

109TH CONGRESS
1ST SESSION

H. R. 1431

To amend the Magnuson-Stevens Fishery Conservation and Management Act to modify requirements for the appointment and training of members of Regional Fishery Management Councils, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. RAHALL (for himself, Mr. FARR, Mr. KIND, Mr. LEACH, and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to modify requirements for the appointment and training of members of Regional Fishery Management Councils, 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.**

4 This Act may be cited as the “Fisheries Science and
5 Management Enhancement Act of 2005”.

1 **SEC. 2. VOTING MEMBERS OF REGIONAL FISHERY MAN-**
2 **AGEMENT COUNCILS.**

3 (a) APPOINTMENT OF MEMBERS.—Section 302(b) of
4 the Magnuson-Stevens Fishery Conservation and Manage-
5 ment Act (16 U.S.C. 1852(b)) is amended as follows:

6 (1) In paragraph (1)(A) by adding at the end
7 the following: “Such official shall represent the in-
8 terests of the general public of such State.”.

9 (2) In paragraph (2)—

10 (A) in subparagraph (A)—

11 (i) in the first sentence by inserting
12 before the period the following: “, and
13 must not have been found by the Sec-
14 retary, after notice and an opportunity for
15 a hearing in accordance with section 554
16 of title 5, United States Code, to have
17 committed an act prohibited by subpara-
18 graph (D), (E), (F), (H), (I), or (L) of
19 section 307(1) or section 307(2).”; and

20 (ii) in the second sentence by striking
21 “Fishery Conservation Amendments of
22 1990” and inserting “Fisheries Science
23 and Management Enhancement Act of
24 2005”;

25 (B) in subparagraph (B)—

1 (i) in the first sentence by striking “of
2 the active” and inserting “among the ac-
3 tive”;

4 (ii) by striking the period at the end
5 of the first sentence and inserting the fol-
6 lowing: “and representatives of the public
7 interest in marine fish conservation who
8 are knowledgeable regarding the conserva-
9 tion and management of the fishery re-
10 sources of the geographic area concerned.
11 Such representatives of the public interest
12 in marine conservation may not include in-
13 dividuals who derive any of their annual
14 income from commercial or recreational
15 fishing or who are employed by any person
16 who derives any of their annual income
17 from commercial or recreational fishing.”;
18 and

19 (iii) by striking “Merchant Marine
20 and Fisheries” and inserting “Resources”;
21 and

22 (C) in subparagraph (C)—

23 (i) in the second sentence by inserting
24 “and representatives of conservation orga-

1 nizations” after “commercial and rec-
2 reational fishing interests”;

3 (ii) by striking the third sentence and
4 inserting the following: “Each list shall
5 consist of a broad slate of candidates for
6 each vacancy, shall include at least two
7 representatives from each of the commer-
8 cial fishing industry sector, the rec-
9 reational fishing sector, and the marine
10 fish conservation public interest sector, and
11 shall consist solely of individuals who are
12 knowledgeable regarding the conservation
13 and management of the fishery resources
14 of the geographical area concerned. Can-
15 didates from the marine fish conservation
16 public interest sector may not derive any of
17 their annual income from fishing and may
18 not be employed by anyone who derives
19 any of their annual income from commer-
20 cial or recreational fishing.”; and

21 (iii) in the fifth sentence (after the
22 amendment made by clause (ii) of this sub-
23 paragraph) by striking “such require-
24 ments” and inserting “the requirements of
25 subparagraph (A)”.

1 (3) In paragraph (3)—

2 (A) by striking “1986” and inserting
3 “2005”; and

4 (B) by striking “consecutive” each place it
5 appears.

