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109TH CONGRESS }
2nd Session }

SENATE

{ REPORT
{ 109-229

MAGNUSON-STEVENSON FISHERY CONSERVA-
TION AND MANAGEMENT REAUTHORIZA-
TION ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2012



APRIL 4, 2006.—Ordered to be printed

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MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION ACT OF 2005

APRIL 4, 2006.—Ordered to be printed

Mr. STEVENS, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 2012]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2012) to authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2006 through 2012, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2012 is to reauthorize the Magnuson-Stevens Fishery and Conservation and Management Act (16 U.S.C. 1801 et seq.) (Magnuson-Stevens Act). In particular, S. 2012 would amend the Magnuson-Stevens Act to: (1) improve the regional fishery management council decision-making process, including strengthening the role science plays in management decisions, (2) provide consistency in the environmental review process, (3) establish national criteria for quota-based programs (limited access privilege programs), (4) strengthen fisheries enforcement, (5) improve the sustainability of fishing practices, and (6) strengthen compliance authorities for international fisheries management. S. 2012 would authorize appropriations of \$328 million for fiscal year (FY) 2006 and such sums as necessary for FYs 2007 through 2012 to carry out the purposes of the Magnuson-Stevens Act. S. 2012 also contains provisions to combat illegal, unreported, and unregulated fishing and other unsustainable high seas fishing activities, and the bill would reauthorize and amend several other relevant fishery

statutes, and it contains implementing legislation for two international fisheries treaties.

BACKGROUND AND NEEDS

The exclusive ocean jurisdiction of the United States is larger than its combined land mass, and the fishery resources managed in this vast marine environment are an important national asset. At the end of 2004, our nation's commercial fisheries were valued at more than \$31.6 billion, and saltwater recreational fishing generated an additional \$30.5 billion in sales. In that year, the United States landed over 9.6 billion pounds of fish and shellfish. According to the United Nations Food and Agriculture Organization, Americans rank as the third largest consumer of seafood in the world. In 2004, the United States consumed 4.8 billion pounds of seafood, up to 16.6 pounds per person annually, and generated \$61.9 billion in consumer expenditures. While the U.S. is one of the world's largest seafood exporters (\$3.7 billion in 2004), the nation imports over 80 percent of domestically consumed seafood. Currently, the largest offshore fishery in terms of volume landed is walleye pollock, with 3.4 billion pounds in 2004. By value, the leading U.S. fisheries in 2004 were: crab, at \$447.9 million; shrimp, at \$425.6 million; lobster, at \$344.1 million; and scallops, at \$322.1 million.

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

The enactment of the Fishery Conservation and Management Act of 1976 (P.L. 94-265) ushered in a new era of marine fishery management for the United States by establishing a national framework for conserving and managing marine fisheries within a 200-mile wide zone contiguous to the United States. Authority to develop and recommend management measures in specific regions was divided among eight regional fishery management councils (Councils). The 1996 Sustainable Fisheries Act (SFA) (P.L. 104-297) substantially amended the legislation, which was renamed the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), to improve conservation and management, and assist fishing communities in adapting to the ensuing changes. The authorization of appropriations for SFA expired in 1999.

The Councils established under the Magnuson-Stevens Act are the New England Council, Mid-Atlantic Council, South Atlantic Council, Caribbean Council, Gulf of Mexico Council, Pacific Council, North Pacific Council, and Western Pacific Council. Each Council is comprised of industry, recreational, governmental, and some non-affiliated representatives (e.g., scientists) and each has authority over the fisheries seaward of the States comprising the region for which it has responsibility. The voting members of each Council include the regional fisheries director of the National Oceanic and Atmospheric Administration (NOAA), the chief fishery official from each State, and between four and twelve individuals with fishery expertise. The primary responsibility of each Council is to develop fishery management plans (FMPs) for important fishery resources. Each plan must be consistent with the ten national standards established under the Magnuson-Stevens Act, including a require-

ment that the plan prevent overfishing. An environmental assessment or impact statement is prepared for every FMP, which is then subject to public hearings.

The Secretary of Commerce (Secretary), through NOAA's National Marine Fisheries Service (NMFS), administers the Magnuson-Stevens Act and reviews, approves (or disapproves), and implements each FMP prepared by a Council. The Secretary must report annually on the health of marine fisheries and identify fisheries that either are overfished, or approaching an overfished condition. For fisheries identified as either overfished, or approaching an overfished condition, the appropriate Council is given one year to develop a plan to stop overfishing and rebuild the fishery, and the Secretary is required to intervene if either the Council fails to act or a Council-prepared plan is inconsistent with the national standards. While a rebuilding plan is being formulated, the Council and Secretary can impose interim or emergency restrictions to reduce overfishing. In addition, the Secretary is responsible for the development of plans for wide-ranging Atlantic fish species like tuna and swordfish, also known as "highly migratory species." Fisheries law enforcement is the joint responsibility of the Secretary and the Secretary of the department in which the Coast Guard is operating.

RECOMMENDATIONS OF THE U.S. COMMISSION ON OCEAN POLICY

The U.S. Commission on Ocean Policy (U.S. Ocean Commission), established pursuant to the Oceans Act of 2000 (P.L. 106-256), submitted its final report to Congress in September 2004. This comprehensive evaluation of U.S. ocean policy, the first in over 30 years, provided important recommendations for the reauthorization of the Magnuson-Stevens Act. While the Commission found that the existing Federal system for managing the nation's fisheries provided a solid foundation, it suggested a number of improvements. The following major recommendations of the Commission for the reauthorization of the Magnuson-Stevens Act were a catalyst for moving the legislation forward and were incorporated in S. 2012:

- Require the Councils to make management decisions based on the findings of their scientific and statistical committees (SSCs).
- Require nominees to the SSCs to be individuals with strong technical credentials and experience, selected from Federal, State, or academia.
- Require each Council to set harvest limits at or below the allowable biological catch determined by its SSC.
- Develop a process for independent peer review of scientific information provided by the SSCs to the Councils.
- Require all saltwater fishermen to obtain licenses to better assess the impacts that recreational fishing has on fisheries, and improve collection of data.
- Require newly appointed Council members to complete a training course within six months of their appointment covering a variety of topics relevant to preparing and better understanding fishery management.
- Affirm that fish managers can use dedicated access privileges (e.g., limited access privilege programs), including community quotas, cooperatives, and geographically based programs.

- Provide national guidelines for dedicated access privileges that allow for regional flexibility in implementation and consider the biological, social, and economic goals of the plan; provide for periodic review; include measures to prevent excessive share consolidation; and be adopted only after adequate public discussion and consultation with all affected stakeholders.
- Take steps to reduce the overcapitalization of fisheries.
- Expand NMFS' use of joint enforcement agreements to implement cooperative fisheries enforcement programs with State agencies.
- Move the management of fisheries towards an ecosystem approach, considering the health of non-commercial resources, and non-fishing impacts on fish stocks, such as pollution.
- Pursue, enforce, and implement international fishing agreements.
- Continue to press for inclusion of environmental objectives as legitimate elements of trade policy, which can play an important role in marine conservation.

Many of these recommendations were supported by the Department of Commerce, which either began implementation or included them in its proposed reauthorization legislation. Even where the recommendations could be achieved under existing Magnuson-Stevens Act authority, such as ecosystem considerations and joint enforcement agreements, the Committee has included language in S. 2012 to signal its support for their continued implementation. Explanations of these provisions appear below and in the section-by-section description of the bill.

OTHER AUTHORIZATIONS

ATLANTIC STRIPED BASS CONSERVATION ACT

Congress passed the Atlantic Striped Bass Conservation Act (P.L. 98-613) in 1984 in response to the critical decline of Atlantic striped bass, an important commercial and recreational species in the northeast. It granted oversight authority to the Atlantic States Marine Fisheries Commission (ASMFC) and required the Secretary of Commerce to institute a moratorium on striped bass fishing in any State that failed to comply with the ASMFC's plan for striped bass. The Atlantic Striped Bass Conservation Act has been amended several times, clarifying management and enforcement authorities and reauthorizing appropriations. Appropriations have been divided between the Secretaries of Commerce and Interior who share responsibility for oversight of the ASMFC's striped bass management. S. 2012 would further reauthorize appropriations of \$1 million to the Secretary of Commerce and \$250,000 to the Secretary of the Interior for each of FYs 2006 through 2010.

SHARK FINNING PROHIBITION ACT

In 2000, Congress passed the Shark Finning Prohibition Act (P.L. 106–557) in an attempt to curtail the practice of shark finning in U.S. fisheries. Shark finning involves catching a shark, removing the fins, and discarding the carcass at sea. The Shark Finning Prohibition Act also prohibits processing or landing a shark fin without the corresponding carcass. It further requires the Secretary to initiate discussions and agreements with other nations to expand shark finning prohibition efforts in order to ensure protection for highly migratory shark species. S. 2012 would reinstate and extend the authorization of this Act from FYs 2006 through 2010.

PACIFIC SALMON TREATY ACT

In an effort to improve cooperation in the management and enhancement of transboundary Pacific salmon stocks, the U.S. and Canada signed the Pacific Salmon Treaty (Treaty) in 1985. The same year, Congress passed the Pacific Salmon Treaty Act (PSTA) (P.L. 99–5) to: (1) establish the U.S. delegation to the Pacific Salmon Commission as directed by the Treaty and (2) clarify matters of jurisdiction, enforcement, adoption of regulations, and authorization of appropriations under the Treaty. Subsequent appropriations have been divided between the Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund (Northern Fund) and the Southern Boundary Restoration and Enhancement Fund (Southern Fund). S. 2012 would insert language authorizing the Northern and Southern Funds and provide guidelines for fund administration, and it would make a technical correction clarifying the proper location of previous appropriations language. S. 2012 also would reauthorize the PSTA from 2006 through 2009.

STATE AUTHORITY FOR DUNGENESS CRAB FISHERY MANAGEMENT

In 1996 the SFA granted the States of California, Oregon, and Washington interim authority through September 30, 1999, to manage the Dungeness crab fishery out to the 200-mile limit of the exclusive economic zone (EEZ) until a Federal plan developed by the Pacific Council is approved by the Secretary. The SFA also required the Pacific States Marine Fisheries Commission (PSMFC) to submit a report to Congress detailing the “health and management” of the fishery. In 1997, the PSMFC recommended to Congress that the States’ interim authority be continued until Federal management offered better management options with no time limit. The PSMFC concurred in 1998 and Congress responded by extending the sunset clause on States’ authority through September 30, 2001, and again through September 30, 2006. In 2005, the Council reaffirmed its position that State management is adequate, the PSMFC role in facilitating the tri-State effort is working well, management measures are preventing overfishing, and that the status quo be retained for the time being. The PSMFC requested a ten-year extension. S. 2012 would respond by making two changes to this existing legislation: (1) extend the States’ interim authority through September 30, 2016 and (2) change the description of the report to be issued by the PSMFC to “status and management” of the fishery, and specify additional criteria to be in-

cluded in that report. Such criteria shall include descriptions of stock status and trends, a description of the research and reviews used to determine such trends, and measures being implemented to prevent over-exploitation of the Dungeness crab fishery.

SUMMARY OF PROVISIONS

S. 2012 includes provisions to improve the effectiveness of the Magnuson-Stevens Act and strengthen fishery conservation and management both domestically and internationally. Some of the more substantive changes contained in S. 2012 include: (1) a new requirement for Councils to establish an annual catch limit capped at optimal yield (OY) for each of its managed fisheries, and to ensure any overages are deducted from the following year's annual limit, (2) a provision to strengthen the process for SSCs to provide scientific advice to Councils, (3) the development of an environmental review process that integrates and conforms the environmental impact assessment requirements of both the Magnuson-Stevens Act and the National Environmental Policy Act (NEPA) into one consistent and predictable review process for fishery management, (4) national criteria for quota programs (known as "limited access privilege programs"), including quota programs for fishing communities and RFAs, (5) a program to develop and engineer new technological devices to reduce bycatch and mortality associated with bycatch, (6) incentives for increased U.S. ownership of shore-side fishery-related infrastructure, and (7) strengthened controls on illegal, unreported, and unregulated fishing that also would require other nations to provide comparable protections to populations of living marine resources at risk from high seas fishing activities.

Several provisions in S. 2012 received considerable attention and generated important discussion over the last year and merit additional comment below.

OVERFISHING AND ANNUAL CATCH LIMITS

The SFA established new requirements in the Magnuson-Stevens Act designed to prevent overfishing and rebuild overfished or depleted fisheries. The SFA attempted to address overfishing by capping fish harvests at maximum sustainable yield (MSY) and requiring FMPs to include measures to rebuild overfished stocks. However, recent evaluations of stock status have shown that ten years after enactment of the SFA, overfishing is still occurring in a number of fisheries, even those fisheries under a rebuilding plan established early in the SFA implementation process.

Establishing a scientifically-based total allowable catch (TAC) for each managed fishery was a unanimous recommendation from all of the Council chairs, a recommendation of the Managing Our Nation's Fisheries Conference II final report, and a recommendation of the U.S. Ocean Commission. Requiring routine adherence to an annual catch limit or TAC is a well-known management approach that has been utilized effectively by several Councils, but failure to adopt this technique more broadly has contributed to continued overfishing. Many commercial and recreational fisheries do not use TACs, opting instead to use effort controls that allow catch to be spread out among a variety of vessel sizes and gear types. TACs, when coupled with sector-based management, can end the race for

fish and prevent impacts on communities and specific gear types while providing a more efficient method of adhering to mortality limits. Nevertheless, some regions argued that with proper accountability safeguards, effort controls could achieve the same results with less disruption to the fishery. However, the Committee concluded that explicit direction is needed to ensure accountability in all regions. After numerous meetings and discussions with the Councils, industry, and conservation groups, the Committee determined that, to ensure compliance with the 1996 amendments, S. 2012 needed to require that: (1) scientifically established annual catch limits be set and adhered to in each managed fishery, and (2) any catch in excess of that limit (overages) should be deducted from the following year's catch limit through appropriate management measures.

As a result, section 104 of the bill would require each FMP to contain a mechanism to establish an annual catch limit at or below OY, which the Magnuson-Stevens Act defines as being capped at MSY. In addition, the section would require that any overages be deducted from the following year's catch and such a deduction may employ the types of control measures used in that fishery, which could include TACs or effort controls. Section 103(b) would require the SSCs to provide recommendations for the Council to consider in establishing the annual catch limits. The Committee intends that these annual catch limits, taken with the existing overfishing and rebuilding authorities, will ensure full compliance with the Magnuson-Stevens Act, thereby producing better data collection on the abundance of the stocks and eventually providing real time catch figures—information that will help achieve greater accountability in fishery management. The intent of this provision is not only to prevent overfishing from occurring, but also to drive improvements in fishery data collection and research to develop a more precise assessment of the amount of fish that can be caught without exceeding OY. Such improvements are likely to increase the reliability of management measures to keep mortality within sustainable levels. A two-year phase-in of the annual catch limit requirement is provided to allow adequate transition time for fisheries not currently managed under catch limits and to allow for adjustments as new plans and amendments are developed by each Council.

INCREASING THE ROLE OF SCIENCE IN DECISION-MAKING

The bill's catch limit provision works in concert with a number of provisions in the bill that respond to calls for strengthening the role of science in Council decision-making. First, section 103 of the bill specifies that the role of the SSCs would be to provide their Councils with the ongoing scientific advice they require in order to make management decisions, including development of mortality limits. Such a role is intended to ensure closer integration of scientific advice into management decisions nationwide. The SSCs also are expected to advise the Councils on a variety of other issues, including stock status and health, bycatch, habitat status, and socio-economic impacts. The bill would require that SSC appointees be Federal, State, academic, or independent experts with strong scientific or technical credentials and experience, and it would allow for stipends for SSC members not employed by a gov-

ernment agency. Second, as noted above, section 104 of the bill would mandate the annual catch limit be set at or below the OY of the fishery, based on the best available scientific information, and section 103 would direct the Councils to consult with its SSCs, or other appropriate scientific body, in setting such catch limits. Finally, sections 201 and 204 contain provisions intended to improve scientific and economic data collection in both commercial and recreational fisheries, including through cooperative research.

COUNCIL PROCESS REFORMS

The bill includes provisions based on both the Department of Commerce bill and expert reports that respond to calls for improving the efficiency, integrity, and expertise of the Council process. Section 103 of the bill would establish a Council training program open to both new and existing Council members designed to prepare members for complying with the legal, scientific, economic, and conflict of interest requirements applicable to the fishery management process. The bill also strengthens and clarifies the Magnuson-Stevens Act's conflict of interest and recusal requirements to ensure that all potential financial conflicts of interest are disclosed and made easily accessible for public review.

Sections 103 and 107 of the bill incorporate provisions designed to improve the speed and uniformity of decision-making. Section 103 would authorize the establishment of a Coordinating Committee comprised of Council chairs, vice chairs, and executive directors as a forum to discuss issues relevant to all Councils. In addition, section 107 would direct the Secretary, with public participation and in consultation with the Council on Environmental Quality (CEQ) and the Councils, to develop one uniform, fishery management-specific environmental review process that conforms the National Environmental Policy Act (NEPA) review, analysis, and public input schedules to the timelines appropriate for fishery management decisions under the Magnuson-Stevens Act. The intent is not to exempt the Magnuson-Stevens Act from NEPA or any of its substantive environmental protections, including those in existing regulation, but to establish one consistent, timely, and predictable regulatory process for fishery management decisions. The Committee understands that it is not uncommon for Councils and NMFS to spend several years developing and reviewing NEPA analyses for FMPs. The Committee intends section 107 to streamline this environmental review process in the context of fishery management.

NATIONAL GUIDELINES FOR LIMITED ACCESS PRIVILEGE PROGRAMS

Section 106 of the bill would establish national guidelines for limited access privilege programs (LAPPs) for the harvesting of fish. These include individual fishing quotas (IFQs), but are expanded to allow allocation of harvesting privileges to fishing communities and creation of voluntary regional fishery associations (RFAs), in order to ensure inclusion of small vessel or entry-level participants, communities, and affected non-harvesters, such as processors, in any plan to rationalize a fishery. Only fisheries that have been operating under a limited access system for at least one year would be eligible for consideration for a LAPP. As for any FMP, LAPPs would be developed by Councils under national cri-

teria, and subject to Secretarial approval, an approach that balances the benefits of regional flexibility with the need for a national policy. The bill would provide for a five-year administrative review of each program's compliance with the goals of the program and the Magnuson-Stevens Act.

The Committee incorporated criteria in S. 2012 that would allow Councils to balance many of the concerns fishermen, crew, communities, conservation groups, and other interests have had over the potential impacts of quota or rationalization programs. Many of these issues were highlighted in the 1999 report of the National Research Council, as well as in subsequent Committee hearings and expert reports, such as the report of the U.S. Ocean Commission. These include requirements regarding eligibility to hold shares, fairness in initial allocation, excessive share caps, consideration of the needs of entry-level and small-vessel fishermen, maintaining the participation of owner-operated fishing vessels, consideration of crew, prevention of consolidation, and the need to establish policies on transferability, auctions, and cost recovery.

The bill would address concerns raised by harvesters, processors, crew, communities, and related businesses about impacts of harvester quota programs in a region or community, including quota consolidation or transfer out of the region, by allowing them to participate in RFAs. Coastal communities dependent on fishery resources crossing their docks and the associated taxes and jobs from related shoreside businesses, have raised concerns that quota programs reward the "actual participants" but ignore the community and next-generation fishermen who were not part of the initial allocation and could be forever priced out of the fishery. RFAs are intended to mitigate such impacts by providing a means of designation or "linking" harvesting LAPPs to a region or a community, which will ensure continued participation of harvesters, processors, and other community interests dependent on the fishery. Processors would be eligible to hold LAPPs to harvest fish to the same extent as permitted under current law, as determined in the Council allocation process. The bill also would provide communities with the opportunity to be issued and hold LAPP quota.

IMPROVING FISHERIES ENFORCEMENT

In response to recommendations by both the U.S. Ocean Commission and the Department of Commerce, the bill contains provisions to strengthen enforcement authorities and increase penalties for violations, consistent with authorities provided under other legislation. In addition, the bill would authorize the establishment of joint enforcement agreements under which the Secretary would deputize and provide Federal funding for State law enforcement officials to carry out any of the Secretary's marine law enforcement responsibilities, including those contained within the Magnuson-Stevens Act.

IMPROVING SUSTAINABILITY OF FISHING PRACTICES

While there has been progress in reducing overfishing after enactment of the SFA, bycatch reduction remains an important goal of the Magnuson-Stevens Act and one that could benefit from greater gear engineering research and deployment. Section 117 of the bill would establish a bycatch reduction engineering program

dedicated to the development of technologies and methods to improve the ability of fishery participants to reduce bycatch and associated mortality. Such technologies should be developed in collaboration with outside experts as well as industry participants. The provision includes an outreach mandate to facilitate use of new technologies, and also encourages the adoption of bycatch reduction incentives in FMPs, such as bycatch quotas.

In addition, the bill would make changes to address overcapacity in certain fisheries, which can also contribute to unsustainable practices. Federal funding for capacity reduction has declined in recent years, but voluntary capacity reduction programs can be financed by a long-term Federal loan that may be reimbursed by landing fees paid by those remaining in the fishery. Section 113 would establish streamlined procedures for such voluntary capacity reduction programs, as agreed to by industry participants, under framework regulations. The bill would retain all aspects of existing section 312(b) regarding requirements that any vessel removed through the program must either be scrapped or prohibited from fishing; and the program ensures that no new capacity be allowed to re-enter the fishery. Section 209 of the bill would amend existing loan programs and construction accounts to assist in these transitions.

In response to the recent series of fishery disasters around the country, from hurricanes Katrina and Rita to losses from harmful algal blooms, section 114 of the bill also would establish an authority for a multi-State or catastrophic fishery disaster program. The program would link disaster assistance under current section 312(a) and the capacity reduction standards of section 312(b) with an economic fishery recovery plan that also would consider shore-side and coastal restoration needs. Such a plan would be developed in coordination with the affected States and implemented by the Secretary.

ECOSYSTEM CONSIDERATIONS IN FISHERY MANAGEMENT

The U.S. Ocean Commission recommended that ecosystem considerations guide management of all marine resources, including fisheries. A number of the Councils have already demonstrated progress in implementing ecosystem approaches to fisheries management using existing Magnuson-Stevens Act authorities. In recognition of these achievements, and to clarify existing statutory authority to incorporate ecosystem considerations in FMPs, section 105 includes a provision that would expressly authorize FMPs to contain management measures for the conservation of non-target species and habitat. This approach should involve multiple and diverse stakeholders in the decision-making process and should be pursued and improved through an iterative process in which Councils will learn from both successes and failures.

Continued progress in this area will require improved scientific understanding of ecological processes in each fishery management region, as well as better coordination among State and Federal agencies responsible for marine resource science and management, academic and research institutions, fishery participants, and other interested and knowledgeable entities. Section 210 of the bill therefore would direct the Secretary to undertake a study based on the recommendations of the Ecosystem Principles Advisory Panel es-

established under the SFA. The study is to report on the state of the science for advancing the concepts and integration of ecosystems considerations in regional fishery management and should provide a roadmap to Councils for increasing the sophistication and integration of ecosystem considerations in fishery management.

