, in which
6 case such fee shall be 2 and one-half percent per
7 year of such average principal amount), less any fee
8 the Federal Financing Bank customarily charges for
9 its services with respect to federally guaranteed obli-
10 gations purchased by it and less the amount, if any,
11 by which the interest rate on such obligation (which
12 shall be fixed at the time the Federal Financing
13 Bank commits to purchase such obligation) exceeds
14 the current new issue rate on outstanding market-
15 able obligations of the United States of comparable
16 maturity.

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

19 “(A) if the security for the guarantee of an ob-
20 ligation under this title relates to a delivered vessel,
21 not be less than one-half of 1 percent per year nor
22 more than 1 percent per year of the average prin-
23 cipal amount of such obligation outstanding, exclud-
24 ing the average amount (except interest) on deposit

1 in an escrow fund created under section 1108 of this
2 title; and

3 “(B) if the security for the guarantee of an ob-
4 ligation under this title relates to a vessel to be con-
5 structed, reconstructed, or reconditioned, not be less
6 than one-quarter of 1 percent per year nor more
7 than one-half of 1 percent per year of the average
8 principal amount of such obligation outstanding, ex-
9 cluding the average amount (except interest) on de-
10 posit in an escrow fund created under section 1108
11 of this title. For the purposes of this subsection, if
12 the security for the guarantee of an obligation under
13 this title relates both to a delivered vessel or vessels
14 and to a vessel or vessels to be constructed, recon-
15 structed, or reconditioned, the principal amount of
16 such obligation shall be prorated in accordance with
17 regulations prescribed by the Secretary. The regula-
18 tions to be prescribed by the Secretary under this
19 subsection shall provide a formula for determining
20 the creditworthiness of obligors under which the
21 most creditworthy obligors pay a fee computed on
22 the lowest allowable percentage and the least credit-
23 worthy obligors pay a fee which may be computed on
24 the highest allowable percentage (the range of cred-

1 itworthiness to be based on obligors which have ac-
 2 tually issued guaranteed obligations).”.

3 **SEC. 305. SALE OF ACQUIRED COLLATERAL.**

4 Section 1104A(a)(3) of the Merchant Marine Act,
 5 1936 (46 U.S.C. 1274(a)(3)), is amended by inserting
 6 after “financing” the following: “(without requiring sub-
 7 sidiy cost ceiling or other authorization under the Federal
 8 Credit Reform Act of 1990)”.

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S 39 IS—2

S 39 IS—3

S 39 IS—4

S 39 IS—5

S 39 IS—6

S 39 IS—7

S 39 IS—8

S 39 IS—9