6 (4) In paragraph (6) by striking “section
7 307(1)(O)” and inserting “subparagraph (D), (E),
8 (F), (H), (I), (L), or (O) of section 307(1) or sec-
9 tion 307(2)”

10 (b) TRAINING OF APPOINTED MEMBERS.—

11 (1) IN GENERAL.—Section 302(b) of the Mag-
12 nuson-Stevens Fishery Conservation and Manage-
13 ment Act (16 U.S.C. 1852(b)) is amended by adding
14 at the end the following:

15 “(7) TRAINING OF APPOINTED MEMBERS.—

16 “(A) IN GENERAL.—The Secretary shall
17 provide to each member of a Council appointed
18 by the Secretary under this subsection, by not
19 later than 6 months after the date the member
20 is first appointed, training in matters relating
21 to the functions of the Council, including—

22 “(i) fishery science and basic fish
23 stock assessment;

24 “(ii) basic instruction in ecological
25 principles;

1 “(iii) social science and fishery eco-
2 nomics;

3 “(iv) the requirements of this Act, the
4 National Environmental Policy Act of
5 1969, chapter 5 of title 5, United States
6 Code (popularly known as the Administra-
7 tive Procedures Act), and other relevant
8 statutes or regulations;

9 “(v) conflict of interest policies that
10 apply to Council members; and

11 “(vi) the public process for developing
12 fishery management plans.

13 “(B) RESTRICTION ON VOTING.—A mem-
14 ber of a Council to whom the Secretary is re-
15 quired to provide training under this paragraph
16 may not vote on any decision of the Council be-
17 fore the date the member completes such train-
18 ing.

19 “(C) TRAINING AVAILABLE TO THE PUB-
20 LIC.—The Secretary may provide training of-
21 fered under this paragraph, or comparable
22 training, to interested members of the public.”.

23 (2) APPLICATION TO CURRENT MEMBERS.—

24 (A) REQUIREMENT TO PROVIDE TRAINING
25 UPON REQUEST.—The Secretary of Commerce

1 is not required to provide training under the
2 amendment made by paragraph (1) to a mem-
3 ber of a Regional Fishery Management Council
4 appointed before the date of the enactment of
5 this Act, unless such member requests such
6 training. Upon such a request, the Secretary
7 shall provide such training within 6 months
8 after the date of the request.

9 (B) RESTRICTION ON VOTING NOT APPLI-
10 CABLE.—Subparagraph (B) of paragraph (7) of
11 section 307(b) of the Magnuson-Stevens Fish-
12 ery Conservation and Management Act (16
13 U.S.C. 1852(b)), as amended by this sub-
14 section, shall not apply to a member of a Re-
15 gional Fishery Management Council to whom
16 the Secretary is required to provide training
17 under subparagraph (A) of this paragraph.

18 **SEC. 3. REGIONAL FISHERY MANAGEMENT COUNCIL COM-**

19 **MITTEES AND PANELS.**

20 (a) SCIENCE AND STATISTICAL COMMITTEES.—Sec-
21 tion 302(g)(1) of the Magnuson-Stevens Fishery Con-
22 servation and Management Act (16 U.S.C. 1852(g)(1)) is
23 amended to read as follows:

24 “(1) SCIENCE AND STATISTICAL COMMIT-
25 TEES.—

1 “(A) REQUIREMENT TO ESTABLISH.—
2 Each Council shall establish and maintain a
3 science and statistical committee to assist the
4 Council in the development, collection, and eval-
5 uation of such statistical, biological, economic,
6 social, and other scientific information as is rel-
7 evant to the Council’s development and amend-
8 ment of any fishery management plan. The
9 members of the science and statistical com-
10 mittee shall consist of qualified Federal, State,
11 academic, or independent scientists, and shall
12 be appointed and paid a stipend by the Sec-
13 retary.

14 “(B) ESTABLISHMENT OF FISHERY AND
15 MARINE SCIENCE SUBCOMMITTEE.—Each
16 science and statistical committee established by
17 a Council under this paragraph shall include a
18 fishery and marine science subcommittee that—

19 “(i) is composed of members of the
20 science and statistical committee who have
21 demonstrated scientific expertise in fishery
22 biological science or marine ecology; and

23 “(ii) includes balanced representation
24 of both such disciplines on the sub-
25 committee.