DESIGNATION OF DEEP SEA CORALS

Scientists and managers have recently begun to gain an appreciation for the important role that deep, cold water, coral communities play in regional ecosystems. In recognition of deep sea coral communities' intrinsic value, section 105 of the bill would authorize Councils to restrict the use of destructive gear types within known areas of deep sea coral habitat. This provision is meant to promote a proactive approach by the Councils towards the protection of deep sea corals that also will focus on preventing gear loss and damage. Section 105 of the bill would authorize discretionary measures to mitigate effects of certain destructive fishing practices on deep sea coral habitats in their FMPs, but the measures do not need to be linked to a determination that the corals comprise essential fish habitat for the relevant fishery. In addition, the language for designating deep sea corals in Section 105 would allow for the consideration of sustainable uses of fishery resources in such areas before restrictions on fishing and access are put in place.

Section 211 of the bill would provide a complementary deep sea coral research and technology program to the coral protection provision included in Section 105. The research and technology program is meant to conduct basic research, and provide Councils with information on the location of deep sea coral habitat and on any ongoing or planned human activity that could affect such habitat.

STRENGTHENING U.S. LEADERSHIP IN INTERNATIONAL CONSERVATION AND MANAGEMENT

The U.S. regulatory regime for fisheries management is widely regarded as one of the most stringent in the world. Sections 401 through 403 contain provisions designed to strengthen the ability of international fishery management organizations, and the United States, to ensure appropriate enforcement and compliance with conservation and management measures in high seas fisheries. As the Committee heard at a hearing in 2003, illegal, unreported, and unregulated (IUU) fishing, expanding fleets, and high bycatch levels, are threats to sustainable fisheries worldwide. There are few effective tools in place to ensure international and regional management organizations can end these practices. These trends have continued under existing law.

S. 2012 would create a new section 207 of the Magnuson-Stevens Act that would establish an international compliance and monitoring program, and contains provisions to help reduce IUU fishing, promote international cooperation, and strengthen the ability of regional fishery management organizations to combat IUU fishing and other harmful fishing practices. The bill would direct the Secretary to define IUU fishing but, to ensure the provision covers enforcement gaps identified by the Committee, it would specify that the definition must include violations of quotas or other rules established under a regional or international agreement, as well as overfishing or use of certain damaging gear in high seas areas

where there is no international or regional conservation and management regime.

In the case where regional or international fishery management organizations or the nation in question are unable to stop IUU fishing, the bill would allow for the use of measures authorized under the High Seas Driftnet Fisheries Enforcement Act (P.L. 102-582) to enforce compliance, but to ensure fairness puts in place procedures to end such measures on a national or vessel-specific basis if IUU fishing ceases. The bill would provide a parallel mechanism to encourage use of new bycatch reduction methods comparable to methods used by U.S. fishermen in high seas fisheries, for protection of certain vulnerable species of concern to the United States, such as endangered sea turtles. The Secretary and the Secretary of State are would be encouraged to provide assistance to nations or organizations in development and adoption of such gear and appropriate fish harvesting plans.

The bill also contains implementing legislation for two treaties that have received the advice and consent of the Senate: (1) the Western and Central Pacific Fisheries Convention—a treaty to establish the first regional management regime for highly migratory species in the Central and Western Pacific, and (2) the Pacific Whiting Treaty, to establish an international scientific and management regime for Pacific whiting.

FUNDING

The bill would authorize \$328 million for the implementation of activities under the Magnuson-Stevens Act, as revised, in FY 2006, which is the authorization level the Department of Commerce recommended in its Magnuson-Stevens reauthorization proposal. Funds required for full implementation of S. 2012 are not yet known, and thus the bill would authorize such sums as are necessary for FYs 2007 through 2012. In FY 2005, Congress provided NOAA with \$311 million for Magnuson-Stevens related activities, and many expert groups have identified the need for increased funds to address emerging science and management needs under current Magnuson-Stevens Act requirements.

For example, the U.S. Ocean Commission estimated annual additional costs for fisheries management over existing levels at approximately \$90 million. None of these amounts include estimates for capacity reduction, disaster funding or international measures included in S.2012. NMFS has estimated that capacity reduction needs in five major U.S. fisheries alone may total \$1 billion. The importance of taking a realistic look at budget needs was underscored in a 2002 report by the National Academy of Public Administration, Courts, Congress, and Constituencies: *Managing Fisheries by Default*, which chronicled the science and management impacts of under-funding the requirements of the 1996 amendments, and made recommendations for budget and planning changes at NMFS. It also noted that correct agency budgets could not support a sustained ecosystem-based management system, which could require as much as \$340 million more than FY 2000 levels.

In order to address the growing need for additional funding for fisheries technology, science, and related information, the bill includes a provision that would establish a new Fisheries Conservation and Management Fund. This fund is intended to respond to

the recommendation by the U.S. Ocean Commission for dedicated funding for ocean-related needs, but establishes a fishery management-specific fund, patterned on the Wallop-Breaux Trust Fund “user pays, user benefits” model. Section 208 would provide that allocations from the fund would be determined in consultation with the Councils, and would be for specific activities not funded under current law, including technology upgrades, cooperative research, gear buybacks and development, and sustainable seafood marketing and handling activities. Money to be deposited in the fund would include any quota set-asides designated by a Council, targeted appropriations, and donated funds.

LEGISLATIVE HISTORY

The Magnuson-Stevens Act was last reauthorized in 1996 (Public Law 104–297) providing authorization of appropriations through FY 1999. The Committee has held numerous hearings on the reauthorization of the Magnuson-Stevens Act since its authorization expired. The provisions contained in S. 2012 reflect some of those earlier discussions. In addition, Chairman Stevens and Co-Chairman Inouye held several listening sessions with a variety of constituents during 2005 to provide Committee members and staff an informal forum for open dialogue on the many complex, and sometimes divisive, issues facing this process.

On February 17, 2005, a listening session for Committee members and staff was held with the Chairmen and Executive Directors of all eight Councils, focusing on issues such as reconciling the similar requirements of NEPA and the Magnuson-Stevens Act in development of FMPs, and ongoing Council work on ecosystem-based fishery management. A listening session held with national environmental groups on April 12, 2005, provided an important discussion on Council reforms, the need to end overfishing and rebuild stocks, and the growing problem of illegal, unreported and unregulated fishing on the high seas. On May 19, 2005, commercial fishing industry groups provided recommendations at a listening session that focused on standards for quota programs that allow for sustained participation of coastal communities in the fishery and the ability for the fishing industry to grow in the global seafood market.

On August 4, 2005, the Chairman and Co-Chairman released a discussion draft of S. 2012 for comment. This draft was based on the Department of Commerce’s reauthorization proposal, listening sessions, and the recommendations contained in the following expert reports and documents: the Reports of the U.S. Commission on Ocean Policy and Pew Ocean Commission, consensus positions of the Council chairs, the *Managing Our Fisheries II Conference Report* (2004), and *Sharing The Fish: Toward a National Policy on Individual Fishing Quotas* (National Research Council, 1999). Numerous groups provided specific expertise for the development of the bill, including the Department of Commerce, the Councils, State fishery managers, industry (fishermen, processors, and suppliers), environmental groups, sportsmen and recreational groups, and members of the U.S. Commission on Ocean Policy.

During the month of August, Committee staff met with all sectors of the fishing industry, States, conservation and other interest groups, concerned individuals, the Department of Commerce, and

Members' staff to discuss any potential questions or issues with the draft bill or recommendations on its improvement. Over 700 comments were received, read, categorized, and evaluated by Committee staff for consideration by Senators Stevens and Inouye for inclusion in the introduced bill.

S. 2012 was introduced in the Senate on November 15, 2005, by Senators Stevens and Inouye and was cosponsored at that time by Senators Snowe, Cantwell, Vitter, and Boxer. The bill was referred to the Senate Committee on Commerce, Science, and Transportation. On November 16, 2005, the Committee held a full Committee hearing on S. 2012, which received broad support from Committee members, with eleven cosponsors representing all the coastal regions of the United States. On December 15, 2005, the Committee considered the bill in an open Executive Session. Senator Stevens offered a substitute amendment to S. 2012 at the Executive Session, it was agreed to by voice vote without objection, and the Committee ordered S. 2012 reported subject to amendment. No other amendments were offered.

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2012 as reported by the Committee would authorize appropriations for the Magnuson-Stevens Fishery Conservation and Management Act. The bill would have impacts on fishery regulations in Federal waters.

ECONOMIC IMPACT

The bill, as reported, provides authorization of appropriations of \$328 million for the Secretary of Commerce for FY 2007, and such sums as may be necessary for FYs 2007 through 2012 to carry out the provisions of the Magnuson-Stevens Act.

PRIVACY

The reported bill would have little, if any, impact on the personal privacy of U.S. citizens. Council members would have an increased financial disclosure requirement.

PAPERWORK

The reported bill may increase paperwork requirements for the private sector engaged in the commercial fishing industry or rec-

reational fishing, including charter fishing business operations. Members of the Councils would be required to complete a member training course to prepare and better understand fishery management.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title and table of contents.

This section sets forth the short title of the bill, the “Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005,” and the table of contents of the bill.

Section 2. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.

This section provides that any amendments or repeals set forth in the bill are to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1801 et seq.), unless otherwise indicated.

Section 3. Changes in findings and definitions.

This section would make a number changes to the findings and definitions set forth in sections 2 and 3 of the Magnuson-Stevens Act respectively. The section also would make technical and conforming changes to reflect the use of the term “limited access privilege” in place of “individual fishing quota” in various sections of the Magnuson-Stevens Act, as revised by the draft.

In addition, the section would insert a new finding in section 2(a) of the Magnuson-Stevens Act, acknowledging that a number of Councils have demonstrated progress in integrating ecosystem considerations in fisheries management under existing authorities in the Magnuson-Stevens Act.

This section also would make the following changes to definitions in section 3 of the Magnuson-Stevens Act:

- Defines the term “confidential information” to mean any information submitted to the Secretary that could cause competitive harm if disclosed.
- Defines the term “regional fishery association” (RFA) as an association formed for mutual benefit of members for social or economic benefit in a region or subregion, and, is comprised of persons engaged in fish harvesting or processing in that region or subregion or who own or operate businesses substantially dependent on a fishery.
- Defines the term “import” as it applies to fisheries products or goods and specifies that the definition does not apply to fish caught within the U.S. EEZ or by a U.S. vessel.
- Defines the term “limited access privilege” as a permit issued for the harvesting in a limited access system authorized under section 107 of the bill. The definition mirrors the existing definition of individual fishing quota, but does not include language from that definition specifying that the quantity of fish involved must be expressed as a percentage of the allowable catch, which is intended to indicate that quantities may be expressed by volume alone. The provision specifies that IFQs are included in the definition but that community development quotas (CDQs) are not.

- Defines the term “observer information” to cover the broad range of information that may be collected by a fishery observer, electronic monitoring system, or as part of a cooperative research program.

Section 4. Highly migratory species.

This section would amend section 102 of the Magnuson-Stevens Act to ensure that any Council or Secretarial action pursuant to an international fishery agreement must reflect the traditional level of U.S. participation in the fishery, relative to other nations. This change is intended to ensure fair treatment of U.S. fishermen in both negotiation of international measures and in development of domestic management measures to achieve internationally-agreed conservation and management goals. It is particularly focused on initiating high-level international discussions in the interest of avoiding the imposition of management measures solely on U.S. vessels when foreign vessels participating in the same fishery are not required to meet similar requirements. Amended subsection 102(c) would require the Secretary to promote provisions of the Magnuson-Stevens Act relating to the rebuilding of a stock that is, or is approaching, being overfished if an international fishery organization does not have a process for developing a formal plan.

Section 5. Total allowable level of foreign fishing.

This section contains technical amendments to section 201(d) of the Magnuson-Stevens Act to clarify that allocations of the total allowable level of foreign fishing (TALFF) would be discretionary and that any TALFF allocation would be set at zero for fisheries with adequate or excess capacity. This provision is intended to ensure that Councils not be required to declare TALFF when harvesting levels are below MSY in order to safeguard the stock or associated stocks from excessive fishing effort.

Section 6. Western Pacific Sustainable Fisheries Fund

This section would amend section 204(e) of the Magnuson-Stevens Act, which governs the establishment of Pacific Insular Area fishing agreements with foreign nations. The amendment would allow funds or contributions given to support a marine conservation plan in a Pacific insular area to be deposited in the Western Pacific Sustainable Fisheries Fund. Currently, the fund can only receive money through foreign fishing agreements that allow fishing in the EEZ around the Pacific remote island areas. Presently, there are no such foreign fishing agreements, creating a shortage of funds.

Subsection 204(e)(8) currently mandates all fines and penalties imposed under the Magnuson-Stevens Act in the EEZ adjacent to American Samoa, Guam, and the Northern Mariana Islands, minus enforcement costs, to be deposited in the treasury of the relevant Pacific insular area. The amendment would remove the requirement to subtract enforcement costs from these funds and also require that such funds collected in the EEZ adjacent to Midway Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis, Howland, and Wake Islands be deposited in the Western Pacific Sustainable Fisheries Fund.

Section 7. Authorization of appropriations.

This section would authorize appropriations for activities under the Magnuson-Stevens Act, as amended, for \$328 million in FY 2006, and such sums as necessary for FY 2007 through 2012.

TITLE I—CONSERVATION AND MANAGEMENT

Section 101. Cumulative impacts.

Under National Standard 8, section 301(a)(8) of the Magnuson-Stevens Act, management measures must take into account the importance of fishery resources to fishing communities. This section would amend National Standard 8 to require the evaluation to utilize the best data and methodology available. This clarifies that the Committee intends that the “best scientific information available” requirement of National Standard 2 should extend to economic and social information evaluated under National Standard 8. This requirement is not limited to evaluation of economic and social impacts under National Standard 8, but would apply to all such evaluations under the Magnuson-Stevens Act. The provision also would amend section 303(a)(9) to require the cumulative economic and social impacts of conservation and management measures be included in any fishery impact assessment submitted as part of a FMP.

Section 102. Caribbean Council jurisdiction.

This section would amend section 302(a)(1)(D) of the Magnuson-Stevens Act to clarify that the jurisdictional boundaries of the Caribbean Fishery Management Council include the U.S. waters surrounding all U.S. territories in the Caribbean Sea. Current law provides the Council jurisdiction over the fisheries seaward of the Virgin Islands and Puerto Rico, which are both defined under the Magnuson-Stevens Act as “States.” This provision, which was proposed by the Department of Commerce, extends the Council’s jurisdiction to the areas seaward of other territories and possessions in the Caribbean. This will enable the Council to address the conservation of coral reefs, reef fish, queen conch, and spiny lobsters in areas not presently under its jurisdiction.

Section 103. Regional Fishery Management Councils.

This section would make a number of changes to section 302 of the Magnuson-Stevens Act, which defines and authorizes the activities of the Councils. Under this broad heading, the bill includes provisions covering the following topics:

TRIBAL ALTERNATE ON PACIFIC COUNCIL.—Subsection 103(a) of the bill amends section 302(b)(5), which establishes the voting membership of the Councils. The amendment would allow the tribal representative on the Pacific Council to appoint an alternate during the period of the representative’s term. Such an alternate is required to be knowledgeable concerning tribal rights and law, as well as the fishery resources of the geographical area concerned.

SCIENTIFIC AND STATISTICAL COMMITTEES (SSCs).—Subsection 103(b) of the bill amends section 302(g) to more fully set forth the role of the SSCs in the Council process. This subsection responds to recommendations to increase the role of science Council decision-making. The amendment adds new sections 302(g)(1)(B)-(E), and

reclassifies the existing text of section 302(g)(1) into subsection (1)(A) with modifications.

Subsection 302(g)(1)(A), as amended, would expand the role of the SSCs to include responsibility for peer review of scientific and socio-economic information relevant to Council development and amendment of any FMP.

In addition, new subsection 302(g)(1)(B) would direct each SSC to provide its Council with ongoing scientific advice for fishery management decisions. The Committee intends that the addition of the term “ongoing” will ensure that all Councils routinely utilize and consult with their SSCs in the development of management measures. Currently, some SSCs are integrally involved in the development and review of management measures, meeting concurrently or on a similar schedule as the Council. Others provide scientific information only when asked by a Council, which may be limited to one or two times per year. The intent of this provision is to ensure that each Council utilizes its SSC meaningfully throughout the management process. The provision also specifies that the types of advice to be provided by SSCs would include recommendations for acceptable biological catch or MSY, as well as reports on socio-economic impacts, stock status and health, bycatch, habitat status, and the sustainability of fishery practices.

New subsection 302(g)(1)(C) would require all SSC appointees to be Federal, State, academic, or independent experts with strong scientific or technical credentials and experience. The Committee intends, with this requirement, to respond to the recommendations of the U.S. Ocean Commission that SSC members have the requisite qualifications to ensure sound scientific advice is provided to the Councils.

New subsection 302(g)(1)(D) would authorize the Secretary to establish a peer review process with each Council for scientific information used by that Council. Such a process would provide the best scientific information available as required under National Standard 1 and be adequate to respond to recommendations by the U.S. Ocean Commission and other experts that Council decision-making be guided by scientific advice. The provision states that such peer review process, which may include existing committees or panels, shall satisfy the requirements established in the FY 2001 appropriations legislation for review of Federal scientific information. These requirements are often too onerous and time-consuming to accommodate fishery management procedures and timetables.

New subsection 302(g)(1)(E) would authorize the Secretary to pay members of a SSC or advisory panel a stipend so long as they are not Federal or State employees. This provision is intended to help Councils attract, as resources provided by the Secretary allow, qualified experts to serve on SSCs who otherwise may not have the funding necessary to enable them to perform the required work.

COUNCIL FUNCTIONS.—Subsection 103(c) of the bill would amend section 302(h) of the Magnuson-Stevens Act to require Councils to develop annual catch limits for each managed fishery after considering the recommendations of their SSC or the peer review process described above. The Committee has not included an absolute requirement that the Council be bound by SSC recommendations due to concerns that such a requirement would unduly politicize the SSC process and be too rigid to take into account unique cir-

cumstances. However, the Committee expects Councils to follow the recommendation of the SSC or the appropriate peer review process, which the Magnuson-Stevens Act ensures will represent the best scientific information available. Section 104 of the bill sets forth the mechanism for ensuring this catch limit is established for the fishery by requiring its inclusion in each FMP or amendment. That provision provides further scientific accountability by ensuring that the catch limits do not exceed OY, which is capped in the Magnuson-Stevens Act at the maximum sustainable level.

REGULAR AND EMERGENCY MEETINGS AND CLOSED MEETINGS.—Subsections (d) and (e) of section 103 of the bill would alter existing notification requirements for Council meetings by amending sections 302(i)(2)(C) and 302(i)(3)(B) of the Magnuson-Stevens Act to eliminate the requirement to notice meetings in newspapers, and allowing the Councils the flexibility to provide notice of meetings by “any means that will result in wide publicity” in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery).

COUNCIL TRAINING PROGRAM.—Subsection 103(f) of the bill would amend section 302 of the Magnuson-Stevens Act by adding a new subsection (k), which would establish a Council training program. New section 302(k) would require the Secretary, in consultation with the Councils and the National Sea Grant College Program, to develop a training course for new Council members to provide them with a background in a variety of topics relevant to fishery management. Topics may include fishery science, management, conflict of interest requirements, economics, tribal rights and customs, and legal requirements. The course would be open to both new and existing Council members, and would also be available to members of committees or advisory panels as resources allow. The Committee believes that all participants in the Council process would benefit from this course, but understands there may be resource limitations. Nevertheless, the Committee expects that Councils will implement policies to ensure that new members have completed the training course prior to participating in Council deliberations on management measures.

COUNCIL COORDINATING COMMITTEE.—Subsection 103(g) would amend section 302(i) of the Magnuson-Stevens Act to authorize the establishment of a Council Coordinating Committee comprised of Council Chairs, Vice Chairs, and Executive Directors as a forum to discuss issues relevant to all Councils. This Coordinating Committee would be subject to the same procedural and notice requirements as the Councils and advisory bodies under section 302(i) of the Magnuson-Stevens Act.

CONFLICTS OF INTEREST.—Subsection 103(h) of the bill would amend section 302(j) of the Magnuson-Stevens Act to improve transparency of the process for disclosure of financial interests and recusal by Council members. Under current law, Council members are required to disclose any financial arrangements they, any family member, or organization in which the individual holds a position, may have in any harvesting, processing, or marketing activity undertaken within a fishery over which the Council has jurisdiction. The changes made by this subsection would ensure that financial interests associated with lobbying and advocacy must also be disclosed, as well as financial interests (such as contractual ar-

rangements) of the member with any other individual or organization with a financial interest in such fishery activities undertaken in a fishery under Council jurisdiction. In addition, the provision would require that all such disclosure information, which is currently publicly available at Council offices during business hours, also be made available over the internet. Finally, this subsection requires the Secretary to report to Congress annually, beginning in 2008, on action taken to implement the requirements of section 302(j), as amended, to ensure that the conflict of interest requirements of the Magnuson-Stevens Act are being adequately enforced by the Secretary and to provide further transparency.

GULF OF MEXICO FISHERIES MANAGEMENT COUNCIL.—Subsection 103(i) of the bill would amend section 302(b)(2) of the Magnuson-Stevens Act to establish guidelines for State Governors and the Secretary in the nomination and selection of voting members to the Gulf of Mexico Council. The provision, intended to remain in force until the authorization of appropriations expires at the end of FY 2012, would require the Secretary to select candidates for Council membership that would maintain a balance of five members from the commercial sector, five members from the recreational sector, and one other individual who is knowledgeable in the conservation and management of fishery resources within the Gulf of Mexico Council's jurisdiction. It would further require that any slate of candidates submitted by a Governor to the Secretary must include at least one individual representing the commercial, recreational, and charter fishing sectors, as well as one other individual knowledgeable in the conservation and management of fisheries resources within the jurisdiction of the Gulf of Mexico Council. If the Secretary makes a determination that a slate of candidates does not meet these requirements, the amendment would solicit the public for nominations to the Council through a notice in the Federal Register. Finally, the amendment would specify that owners or operators of fish farms outside the U.S. would not qualify as representatives of the commercial fishing sector.

REPORT AND RECOMMENDATIONS ON GULF COUNCIL AMENDMENT.—Section 103(j) of the bill would require the Secretary to evaluate the success of the guidelines provided in section 103(i) in creating a fair and balanced representation of the commercial and recreational sectors on the Gulf of Mexico Council. This evaluation, and a report to Congress on the findings, would be required to be completed by August, 2011, prior to the expiration of the authorizations for the Magnuson-Stevens Act. The report should include recommendations on any changes that may be necessary to achieve fair representation and whether to renew the authority contained in section 103(i).

Section 104. Fishery management plan requirements.

This section would amend section 303(a) of the Magnuson-Stevens Act, which sets forth the mandatory requirements of FMPs. Section 104 would expand the categories of data that may be submitted, ensure that the plan describes the economic importance of the sectors participating in a fishery, consider the economic impacts on a sector when allocating harvest restrictions among sectors, and require that each plan include a mechanism for establishing an enforceable annual catch limit. Other amendments to

section 303(a) relating to cumulative impact assessments are made in section 101 of the bill.

NEW INFORMATION AND ANALYSES.—Section 104(a) would amend section 303(a)(5) of the Magnuson-Stevens Act to include fish processors and charter fishing among the sectors of a fishery from which data may be collected and to include economic data among the types of data submitted to the Secretary in a FMP. The provision also would amend section 303(a)(13) to require an assessment of the relative economic importance of the commercial, recreational, and charter fishing sectors of the fishery and amend section 303(a)(14) to ensure that in allocating harvest restrictions among sectors, the economic impact of such restrictions on each sector participating in the fishery is considered.

ANNUAL CATCH LIMITS.—Section 104 would also create a new subsection 303(a)(15) to require each FMP to provide a mechanism for setting annual catch limits for each managed sector in the plan (including for a multiyear plan). Such a limit should be set at or below OY as based on the best scientific information available. If a harvest exceeds the annual catch limit, any excess would be deducted from the following year's catch limit through management measures determined appropriate by the Council for the fishery, including by adjusting the following year's management measures and input controls or reducing the fishing mortality rate in the following year. New subsection (15) applies this annual catch limit and adjustment requirement on a sector-specific basis so that harvest overages in one sector result in adjustments in the following year only in that sector. The Committee expects that if a sector is likely to exceed its annual catch limit, the Council will restrict that sector's harvest to ensure the sector stays within its annual catch limit.

This provision is intended to provide a transparent accounting mechanism to help ensure that each fishery is in compliance with the overfishing and rebuilding requirements of the Magnuson-Stevens Act. The 1996 amendments made by the SFA established new requirements to cap harvests at sustainable levels and to establish plans to rebuild overfished fisheries, and there has been progress in achieving these goals in a number of fisheries. However, a full 10 years after passage of the SFA, recent evaluations of stock status have revealed that overfishing is still occurring in a number of fisheries, even those fisheries under a rebuilding plan or determined to be overfished during the early phase of SFA implementation. In many cases, this has resulted from failure of a plan to require adherence to scientifically-established mortality limits from one year to the next. As a result, the Committee determined that it needed to include a new mechanism in FMPs for ensuring compliance with the existing conservation requirements.

Existing requirements of the Magnuson-Stevens Act.—The SFA established for the first time that harvests must be capped at scientifically-determined sustainable levels, i.e. below MSY. National Standard 1 of the Magnuson-Stevens Act (16 USC 1851(a)(1)) provides that conservation and management measures in any FMP shall “prevent overfishing, while achieving, on a continuing basis, the [OY] from each fishery...” The Magnuson-Stevens Act defines “OY” as the amount of fish that will provide the greatest overall benefit to the Nation,

“prescribed as such on the basis of the [MSY] from the fishery, as reduced by any relevant economic, social, or ecological factor,” and in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery (U.S.C. 16 1802(28)). Overfishing is defined in the Act “as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the [MSY] on a continuing basis.” (16 U.S.C. 1802(29)). MSY is a theoretical concept meaning the amount that is “the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions” (50 Fed. Reg. § 600.310(c)(2)(i)).

Section 304 of the Magnuson-Stevens Act requires preparation of a rebuilding plan for any overfished fishery that specifies a time period for ending overfishing and rebuilding the fishery. Section 304(e)(4) requires the rebuilding time period to: (1) be as short as possible, taking into account the status and biology of the stock of fish, the needs of the fishing communities, and the interaction of the overfished stocks of fish within the marine ecosystem, and (2) not exceed 10 years, except in cases where the biology of the stock of fish, or other environmental conditions dictate otherwise. Congress assumed that, on average, 10 years would provide sufficient rebuilding time for many species, based on their life history, but in any particular case, the biology of the stock would govern if 10 years was not enough time for recovery. NMFS guidelines issued in 1998 interpreted the Magnuson-Stevens Act to provide that whenever it would take longer than 10 years to rebuild an overfished species, NMFS would set a ceiling on the rebuilding duration that would be reached by adding the shortest possible time to rebuild plus “one mean generation time” based on the species’ life history characteristics. A “mean generation time” is defined by NMFS to be the time it will take for an average mature fish to be replaced by its offspring.

Taken together, these provisions were intended to end overfishing and rebuild overfished stocks in a reasonable period of time. Congress envisioned some pragmatic flexibility on the timeframe for ending overfishing in order for the Secretary and the Councils to identify fisheries in which overfishing was occurring, evaluate the status of the stocks, and then make necessary changes in the FMPs to end the overfishing activity and rebuild these stocks to sustainable levels. However, the effects of overfishing that continues during a rebuilding period have been exacerbated when rebuilding periods have been extended based on the biology of the stock (as permitted by the Magnuson-Stevens Act), or “re-set” based on new information that increased the biomass target for the stock, in which case overfishing continues long after the 10 year rebuilding benchmark.

The goal of the Magnuson-Stevens Act should be to produce MSY “on a continuing basis” in order to end overfishing and rebuild fisheries within a reasonable period of time. To achieve this goal, plans must establish a reasonable end-date for fishing beyond sustainable levels, particularly because it is necessary to ensure that overfishing during the rebuilding period will not undermine rebuilding goals. In addition, as noted by the U.S. Ocean Commission, even where target catch levels are set in a plan at sustainable levels,

amounts harvested over such levels in one year have not been accounted for in setting the next year's levels, which has resulted in compounding problems for the stocks at issue.

Changes to the Magnuson-Stevens Act.—S. 2012 would preserve existing law on overfishing and rebuilding, since the Committee believes that the basic provisions are sound. However, the bill would amend the Magnuson-Stevens Act to require establishment of a mandatory accounting mechanism in every FMP to keep harvests at sustainable levels. Such mechanism would assure annual harvests will be at or below OY (thus below MSY), based on the best scientific information available. While some of the best managed fisheries use TAC-based management, the most direct means of controlling mortality, a Council can use any management measure deemed appropriate for the fishery (e.g., days at sea/trip limits, bag limits, escapement). However, the Council must assure that amounts taken over OY are deducted from the next year's limit, utilizing similar measures.

The Committee expects that TAC-managed fisheries will continue to use TACs and that fisheries managed using other effort controls may continue to use presently employed methods though some may consider moving to TAC-based management over time. Although some regions have avoided using TACs because they fear they may inspire a "race for fish," experience in other regions has shown that sector-based TACs offer management certainty and community protections that can address these concerns.

The Committee recognizes that almost every Council implements multi-year plans or multi-species FMPs, and believes the annual catch limit can be met in these types of plans. Section 104 allows multi-year plans to continue if they include a mechanism for establishing catch limits (and adjusting for over- or under-harvesting) within the years covered in the FMP. The annual catch limit process is distinct from stock status and fishing mortality rate determinations, which may take place on a two to five year cycle, although such determinations will influence the specific "catch limit" that is established for the year or years covered in the FMP.

Furthermore, the Committee believes that the annual catch limit mechanism could apply to the overall catch limit for all species under a multi-species FMP. Several Councils have developed multi-species management plans for fisheries that employ a wide variety of gear types. For example, Pacific cod, pollock, and flatfish are major fisheries in the North Pacific and are targeted by multiple gear types (trawl, hook-and-line, pot, jig gear). Currently, NMFS credits both directed harvest of Pacific cod and the incidental harvest of Pacific cod against the Pacific cod annual catch limit to ensure that Pacific cod are not over harvested. When cod is open for directed fishing, all cod must be retained. Directed fishing for Pacific cod is closed when the amount of cod available for harvest in the directed fishery is caught, reserving the remainder of the annual catch limit for incidental catch in other groundfish fisheries. NMFS then allows vessels to retain incidental catches of Pacific cod (if the annual catch limit has not been reached) taken in other directed fisheries that are open, up to a maximum retainable amount (determined in regulations). Catch of all species, whether targeted or taken as bycatch, whether retained or discarded, count toward

the annual catch limits, and fisheries are closed when these limits are reached.

The Committee heard numerous concerns that the science and data collection, including catch reporting, is not yet timely or sufficient for setting annual catch limits, particularly in a multi-species fishery. However, better and timelier data collection and reporting should result from establishing an annual catch limit before the fishery season begins and managing to that limit, as has been demonstrated in a number of fisheries. Furthermore, S.2012 supports the expanded use of catch monitoring technologies and improved information concerning fishing effort and stock status which should assist in providing the data needed to improve catch limit compliance.

Section 105. Fishery management plan discretionary provisions.

This section would make a number of changes to section 303(b) of the Magnuson-Stevens Act, which governs the discretionary provisions that may be included in a FMP.

DEEP SEA CORAL PROTECTION ZONES.—Section 105(2) of the bill would add subsection 303(b)(2)(B), which would authorize Councils to restrict certain types of fishing in zones where deep sea corals have been identified by the deep sea coral research and technology program established in section 211 of the bill. Deep sea coral communities provide critical habitat for many species, including several that are commercially important, and may host greater biological diversity than their shallow water counterparts. They can also provide scientists with data on historical climate patterns and hold great promise as a potential source of future medicines. However, these communities, which may include both coral and sponge species, are extremely susceptible to damage from certain types of fishing gear and techniques. Such interactions are also of concern to industry because of economic impacts to fishermen from lost or damaged gear. The section is intended to permit a Council to establish closures to address these problems without requiring a prior identification of the area as essential fish habitat. Closures to protect deep sea coral under this section will only be initiated after known locations of deep sea corals have been identified, as provided in section 408. In addition, the Committee intends consideration of long-term sustainable uses to ensure the Councils can provide opportunities for the continued use in the fishery of gear that does not cause physical damage to deep sea coral.

ACCESS TO RESTRICTED AREAS.—Section 105(2) would add subsection 303(b)(2)(C) to establish four criteria that must be met under the Magnuson-Stevens Act whenever a Council elects to close an area to all fishing activity. These criteria, which are consistent with the recommendations of the U.S. Ocean Commission, are that: (1) that such closure be based on the best available science, as required under National Standard 1, (2) such closure include criteria to assess the conservation benefit thereof, (3) there is a timetable for review of the closure's performance, and (4) such closure is based on an assessment of the benefits and impacts of the closure in relation to other management measures. While the Committee expects FMPs generally will address all four criteria in any fishing closure, in a case where all fishing is prohibited, extra care should be taken to ensure each criterion is met.

CONSIDERATION OF INTERSTATE DIFFERENCES.—Section 105(3) would amend section 303(b)(5) of the Magnuson-Stevens Act to authorize a Council to consider differences within a fishery but between various States and ports, including distance to fishing grounds and the proximity to time and area closures, in their FMPs.

LIMITED ACCESS SYSTEMS.—Section 105(4) would amend section 303(b)(6) to clarify that, in addition to the current criteria for establishing limited access systems, a Council must also consider the conservation requirements of the Magnuson-Stevens Act and the fair and equitable distribution of access privileges. While these criteria are already contained in two of the National Standards, the Committee's intent is to highlight their importance in the context of other listed considerations.

ECONOMIC DATA COLLECTION.—Sections 105(5)-(7) would make technical changes in several subsections of 303(b) to allow for the collection of economic data from fish processors.

NEPA COMPLIANCE.—The bill would create a new subsection 303(b)(12) to allow an FMP to set forth a process for compliance with NEPA established pursuant to section 107 of the bill.

ECOLOGICAL FACTORS.—The bill would create a new subsection 303(b)(13) to allow an FMP to include management measures that consider a variety of ecological factors affecting fishery populations, including the conservation of target and non-target species. This provision is intended to encourage Councils to continue to include ecosystem considerations in FMPs.

Section 106. Limited Access Privilege Programs.

This section would create a new Magnuson-Stevens Act section 303A to authorize Councils to create a Limited Access Privilege Program (LAPP) for the harvesting of fish within a given fishery. A LAPP, defined in section 3 of the bill, includes individual fishing quota (IFQ) programs as well as other programs in which a permit is issued to a specific person or authorized entity that allows harvest of a specified unit or units of the TAC of a fishery. All LAPPs would be subject to Secretarial approval through the FMP process and could only be developed for a fishery already being run under a limited access system.

The bill also contains specific provisions that would authorize the issuance of quota to fishing communities and for the creation of regional fishery associations (RFAs). These provisions were created in response to the concerns of communities and shoreside businesses around the country over the economic harm that could result from consolidation of quota in IFQs and similar programs. Many of these concerns were reflected in hearings and expert reports, including the 1999 National Research Council report required under the SFA. While some groups argued that allocating specific shares of processing privileges ("processor shares") would provide economic stability to communities, other groups believed that no special status should be granted to processors. The Committee chose to take a broader, community-based view and allow allocation of harvesting privileges to communities, and inclusion of processors and other shore-based businesses in RFAs with LAPP holders which would allow for the designation or linkage of LAPPs to a region or community.

In particular, the Committee recognizes that many small, poor coastal communities lack the resources to enter fisheries that may be subject to future LAPPs, and they have often been overlooked in allocation decisions. The Committee cautions the Councils not to use the requirements of section 106 to prevent these communities from being fully included in allocation of the fishery resource.

In addition, LAPPs are not intended to be used as a mechanism to reduce harvests through refinement of catch quota by those who are not fishery participants. Total quota available for harvest is established separately under the conservation requirements of the Act. Therefore, this section restricts the holding, acquisition, use, or issuance of LAPPs only to persons who substantially participate in a fishery.

The new section 303A would set forth the following provisions concerning LAPPs:

NO CREATION OF RIGHT, TITLE, OR INTEREST.—The new section 303A(b) would re-affirm existing law relating to IFQs that a LAPP is a permit that may be revoked or limited at any time without right to compensation. This permit would be considered a grant of permission to participate in the fishery and, as such, would not grant the holder any right to a fish before it was harvested. As a permit, the privilege could also be revoked or modified for any failure to comply with the program or if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen.

REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—New section 303A(c)(1) lists the criteria that any proposed LAPP must meet. These requirements specify that any LAPP must:

- (A) Assist in rebuilding an overfished fishery;
- (B) Reduce capacity in a fishery that is over capacity;
- (C) Promote fishing safety and fishery conservation and management;
- (D) Prohibit any person other than a U.S. citizen, corporation, partnership, or other entity established under the laws of the United States or a State, or resident alien that meets the requisite participation and eligibility requirements, from holding a harvesting privilege;
- (E) Require that processing of fish harvested under a LAPP be done within U.S. jurisdiction, i.e. in U.S. territory or by vessels of the United States. New section 303A(c)(2) would allow a waiver of this requirement for fisheries that have historically processed their catch outside the United States if the United States has a seafood safety equivalency agreement with the country where processing is to occur;
- (F) Specify the goals of the program;
- (G) Be subject to continual monitoring with a formal review of the program every 5 years which shall include any modifications needed to ensure the program meets its goals;
- (H) Include an effective system for monitoring, management, and enforcement, including the use of observers of electronic monitoring systems;
- (I) Include an appeals process for administrative review of Secretarial determinations;
- (J) Provide for a separate review process, established by the Secretary in consultation with the Department of Justice and

Federal Trade Commission, to determine if any acts of illegal collusion, anti-competition, antitrust, or price-fixing occurs among members of RFAs established under the program; and

(K) Provide for the revocation of privilege held by anyone who violates U.S. antitrust laws.

FISHING COMMUNITIES.—New section 303A(c)(3) would establish that fishing communities may be deemed eligible to receive and hold harvest privileges if they meet criteria developed by the relevant Council. According to new section 303A(c)(3)(A)(i), the community would have to: (1) be located within the management area of the relevant Council, (2) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register, (3) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the relevant Council's jurisdiction, and (4) develop and submit a community sustainability plan to the Council and Secretary. This plan must address the social and economic development needs of the community, including those who have not historically had access to resources to participate in the fishery. Failure to adhere to this plan will result in the loss of any privilege.

Participation criteria for a Council to consider are: (1) traditional fishing or processing practices in, and dependence on, the fishery, (2) the cultural and social framework of the fishing community, (3) economic barriers to access to the fishery, (4) the existence and severity of projected socio-economic impacts associated with a LAPP on participants in the fishery and related businesses, (5) the expected effectiveness, transparency and equitability of the community sustainability plan, and (6) the potential for improving economic conditions in remote coastal communities that lack the resources to participate in fishery related activities. The Committee intends the Councils to consider as "traditional" those uses that pre-date contemporary commercial fishing in smaller, isolated communities that can demonstrate historic dependence on combination fisheries or participation in the fishery during years that may not fall within the qualifying period for individual LAPPs.

REGIONAL FISHERY ASSOCIATIONS.—RFAs provide for persons in the limited access fisheries in a specific region or subregion to make voluntary arrangements for their own mutual interest, and to promote the economic and social well-being of the region. The Committee intends that participation in a particular RFA will be limited to persons substantially participating in or substantially dependent on one or more fisheries subject to a LAPP within the RFA's region or subregion of concern. Determinations of substantial participation and substantial dependence shall be established by the Secretary upon recommendation by the Council. In an RFA, quota would be allocated to the harvester but classified for use in a specific region in order to maintain a relative balance between the harvesting sector receiving the quota and the communities, processors, and other fishery-related businesses that have become dependent on the resource entering their port. Establishment of such RFAs would allow for mitigation of any impacts of a LAPP on a variety of community and fishery-related business interests, without allocation to individual companies of an exclusive right to process fish. The bill would also allow a Council to consider regional or port-specific landing requirements to maintain a relative

balance of the commercial industry sectors, such that fishermen, processors, and communities could participate in and benefit from the rationalized fishery.

New section 303A(c)(4) would provide that an RFA may participate in a LAPP if it meets certain eligibility and participation criteria. To be eligible, an RFA must: (1) be located within the management area of the relevant Council, (2) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register, (3) be voluntary organizations with bylaws and procedures and consisting of members who conduct commercial or recreational fishing, fish processing, or support businesses, and (4) develop and submit an RFA sustainability plan to the relevant Council and Secretary. Failure to adhere to this plan would result in the loss of harvest privileges.

RFA participation criteria set by a Council must consider: (1) traditional fishing or processing practices, (2) the cultural and social framework relevant to the fishery, (3) economic barriers to access to the fishery, (4) the existence and severity of projected socio-economic impacts associated with a LAPP on participants in the fishery and its related businesses, (5) the administrative and fiduciary soundness of the RFA, and (6) the expected effectiveness, transparency, and equitability of the RFA's sustainability plan.

ALLOCATION.—New section 303A(c)(5) would require LAPPs to provide a fair and equitable distribution of the initial allocation of catch in a way that:

(A) Considers catch history, employment, investment, dependence on the fishery, and historic participation of fishing communities;

(B) Considers the basic social and cultural framework of the fishery, and promotes the sustained participation of small, owner-operated fishing vessels and communities that depend on the fisheries, which could include regional landing requirements;

(C) Assists entry level and small scale members of the fishing community;

(D) Limits the maximum share of the access privileges able to be held, acquired, or used by a qualified entity; and

(E) Authorizes all those who substantially participate in the fishery to hold a limited access privilege.

PROGRAM INITIATION.—New section 303A(c)(6) would provide that any Council may establish a LAPP in an FMP or FMP amendment on its own initiative or in response to a petition certified by the Secretary and signed by a group of fishermen representing a majority of the permit holders or allocation within a multi-species fishery. Section 303A(c)(6)(B) provides that for a petition initiated in the Gulf of Mexico region for a fishery using multi-species permits, only those fishermen who had substantially fished the species named in the petition would be eligible to sign.

Subsection 303A(c)(6)(D) would specify that in the New England and Gulf of Mexico regions any IFQ program would also be subject to a final referendum in order to be approved. Approval in New England would require a 2/3 majority of voting permit holders and approval in the Gulf of Mexico would require a majority of eligible permit holders. Only fishermen who have fished the species in question will be eligible to vote in a Gulf of Mexico referendum on

an IFQ in a multi-species fishery. With respect to such Gulf of Mexico programs, the majority vote may be measured by weighting votes considering the quantity of fish authorized to be harvested under the permit (e.g., 200 pounds per day or 2,000 pounds per day). The Gulf of Mexico Red Snapper Fishery would be exempted from these requirements. The Secretary would be responsible for the conduct of the referendum and any referenda would not be subject to the requirements of the Paperwork Reduction Act (Chapter 33 of 44 U.S.C.).

TRANSFERABILITY.—New subsection 303A(c)(7) would require a Council to establish a policy on the transferability of privileges and a program to monitor such transfers that is consistent with the policies that the Council established during the allocation process, including with respect to continued participation of small vessel owner-operators and communities.

PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—New subsection 303A(c)(8) would state that any FMP prepared by the Secretary for Atlantic highly migratory species under section 304(g) of the Magnuson-Stevens Act would be required to meet the same requirements for any potential LAPPs.

ANTITRUST SAVINGS CLAUSE.—New subsection 303A(c)(9) would provide a savings clause stating that nothing in the Magnuson-Stevens Act shall waive any U.S. antitrust laws as defined in the first section of the Clayton Act or section 5 of the Federal Trade Commission Act.

AUCTION AND OTHER PROGRAMS.—New section 303A(d) would authorize a Council to use an auction or other system to collect royalties from the initial distribution of privilege in a LAPP if: (1) the system or program is conducted in a manner consistent with the requirements, and (2) revenues from the distribution system are deposited in the limited access system administration fund (established in section 305(h)(5)(b) of the Magnuson-Stevens Act). Funds from the limited access system administration fund would be made available through annual appropriations.

COST RECOVERY.—New section 303A(e) would require a Council that develops a LAPP to establish a methodology for assessing the management, data collection and analysis, and enforcement programs, and provide for a schedule of fees to support these activities. Section 106(b) amends section 304(d)(2)(A) of the Magnuson-Stevens Act to establish technical amendments allowing the collection of fees for this purpose.

LIMITED DURATION.—New section 303A(f) would authorize a Council to establish limits on the duration of any LAPP allocation and provide a mechanism for participants and new entrants to require or re-acquire allocations.

LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—New section 303A(g) would retain language of existing section 303(d)(4), which authorizes Councils to allow 25 percent of fees collected from a fishery to be used to aid entry-level and small boat fishermen in purchasing shares. Such a program would be developed under a Council's standard rules and procedures and be subject to public comment. The Secretary would be prohibited from approving a plan that has not met all the other requirements for LAPPs.

EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—New section 303A(h) would ensure that section 303A would not require a

reallocation of quota share from any limited access system, including sector allocations, submitted to the Secretary and approved by the Council prior to the date of enactment of this bill.

However, the LAPP provisions of S. 2012 adopt the recommendations of the U.S. Ocean Commission, and the Committee expects that quota programs now being developed by the Councils will incorporate these recommendations even before enactment of this legislation. The Committee recognizes that Councils must move forward on programs under development and does not intend to cause unwarranted delays by requiring mature plans to be re-drafted wholesale. But Councils should attempt to ensure plans adhere to the spirit of the criteria recommended by the U.S. Ocean Commission and those contained in the bill in order to improve the consistency and fairness of future programs.