1 “(C) FUNCTIONS OF FISHERY AND MARINE
2 SCIENCE SUBCOMMITTEE.—In the development
3 by a Council of any fishery management plan or
4 amendment to a fishery management plan, and
5 in the taking by a Council of any other action
6 that prescribes an authorized fishing mortality
7 level or rate, the fishery and marine science
8 subcommittee of the Council shall—

9 “(i) based on the best scientific infor-
10 mation available, determine for the Coun-
11 cil—

12 “(I) biological catch (including
13 bycatch) limits, including annual lim-
14 its, that will prevent overfishing, re-
15 build overfished stocks, achieve, on a
16 continuing basis, the optimum yield
17 for such fishery, and that consider
18 predator-prey relationships and other
19 ecological factors;

20 “(II) specific habitat types and
21 areas in need of protection from the
22 adverse effects of fishing identified
23 pursuant to section 303(a)(7); and

24 “(III) any additional protections
25 required for species under the Coun-

1 cil’s jurisdiction that are listed as
2 threatened species or endangered
3 under section 4 of the Endangered
4 Species Act of 1973 (16 U.S.C.
5 1533);

6 “(ii) allow an opportunity for public
7 input on the development of the sub-
8 committee’s determinations and create a
9 public record of such input and the sub-
10 committee’s response to such input;

11 “(iii) publish its determinations in the
12 Federal Register; and

13 “(iv) review all conservation and man-
14 agement measures developed by the Coun-
15 cil to determine whether such measures are
16 at least as stringent as the subcommittee’s
17 determinations made under clause (i).

18 “(D) RECOMMENDATIONS.—Each fishery
19 and marine science subcommittee may rec-
20 ommend to the associated Council conservation
21 and management measures that are based on
22 and consistent with the determinations made by
23 the subcommittee under subparagraph (C)(i).”.

24 (b) EFFECT OF DECISIONS AND RECOMMENDA-
25 TIONS.—Section 302(g)(5) of the Magnuson-Stevens Fish-

1 ery Conservation and Management Act (16 U.S.C.
2 1852(g)(5)) is amended by inserting “, except decisions
3 and recommendations made by the fisheries and marine
4 science subcommittees of the science and statistical com-
5 mittees pursuant to paragraph (1)(C)(i),” after “under
6 this subsection”.

7 (c) EFFECT OF DECISIONS AND RECOMMENDA-
8 TIONS.—Section 302(g) of the Magnuson-Stevens Fishery
9 Conservation and Management Act (16 U.S.C. 1852(g))
10 is amended by adding at the end the following:

11 “(6) For the purposes of this subsection, the
12 term ‘qualified Federal, State, academic, or inde-
13 pendent scientists’ means individuals who—

14 “(A) through publication of peer-reviewed
15 scientific literature and academic training,
16 have—

17 “(i) demonstrated scientific expertise
18 in fisheries science or marine ecology; or

19 “(ii) demonstrated expertise in eco-
20 nomics or social science as it relates to
21 fisheries management; and

22 “(B) have no direct financial interest, or
23 are not employed by any person with a direct
24 financial interest, in any fishery.”.

1 (d) DISCLOSURE OF FINANCIAL INTEREST AND
2 RECUSAL.—Section 302(j) of the Magnuson-Stevens Fish-
3 ery Conservation and Management Act (16 U.S.C.
4 1852(j)) is amended by striking paragraphs (6) and (7)
5 and inserting the following:

6 “(6) PROHIBITION ON VOTING.—

7 “(A) PROHIBITION.—An affected indi-
8 vidual shall not vote on a Council decision that
9 would have an effect on a financial interest that
10 the individual is required to disclose under
11 paragraph (2).

12 “(B) DETERMINATION OF EFFECT ON FI-
13 NANCIAL INTEREST.—At the request of an af-
14 fected individual or a member of the public, or
15 upon the initiative of the appropriate des-
16 ignated official, the designated official shall
17 make a determination for the record whether a
18 Council decision would have an effect on the fi-
19 nancial interest of an affected individual re-
20 ferred to in subparagraph (A).