FEES.—Section 106(b) would amend section 304(d)(2)(A) of the Magnuson-Stevens Act to authorize the Secretary to collect fees from any LAPP to cover the costs of the data collection, in addition to fees for enforcement and management, already permitted under current law.

INVESTMENT IN UNITED STATES SEAFOOD PROCESSING FACILITIES.—Section 106(c) would direct the Secretary to work with the Small Business Administration and other Federal Agencies to develop incentives for U.S. investment in U.S. seafood processing facilities for fisheries that lack U.S. based facilities.

APPLICATION WITH AMERICAN FISHERIES ACT.—Subsection 106(e) of the bill contains a savings clause, stating that any changes in law contained in section 106 would not supersede the requirements of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note et alia).

Section 107. Environmental review process.

This section would add a new subsection 304(i) to the Magnuson-Stevens Act requiring the Secretary, with public participation and in consultation with the Council on Environmental Quality (CEQ) and the Councils, to develop integrated procedures for compliance with NEPA. These integrated procedures would then be established as the sole environmental impact assessment for FMPs. Such a procedure would have to meet a number of criteria including: (1) conformity to timelines for review and approval of FMPs, and (2) integration of the environmental analytical procedures and public input timelines with FMP preparation and dissemination. The Secretary would be given 12 months to propose the revised procedures, allow a requisite 90 days for public comment, and promulgate final procedures 18 months after enactment of the bill.

Section 108. Emergency regulations.

This section would amend section 305(c)(3)(B) of the Magnuson-Stevens Act to extend from 180 to 186 days the period during which an emergency amendment to an FMP may remain in effect. It also permits a potential extension period of the same length. These changes would allow an emergency regulation to remain in effect for a full year.

Section 109. Western Pacific Community Development

This provision would create a new subsection 305(j), directing the Secretary to create a pilot program for regionally based marine education programs in the western Pacific. The program's goal would be to increase communication, education, and training with regard to marine resource issues throughout the region, especially among indigenous Pacific islanders, native Hawaiians, and other underrepresented groups. Subsection 305(j)(2) specifies that the program is required to have six components:

- (1) marine science and technology education focused on preparing residents for employment in related fields;
- (2) fisheries and seafood related training programs, including observer training programs;
- (3) outreach programs and materials designed to inform residents about the quality and sustainability of wild caught fish or fish products farmed through responsible aquaculture, particularly in Hawaii and the western Pacific;
- (4) programs to identify methods and technologies that will improve data collection and quality, and increase the sustainability of fishing practices and that may be shared with other communities and nations in the western and central Pacific;
- (5) enhancement of science-based fishery management with local and traditional knowledge (including Pacific islander and native Hawaiian knowledge); and
- (6) development of partnerships with other western Pacific island agencies, academic institutions, and other entities to meet the purposes of the section.

Section 110. Western Alaska Community Development Quota Program.

This section would amend section 305(i)(1) of the Magnuson-Stevens Act to clarify that communities currently participating in the western Alaska community development quota programs that were included in NMFS regulations in effect on January 1, 2004 or were approved by NMFS on April 19, 1999 are authorized by statute to participate in the program.

Section 111. Secretarial action on State groundfish fishing.

This section would add a new subsection 305(k) to the Magnuson-Stevens Act to require the Secretary to make a determination within 60 days of enactment as to whether fishing in State waters on regulated species in the New England multi-species complex without a New England multi-species groundfish fishery permit is consistent with the relevant Federal FMP. If the Secretary finds that such fishing activity in State waters is not consistent with the Federal plan, the Secretary would be directed to notify the State and develop measures to establish consistency with the Federal plan, in consultation with the New England Council.

Section 112. Joint enforcement agreements.

This section would add section 311(b)(1)(A)(vi) to the Magnuson-Stevens Act, clarifying that enforcement authority for any marine resource law administered by the Secretary is given jointly to the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. This enforcement authority is

also broadened to allow any officer of the Secretaries to access any data required to be submitted under this title. The provision specifically mentions information from Global Maritime Distress and Safety Systems (GMDSS), vessel monitoring systems, or other similar systems. Data collected from these systems would be subject to all the confidentiality requirements of section 402 of the Magnuson-Stevens Act.

This section also would add two new sections to section 311 of the Magnuson-Stevens Act. These provisions, designated section 311(h) and section 311(i), would authorize the Secretary to enter into joint enforcement agreements (JEAs) with the States for the enforcement of marine resource laws.

JOINT ENFORCEMENT AGREEMENTS.—New subsection 311(h) would authorize State Governors to apply to the Secretary for execution of a JEA. Such an agreement would deputize and provide Federal funding for State law enforcement officials to carry out any of the Secretary’s marine law enforcement responsibilities, including those contained within the Magnuson-Stevens Act. All coastal states, including those bordering the Great Lakes, are eligible to enter into a JEA with the Secretary. Each JEA is required to:

- Be consistent with the purposes of section 311;
- Contain an allocation of funds that will be distributed equitably among participating States, based on: (1) consideration of Federal enforcement needs, (2) State enforcement needs, and (3) State enforcement capacity; and
- Provide for the confidentiality of data and information to States pursuant to section 402 of the Magnuson-Stevens Act.

IMPROVED DATA SHARING.—New subsection 311(i) is designed to ensure that States which enter into a JEA under this section, or a confidentiality agreement under section 402(b)(1)(B) of the Magnuson-Stevens Act, may also gain access to data gathered by the Secretary from GMDSS, vessel monitoring systems, or similar systems subject to certain conditions.

REPORT ON USING GMDSS.—Section 112(b) would also require NMFS and the Coast Guard to submit a report to Congress on the following aspects of the use of GMDSS and similar systems in JEAs:

- (1) A cost-benefit analysis of the feasibility, value, and cost of using the GMDSS, vessel monitoring system, or similar system in fishery management and enforcement if the Federal government were to bear the primary capital investment costs.
- (2) The cumulative impact of existing system requirements for commercial vessels.
- (3) Whether the GMDSS requirements would overlap with existing requirements.
- (4) How to address data integration from such systems.
- (5) How to maximize data sharing between Federal and State governments while considering appropriate levels of confidentiality.
- (6) How to develop, purchase, or distribute GMDSS or similar systems to regulated vessels.

Section 113. Transition to sustainable fisheries.

This section makes a number of changes to section 312 of the Magnuson-Stevens Act. Most of the changes relate to subsections

312(b)-(e), which establish the fishing capacity reduction program, but two technical changes are made to subsection 312(a), regarding fisheries disaster relief. The changes to section 312(a) would include harvest restrictions to protect human health or the marine environment, including under other statutory authority, among the causes of a fishery failure that could qualify a community for disaster relief, and reauthorize the program for FY 2006 through 2012.

Amendments to Subsection 312(b)-(d) include technical changes that would:

- Allow a majority of permit holders or individuals holding a majority of the allocation in a fishery to conduct a voluntary fishing capacity reduction program. Currently only a Council or State may request that the Secretary initiate such a program.
- Include achieving stability, safety, or organizational effectiveness in the list of qualified reasons for initiating a capacity reduction program.
- Require a program involving industry fee systems to demonstrate the prospect of paying off its debts rather than demonstrate certainty.
- Require that if payment is made to a vessel owner under a capacity reduction program, the owner must also relinquish any claim to a permit associated with the vessel or the vessel itself, and that the vessel be either scrapped or permanently prohibited from use for fishing in State, Federal, or high seas area, or in the waters of a foreign nation.
- Include harvester proponents of a capacity reduction program in consultations between the Secretary and the relevant Council.
- Allow the Secretary to conduct a referendum on establishing an industry fee system to fund a capacity reduction program without request of the Councils.
- Reduce the requirements for a successful referendum on an industry fee system to a simple majority of those voting, rather than a two-thirds majority.
- Allow industry fees to be collected from the seller rather than only the first ex-vessel fish purchaser.

The bill also would revise subsection 312(e) of the Magnuson-Stevens Act, which establishes requirements for implementation of a voluntary capacity reduction program. Revised subsections 312(e)(1)-(2) would direct the Secretary to propose and adopt framework regulations for all capacity reduction programs and implement all such programs through the adoption and promulgation of program regulations. Revised subsection 312(e)(3) would establish a harvester proponents' implementation plan for those capacity reduction programs funded through an industry fee system. Under this plan, the Secretary would not be able to propose implementing regulations until the harvester proponents of the plan provide a proposal that: (1) specifies the type and number of vessels or permits eligible to participate, taking into account various considerations, and (2) outlines procedures for program participation. Revised subsection 312(e)(4) would direct the Secretary to enter into a contract with each person participating in a program. Such a contract would be required to be consistent with the framework and implementing regulations. Revised subsections 312(e)(5)-(6) would

establish the procedures for reduction auctions which are to take place if a capacity reduction program does not involve a fair market assessment.

Section 114. Regional coastal disaster assistance, transition, and recovery program.

This section would create a new section 315 in the Magnuson-Stevens Act to establish a regional coastal disaster assistance, transition, and recovery program. This program would authorize the Secretary, in consultation with the relevant Governors, to provide immediate relief to the fishery sector of a region afflicted by a catastrophic fishery disaster. Economic assistance would be made available for: (1) meeting immediate shoreside infrastructure needs, (2) financial assistance and job training for fishermen in a fishery that may be temporarily closed, (3) funding for a capacity reduction program under section 312(b), and (4) any other activities authorized under the fisheries disaster assistance provisions in section 312(a) of the Magnuson-Stevens Act, or section 308(d) of the Interjurisdictional Fisheries Act of 1986. Any fisherman who opts to scrap a fishing vessel would be eligible for job training.

New section 315(b)(4) would allow the Secretary to waive the State or local matching requirements of section 308(d)(3) of the Interjurisdictional Fisheries Act or section 312 of the Magnuson-Stevens Act if no such funds are available and if the benefits of full Federal financing outweigh the cost. However, a State would be required to meet the requirements of section 312(b), the fisheries disaster relief provision of the Magnuson-Stevens Act. New section 315(c) would direct the Secretary to provide the Governor of each State participating in a program under this section with a comprehensive socio-economic evaluation of the affected fisheries to aid in the assessment of their future viability. New section 315(d) would define a catastrophic fishery disaster as a natural disaster, a judicial closure, or regulatory fishery closure to protect human health or the marine environment that: (1) results in economic loss to coastal or fishing communities, (2) affects more than one fishery managed by a State, interstate fishery commission, or pursuant to a Federal FMP, and (3) is determined to be a fishery failure under section 312(a) of the Magnuson-Stevens Act or a resource disaster under section 308(d) of the Interjurisdictional Fisheries Act of 1986.

Section 115. Fishery finance program hurricane assistance.

This section would create a program directing the Secretary, subject to appropriations, to provide assistance to holders of fishery finance program (FFP) loans who were affected by Hurricanes Katrina or Rita. Any funds would be made available to loan holders based on their outstanding balance in order to: (1) defer principal payments for one year and reamortize the debt, (2) extend the term of the loan for one year, (3) pay the interest costs for loans during FY 2006-2012, and (4) provide opportunities for loan forgiveness subject to Secretarial approval. To be eligible for this program, loan holders must use monies for the new investment in, repair, or replacement of vessels, facilities, or fisheries infrastructure for use within the affected areas.

Eligibility for such assistance would be limited to holders of FFP loans who use the assistance to replace any damaged capital for use within the declared disaster area. The section would authorize up to \$15 million for each eligible FFP loan holder for FY 2006 through 2012.

Section 116. Shrimp fisheries hurricane assistance program.

This section would authorize \$17,500,000 for FY 2006 through 2011 to the Secretary in order to carry out a disaster assistance program in the Gulf of Mexico shrimp fishing industry. Monies would be allocated to States based on the percentage of the shrimp catch caught by their Gulf Coast fisheries and would be used for such purposes as marketing, seafood testing programs, development of limited access programs, bycatch reduction, capacity reduction, and individual and small business personal assistance.

Section 117. Bycatch reduction engineering program.

This section would create a new section 316 of the Magnuson-Stevens Act directing the Secretary, in cooperation with the Councils and other interests, to create a bycatch reduction engineering program within one year of enactment. The program would be tasked with developing technological devices and engineering techniques for minimizing bycatch, seabird bycatch, bycatch mortality, and post-release mortality. The provision requires the program to: (1) be regionally based, (2) coordinate with projects under the Magnuson-Stevens Act's cooperative research and management program, (3) use information and outreach to encourage the adoption of new technologies, and (4) provide for consultation with Councils so they may incorporate new approaches to bycatch reduction in FMPs.

This section would also authorize an FMP to contain various incentives to encourage the reduction of all types of bycatch. These incentives could include the use of bycatch quota, measures to promote the use of gear that reduces bycatch rates, post-release mortality, or other measures as determined by the best scientific information available.

Section 118. Community-based restoration program for fishery and coastal habitats.

This section would authorize the existing NMFS community-based restoration program to implement and support the restoration of fishery and coastal habitats. The program would be authorized to—

- (1) provide funding and expertise to communities in order to assist them with habitat restoration;
- (2) advance the science and monitoring of coastal habitat restoration;
- (3) transfer restoration technologies to the private sector, the public, and other governmental agencies;
- (4) develop public-private partnerships to accomplish sound coastal restoration projects;
- (5) promote community support and volunteer participation in habitat restoration;
- (6) promote stewardship of fishery and coastal habitats; and
- (7) leverage resources at national, regional, and local levels.

Section 119. Prohibited acts.

This section would add two items to the list of prohibited acts in section 307(1) of the Magnuson-Stevens Act: (1) a prohibition on commercial activity with respect to any fish acquired in violation of any foreign law or regulation, and (2) a prohibition on the use of any vessel that has been removed from a fishery through the fishing capacity reduction program described in section 312(b)(2) of the Magnuson-Stevens Act. These provisions are similar to language contained in the Lacey Act (16 U.S.C. 3371 et seq.), but their placement here would make transgressors subject to penalties under the Magnuson-Stevens Act as well.

Section 120. Enforcement.

This section would amend sections 308 through 311 of the Magnuson-Stevens Act to make a number of technical and substantive changes to the authority of the Secretary and the ways in which civil and criminal penalties are assessed, enforced, and administered under the Magnuson-Stevens Act.

The Committee expects the Agency to exercise discretion in the enforcement of these provisions. This increase in civil penalties is needed in order to make the collections from violations more than the cost of doing business in particularly lucrative fisheries and to provide an adequate response to especially egregious violations or violations involving repeat offenders. The Committee feels an increase in penalties for criminal offenses and the possibility of imprisonment is particularly justified to provide adequate enforcement measures to deter egregious, large-scale and repeat violators, who feel monetary fines are a normal part of commercial fishing operations. However, the new maximums and enhanced enforcement authority should be focused on large-scale and repeat violators and are not intended for use in routine enforcement cases.

Amendments to section 308: Civil Enforcement. Section 120(a)(1)-(5) would amend section 308 to: (1) raise the maximum civil penalty from \$100,000 to \$240,000, (2) give the Secretary authority to issue subpoenas for the purposes of any investigation carried out under the Magnuson-Stevens Act or any other marine resource law enforced by the Secretary, (3) make technical changes to clarify that transfer of ownership of a permit, such as those held in a LAPP, does not release it from any sanctions held against it, and (4) make other technical changes to include settlement of civil forfeitures in language regarding the reinstatement of permits. In addition, this section would amend section 308(a)(4) of the Magnuson-Stevens Act to allow the Secretary to use subpoenas in the investigation of alleged violations of the Magnuson-Stevens Act and other marine resource laws enforced by the Secretary. Existing law authorizes subpoenas for civil penalty hearings but not for the investigations of alleged violations. The Committee intends the inclusion of investigative subpoena authority to allow for more thorough investigations of an alleged violation prior to a decision to issue a notice of violation and assessment of civil monetary penalty.

AMENDMENTS TO SECTION 309: CRIMINAL PENALTIES.—Section 120(b) would amend Magnuson-Stevens Act sections 309(a)-(c) which govern criminal penalties, in order to:

- Increase the maximum penalty for non-violent criminal violations of Magnuson-Stevens Act provisions under sections

307(1)(D),(E),(F),(H),(I),(L) or section 307(2) to \$500,000 and 5 years imprisonment except for corporations or other organizations, for which the maximum penalty would be \$1 million. The Magnuson-Stevens Act currently authorizes penalties of \$100,000 and/or six months imprisonment for violations of the section 307(1) provisions listed above, and fines of \$200,000 but no imprisonment for violations of section 307(2). The violations covered under this provision are generally related to enforcement actions or unlicensed fishing in State waters and are not changed from the current Act.

- Remove the fine levied for aggravated criminal offenses but keep the penalty of up to 10 years in prison. This penalty is currently levied against individuals who threaten or commit a violent offense against observers and enforcement officers. The amendment would also extend the coverage to Council members or staff.

- Criminalize knowing violations of any other provisions of section 307 of the Magnuson-Stevens Act and set the maximum penalty at 5 years imprisonment and/or fines as stipulated by Title 18, U.S.C. This change would bring the Magnuson-Stevens Act into parity with other environmental management statutes such as the Clean Water Act.

- Establish that legal actions related to the Magnuson-Stevens Act fall under the jurisdiction of the U.S. district courts and that each violation of Magnuson-Stevens Act provisions shall be considered a separate offense.

AMENDMENTS TO SECTION 310: CIVIL FORFEITURES.—Section 120(c) would make technical changes to section 310(a) of the Magnuson-Stevens Act in order to clarify that vessel forfeiture will not be imposed as a penalty for violations of Magnuson-Stevens Act provisions in cases where a citation issued under section 311(a) is deemed sufficient.

AMENDMENTS TO SECTION 311: ENFORCEMENT RESPONSIBILITY.—Sections 120(d) and (e) would make technical changes to sections 311(a) and (b) to clarify that the Secretary has the authority to enforce any marine resource law administered by the Secretary and to use, by agreement, the services of any other Federal, State, Territory, Commonwealth, or Tribal agency in doing so. Section 120(f) would make a technical change to section 311(e)(1)(b) to allow the Secretary to pay rewards less than \$20,000 or 20 percent of the penalty in question for assistance in resolving a violation of the Magnuson-Stevens Act. Previously, rewards were to be not less than \$20,000 or 20 percent of the penalty.

TITLE II—INFORMATION AND RESEARCH

Section 201. Recreational fisheries information.

This section would create a new subsection 401(g) of the Magnuson-Stevens Act that would direct the Secretary to establish a national program for the registration of marine recreational fishermen. The new registry would include all individuals who fish recreationally: (1) in the EEZ, (2) for anadromous species, or (3) for continental shelf fishery resources beyond the EEZ. New subsection 401(g)(2) would require the Secretary to exempt any individuals or charter fishing vessels from the registry if they are already reg-

istered in a State which uses that information to assist in completing marine recreational fisheries statistical surveys or for evaluating the effects of proposed conservation and management measures.

Subsection 401(g)(3) would direct the Secretary to establish a program for improving the marine recreational fisheries statistical surveys including to the extent possible: (1) dockside interviews, (2) surveys to target anglers registered at the State or local level, (3) collection of trip data from charter fishing vessels, and (4) development of a weather corrective factor to be applied to catch estimates. The Secretary would report to Congress on the program's progress two years after its establishment. Improved fishing data collection is imperative to the successful implementation of section 104(7) of the Magnuson-Stevens Act. Additionally, this will help ensure that all fish caught under a recreational permit are accurately accounted for under that recreational sector's allocation.

Section 202. Collection of information.

This section would amend section 402(a) of the Magnuson-Stevens Act to allow Councils to request that the Secretary gather economic data regarding fish or fish processing operations. It would also authorize the Secretary to initiate an additional information collection program if it is deemed necessary.

Section 203. Access to certain information.

This section would make technical changes to section 402(b), which governs the handling of confidential information pursuant to the Magnuson-Stevens Act. An amendment to section 402(b)(1) would clarify that confidential information, as defined in this bill, would be kept confidential and be exempt from disclosure under the Freedom of Information Act, except to various parties or under certain circumstances. These exemptions include: (1) Federal or Council employees responsible for fishery management, (2) State or Marine Fishery Commission employees, subject to a confidentiality agreement prohibiting public disclosure of information, (3) State employees charged with fishery management in a State party to a JEA, (4) use to verify catch in a LAPP, subject to a confidentiality agreement prohibiting public disclosure of information, (5) with written authorization from the appropriate parties, (6) use in Secretarial determinations in a LAPP, and (7) use in support of homeland security activities.

This section would also make requisite technical changes and inset a new section 402(b)(2) to govern the confidentiality of observer information. This information would be deemed confidential, with the exceptions described above and three additional exceptions: (1) for the North Pacific Council to allow disclosure of bycatch information, (2) when the information is necessary to adjudicate observer certifications, and (3) for the training and assessment of observers.

Section 204. Cooperative research and management program.

This section would create a new section 317 of the Magnuson-Stevens Act. This new section would establish a cooperative research and management program to fund partnerships between Federal and State entities in research and management activities

that are consistent with the goals of the Magnuson-Stevens Act. The program would be implemented on a regional basis and be developed and conducted through partnerships among Federal and State managers and scientists, commercial and recreational fishing industry participants, and educational institutions.

Project eligibility would be based on a determination of critical need by the Councils, made in consultation with the Secretary. Funding would be awarded on a competitive basis and based on regional needs with priority given to projects designed to: (1) collect data to improve stock assessments, (2) assess bycatch or post release mortality, (3) reduce bycatch or post release mortality, (4) identify or conserve habitat areas of particular concern, and (5) collect and compile socio-economic data. The Committee expects the Secretary to be sensitive to the research needs of each fisheries region and the expectation that each region should be treated fairly with respect to such allocation.

New subsection 317(d) would direct the Secretary to establish a uniform, but regionally based, expedited permitting process for projects under this section within six months after enactment. Any programs funded through quota set-asides within a fishery would be exempt from the requirements of this section.

Section 205. Herring study.

This section would create a new section 318 in the Magnuson-Stevens Act that would authorize the Secretary to conduct a study on herring in the northwest Atlantic to examine its abundance, distribution, and role as a forage fish for other commercially important stocks. An interim report on the study would be due at the end of FY 2008, and a final report would be due within three months of the study's completion. The section would authorize \$2 million for FY 2007 through 2009 to complete the study.

Section 206. Restoration study.

This section would create a new section 319 in the Magnuson-Stevens Act that would authorize the Secretary to conduct a study to update the scientific information and protocols needed to improve coastal habitat restoration. The section would authorize \$500,000 for FY 2007 to complete the study.

Section 207. Western Pacific fishery demonstration projects.

This section would amend section 111(b) of the SFA to remove the Secretary of the Interior as a granting agent for western Pacific demonstration projects and to remove limits on the number of projects that may exist at a given time. This section also contains a technical correction to language in section 111(b)(6) of the SFA.

Section 208. Fisheries conservation and management fund.

This section would direct the Secretary to establish a fishery conservation and management fund that shall be available to the Secretary to disburse on a regional basis for purposes including: (1) efforts to improve fishery harvest data collection, (2) cooperative fishery research and analysis, (3) development of methods or technology to improve the quality, safety, and value of landed fish, (4) analysis of fishery products for health benefits and risk, (5) marketing including consumer education, and (6) financial assistance

to fishermen to offset the costs of modifying gear to comply with the Magnuson-Stevens Act. The fund may receive deposits from the sale of quota set aside by a Council for that purpose or from outside sources, including donations from State and local authorities and private or non-profit organizations. Money in the fund would be disbursed to the various management regions based on a consensus decision by the Councils except that no region would receive less than 5 percent of the Fund.

Section 209. Use of fishery finance program and capital construction fund for sustainable purposes.

This section would amend the Merchant Marine Act of 1936 (46 U.S.C. App. 1274(a)(7)) to expand the eligibility for federally guaranteed loans, under the FFP. The expansion would include activities that assist in the transition to reduced fishing capacity, outlays for technologies, or upgrades designed to improve collection and reporting on fishery-dependent data to reduce bycatch, improve selectivity, reduce adverse impacts of fishing gear, or to increase vessel safety. These provisions would implement recommendations of the fishery financial investment task force established under the SFA. Subsection 209(b) would expand the purposes of the capital construction fund by authorizing termination and withdrawal from a fund in exchange for the retirement of the related commercial fishing vessels and commercial fishing permits. Persons could also withdraw money from the fund for investment in shoreside fishery related facilities for the purpose of promoting U.S. ownership.

Section 210. Regional ecosystem research.

This section would add a new subsection 406(f) to the Magnuson-Stevens Act. This subsection would direct the Secretary, in consultation with the Councils, to undertake a study on the state of the science for advancing the concepts and integration of ecosystem considerations in regional fishery management. The study would be based on the recommendations of the Ecosystem Principles Advisory Panel, established in section 406 of the Magnuson-Stevens Act, and would include—

- (1) recommendations on data requirements for understanding ecosystem processes;
- (2) recommendations for incorporating broad stakeholder participation;
- (3) recommendations on how to account for the effects of environmental variation in fish stocks; and
- (4) a description of existing and developing Council efforts to implement ecosystem approaches.

The study would be completed six months after enactment.

Section 211. Deep sea coral research and technology program.

This section would create a new section 408 in the Magnuson-Stevens Act to direct the Secretary to establish a deep sea coral research and technology program. This program would be developed in consultation with appropriate Councils and in coordination with other Federal agencies and education institutions. Its purpose would be to—

- (1) identify existing research on, and known locations of, deep sea corals;

- (2) locate and map deep sea corals;
- (3) monitor activity in known areas of deep sea corals;
- (4) conduct research, including cooperative research with the fishing industry, on deep sea corals and survey methods;
- (5) develop technologies to reduce the interaction between fishing gear and deep sea corals; and
- (6) prioritize program activities in areas where deep sea corals are known to occur.

This program would benefit from the active participation of a wide range of knowledgeable individuals including commercial fishermen, recreational fishermen, independent scientists, government officials, conservationists, and other members of the public. The Secretary and Councils should strive to involve these individuals in the design and implementation of this research program. All data collected by the program would be transmitted to the appropriate Council, and the Secretary would be required to submit a biennial report to Congress on steps taken to identify, monitor and protect deep sea corals.

Section 212. Impact of turtle excluder devices on shrimping.

This section would direct the Undersecretary of Commerce for Oceans and Atmosphere to establish an agreement with the National Academy of Sciences to conduct a study on the effect of turtle excluder devices on the shrimping industry. This would authorize the same study for which funding was provided in a previous appropriations bill.

Section 213. Hurricane effects on shrimp and oyster fisheries and habitats.

This section would direct the Secretary to complete two reports within six months of enactment, detailing the effects of Hurricanes Katrina and Rita on commercial and recreational fisheries and fishery habitat in States bordering the Gulf of Mexico. Subsection 213(c) of the bill would direct the Secretary to restore fishery habitats, including shrimp and oyster habitats, in Louisiana and Mississippi.

TITLE III—OTHER FISHERIES STATUTES

Section 301. Amendments to Northern Pacific Halibut Act.

This section would make technical changes and would amend section 8(a) of the Northern Pacific Halibut Act of 1982 (NPHA) to expand its Permit Sanctions and Criminal and Civil Penalties provisions as follows: (1) by raising caps on civil penalties to \$200,000 from \$25,000, and (2) by allowing the Secretary to consider information on the ability of a violator to pay a penalty if such information is provided 30 days prior to the hearing.

PERMIT SANCTIONS.—Subsection 301(b) of the bill would allow the Secretary, after a hearing, to deny, suspend, revoke, or impose additional conditions on any permit issued under the NPHA for the following transgressions: (1) use of a vessel in a prohibited act, (2) violation of the Magnuson-Stevens Act by a permit holder or vessel owner/operator, or (3) failure of a permit holder or vessel owner/operator to pay any portion of a fine or civil penalty associated with the violation of any marine resource law enforced by the Secretary.

Prior to imposing any sanctions, the Secretary must consider the same mitigating factors as for assessing a civil penalty, including the nature, circumstances, extent, and gravity of the violation, and the violator's degree of culpability, past history, and any other matters justice may require. A permit sanction would remain in place, including through any transfer of ownership, until all fines and settlements have been paid.

CRIMINAL PENALTIES.—Subsection 301(c) of the bill would raise the cap on fines associated with criminal penalties under the Magnuson-Stevens Act from \$50,000 to \$200,000, except in cases involving weapons or assault on an officer, in which case the fine is raised from \$100,000 to \$400,000.

Section 302. Reauthorization of other fisheries acts.

This section would reauthorize a number of additional fisheries acts including the:

ATLANTIC STRIPED BASS CONSERVATION ACT.—\$1 million is authorized to the Secretary of Commerce and \$250,000 to the Secretary of the Interior for each of FY 2006 through 2010.

YUKON RIVER SALMON ACT OF 2000.—\$4 million is authorized for each of FY 2006 through 2010.

SHARK FINNING PROHIBITION ACT.—Reauthorized at the same funding level for FY 2006 through 2010.

PACIFIC SALMON TREATY ACT.—This provision would take language related to the 1999 Pacific Salmon Treaty Agreement between the United States and Canada, from the Commerce, Justice, and Science portion of the FY 2000 omnibus appropriations bill and transfer it to the Pacific Salmon Treaty Act (16 U.S.C. 3631 et seq.). This language covers the authorization and management of the Northern and Southern Boundary Restoration and Enhancement Funds and would reauthorize the funds for FY 2006 through 2009.

STATE AUTHORITY FOR DUNGENESS CRAB FISHERY MANAGEMENT.—This provision would make technical amendments to PL 105–384 to extend the authority of States to manage the Dungeness Crab fishery in the EEZ adjacent to State waters through 2016. The extension would provide time for the States to consider long term management needs, including development of a capacity reduction plan. The provision also changes the State reporting requirements to a report on stock “status” rather than “health” and stipulates that such reports must include information on: (1) stock status and trends, (2) a description of the types of scientific information and processes used to determine the stock trends, and (3) measures implemented or planned that are designed to end over-fishing in the fishery.

TITLE IV—INTERNATIONAL

The Magnuson-Stevens Act requirements govern fishing within the 4.5 million square mile U.S. EEZ, as well as harvesting activities by U.S. fishermen on the high seas. However, many other countries do not impose the same stringent regime on their fishing fleets, either within their EEZs or on the high seas. Moreover, many fisheries are not covered by international agreements. Even when agreements exist, implementation is slow, and management requirements are weak or ineffective in the face of economic pres-

asures. The absence of effective management rules has both economic and conservation implications for U.S. industry and management. There is a clear need to ensure other nations, particularly those that fish on shared or high seas stocks, adhere to conservation and management standards comparable to those adhered to by U.S. fishermen both in U.S. waters and on the high seas.

To the extent that fish stocks found in the U.S. EEZ migrate outside these boundaries, unsustainable fishing practices of foreign fleets adversely impact fish stocks and undermine the effectiveness of the U.S. management measures. In addition, as high seas stocks decline due to foreign overfishing, and as bycatch of endangered or protected species by those fisheries increases, additional restrictions placed on U.S. vessels under the Magnuson-Stevens Act or other U.S. law both disadvantage U.S. fleets and fail to address the problem. For example, a court barred the Hawaiian long-line fishing fleet, a tiny fraction of the Pacific longline fleet (1-3 percent), from harvesting swordfish (and initially, tuna) on the high seas as a result of concerns over interactions with endangered sea turtles. However, longline fleets from other nations, which are growing annually, continued to fish those same stocks without protective measures, disadvantaging U.S. fishermen, and increasing threats to sea turtles.

U.S. fishermen feel these effects in the marketplace, as they must compete with cheaper imports harvested using unsustainable fishing practices, while bearing the costs of compliance with U.S. law. In addition, exploitation of fishery resources by unregulated, expanding foreign fleets on the high seas has resulted in falling world prices for many species. The growing U.S. appetite for fish, and flow of inexpensive imports to the United States, provides foreign fleets an incentive to maximize unsustainable harvests, while economically disadvantaging U.S. fishermen.

As such, the following provisions are included in S. 2012 in order to strengthen the ability of international fishery organizations and the United States to ensure compliance with, enforcement of, and adherence to existing international conservation and management measures for high seas fisheries.

Section 401. International monitoring and compliance.

This section would create a new section 207 of the Magnuson-Stevens Act. The new section would contain provisions authorizing the Secretary to promote improved monitoring and compliance for high seas fisheries or fisheries governed by international or regional fishery management agreements. To accomplish these goals, the provision would authorize the Secretary to—

- (1) share information on harvesting and processing capacity and IUU fishing on the high seas with law enforcement organizations of foreign nations and international organizations;
- (2) further develop real time information sharing capabilities, on IUU fishing;
- (3) participate in global and regional efforts to build an international network for monitoring;
- (4) support efforts to create an international registry of fishing vessels;
- (5) enhance regional enforcement capabilities through the use of remote sensing technology;

(6) provide technical assistance to developing countries to improve their monitoring, control, and surveillance capabilities; and

(7) support efforts requiring all large-scale fishing vessels operating on the high seas to be fitted with vessel monitoring systems by the end of 2008.

Section 402. Finding with respect to illegal, unreported, and unregulated fishing.

This section would add a new finding to subsection 2(a) of the Magnuson-Stevens Act stating that international cooperation is necessary to address IUU fishing.

Section 403. Action to end illegal, unreported, or unregulated fishing and reduce bycatch of protected marine species.

This section would amend the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a et seq.) by creating four new sections, 607-610, that aim to improve: (1) United States awareness of the status of international marine resources, and (2) international compliance with laws on IUU fishing and protected marine resources. This information would be summarized in a biennial report (Report) created by the Secretary.

BIENNIAL REPORT ON INTERNATIONAL COMPLIANCE.—New section 607 would require the Secretary to report to Congress every two years containing the following information: (1) state of knowledge of the status of international living marine resources of interest to the United States, (2) a list of nations identified under new sections 609 and 610, (3) a description of efforts taken by nations to comply with new sections 609 and 610, (4) a description of progress made at the international level pursuant to new section 608, in strengthening international fishery management organizations with the goal of ending IUU fishing, and (5) a plan of action for implementing international measures to reduce the impacts of fishing on protected marine resources.

ACTION TO STRENGTHEN INTERNATIONAL FISHERY MANAGEMENT ORGANIZATIONS.—New section 608 would direct the Secretary, in consultation with the Secretary of State, to improve the effectiveness of international fishery management organizations (IFMOs) by urging those organizations to which the United States is a party to: (1) incorporate sanctions against member or nonmember governments with vessels engaging in IUU fishing, (2) seek adoption of lists of IUU vessels including authorized (green) and unauthorized (red) vessel lists, (3) seek international adoption of a vessel monitoring system to document capacity, (4) increase the use of observers and compliance monitoring technologies, (5) adopt greater port state controls in all nations, (6) seek adoption of market related measures to combat IUU fishing including import prohibitions, restrictions, and catch documentation schemes, and (7) urge other nations at all levels, including the Convention on International Trade in Endangered Species and the World Trade Organization, to adopt measures to restrict trade in IUU products.

ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.—New section 609 would describe the process for identifying nations whose vessels participate in IUU fishing. For a nation to be listed, the Secretary must determine that vessels of that nation have engaged in

IUU fishing within the past year; and that the relevant IFMO has not implemented measures to end IUU fishing by that nation's vessels or that the nation is not party to an IFMO, or no relevant IFMO exists. Listing a nation in the Report shall constitute an identification under section 101(b)(1)(a) of the High Seas Driftnet Enforcement Act (16 U.S.C. 1826a(b)(1)(A)). This identification would require the Secretary of the Treasury to: (1) withhold or revoke the clearance of any vessels of the identified nation and deny them entry into the navigable waters or any port of the United States, (2) prohibit the importation of fish, fish products, or sport fishing gear from that nation, and (3) impose other economic sanctions if items (1) and (2) are not successful in stopping the violation.

New section 609(c) would require the Secretary, in consultation with the Secretary of State to notify the President and the nation in question of its status within 60 days of submitting a report to Congress pursuant to section 607. The Secretary must also initiate consultations with listed nations to encourage them to take corrective action and, notify any relevant IFMOs of the actions taken by the United States.

New section 609(d) would require the Secretary to establish a procedure for certifying that a listed nation is taking corrective action. Such a determination must be provided in the Report for each listed nation. To become certified as taking corrective action a nation must provide documentary evidence, or the relevant IFMO must implement measures that are effective in ending IUU fishing by the listed nation. Alternatively, the Secretary may certify vessels from a listed nation on a shipment by shipment or other similar basis. If a nation becomes certified as taking corrective action it would not be subject to the sanctions described above.

The new section 609(e) would direct the Secretary to promulgate a definition of IUU fishing within three months of enactment. Such a definition would include: (1) fishing activities that violate IFMO agreements to which the United States is a party, (2) overfishing of fish stocks shared with the United States for which there are no international management measures or in areas not covered by an IFMO or agreement, and (3) fishing activity that has adverse impacts on seamounts, hydrothermal vents, and deep water corals located beyond national jurisdiction for which there are no applicable management measures or in areas with no applicable IFMO or agreement. The Secretary would be authorized to receive such sums as necessary to carry out section 609 for FY 2006 through 2012.

EQUIVALENT CONSERVATION MEASURES.—New section 610 would establish a similar listing procedure to section 609 for nations that fail to end or reduce bycatch of protected living marine resources by using regulatory measures that are comparable to those of the United States, taking into account different conditions. The section would define a protected living marine resource as non-target fish, marine mammals, or sea turtles in areas beyond U.S. jurisdiction that are protected under U.S. law or international agreement. This definition includes sharks, but does not include any other fish species managed under the Magnuson-Stevens Act, Atlantic Tunas Convention Act, or another IFMO.

To be listed in the Report: (1) vessels of that nation must have been engaged in fishing practices during the past year that result in bycatch of a protected marine resource, (2) the relevant international or regional organization must have failed to implement effective measures to end or reduce the impacts, and (3) the nation in question must have failed to adopt a regulatory program governing such practices that is comparable to that of the United States. The notification, consultation, sanctions, and certification provisions of this section are all similar to those of section 609 except that the Secretary must seek international agreements for restricting fishing practices that result in the bycatch of protected marine resources through the United Nations Food and Agriculture Organization as well as the relevant IFMO. The Secretary must also seek the amendment of any relevant international treaty to ensure that it is consistent with the requirements of this section. In certifying a nation as taking corrective action, the Secretary must ensure that the nation in question is taking measures to maximize the probability of post-release survival, including the mandatory use of circle hooks in pelagic longline fishing.

This section would also require the Secretary to assist nations in achieving certification, including by undertaking cooperative research activities, facilitating the transfer of appropriate technology, and designing and implementing fish harvesting plans. The Secretary would be authorized to receive such sums as are necessary for FY 2006 through 2012 to carry out this section.

Sec. 404. Monitoring of Pacific insular area fisheries.

Section 404 would amend sections 201(h)(2)(B) and 204(e)(4)(A)(i) of the Magnuson-Stevens Act. These sections concern observer coverage of foreign fishing under a Pacific insular area fishery agreement. The amendments would allow foreign fishing under such an agreement to be monitored by any program that the Secretary determines is adequate to monitor harvest, bycatch, and compliance with U.S. laws. The existing law appears to require 100 percent observer coverage in these fisheries, and some foreign nations have expressed concern over the high cost of maintaining that level of coverage. These changes would recognize that automated vessel monitoring systems have become a valuable tool that can effectively complement an observer program, thus enabling foreign fishing to be monitored successfully at a lower cost.

Section 405. Reauthorization of the Atlantic Tunas Convention Act.

This section would reauthorize the Atlantic Tunas Convention Act (ATCA) for \$5,495 million in FY 2006, \$5,770 million for each of FY 2007 and 2008, \$6,058 million for each of FY 2009 and 2010; and \$6,361 million for each of FY 2011 and 2012. These funding levels represent a 5 percent increase per year. Of the total authorization, \$160,000 per year would be allocated to the advisory committee established under ATCA and \$4,500 million per year would be allocated to research activities. This section would also establish a cooperative research program on Atlantic billfish that would be allocated \$3 million based on the Atlantic Billfish Research Plan of 2002. This program would be established at the Southeast Fisheries Science Center.

Section 406. International overfishing and domestic equity.

Section 406(a) would amend section 304(e) of the Magnuson-Stevens Act which addresses rebuilding in overfished fisheries. The amendment would add a new subsection 304(e)(8) to address a situation in which a fishery is overfished due to international fishing pressure and for which no international agreement or measures exist to end overfishing. In this event, the provision would direct the Secretary to seek international action to end overfishing. The relevant Council would also be directed to recommend regulations for U.S. fishermen relative to their impact on the fishery and to provide recommendations for international action.

Section 406(b) would amend section 304(g)(2) of the Magnuson-Stevens Act which states that any highly migratory species managed by the Secretary or pursuant to the ATCA that are caught and released as part of a tagging study shall not be considered bycatch. The amendment would expand this exemption to highly migratory species managed by a Council or pursuant to the Western and Central Pacific Fisheries Convention Implementation Act described in title V.

TITLE V—IMPLEMENTATION OF WESTERN AND CENTRAL PACIFIC
FISHERIES CONVENTION

Title V contains the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), which is legislation to implement the Convention on the Conservation and Management of Highly Migratory Stocks in the Western and Central Pacific Ocean (Convention), adopted on September 5, 2000 in Honolulu, Hawaii. The Convention, which the United States signed in 2000, became effective on June 19, 2004 prior to U.S. ratification. The President transmitted the Convention to the Senate on May 16, 2005, and the Senate provided its advice and consent on November 17, 2005.

The objective of the Convention is to ensure the long-term conservation and sustainable use of tuna and other highly migratory stocks in the Western and Central Pacific Ocean, and also will be an important tool in helping to reduce the impact of fishing for such stocks on non-target species. The Convention adopts provisions that implement key aspects of the 1995 United Nations Fish Stocks Agreement, including provisions on compliance and enforcement, and bycatch of non-target species.

Section 501 sets forth the title of the legislation, and section 502 sets forth the definitions for terms used in the WCPFC Implementation Act, including “Convention Area,” which is the same as that which appears in the Convention, and “highly migratory fish stocks,” which tracks the definition in the United States Convention on the Law of the Sea. Examples of highly migratory species include tuna, swordfish, marlin and related highly migratory species.

Section 503 would set forth the President’s authority to nominate five commissioners (and alternates) to represent the United States on the Convention’s governing Commission, as well as their status and associated administrative matters. The section would direct that one commissioner be an officer or employee of the Department of Commerce (e.g., of NMFS), to ensure the U.S. government is rep-

resented. Another commissioner position is set aside for the Chairman or a sitting member of the Western Pacific Council, which has authority under the Magnuson-Stevens Act over development of FMPs for vessels of the United States fishing for highly migratory species in the areas seaward of Hawaii and U.S. Pacific island areas, including, American Samoa, Guam, and the Northern Mariana Islands. The Committee expects the Commissioners to include representatives of each of the harvesting sectors participating in the fisheries of the Convention Area, which should also provide geographic diversity among the Commissioners.

Section 503 (d) would authorize U.S. Commission members to appoint an Advisory Committee and establishes the status, terms, and responsibilities of such a Committee. Section 503 (f) would provide for the development of a memorandum of understanding (MOU) among the Secretary, the Secretary of State, and the three Councils in the Pacific, setting forth a clear understanding of the roles of the respective Councils in international fishery management discussions relating to stocks under Council jurisdiction, as well as with respect to development of domestic fishing regulations for such stocks that are consistent with international management actions.

Section 504 authorizes the Secretary of State, in consultation with the Secretary and the U.S. commissioners, to approve or disapprove acts of the Commission and act on them either directly or by referral to the appropriate authority. Section 505 would authorize the Secretary, in consultation with the Coast Guard and the appropriate Councils, to implement and enforce the provisions, and any regulations issued under, the WCPFC Implementation Act. Consistent with practice in other regions of the country, implementation of any discretionary provisions of the Convention relating to stocks under Council jurisdiction could be made, to the extent practicable and within necessary timelines, under procedures used in the Magnuson-Stevens Act.

Section 506 would set forth other authorities of the Secretary under the WCPFC Implementation Act, including all relevant research, permitting, and enforcement pursuant. Subsection (b) would provide that all violations of the WCPFC Implementation Act shall be prosecuted in the same manner, by the same means, and with the same powers provided to the Secretary under the Magnuson-Stevens Act, and section 507(b) would state that any violation of the WCPFC Implementation Act shall be enforced as if it were a violation of section 307 (Prohibited Acts) of the Magnuson-Stevens Act.

Section 508 would authorize the Commissioners, through the Secretary of State and with the concurrence of the Secretary or other organization involved, to cooperate with Federal, State, and private institutions and organizations to carry out their duties under the Convention.

Section 509 would direct the Secretary of State to ensure participation by American Samoa, Guam, and the Northern Mariana Islands to the same extent provided to territories of other nations. Finally, section 510 would authorize to the Secretary such sums as may be necessary for implementation of the WCPFC Implementation Act.

TITLE VI—PACIFIC WHITING

Title VI implements the terms of the Agreement on Pacific Hake/Whiting as signed by the United States and Canada in November, 2003 (Agreement). It shall be known as the Pacific Whiting Act of 2005 (Pacific Whiting Act).

Section 601 sets out the title of the legislation, and section 602 provides a list of definitions used in the Pacific Whiting Act, including “offshore whiting resource,” which is defined as the transboundary stock of whiting excluding that portion of the stock located in Puget Sound and the Strait of Georgia.