21 “(C) REVIEW OF DETERMINATION.—Any
22 Council member or member of the public may
23 submit a written request to the Secretary to re-
24 view any determination by the designated offi-
25 cial under subparagraph (B), within 10 days

1 after such determination. Such review shall be
2 completed within 30 days after receipt of the
3 request.

4 “(D) TREATMENT OF DECISION MADE
5 PENDING REVIEW.—If the Council makes a de-
6 cision before the Secretary has completed a re-
7 view under subparagraph (C), the eventual rul-
8 ing by the Secretary in the review shall be
9 treated as a cause for invalidation or reconsid-
10 eration by the Secretary of such decision, if the
11 Secretary determines that the Council decision
12 had an effect on the financial interest of an af-
13 fected individual and the affected individual’s
14 vote decided the Council action.

15 “(E) The Secretary, in consultation with
16 the Councils and by not later than one year
17 after the date of enactment of the Fisheries
18 Management Reform Act of 2005, shall promul-
19 gate regulations that—

20 “(i) prohibit an affected individual
21 from voting in accordance with subpara-
22 graph (A); and

23 “(ii) allow for the making of deter-
24 minations under subparagraphs (B) and
25 (C).

1 “(7) RELATIONSHIP TO OTHER LAW.—Section
2 208 of title 18, United States Code, does not apply
3 to an affected individual referred to in paragraph
4 (1)(A)(ii) during any time during which the indi-
5 vidual is in compliance with the regulations pre-
6 scribed under paragraph (5).”.

7 **SEC. 4. REQUIRED PROVISIONS IN FISHERY MANAGEMENT**
8 **PLANS.**

9 Section 303(a) of the Magnuson-Stevens Fishery
10 Conservation and Management Act (16 U.S.C. 1853(a))
11 is amended—

12 (1) in paragraph (1)(A) by inserting “and the
13 associated ecosystem” before the semicolon at the
14 end;

15 (2) in paragraph (1) by striking “and” after
16 the semicolon at the end of subparagraph (B), by
17 adding “and” after the semicolon at the end of sub-
18 paragraph (C), and by adding at the end the fol-
19 lowing:

20 “(D) in the case of a plan developed by a
21 Council, at least as stringent as (or more strin-
22 gent than) the matters determined under sec-
23 tion 302(g)(1)(C)(i) by the fishery and marine
24 science subcommittee of the Council;” and

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

3 “(14) allocate any quotas or other conservation
4 and management measures fairly and equitably
5 among the commercial, recreational, and charter
6 fishing sectors in the fishery, and allow individual
7 sectors of the fishery to develop allocation plans that
8 are subject to the approval of the Council.”.

9 **SEC. 5. PEER REVIEW.**

10 Section 304 of the Magnuson-Stevens Fishery Con-
11 servation and Management Act (16 U.S.C. 1854) is
12 amended by adding at the end the following:

13 “(i) PEER REVIEW.—

14 “(1) REVIEW REQUIREMENTS.—The Secretary,
15 using qualified independent scientists, shall—

16 “(A) periodically conduct peer reviews of
17 determinations made under section
18 302(g)(1)(C)(i) by each fishery and marine
19 science subcommittee of a Council’s science and
20 statistical committee; and

21 “(B) upon request by a Council, conduct a
22 peer review of a determination made under sec-
23 tion 302(g)(1)(C)(i) by a fishery and marine
24 science subcommittee of the Council’s science
25 and statistical committee.

1 “(2) IMPLEMENTATION OF DETERMINATION
2 NOT AFFECTED.—Paragraph (1)(B), and any re-
3 quest for review under that paragraph, shall not af-
4 fect any requirement that a Council implement a de-
5 termination that is the subject of such a request.”.