Sections 603 through 606 would authorize the Secretary, in consultation with the Secretary of State, to appoint U.S. representatives to the various groups and committees authorized by the Agreement. Section 603 would authorize the appointment of four U.S. members of the joint management committee. These representatives would include an official of NOAA, a member of the Pacific Council, one member from a list submitted by the treaty Indian tribes with rights to the offshore whiting resource, and one appointee from the commercial fishing sector. The term of office for each member would be 4 years. Section 604 would authorize the appointment of not more than two scientific experts to the scientific review group for renewable terms of not more than four years. Section 605 would authorize the appointment of between six and twelve U.S. members to serve as scientific experts on the joint technical committee, including at least one NOAA official. Section 606 would authorize appointment of between six and twelve members of the advisory panel. These members shall have knowledge of or experience with the offshore whiting resource, and shall not be U.S. employees.

Section 607 would authorize the Secretary, in conjunction with the Secretary of State, to accept or reject recommendations of the joint management committee. Section 607(b) would authorize the Secretary to promulgate regulations and cooperate with Canadian officials.

Section 608 would require the Secretary to establish a catch level for Pacific whiting according to the standards of the agreement but, otherwise, to manage the Pacific whiting fishery according to the standards set forth in the Magnuson-Stevens Act. The agreement stipulates that the Secretary shall set the annual catch level in accordance with the recommendations of the joint management committee in years when both Canadian and U.S. members of the Committee agree on the appropriate level. In years when no agreement is reached, the Secretary shall set a catch level such that it: (1) takes into account the recommendations of the Pacific Council, (2) uses the best scientific information available, and (3) is based on the default total allowable catch and allocation rules set forth in the Agreement.

Section 609 would deal with administrative matters such as employment status of Commissioners and their compensation.

Section 610 would authorize the Secretary to enforce the provisions of this title, including prosecution of all violations under the authority of the Magnuson-Stevens Act. Finally, section 611 would authorize appropriation of such sums as may be necessary for the implementation of the Pacific Whiting Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

NORTHERN PACIFIC HALIBUT ACT OF 1982

SEC. 8. CIVIL PENALTY; PROCEDURE.

[16 U.S.C. 773f]

(a) LIABILITY; CONTINUING VIOLATIONS; NOTICE; DETERMINATION OF AMOUNT.—Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 7 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed **[\$25,000]** *\$200,000* for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall taken into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the **[violation, the degree of culpability, and history of prior offenses, ability to pay,]** *violation, the degree of culpability, any history of prior offenses,* and such other matters as justice may require. *In assessing such penalty, the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay if the information is provided to the Secretary at least 30 days prior to an administrative hearing.*

(b) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under subsection (a) may obtain a review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary and the Attorney General. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, in accordance with rules prescribed pursuant to section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) RECOVERY OF ASSESSED PENALTIES BY ATTORNEY GENERAL.—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Sec-

retary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) **COMPROMISE, MODIFICATION, AND REMISSION OF PENALTIES.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(e) **REVOCATION OR SUSPENSION OF PERMIT.**—

(1) **IN GENERAL.**—*The Secretary may take any action described in paragraph (2) in any case in which—*

(A) *a vessel has been used in the commission of any act prohibited under section 7;*

(B) *the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 7; or*

(C) *any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue.*

(2) **PERMIT-RELATED ACTIONS.**—*Under the circumstances described in paragraph (1) the Secretary may—*

(A) *revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;*

(B) *suspend such permit for a period of time considered by the Secretary to be appropriate;*

(C) *deny such permit; or*

(D) *impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to any foreign fishing vessel, on the approved application of the foreign nation involved and on any permit issued under that application.*

(3) **FACTORS TO BE CONSIDERED.**—*In imposing a sanction under this subsection, the Secretary shall take into account—*

(A) *the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and*

(B) *with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.*

(4) **TRANSFERS OF OWNERSHIP.**—*Transfer of ownership of a vessel, a permit, or any interest in a permit, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, permit, or interest in a permit, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel, permit, or interest at the time of the transfer.*

(5) **REINSTATEMENT.**—*In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty, criminal fine, or any amount in settlement of a civil forfeiture,*

the Secretary shall reinstate the permit upon payment of the penalty, fine, or settlement amount and interest thereon at the prevailing rate.

(6) *HEARING.*—No sanction shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed either in conjunction with a civil penalty proceeding under this section or otherwise.

(7) *PERMIT DEFINED.*—In this subsection, the term “permit” means any license, certificate, approval, registration, charter, membership, exemption, or other form of permission issued by the Commission or the Secretary, and includes any quota share or other transferable quota issued by the Secretary.

SEC. 9. CRIMES AND CRIMINAL PENALTIES.

[16 U.S.C. 773g]

(a) *OFFENSES.*—A person is guilty of any offense if he commits an act prohibited by section 7(a)(2), (3), (4), or (6); or section 7(b).

(b) *FINES; IMPRISONMENT.*—Any offense described in subsection (a) is punishable by a fine of not more than ~~【\$50,000】~~ \$200,000 or imprisonment for not more than 6 months or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury the offense is punishable by a fine of not more than ~~【\$100,000,】~~ \$400,000, or imprisonment for not more than 10 years or both.

ATLANTIC TUNAS CONVENTION ACT OF 1975

【SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

[16 U.S.C. 971h]

【(a) *IN GENERAL.*—There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in Article X of the Convention, the following sums:

【(1) For each of fiscal years 2003 and 2004, \$5,480,000.

【(2) For each of fiscal years 2005 and 2006, \$5,495,000.

【(b) *ALLOCATION.*—Of amounts available under this section for each fiscal year—

【(1) \$150,000 are authorized for the advisory committee established under section 4 and the species working groups established under section 4A; and

【(2) \$4,240,000 are authorized for research activities under this Act and the Act of September 4, 1980 (16 U.S.C. 971i).】

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) *IN GENERAL.*—There are authorized to be appropriated to the Secretary to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in Article X of the Convention—

(1) \$5,495,000 for fiscal year 2006;

(2) \$5,770,000 for each of fiscal years 2007 and 2008;

(3) \$6,058,000 for each of fiscal years 2009 and 2010; and

(4) \$6,631,000 for each of fiscal years 2011 and 2012.

(b) *ALLOCATION.*—Of the amounts made available under subsection (a) for each fiscal year—

(1) \$160,000 are authorized for the advisory committee established under section 4 of this Act and the species working groups established under section 4A of this Act; and

(2) \$7,500,000 are authorized for research activities under this Act and section 3 of Public Law 96–339 (16 U.S.C. 971i), of which \$3,000,000 shall be for the cooperative research program under section 3(b)(2)(H) of that section (16 U.S.C. 971i(b)(2)(H)).

PUBLIC LAW 96–339

SEC. 3. BIENNIAL REPORT ON BLUEFIN TUNA; HIGHLY MIGRATORY SPECIES RESEARCH AND MONITORING.

[16 U.S.C. 971i]

(a) [Omitted. The report required by subsection (a) was terminated by section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note).]

(b) **HIGHLY MIGRATORY SPECIES RESEARCH AND MONITORING.**—

(1) Within 6 months after the date of enactment of the Atlantic Tunas Convention Authorization Act of 1995, the Secretary of Commerce, in cooperation with the advisory committee established under section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) and in consultation with the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas (referred to elsewhere in this section as the “Commission”) and the Secretary of State, shall develop and implement a comprehensive research and monitoring program to support the conservation and management of Atlantic bluefin tuna and other highly migratory species that shall—

(A) identify and define the range of stocks of highly migratory species in the Atlantic Ocean, including Atlantic bluefin tuna; and

(B) provide for appropriate participation by nations which are members of the Commission.

(2) The program shall provide for, but not be limited to—

(A) statistically designed cooperative tagging studies;

(B) genetic and biochemical stock analyses;

(C) population censuses carried out through aerial surveys of fishing grounds and known migration areas;

(D) adequate observer coverage and port sampling of commercial and recreational fishing activity;

(E) collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landing reports for charter operations and fishing tournaments, and programs to provide reliable reporting of the catch by private anglers;

(F) studies of the life history parameters of Atlantic bluefin tuna and other highly migratory species;

(G) integration of data from all sources and the preparation of data bases to support management decisions; [and]

(H) include a cooperative research program on Atlantic billfish based on the Southeast Fisheries Science Center Atlantic Billfish Research Plan of 2002; and

[(H)] *(I) other research as necessary.*

(3) In developing a program under this section, the Secretary shall—

(A) ensure that personnel and resources of each regional research center shall have substantial participation in the stock assessments and monitoring of highly migratory species that occur in the region;

(B) provide for comparable monitoring of all United States fishermen to which the Atlantic Tunas Convention Act of 1975 applies with respect to effort and species composition of catch and discards;

(C) consult with relevant Federal and State agencies, scientific and technical experts, commercial and recreational fishermen, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan; and

(D) through the Secretary of State, encourage other member nations to adopt a similar program.

SHARK FINNING PROHIBITION ACT

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

[16 U.S.C. 1822 note]

There are authorized to be appropriated to the Secretary of Commerce for **[(fiscal years 2001 through 2005)]** *fiscal years 2006 through 2010* such sums as are necessary to carry out this Act.

ATLANTIC STRIPED BASS CONSERVATION ACT

SEC. 7. AUTHORIZATION OF APPROPRIATIONS; COOPERATIVE AGREEMENTS.

[16 U.S.C. 5156]

[(a) AUTHORIZATION.]—For each of fiscal years 2001, 2002, and 2003, there are authorized to be appropriated to carry out this Act—

[(1) \$1,000,000 to the Secretary of Commerce; and

[(2) \$250,000 to the Secretary of the Interior.]

(a) AUTHORIZATION.—For each of fiscal years 2006, 2007, 2008, 2009, and 2010, there are authorized to be appropriated to carry out this Act—

(1) \$1,000,000 to the Secretary of Commerce; and

(2) \$250,000 to the Secretary of the Interior.

(b) COOPERATIVE AGREEMENTS.—The Secretaries may enter into cooperative agreements with the Atlantic States Marine Fisheries Commission or with States, for the purpose of using amounts appropriated pursuant to this section to provide financial assistance for carrying out the purposes of this Act.

YUKON RIVER SALMON ACT OF 2000

SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

[16 U.S.C. 5727]

There are authorized to be appropriated to the Secretary of the Interior to carry out this title ~~[\$4,000,000 for each of fiscal years 2004 through 2008,]~~ *\$4,000,000 for each of fiscal years 2006 through 2010*, of which—

(1) such sums as are necessary shall be available each fiscal year for travel expenses of Panel members, alternate Panel members, United States members of the Joint Technical Committee established by paragraph C.2 of the memorandum of understanding concerning the Pacific Salmon Treaty between the Government of the United States and the Government of Canada (recorded January 28, 1985), and members of an advisory committee established and appointed under section 203, in accordance with Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code;

(2) such sums as are necessary shall be available for the United States share of expenses incurred by the Joint Technical Committee and any panel established by any agreement between the Government of the United States and the Government of Canada for restoration and enhancement of salmon originating in Canada;

(3) up to \$3,000,000 shall be available each fiscal year for activities by the Department of the Interior and the Department of Commerce for survey, restoration, and enhancement activities related to salmon stocks originating from the Yukon River in Canada, of which up to \$1,200,000 shall be available each fiscal year for Yukon River salmon stock restoration and enhancement projects under section 207(b); and

(4) \$600,000 shall be available each fiscal year for cooperative salmon research and management projects in the portion of the Yukon River drainage located in the United States that are recommended by the Panel.

SUSTAINABLE FISHERIES ACT

SEC. 111. PACIFIC COMMUNITY FISHERIES.

[16 U.S.C. 1855 note]

(a) [Omitted. Subsection (a) amended section 305 of the Magnuson-Stevens Fishery Conservation and Management Act.]

(b) WESTERN PACIFIC DEMONSTRATION PROJECTS.—(1) The Secretary of Commerce ~~[and the Secretary of the Interior are]~~ *is* authorized to make direct grants to eligible western Pacific communities, as recommended by the Western Pacific Fishery Management Council, for the purpose of establishing ~~[not less than three and not more than five]~~ fishery demonstration projects to foster and promote traditional indigenous fishing practices. There are authorized to be appropriated to carry out this section \$500,000 for each fiscal year.

(2) Demonstration projects funded pursuant to this subsection shall foster and promote the involvement of western Pacific communities in western Pacific fisheries and may—

(A) identify and apply traditional indigenous fishing practices;

(B) develop or enhance western Pacific community-based fishing opportunities; and

(C) involve research, community education, or the acquisition of materials and equipment necessary to carry out any such demonstration project.

(3)(A) The Western Pacific Fishery Management Council, in consultation with the Secretary of Commerce, shall establish an advisory panel under section 302(g) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(g)) to evaluate, determine the relative merits of, and annually rank applications for such grants. The panel shall consist of not more than 8 individuals who are knowledgeable or experienced in traditional indigenous fishery practices of western Pacific communities and who are not members or employees of the Western Pacific Fishery Management Council.

(B) If the Secretary of Commerce or the Secretary of the Interior awards a grant for a demonstration project not in accordance with the rank given to such project by the advisory panel, the Secretary shall provide a detailed written explanation of the reasons therefor.

(4) The Western Pacific Fishery Management Council shall, with the assistance of such advisory panel, submit an annual report to the Congress assessing the status and progress of demonstration projects carried out under this subsection.

(5) Appropriate Federal agencies may provide technical assistance to western Pacific community-based entities to assist in carrying out demonstration projects under this subsection.

[(6) For the purposes of this subsection, "western Pacific community" shall mean a community eligible to participate under section 305(i)(2)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by this Act.]

(6) In this subsection the term "Western Pacific community" means a community eligible to participate under section 305(i)(2)(B)(i) through (iv) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(i)(2)(B)(i) through (iv)).

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 2. FINDINGS, PURPOSES AND POLICY.

[16 U.S.C. 1801]

(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

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

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.

(11) *A number of the Fishery Management Councils have demonstrated significant progress in integrating ecosystem con-*

siderations in fisheries management using the existing authorities provided under this Act.

(12) International cooperation is necessary to address illegal, unreported, and unregulated fishing and other fishing practices which may harm the sustainability of living marine resources and disadvantage the United States fishing industry.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish, within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the State, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and

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

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes

other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; considers efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act;

(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

(6) to foster and maintain the diversity of fisheries in the United States; and

(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

SEC. 3. DEFINITIONS.

[16 U.S.C. 1802]

As used in this Act, unless the context otherwise requires—

(1) The term “anadromous species” means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term “bycatch” means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

(3) The term “charter fishing” means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.

(4) The term “commercial fishing” means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) The term “conservation and management” refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any

fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(6) The term “Continental Shelf” means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(7) *The term “confidential information” means—*

(A) trade secrets; or

(B) commercial or financial information the disclosure of which is likely to result in substantial harm to the competitive position of the person who submitted the information to the Secretary.

[(7)] (8) The term “Continental Shelf fishery resources” means the following: Cnidaria Bamboo Coral—*Acanella* spp.; Black Coral—*Antipathes* spp.; Gold Coral—*Callogorgia* spp.; Precious Red Coral—*Corallium* spp.; Bamboo Coral—*Keratoisis* spp.; and Gold Coral—*Parazoanthus* spp. Crustacea Tanner Crab—*Chionoecetes tanneri*; Tanner Crab—*Chionoecetes opilio*; Tanner Crab—*Chionoecetes angulatus*; Tanner Crab—*Chionoecetes bairdi*; King Crab—*Paralithodes camtschatica*; King Crab—*Paralithodes platypus*; King Crab—*Paralithodes brevipes*; Lobster—*Homarus americanus*; Dungeness Crab—*Cancer magister*; California King Crab—*Paralithodes californiensis*; California King Crab—*Paralithodes rathbuni*; Golden King Crab—*Lithodes aequispinus*; Northern Stone Crab—*Lithodes maja*; Stone Crab—*Menippe mercenaria*; and Deep-sea Red Crab—*Chaceon quinque-dens*. Mollusks Red Abalone—*Haliotis rufescens*; Pink Abalone—*Haliotis corrugata*; Japanese Abalone—*Haliotis kamtschatkana*; Queen Conch—*Strombus gigas*; Surf Clam—*Spisula solidissima*; and Ocean Quahog—*Arctica islandica*. Sponges Glove Sponge—*Spongia cheiris*; Sheepswool Sponge—*Hippiospongia lachne*; Grass Sponge—*Spongia graminea*; and Yellow Sponge—*Spongia barbera*. If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil, of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

[(8)] (9) The term “Council” means any Regional Fishery Management Council established under section 302.

[(9)] (10) The term “economic discards” means fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons.

[(10)] (11) The term “essential fish habitat” means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.

[(11)] (12) The term “exclusive economic zone” means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

[(12)] (13) The term “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, and birds.

[(13)] (14) The term “fishery” means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(15) *The term “regional fishery association” means an association formed for the mutual benefit of members—*

(A) to meet social and economic needs in a region or sub-region; and

(B) comprised of persons engaging in the harvest or processing of fishery resources in that specific region or sub-region or who otherwise own or operate businesses substantially dependent upon a fishery.

[(14)] (16) The term “fishery resource” means any fishery, any stock of fish, any species of fish, and any habitat of fish.

[(15)] (17) The term “fishing” means—

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C). Such term does not include any scientific research activity which is conducted by a scientific research vessel.

[(16)] (18) The term “fishing community” means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

[(17)] (19) The term “fishing vessel” means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including,

but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

[(18)] (20) The term “foreign fishing” means fishing by a vessel other than a vessel of the United States.

[(19)] (21) The term “high seas” means all waters beyond the territorial sea of the United States and beyond any foreign nation’s territorial sea, to the extent that such sea is recognized by the United States.

[(20)] (22) The term “highly migratory species” means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).

(23) *The term “import”—*

(A) means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

(B) does not include any activity described in subparagraph (A) with respect to fish caught in the exclusive economic zone or by a vessel of the United States.

[(21)] (24) The term “individual fishing quota” means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).

[(22)] (25) The term “international fishery agreement” means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

[(23)] (26) The term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(27) *The term “limited access privilege”—*

(A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish that may be received or held for exclusive use by a person; and

(B) includes an individual fishing quota; but

(C) does not include community development quotas as described in section 305(i).

[(24)] (28) The term “Marine Fisheries Commission” means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.

[(25)] (29) The term “migratory range” means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as

determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

[(26)] (30) The term “national standards” means the national standards for fishery conservation and management set forth in section 301.

[(27)] (31) The term “observer” means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.

(32) *The term “observer information” means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.*

[(28)] (33) The term “optimum”, with respect to the yield from a fishery, means the amount of fish which—

(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

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

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

[(29)] (34) The terms “overfishing” and “overfished” mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

[(30)] (35) The term “Pacific Insular Area” means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.

[(31)] (36) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

[(32)] (37) The term “recreational fishing” means fishing for sport or pleasure.

[(33)] (38) The term “regulatory discards” means fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

[(34)] (39) The term “Secretary” means the Secretary of Commerce or his designee.

[(35)] (40) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

[(36)] (41) The term “special areas” means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

[(37)] (42) The term “stock of fish” means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

[(38)] (43) The term “treaty” means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

[(39)] (44) The term “tuna species” means the following: Albacore Tuna—*Thunnus alalunga*; Bigeye Tuna—*Thunnus obesus*; Bluefin Tuna—*Thunnus thynnus*; Skipjack Tuna—*Katsuwonus pelamis*; and Yellowfin Tuna—*Thunnus albacares*.

[(40)] (45) The term “United States”, when used in a geographical context, means all the States thereof.

[(41)] (46) The term “United States fish processors” means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

[(42)] (47) The term “United States harvested fish” means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under this Act.

[(43)] (48) The term “vessel of the United States” means—

(A) any vessel documented under chapter 121 of title 46, United States Code;

(B) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

[(44)] (49) The term “vessel subject to the jurisdiction of the United States” has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).

[(45)] (50) The term “waters of a foreign nation” means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial

sea or exclusive economic zone is recognized by the United States.

[SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

[16 U.S.C. 1803]

[There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act, not to exceed the following sums:

- [(1) \$147,000,000 for fiscal year 1996;
- [(2) \$151,000,000 for fiscal year 1997;
- [(3) \$155,000,000 for fiscal year 1998; and
- [(4) \$159,000,000 for fiscal year 1999.]

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out the provisions of this Act—

- (1) \$328,004,000 for fiscal year 2006; and*
- (2) such sums as may be necessary for fiscal years 2007 through 2012.*

* * * * *

SEC. 102. HIGHLY MIGRATORY SPECIES.

[16 U.S.C. 1812]

(a) IN GENERAL.—The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and shall promote the achievement of optimum yield of such species throughout their range, both within and beyond the exclusive economic zone.

(b) TRADITIONAL PARTICIPATION.—For fisheries being managed under an international fisheries agreement to which the United States is a party, Council or Secretarial action, if any, shall reflect traditional participation in the fishery, relative to other Nations, by fishermen of the United States on fishing vessels of the United States.

(c) PROMOTION OF STOCK MANAGEMENT.—If a relevant international fisheries organization does not have a process for developing a formal plan to rebuild a depleted stock, an overfished stock, or a stock that is approaching a condition of being overfished, the provisions of this Act in this regard shall be communicated to and promoted by the United States in the international or regional fisheries organization.

* * * * *

SEC. 201. FOREIGN FISHING.

[16 U.S.C. 1821]

(a) IN GENERAL.—After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone, unless such foreign fishing—

- (1) is authorized under subsections (b) or (c) or section 204(e), or under a permit issued under section 204(d);*
- (2) is not prohibited under subsection (f); and*
- (3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.*

(b) EXISTING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202(b) or (c), if such agreement—

- (1) was in effect on the date of enactment of this Act; and
- (2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a “governing international fishery agreement”. Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and

(iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D) United States observers required under subsection (h) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;

(E) any fees required under section 204(b)(10) be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation; and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 204, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) and the applicable conditions and restrictions established under section 204(b)(7); and

(D) take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, [shall be] *is* that portion of the optimum yield of such fishery which [will not] *cannot, or will not*, be harvested by vessels of the United States, as determined in accordance with this Act. *Allocations of the total allowable level of foreign fishing are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess harvest capacity.*

(e) ALLOCATION OF ALLOWABLE LEVEL.—

(1)(A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subpara-

graph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery. If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;

(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including

minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2)(A) For the purposes of this paragraph—

(i) The term “certification” means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 8(a) of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1978(a)).

(ii) The term “remedial period” means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period; shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 8(d) of the Fishermen’s Protective Act of 1967 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or

more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 8(d) during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this Act.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 204.

(D) If the certification of a foreign country is not terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the last day of the remedial period, the Secretary of State—

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any harvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f) RECIPROCITY.—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(g) PRELIMINARY FISHERY MANAGEMENT PLANS.—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan—

(1) shall contain a preliminary description of the fishery and a preliminary determination as to—

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and

(C) are described in section 303(b)(2), (3), (4), (5), and (7).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305.

(h) FULL OBSERVER COVERAGE PROGRAM.—

(1)(A) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone.

(B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program **[that is at least equal in effectiveness to the program established by the Secretary;]** *or other monitoring program that the Secretary, in consultation with the Western Pacific Management Council, determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement;*

(C) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or

(D) for reasons beyond the control of the Secretary, an observer is not available.

(3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this Act.

(i) RECREATIONAL FISHING.—Notwithstanding any other provision of this title, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 304. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

* * * * *

SEC. 204. PERMITS FOR FOREIGN FISHING.

[16 U.S.C. 1824]

(a) IN GENERAL.—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—

(1) ELIGIBILITY; DURATION.—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a). No permit issued under this section may be valid for longer than a year; and section 558(c) of title 5, United States Code, does not apply to the renewal of any such permit.

(2) FORMS.—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) CONTENTS.—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, hold capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;

(E) the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States;

(F) the ocean area in which, and the season or period during which, such fishing will be conducted; and

(G) all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards; and shall include any other pertinent information and material which the Secretary may require.

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3). The Secretary of State shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy or a summary of the application to the appropriate Council.

(5) ACTION BY COUNCIL.—After receiving a copy or summary of an application under paragraph (4)(C), the Council may prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) APPROVAL.—

(A) After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B), the application, if he determines that the fishing described in the application will meet the requirements of this Act, or he may disapprove all or any portion of the application.

(B)(i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United

States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by United States fish processors.

(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) or subsection (d) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and any applicable Federal or State fishing regulations.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c)(1), (2), and (3).

(D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B) or subsection (d), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.

(E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; and

(C) any Council which has authority over any fishery specified in such application.

(9) DISAPPROVAL OF APPLICATIONS.—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of

State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) FEES.—

(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.

(11) ISSUANCE OF PERMITS.—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(c) REGISTRATION PERMITS.—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

(d) TRANSSHIPMENT PERMITS.—

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

(A) submits an application which is approved by the Secretary under paragraph (3); and

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

(2) TRANSMITTAL.—Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of State, Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any affected State.

(3) APPROVAL OF APPLICATION.—The Secretary may approve, in consultation with the appropriate Council or Marine Fisheries Commission, an application for a permit under this section if the Secretary determines that—

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

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

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

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

(4) WHOLE OR PARTIAL APPROVAL.—The Secretary may approve all or any portion of an application under paragraph (3).

(5) FAILURE TO APPROVE APPLICATION.—If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

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

(7) FEES.—The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit, except that the Secretary shall waive the fee for the permit if the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation.

(e) PACIFIC INSULAR AREAS.—

(1) NEGOTIATION OF PACIFIC INSULAR AREA FISHERY AGREEMENTS.—The Secretary of State, with the concurrence of the Secretary and in consultation with any appropriate Council, may negotiate and enter into a Pacific Insular Area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to a Pacific Insular Area—

(A) in the case of American Samoa, Guam, or the Northern Mariana Islands, at the request and with the concur-

rence of, and in consultation with, the Governor of the Pacific Insular Area to which such agreement applies; and

(B) in the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, at the request of the Western Pacific Council.

(2) AGREEMENT TERMS AND CONDITIONS.—A Pacific Insular Area fishery agreement—

(A) shall not be considered to supersede any governing international fishery agreement currently in effect under this Act, but shall provide an alternative basis for the conduct of foreign fishing within the exclusive economic zone adjacent to Pacific Insular Areas;

(B) shall be negotiated and implemented consistent only with the governing international fishery agreement provisions of this title specifically made applicable in this subsection;

(C) may not be negotiated with a nation that is in violation of a governing international fishery agreement in effect under this Act;

(D) shall not be entered into if it is determined by the Governor of the applicable Pacific Insular Area with respect to agreements initiated under paragraph (1)(A), or the Western Pacific Council with respect to agreements initiated under paragraph (1)(B), that such an agreement will adversely affect the fishing activities of the indigenous people of such Pacific Insular Area;

(E) shall be valid for a period not to exceed three years and shall only become effective according to the procedures in section 203; and

(F) shall require the foreign nation and its fishing vessels to comply with the requirements of paragraphs (1), (2), (3) and (4)(A) of section 201(c), section 201 (d), and section 201(h).

(3) PERMITS FOR FOREIGN FISHING.—

(A) Application for permits for foreign fishing authorized under a Pacific Insular Areas fishing agreement shall be made, considered and approved or disapproved in accordance with paragraphs (3), (4), (5), (6), (7)(A) and (B), (8), and (9) of subsection (b), and shall include any conditions and restrictions established by the Secretary in consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, the Governor of the applicable Pacific Insular Area, and the appropriate Council.

(B) If a foreign nation notifies the Secretary of State of its acceptance of the requirements of this paragraph, paragraph (2)(F), and paragraph (5), including any conditions and restrictions established under subparagraph (A), the Secretary of State shall promptly transmit such notification to the Secretary. Upon receipt of any payment required under a Pacific Insular Area fishing agreement, the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a

statement of all of the requirements, conditions, and restrictions established under this subsection which apply to the fishing vessel for which the permit is issued.

(4) MARINE CONSERVATION PLANS.—

(A) Prior to entering into a Pacific Insular Area fishery agreement, the Western Pacific Council and the appropriate Governor shall develop a 3-year marine conservation plan detailing uses for funds to be collected by the Secretary pursuant to such agreement. Such plan shall be consistent with any applicable fishery management plan, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects. Conservation and management objectives shall include, but not be limited to—

[(i) establishment of Pacific Insular Area observer programs, approved by the Secretary in consultation with the Western Pacific Council, that provide observer coverage for foreign fishing under Pacific Insular Area fishery agreements that is at least equal in effectiveness to the program established by the Secretary under section 201(h);]

(i) Pacific Insular Area observer programs, or other monitoring programs, that the Secretary determines are adequate to monitor the harvest, bycatch, and compliance with the laws of the United States by foreign fishing vessels that fish under Pacific Insular Area fishing agreements;

(ii) conduct of marine and fisheries research, including development of systems for information collection, analysis, evaluation, and reporting;

(iii) conservation, education, and enforcement activities related to marine and coastal management, such as living marine resource assessments, habitat monitoring and coastal studies;

(iv) grants to the University of Hawaii for technical assistance projects by the Pacific Island Network, such as education and training in the development and implementation of sustainable marine resources development projects, scientific research, and conservation strategies; and

(v) western Pacific community-based demonstration projects under section 112(b) of the Sustainable Fisheries Act and other coastal improvement projects to foster and promote the management, conservation, and economic enhancement of the Pacific Insular Areas.

(B) In the case of American Samoa, Guam, and the Northern Mariana Islands, the appropriate Governor, with the concurrence of the Western Pacific Council, shall develop the marine conservation plan described in subparagraph (A) and submit such plan to the Secretary for approval. In the case of other Pacific Insular Areas, the Western Pacific Council shall develop and submit the ma-

rine conservation plan described in subparagraph (A) to the Secretary for approval.

(C) If a Governor or the Western Pacific Council intends to request that the Secretary of State renew a Pacific Insular Area fishery agreement, a subsequent 3-year plan shall be submitted to the Secretary for approval by the end of the second year of the existing 3-year plan.

(5) RECIPROCAL CONDITIONS.—Except as expressly provided otherwise in this subsection, a Pacific Insular Area fishing agreement may include terms similar to the terms applicable to United States fishing vessels for access to similar fisheries in waters subject to the fisheries jurisdiction of another nation.

(6) USE OF PAYMENTS BY AMERICAN SAMOA, GUAM, NORTHERN MARIANA ISLANDS.—Any payments received by the Secretary under a Pacific Insular Area fishery agreement for American Samoa, Guam, or the Northern Mariana Islands shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which those funds were collected. Amounts deposited in the Treasury of a Pacific Insular Area shall be available, without appropriation or fiscal year limitation, to the Governor of the Pacific Insular Area—

(A) to carry out the purposes of this subsection;

(B) to compensate (i) the Western Pacific Council for mutually agreed upon administrative costs incurred relating to any Pacific Insular Area fishery agreement for such Pacific Insular Area, and (ii) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(A); and

(C) to implement a marine conservation plan developed and approved under paragraph (4).

(7) WESTERN PACIFIC SUSTAINABLE FISHERIES FUND.—There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which any payments received by the Secretary under a Pacific Insular Area fishery agreement *and any funds or contributions received in support of conservation and management objectives under a marine conservation plan* for any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Western Pacific Sustainable Fisheries Fund shall be made available, without appropriation or fiscal year limitation, to the Secretary, who shall provide such funds only to—

(A) the Western Pacific Council for the purpose of carrying out the provisions of this subsection, including implementation of a marine conservation plan approved under paragraph (4);

(B) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(B); and

(C) the Western Pacific Council to meet conservation and management objectives in the State of Hawaii if monies remain in the Western Pacific Sustainable Fisheries Fund

after the funding requirements of subparagraphs (A) and (B) have been satisfied. Amounts deposited in such fund shall not diminish funding received by the Western Pacific Council for the purpose of carrying out other responsibilities under this Act.

(8) USE OF FINES AND PENALTIES.—In the case of violations occurring within the exclusive economic zone off American Samoa, Guam, or the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its [authority, after payment of direct costs of the enforcement action to all entities involved in such action,] shall be deposited into the Treasury of the Pacific Insular Area adjacent to the exclusive economic zone in which the violation occurred, to be used for fisheries enforcement and for implementation of a marine conservation plan under paragraph (4). *In the case of violations by foreign vessels occurring within the exclusive economic zones off Midway Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis, Howland, Baker, and Wake Islands, amounts received by the Secretary attributable to fines and penalties imposed under this Act, shall be deposited into the Western Pacific Sustainable Fisheries Fund established under paragraph (7) of this subsection.*

* * * * *

SEC. 207. INTERNATIONAL MONITORING AND COMPLIANCE.

(a) *IN GENERAL.*—The Secretary may undertake activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and to implement the requirements of this title.

(b) *SPECIFIC AUTHORITIES.*—In carrying out subsection (a), the Secretary may—

(1) *share information on harvesting and processing capacity and illegal, unreported and unregulated fishing on the high seas, in areas covered by international fishery management agreements, and by vessels of other nations within the United States exclusive economic zone, with relevant law enforcement organizations of foreign nations and relevant international organizations;*

(2) *further develop real time information sharing capabilities, particularly on harvesting and processing capacity and illegal, unreported and unregulated fishing;*

(3) *participate in global and regional efforts to build an international network for monitoring, control, and surveillance of high seas fishing and fishing under regional or global agreements;*

(4) *support efforts to create an international registry or database of fishing vessels, including by building on or enhancing registries developed by international fishery management organizations;*

(5) *enhance enforcement capabilities through the application of commercial or governmental remote sensing technology to locate or identify vessels engaged in illegal, unreported, or un-*

regulated fishing on the high seas, including encroachments into the exclusive economic zone by fishing vessels of other nations;

(6) provide technical or other assistance to developing countries to improve their monitoring, control, and surveillance capabilities; and

(7) support coordinated international efforts to ensure that all large-scale fishing vessels operating on the high seas are required by their flag State to be fitted with vessel monitoring systems no later than December 31, 2008, or earlier if so decided by the relevant flag State or any relevant international fishery management organization.

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.

[16 U.S.C. 1851]

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management.

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

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be

(A) fair and equitable to all such fishermen;

(B) reasonably calculated to promote conservation; and

(C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities *by utilizing economic and social data and assessment methods based on the best economic and social information available*, in order to (A) provide for the sustained partici-

pation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

(b) GUIDELINES.—The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

[16 U.S.C. 1852]

(a) ESTABLISHMENT.—

(1) There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(A) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have 18 voting members, including 12 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(B) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have 21 voting members, including 13 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(C) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(D) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States *and of commonwealths, territories, and possessions of the United States in the Caribbean Sea* (except as provided in paragraph (3)). The Caribbean Council shall have 7 voting members, including 4 ap-

pointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(E) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in paragraph (3)). The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(F) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State), and including one appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).

(G) NORTH PACIFIC COUNCIL.—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(H) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

(2) Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

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

(b) VOTING MEMBERS.—

(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary in accordance with paragraphs (2) and (5).

(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—

(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the ex-

tent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

(D)(i) The Secretary shall appoint to the Gulf of Mexico Fisheries Management Council—

(I) 5 representatives of the commercial fishing sector;

(II) 5 representatives of the recreational fishing and charter fishing sectors; and

(III) 1 other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

(ii) The Governor of a State submitting a list of names of individuals for appointment by the Secretary of Commerce to the Gulf of Mexico Fisheries Management Council under subparagraph (C) shall include—

(I) at least 1 nominee each from the commercial, recreational, and charter fishing sectors; and

(II) at least 1 other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

(iii) If the Secretary determines that the list of names submitted by the Governor does not meet the requirements of clause (ii), the Secretary shall—

(I) publish a notice in the Federal Register asking the residents of that State to submit the names and pertinent biographical data of individuals who would meet the requirement not met for appointment to the Council; and

(II) add the name of any qualified individual submitted by the public who meets the unmet requirement to the list of names submitted by the Governor.

(iv) For purposes of clause (ii), an individual who owns or operates a fish farm outside of the United States shall not be considered to be a representative of the commercial fishing sector.

[(D)] (E) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with paragraphs (2) and (5) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.

(4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(5)(A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph.

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

- (i) the qualifications of the individuals on the list referred to in subparagraph (A),
- (ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and
- (iii) the geographic area in which the tribe of the representative is located.

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

(D) *The tribal representative appointed under subparagraph (A) may designate as an alternate, during the period of the representative's term, an individual knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.*

(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraphs (2) or (5) if—

(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

(B) the member is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307(1)(O).

(c) NONVOTING MEMBERS.—

(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) COMPENSATION AND EXPENSES.—The voting members of each Council who are required to be appointed by the Secretary and who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-15, step 7 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

(e) TRANSACTION OF BUSINESS.—

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.

(5) At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of

any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.

(f) STAFF AND ADMINISTRATION.—

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g), must be consistent with the procedural guidelines set forth in subsection (i)(2). Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

[(g) COMMITTEES AND PANELS.—(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.]

(g) COMMITTEES AND ADVISORY PANELS.—

(1)(A) *Each Council shall establish, maintain, and appoint the members of a scientific and statistical committee to assist it in the development, collection, evaluation, and peer review of*

such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(B) Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch or maximum sustainable yield, and reports on stock status and health, bycatch, habitat status, socio-economic impacts of management measures, and sustainability of fishing practices.

(C) Members appointed by the Councils to the scientific and statistical committees shall be Federal employees, State employees, academicians, or independent experts with strong scientific or technical credentials and experience.

(D) The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery. The review process, which may include existing committees or panels, is deemed to satisfy the requirements of the guidelines issued pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal year 2001 (Public Law 106-554—Appendix C; 114 Stat. 2763A-153).

(E) In addition to the provisions of section 302(f)(7), the Secretary may pay a stipend to members of the scientific and statistical committees or advisory panels who are not employed by the Federal government or a State marine fisheries agency.

(2) Each Council shall establish such [other] advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(3)(A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

(4) The Secretary shall establish advisory panels to assist in the collection and evaluation of information relevant to the development of any fishery management plan or plan amendment for a fishery to which subsection (a)(3) applies. Each advisory panel shall participate in all aspects of the development of the plan or amendment; be balanced in its representation of commercial, recreational, and other interests; and consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from among—

(A) members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

(B) other interested persons.

(5) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

(1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time (and promptly whenever changes in conservation and management measures in another fishery substantially affect the fishery for which such plan was developed);

(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(C) or section 204(d), and any fishery management plan or amendment transmitted to it under section 304(c)(4);

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act (and for purposes of this paragraph, the term “geographical area concerned” may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area);

(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery (except as provided in subsection (a)(3)) within its geographical area of **authority, and** *authority*;

(6) *adopt annual catch limits for each of its managed fisheries after considering the recommendations of its scientific and statistical committee or the peer review process established under subsection (g); and*”.

[(6)] (7) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

(i) PROCEDURAL MATTERS.—

(1) The Federal Advisory Committee Act (5 U.S.C. App. 1) shall not apply **to the Councils or to the scientific and statistical committees or advisory panels established under subsection (g).** *to the Councils, the Council coordination committee established under subsection (l), or to the scientific and statistical committees or other committees or advisory panels established under subsection (g).*

(2) The following guidelines apply with respect to the conduct of business at meetings **of a Council, and of the scientific and statistical committee and advisory panels established under subsection (g):** *of a Council, of the Council coordination committee established under subsection (l), and of the scientific and statistical committees or other committees or advisory panels established under subsection (g):*

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be **published in local newspapers** *provided by any means that will result in wide publicity (except that e-mail notification and website postings alone are not sufficient)* in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected **fishery**) and such notice may be given by such other means as will result in wide publicity. *fishery*. Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c), in which case public notice shall be given immediately.

(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.

(E) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

(F) Subject to the procedures established under paragraph (4), and the guidelines prescribed by the Secretary under section 402(b), relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a

single location in the offices of the Council or the Secretary, as appropriate.

(3)(A) Each Council, *the Council Coordination Committee established under subsection (1)*, scientific and statistical committee, *other committee*, and advisory panel—

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested.

Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(B) If any meeting or portion is closed, the Council concerned shall ~~notify local newspapers~~ *provide notice by any means that will result in wide publicity* in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 402(b), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans.

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

(j) DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.—

(1) For the purposes of this subsection—

(A) the term “affected individual” means an individual who—

- (i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or
 - (ii) is a voting member of a Council appointed—
 - (I) under subsection (b)(2); or
 - (II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and
 - (B) the term “designated official” means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).
- (2) Each affected individual must disclose any financial interest held by—
- (A) that individual;
 - (B) the spouse, minor child, or partner of that individual; and
 - (C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; in any harvesting, processing, *lobbying*, *advocacy*, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has **【**jurisdiction.**】** *jurisdiction, or with respect to any other individual or organization with a financial interest in such activity.*
- (3) The disclosure required under paragraph (2) shall be made—
- (A) in the case of an affected individual referred to in paragraph (1)(A)(i), before appointment by the Secretary; and
 - (B) in the case of an affected individual referred to in paragraph (1)(A)(ii), within 45 days of taking office.
- (4) An affected individual referred to in paragraph (1)(A)(ii) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C).
- (5) The financial interest disclosures required by this subsection shall—
- (A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe;
 - 【**(B) be kept on file, and made available for public inspection at reasonable hours, at the Council offices; and**】**
(B) be kept on file by the Council and made available on the Internet and for public inspection at the Council offices during reasonable times; and
 - (C) be kept on file by the Secretary for use in reviewing determinations under paragraph (7)(B) and made available for public inspection at reasonable hours.
- (6) The participation by an affected individual referred to in paragraph (1)(A)(ii) in an action by a Council during any time in which that individual is not in compliance with the regula-

tions prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.

(7)(A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(B) At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

(C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

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

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

(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of the Sustainable Fisheries Act, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and which allow for the making of determinations under subparagraphs (B) and (C).

(8) Section 208 of title 18, United States Code, does not apply to an affected individual referred to in paragraph (1)(A)(ii) during any time in which that individual is in compliance with the regulations prescribed under paragraph (5).

(9) *On January 1, 2008, and annually thereafter, the Secretary shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements of this subsection.*

(k) *COUNCIL TRAINING PROGRAM.—*

(1) *TRAINING COURSE.*—Within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, the Secretary, in consultation with the Councils and the National Sea Grant College Program, shall develop a training course for newly appointed Council members. The course may cover a variety of topics relevant to matters before the Councils, including—

(A) fishery science and basic stock assessment methods;

(B) fishery management techniques, data needs, and Council procedures;

(C) social science and fishery economics;

(D) tribal treaty rights and native customs, access, and other rights related to Western Pacific indigenous communities;

(E) legal requirements of this Act, including conflict of interest and disclosure provisions of this section and related policies;

(F) other relevant legal and regulatory requirements, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.);

(G) public process for development of fishery management plans; and

(H) other topics suggested by the Council.

(2) *MEMBER TRAINING.*—The training course shall be available to both new and existing Council members, and may be made available to committee or advisory panel members as resources allow.

(l) *COUNCIL COORDINATION COMMITTEE.*—The Councils may establish a Council coordination committee consisting of the chairs, vice chairs, and executive directors of each of the 8 Councils described in subsection (a)(1), or other Council members or staff, in order to discuss issues of relevance to all Councils, including issues related to the implementation of this Act.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

[16 U.S.C. 1853]

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

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery, to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

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

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

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

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

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

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, [and charter fishing] *charter fishing, and fish processing* in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, *economic information necessary to meet the requirements of this Act*, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors,

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

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and [describe the likely effects, if any, of the conservation and management measures on—] *analyze the likely effects, if any, including the cumulative economic and social impacts, of the conservation and management measures on, and possible mitigation measures for—*

(A) participants in the fisheries and fishing communities affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the [fishery] *fishery, including their economic impact,* and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; [and]

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, [allocate] *allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector,* any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the [fishery.] *fishery; and*

(15) *provide a mechanism for specifying annual catch limits in the plan (including a multiyear plan), the implementing regulations, or the annual specifications that shall be established by the Council or Secretary based on the best scientific informa-*

tion available at a level that does not exceed optimum yield, and, for purposes of which harvests exceeding the specified annual catch limit (including the specified annual catch limit for a sector) shall either be deducted from the following year's annual catch limit (including the annual catch limit for that sector), or by adjusting other management measures and input controls such that the fishing mortality rate for the following year is reduced to account for the overage to achieve the overfishing and rebuilding objectives of the plan for that sector.

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

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

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) *designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and*

(C) *with respect to any closure of an area to all fisheries managed under this Act, ensure that such closure—*

(i) is based on the best scientific information available;

(ii) includes criteria to assess the conservation benefit of the closed area;

(iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and

(iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;
- (4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;
- (5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the **fishery;** *fishery and take into account the different circumstances affecting fisheries from different States and port, including distances to fishing grounds and proximity to time and area closures;*
- [(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—**
- [(A) present participation in the fishery,**
 - [(B) historical fishing practices in, and dependence on, the fishery,**
 - [(C) the economics of the fishery,**
 - [(D) the capability of fishing vessels used in the fishery to engage in other fisheries,**
 - [(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and**
 - [(F) any other relevant considerations;]**
- (6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—*
- (A) the conservation requirements of this Act with respect to the fishery;*
 - (B) present participation in the fishery;*
 - (C) historical fishing practices in, and dependence on, the fishery;*
 - (D) the economics of the fishery;*
 - (E) the capability of fishing vessels used in the fishery to engage in other fisheries;*
 - (F) the cultural and social framework relevant to the fishery and any affected fishing communities;*
 - (G) the fair and equitable distribution of access privileges to a public resource; and*
 - (H) any other relevant considerations;*
- (7) require fish processors who first receive fish that are subject to the plan to submit data **[(other than economic data)]** which are necessary for the conservation and management of the fishery;
- (8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; **and**

(12) establish a process for complying with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) pursuant to section 304(h) of this Act;

(13) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

[(12)] (14) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

[(d) INDIVIDUAL FISHING QUOTAS.—(1)(A) A Council may not submit and the Secretary may not approve or implement before October 1, 2002, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program.

[(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately returned by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).