6 **SEC. 6. COOPERATIVE RESEARCH, DATA COLLECTION, AND**
7 **GEAR MODIFICATION PROGRAM.**

8 Section 305 of the Magnuson-Stevens Fishery Con-
9 servation and Management Act (16 U.S.C. 1855) is
10 amended by adding at the end the following:

11 “(j) COOPERATIVE RESEARCH, DATA COLLECTION,
12 AND GEAR MODIFICATION PROGRAM.—In cooperation
13 with the Councils, the fishing industry, the conservation
14 community, and interested academics, the Secretary shall
15 carry out a cooperative research, data collection, and gear
16 modification program to—

17 “(1) conduct conservation engineering projects
18 designed to avoid bycatch, minimize the mortality of
19 unavoidable bycatch, or minimize fishery impacts on
20 essential fish habitat through modifications of fish-
21 ing gear and practices;

22 “(2) identify ecosystem effects of fishing, to
23 monitor marine ecosystem trends and dynamics;

1 “(3) collect information on the status of stocks
2 of fish and the life history of managed species of
3 fish;

4 “(4) provide financial assistance to fishermen to
5 offset the costs of modifying fishing practices and
6 gear to meet the requirements of this Act;

7 “(5) provide financial assistance to States for
8 programs to improve recreational fishing data; and

9 “(6) provide financial or other incentives for
10 fishermen to develop and utilize fishing gear and
11 practices that avoid bycatch, the mortality of un-
12 avoidable bycatch, and adverse impacts on essential
13 fish habitat.”.

14 **SEC. 7. AMENDMENTS TO SALTONSTALL-KENNEDY ACT.**

15 (a) USE OF TRANSFERRED AMOUNTS.—Section 2(b)
16 of the Act of August 11, 1939 (15 U.S.C. 713c–3(b)),
17 popularly known as the Saltonstall-Kennedy Act, is
18 amended to read as follows:

19 “(b) TRANSFER OF FUNDS.—The Secretary of Agri-
20 culture shall transfer to the Secretary each fiscal year
21 from moneys made available to carry out the provisions
22 of section 32 of such Act of August 24, 1935, an amount
23 equal to 30 percent of the gross receipts from duties col-
24 lected under the customs laws on fishery products (includ-
25 ing fish, shellfish, mollusks, crustacea, aquatic plants and

1 animals, and any products thereof, including processed
2 and manufactured products), which shall be maintained
3 in a separate fund only for use by the Secretary—

4 “(1) to provide financial assistance for the pur-
5 pose of carrying out fisheries research and develop-
6 ment projects approved under subsection (c);

7 “(2) to implement the national fisheries re-
8 search and development program provided for under
9 subsection (d);

10 “(3) to implement the Northwest Atlantic
11 Ocean Fisheries Reinvestment Program established
12 under section 314 of the Magnuson-Stevens Fishery
13 Conservation and Management Act (16 U.S.C.
14 1863);

15 “(4) to fund the Federal share of a fishing ca-
16 pacity reduction program established under section
17 312 of the Magnuson-Stevens Fishery Conservation
18 and Management Act (16 U.S.C. 1861a); and

19 “(5) to implement section 305(j) of the Magnu-
20 son-Stevens Fishery Conservation and Management
21 Act (16 U.S.C. 1855(j)).”.

22 (b) ALLOCATION OF FUND MONEYS.—Section
23 2(e)(1) of such Act (15 U.S.C. 713c–3(e)) is amended—

1 (1) in the first sentence by inserting “and such
2 other purposes as are authorized by this Act” after
3 “provisions of this section”;

4 (2) by inserting after the first sentence the fol-
5 lowing:

6 “Amounts available for allocation under this subsection
7 shall be in addition to amounts appropriated for National
8 Marine Fisheries Service operations.”;

9 (3) in paragraph (1)(A) by striking “no less
10 than 60 per centum \$5,000,000 of such moneys”
11 and inserting “\$5,000,000”; and

12 (4) by amending paragraph (1)(B) to read as
13 follows:

14 “(B) The Secretary shall use the balance
15 of the moneys in the fund to finance activities
16 carried out under section 305(k) of the Magnu-
17 son-Stevens Fishery Conservation and Manage-
18 ment Act (16 U.S.C. 1855(k)).”.

○