[(2)(A) No provision of law shall be construed to limit the authority of a Council to submit and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an individual fishing quota program.

[(B) This subsection shall not be construed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the North Pacific halibut and sablefish, South Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog individual fishing quota programs.

[(3) An individual fishing quota or other limited access system authorization—

[(A) shall be considered a permit for the purposes of sections 307, 308, and 309;

[(B) may be revoked or limited at any time in accordance with this Act;

[(C) shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited; and

[(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested.

[(4)(A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the—

[(i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and

[(ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

[(B) A Council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.

[(5) In submitting and approving any new individual fishing quota program on or after October 1, 2002, the Councils and the Secretary shall consider the report of the National Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program—

[(A) establishes procedures and requirements for the review and revision of the terms of any such program (including any revisions that may be necessary once a national policy with respect to individual fishing quota programs is implemented), and, if appropriate, for the renewal, reallocation, or reissuance of individual fishing quotas;

[(B) provides for the effective enforcement and management of any such program, including adequate observer coverage, and for fees under section 304(d)(2) to recover actual costs directly related to such enforcement and management; and

[(C) provides for a fair and equitable initial allocation of individual fishing quotas, prevents any person from acquiring an excessive share of the individual fishing quotas issued, and considers the allocation of a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, and crew members who do not hold or qualify for individual fishing quotas.]

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

(a) *IN GENERAL.*—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) *NO CREATION OF RIGHT, TITLE, OR INTEREST.*—A limited access system, limited access privilege, quota share, or other authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation for failure to comply with the terms of the plan or if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

(c) *REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.*—

(1) *IN GENERAL.*—In addition to complying with the other requirements of this Act, any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding; and

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) the safety of human life at sea; and

(ii) the conservation and management of the fishery;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish;

(E) require that all fish harvested under a limited access privilege program be processed by vessels of the United States, in United States waters, or on United States soil (including any territory of the United States).

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the establishment of the program and every 5 years thereafter;

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers;

(I) include an appeals process for administrative review of determinations with respect to the Secretary's decisions regarding administration of the limited access privilege program;

(J) provide for the establishment by the Secretary, in consultation with the Department of Justice and the Federal Trade Commission, for an information collection and review process to provide any additional information needed by the Department of Justice and the Federal Trade Commission to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) **WAIVER.**—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

(A) the fishery has historically processed the fish outside of the United States; and

(B) the United States has a seafood safety equivalency agreement with the country where processing will occur (or other assurance that seafood safety procedures to be used in such processing are equivalent or superior to the applicable United States seafood safety standards).

(3) **FISHING COMMUNITIES.**—

(A) **IN GENERAL.**—

(i) **ELIGIBILITY.**—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of fishing communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) **FAILURE TO COMPLY WITH PLAN.**—The Secretary shall deny limited access privileges granted under this section for any person who fails to comply with the requirements of the plan.

(B) *PARTICIPATION CRITERIA.*—*In developing participation criteria for eligible communities under this paragraph, a Council shall consider—*

(i) *traditional fishing or processing practices in, and dependence on, the fishery;*

(ii) *the cultural and social framework relevant to the fishery;*

(iii) *economic barriers to access to fishery;*

(iv) *the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or sub-region;*

(v) *the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and*

(vi) *the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.*

(4) *REGIONAL FISHERY ASSOCIATIONS.*—

(A) *IN GENERAL.*—*To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—*

(i) *be located within the management area of the relevant Council;*

(ii) *meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;*

(iii) *be a voluntary association with established by-laws and operating procedures consisting of participants in the fishery, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities; and*

(iv) *develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.*

(B) *FAILURE TO COMPLY WITH PLAN.*—*The Secretary shall deny limited access privileges granted under this section for any person who fails to comply with the requirements of the plan.*

(C) *PARTICIPATION CRITERIA.*—*In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—*

(i) *traditional fishing or processing practices in, and dependence on, the fishery;*

(ii) *the cultural and social framework relevant to the fishery;*

(iii) *economic barriers to access to fishery;*

(iv) *the existence and severity of projected economic and social impacts associated with implementation of*

limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or sub-region, upon the administrative and fiduciary soundness of the association and its by-laws; and

(v) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) *ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—*

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

(i) current and historical harvests;

(ii) employment in the harvesting and processing sectors;

(iii) investments in, and dependence upon, the fishery; and

(iv) the current and historical participation of fishing communities;

(B) to the extent practicable, consider the basic cultural and social framework of the fishery, especially through the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges and, where appropriate, recommending the provision of economic assistance in the purchase of limited access privileges to harvest fish;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

(i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquired, or use; and

(ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges;

(E) establish procedures to address geographic or other consolidation in both the harvesting and processing sectors of the fishery; and

(F) authorize limited access privileges to harvest fish to be held, acquired, or used by or issued under the system to persons who substantially participate in the fishery, as specified by the Council, including, as appropriate, fishing vessel owners, vessel captains, vessel crew members, fishing communities, and regional fishery associations.

(6) *PROGRAM INITIATION.—*

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or

amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) *PETITION*.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) *CERTIFICATION BY SECRETARY*.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) *NEW ENGLAND AND GULF REFERENDUM*.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than $\frac{2}{3}$ of those voting in a referendum among eligible permit holders with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation

and Management Reauthorization Act of 2005, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(7) **TRANSFERABILITY.**—In establishing a limited access privilege program, a Council shall—

(A) establish a policy on the transferability of limited access privilege shares (through sale or lease), including a policy on any conditions that apply to the transferability of limited access privilege shares that is consistent with the policies adopted by the Council for the fishery under paragraph (3); and

(B) establish criteria for the approval and monitoring of transfers (including sales and leases) of limited access privilege shares.

(8) **PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.**—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(g).

(9) **ANTITRUST SAVINGS CLAUSE.**—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term “antitrust laws” has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

(d) **AUCTION AND OTHER PROGRAMS.**—In establishing a limited access privilege program, a Council may consider, and provide for, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of subsection (c)(3)(A); and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) **COST RECOVERY.**—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) *LIMITED DURATION.*—In establishing a limited access privilege program after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, a Council may establish—

(1) a set term after which any initial or subsequent allocation of a limited access privilege shall expire;

(2) different set terms within a fishery if the Council determines that variation of terms will further management goals; and

(3) a mechanism under which participants in and entrants to the program may acquire or reacquire allocations.

(g) *LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.*—

(1) *IN GENERAL.*—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) *ELIGIBILITY CRITERIA.*—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) *EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.*—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, shall be construed to require a reallocation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation, under development or submitted by a Council or approved by the Secretary or by Congressional action before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005.

SEC. 304. ACTION BY SECRETARY.

[16 U.S.C. 1854]

(a) *REVIEW OF PLANS.*—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

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

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that

written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

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

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

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

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

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

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

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law. If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

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

(5) For purposes of this subsection and subsection (b), the term “immediately” means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

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

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

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

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

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

(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.—(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

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

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

(2) In preparing any plan or amendment under this subsection, the Secretary shall—

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

(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any [individual fishing quota] *limited access privilege* program, unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately—

(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

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

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.

(d) ESTABLISHMENT OF FEES.—(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the **management and enforcement** *management, data collection, and enforcement* of any—

(i) **individual fishing quota** *limited access privilege* program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under **section 305(h)(5)(B)**, except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee com-

mitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)). **】** *section 305(h)(5)(B)*.

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

(e) REBUILDING OVERFISHED FISHERIES.—

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within one year of an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

(A) to end overfishing in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

(A) specify a time period for ending overfishing and rebuilding the fishery that shall—

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an inter-

national agreement in which the United States participates dictate otherwise;

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the one-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.

(8) *The provisions of this paragraph shall apply in lieu of paragraphs (2) through (7) of this subsection to a fishery that the Secretary determines is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. For such fisheries—*

(A) the Secretary, in cooperation with the Secretary of State, immediately take appropriate action at the international level to end the overfishing; and

(B) within 1 year after the Secretary's determination, the appropriate Council, or Secretary, for fisheries under section 302(a)(3) shall—

(i) develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States on the stock and, if developed by a Council, the Council shall submit such recommendations to the Secretary; and

(ii) develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock.

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

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

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned. No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

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

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—(1) Preparation and implementation of plan or plan amendment. The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall—

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

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

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection—

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

(2) CERTAIN FISH EXCLUDED FROM “BYCATCH” DEFINITION.—Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 [(16 U.S.C. 971d)] (16 U.S.C. 971d), or highly migratory species harvested in a commercial fishery managed by a Council under this Act or the Western and Central Pacific Fisheries Convention Implementation Act, that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.

(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

(i) ENVIRONMENTAL REVIEW PROCESS.—

(1) PROCEDURES.—*The Secretary shall, in consultation with the Councils and the Council on Environmental Quality, revise and update agency procedures for compliance with the National Environmental Policy Act (42 U.S.C. 4231 et seq.). The procedures shall—*

(A) conform to the time lines for review and approval of fishery management plans and plan amendments under this section; and

(B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.

(2) USAGE.—*The updated agency procedures promulgated in accordance with this section used by the Councils or the Secretary shall be the sole environmental impact assessment procedure for fishery management plans, amendments, regulations, or other actions taken or approved pursuant to this Act.*

(3) *SCHEDULE FOR PROMULGATION OF FINAL PROCEDURES.—The Secretary shall—*

(A) propose revised procedures within 12 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005;

(B) provide 90 days for public review and comments; and

(C) promulgate final procedures no later than 18 months after the date of enactment of that Act.

(4) *PUBLIC PARTICIPATION.—The Secretary is authorized and directed, in cooperation with the Council on Environmental Quality and the Councils, to involve the affected public in the development of revised procedures, including workshops or other appropriate means of public involvement.*

SEC. 305. OTHER REQUIREMENTS AND AUTHORITY.

[16 U.S.C. 1855]

(a) **GEAR EVALUATION AND NOTIFICATION OF ENTRY.—**(1) Not later than 18 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries—

(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 303(a); and

(B) to which section 302(a)(3) applies and all fishing gear used in such fisheries.

(2) The Secretary shall include with such list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).

(3) Effective 180 days after the publication of such list, no person or vessel may employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council, or the Secretary with respect to a fishery to which section 302(a)(3) applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.

(4) A Council may submit to the Secretary any proposed changes to such list or such guidelines the Council deems appropriate. The Secretary shall publish a revised list, after notice and an opportunity for public comment, upon receiving any such proposed changes from a Council.

(5) A Council may request the Secretary to promulgate emergency regulations under subsection (c) to prohibit any persons or vessels from using an unlisted fishing gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary for fisheries to which section 302(a)(3) applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this Act.

(6) Nothing in this subsection shall be construed to permit a person or vessel to engage in fishing or employ fishing gear when such fishing or gear is prohibited or restricted by regulation under a fishery management plan or plan amendment, or under other applicable law.

(b) **FISH HABITAT.—**(1)(A) The Secretary shall, within 6 months of the date of enactment of the Sustainable Fisheries Act, establish

by regulation guidelines to assist the Councils in the description and identification of essential fish habitat in fishery management plans (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat. The Secretary shall set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat and for the review and updating of such identifications based on new scientific evidence or other relevant information.

(B) The Secretary, in consultation with participants in the fishery, shall provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.

(C) The Secretary shall review programs administered by the Department of Commerce and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.

(D) The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.

(2) Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.

(3) Each Council—

(A) may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and

(B) shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority.

(4)(A) If the Secretary receives information from a Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.

(B) Within 30 days after receiving a recommendation under subparagraph (A), a Federal agency shall provide a detailed response in writing to any Council commenting under paragraph (3) and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.

(c) EMERGENCY ACTIONS AND INTERIM MEASURES.—(1) If the Secretary finds that an emergency exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery.

(2) If a Council finds that an emergency exists or that interim measures are needed to reduce overfishing for any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery—

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

(B) the Secretary may promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by less than a unanimous vote, requests the taking of such action.

(3) Any emergency regulation or interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation or interim measure promulgated under this subsection—

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

(B) shall, except as provided in subparagraph (C), remain in effect for not more than ~~180 days~~ 186 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 180 days, provided the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;

(C) that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, Provided, That the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action; and

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

(d) RESPONSIBILITY OF SECRETARY.—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code,

as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

(e) EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.—The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsections (a), (b), and (c) of section 304 as they apply to the functions of the Secretary under such provisions.

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

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

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

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

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

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

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

(g) NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES.—

(1)(A) In accordance with regulations promulgated by the Secretary pursuant to this paragraph, a Council may establish a fishery negotiation panel to assist in the development of specific conservation and management measures for a fishery under its authority. The Secretary may establish a fishery negotiation panel to assist in the development of specific conservation and management measures required for a fishery under section 304(e)(5), for a fishery for which the Secretary has authority under section 304(g), or for any other fishery with the approval of the appropriate Council.

(B) No later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations establishing procedures, developed in cooperation with the Administrative Conference of the United States, for the establishment and operation of fishery negotiation panels. Such procedures shall be comparable to the procedures for negotiated rulemaking

established by subchapter III of chapter 5 of title 5, United States Code.

(2) If a negotiation panel submits a report, such report shall specify all the areas where consensus was reached by the panel, including, if appropriate, proposed conservation and management measures, as well as any other information submitted by members of the negotiation panel. Upon receipt, the Secretary shall publish such report in the Federal Register for public comment.

(3) Nothing in this subsection shall be construed to require either a Council or the Secretary, whichever is appropriate, to use all or any portion of a report from a negotiation panel established under this subsection in the development of specific conservation and management measures for the fishery for which the panel was established.

(h) CENTRAL REGISTRY SYSTEM FOR LIMITED ACCESS SYSTEM PERMITS.—(1) Within 6 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits established under section 303(b)(6) or other Federal law, including [individual fishing quotas,] *limited access privileges*, which shall provide for the registration of title to, and interests in, such permits, as well as for procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial or non-judicial foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate by the Secretary. Such registry system shall—

(A) provide a mechanism for filing notice of a nonjudicial foreclosure or enforcement of a judgment by which the holder of a senior security interest acquires or conveys ownership of a permit, and in the event of a nonjudicial foreclosure, by which the interests of the holders of junior security interests are released when the permit is transferred;

(B) provide for public access to the information filed under such system, notwithstanding section 402(b); and

(C) provide such notice and other requirements of applicable law that the Secretary deems necessary for an effective registry system.

(2) The Secretary shall promulgate such regulations as may be necessary to carry out this subsection, after consulting with the Councils and providing an opportunity for public comment. The Secretary is authorized to contract with non-Federal entities to administer the central registry system.

(3) To be effective and perfected against any person except the transferor, its heirs and devisees, and persons having actual notice thereof, all security interests, and all sales and other transfers of permits described in paragraph (1), shall be registered in compliance with the regulations promulgated under paragraph (2). Such registration shall constitute the exclusive means of perfection of title to, and security interests in, such permits, except for Federal tax liens thereon, which shall be perfected exclusively in accordance with the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.). The Secretary shall notify both the buyer and seller of a permit if a lien has been filed by the Secretary of the Treasury against the

permit before collecting any transfer fee under paragraph (5) of this subsection.

(4) The priority of security interests shall be determined in order of filing, the first filed having the highest priority. A validly-filed security interest shall remain valid and perfected notwithstanding a change in residence or place of business of the owner of record. For the purposes of this subsection, "security interest" shall include security interests, assignments, liens and other encumbrances of whatever kind.

(5)(A) Notwithstanding section 304(d)(1), the Secretary shall collect a reasonable fee of not more than one-half of one percent of the value of a limited access system permit upon registration of the title to such permit with the central registry system and upon the transfer of such registered title. Any such fee collected shall be deposited in the Limited Access System Administration Fund established under subparagraph (B).

(B) There is established in the Treasury a Limited Access System Administration Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purposes of—

(i) administering the central registry system; and

(ii) administering and implementing this Act in the fishery in which the fees were collected. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(i) ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS.—

(1)(A) The North Pacific Council and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program.

(B) **【To】** *Except as provided in subparagraph (E)*, to be eligible to participate in the western Alaska community development quota program under subparagraph (A) a community shall—

(i) be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea;

(ii) not be located on the Gulf of Alaska coast of the north Pacific Ocean;

(iii) meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register;

(iv) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to be a Native village;

(v) consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea or waters surrounding the Aleutian Islands; and

(vi) not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.

(C)(i) Prior to October 1, 2001, the North Pacific Council may not submit to the Secretary any fishery management plan, plan amendment, or regulation that allocates to the western Alaska community development quota program a percentage of the total allowable catch of any Bering Sea fishery for which, prior to October 1, 1995, the Council had not approved a percentage of the total allowable catch for allocation to such community development quota program. The expiration of any plan, amendment, or regulation that meets the requirements of clause (ii) prior to October 1, 2001, shall not be construed to prohibit the Council from submitting a revision or extension of such plan, amendment, or regulation to the Secretary if such revision or extension complies with the other requirements of this paragraph.

(ii) With respect to a fishery management plan, plan amendment, or regulation for a Bering Sea fishery that—

(I) allocates to the western Alaska community development quota program a percentage of the total allowable catch of such fishery; and

(II) was approved by the North Pacific Council prior to October 1, 1995; the Secretary shall, except as provided in clause (iii) and after approval of such plan, amendment, or regulation under section 304, allocate to the program the percentage of the total allowable catch described in such plan, amendment, or regulation. Prior to October 1, 2001, the percentage submitted by the Council and approved by the Secretary for any such plan, amendment, or regulation shall be no greater than the percentage approved by the Council for such fishery prior to October 1, 1995.

(iii) The Secretary shall phase in the percentage for community development quotas approved in 1995 by the North Pacific Council for the Bering Sea crab fisheries as follows:

(I) 3.5 percent of the total allowable catch of each such fishery for 1998 shall be allocated to the western Alaska community development quota program;

(II) 5 percent of the total allowable catch of each such fishery for 1999 shall be allocated to the western Alaska community development quota program; and

(III) 7.5 percent of the total allowable catch of each such fishery for 2000 and thereafter shall be allocated to the western Alaska community development quota program, unless the North Pacific Council submits and the Secretary approves a percentage that is no greater than 7.5 percent of the total allowable catch of each such fishery for 2001 or the North Pacific Council sub-

mits and the Secretary approves any other percentage on or after October 1, 2001.

(D) This paragraph shall not be construed to require the North Pacific Council to resubmit, or the Secretary to reapprove, any fishery management plan or plan amendment approved by the North Pacific Council prior to October 1, 1995, that includes a community development quota program, or any regulations to implement such plan or amendment.

(E) A community shall be eligible to participate in the western Alaska community development quota program under subparagraph (A) if the community was—

(i) listed in table 7 to part 679 of title 50, Code of Federal Regulations, as in effect on January 1, 2004;

or

(ii) approved by the National Marine Fisheries Service on April 19, 1999.

(2)(A) The Western Pacific Council and the Secretary may establish a western Pacific community development program for any fishery under the authority of such Council in order to provide access to such fishery for western Pacific communities that participate in the program.

(B) To be eligible to participate in the western Pacific community development program, a community shall—

(i) be located within the Western Pacific Regional Fishery Management Area;

(ii) meet criteria developed by the Western Pacific Council, approved by the Secretary and published in the Federal Register;

(iii) consist of community residents who are descended from the aboriginal people indigenous to the area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the Western Pacific region;

(iv) not have previously developed harvesting or processing capability sufficient to support substantial participation in fisheries in the Western Pacific Regional Fishery Management Area; and

(v) develop and submit a Community Development Plan to the Western Pacific Council and the Secretary.

(C) In developing the criteria for eligible communities under subparagraph (B)(ii), the Western Pacific Council shall base such criteria on traditional fishing practices in or dependence on the fishery, the cultural and social framework relevant to the fishery, and economic barriers to access to the fishery.

(D) For the purposes of this subsection “Western Pacific Regional Fishery Management Area” means the area under the jurisdiction of the Western Pacific Council, or an island within such area.

(E) Notwithstanding any other provision of this Act, the Western Pacific Council shall take into account traditional indigenous fishing practices in preparing any fishery management plan.

(3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and report-

ing requirements of other participants in the fishery in which the allocation to such program has been made.

(4) After the date of enactment of the Sustainable Fisheries Act, the North Pacific Council and Western Pacific Council may not submit to the Secretary a community development quota program that is not in compliance with this subsection.

(j) *WESTERN PACIFIC REGIONAL MARINE EDUCATION AND TRAINING.*—

(1) *IN GENERAL.*—*The Secretary shall establish a pilot program for regionally-based marine education and training programs in the Western Pacific to foster understanding, practical use of knowledge (including native Hawaiian and other Pacific Islander-based knowledge), and technical expertise relevant to stewardship of living marine resources. The Secretary shall, in cooperation with the Western Pacific Regional Fishery Management Council, regional educational institutions, and local Western Pacific community training entities, establish programs or projects that will improve communication, education, and training on marine resource issues throughout the region and increase scientific education for marine-related professions among coastal community residents, including indigenous Pacific islanders, Native Hawaiians and other underrepresented groups in the region.*

(2) *PROGRAM COMPONENTS.*—*The program shall—*

(A) *include marine science and technology education and training programs focused on preparing community residents for employment in marine related professions, including marine resource conservation and management, marine science, marine technology, and maritime operations;*

(B) *include fisheries and seafood-related training programs, including programs for fishery observers, seafood safety and seafood marketing, focused on increasing the involvement of coastal community residents in fishing, fishery management, and seafood-related operations;*

(C) *include outreach programs and materials to educate and inform consumers about the quality and sustainability of wild fish or fish products farmed through responsible aquaculture, particularly in Hawaii and the Western Pacific;*

(D) *include programs to identify, with the fishing industry, methods and technologies that will improve the data collection, quality, and reporting and increase the sustainability of fishing practices, and to transfer such methods and technologies among fisheries sectors and to other nations in the Western and Central Pacific;*

(E) *develop means by which local and traditional knowledge (including Pacific islander and Native Hawaiian knowledge) can enhance science-based management of fishery resources of the region; and*

(F) *develop partnerships with other Western Pacific Island agencies, academic institutions, and other entities to meet the purposes of this section.*

(k) *MULTISPECIES GROUND FISH.*—*Within 60 days after the date of enactment of the Magnuson-Stevens Fishery Conservation and Man-*

agement Reauthorization Act of 2005, the Secretary of Commerce shall determine whether fishing in State waters without a New England multispecies groundfish fishery permit on regulated species within the multispecies complex is not consistent with the applicable Federal fishery management plan. If the Secretary makes a determination that such actions are not consistent with the plan, the Secretary shall, in consultation with the Council, and after notifying the affected State, develop and implement measures to cure the inconsistency.

* * * * *

SEC. 307. PROHIBITED ACTS.

[16 U.S.C. 1857]

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act;

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus*, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan implemented under this title, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.);

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(K) to steal or attempt to steal or to negligently and without authorization remove, damage, or tamper with—

(i) fishing gear owned by another person, which is located in the exclusive economic zone,

(ii) fish contained in such fishing gear;

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

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation;

(N) to strip pollock of its roe and discard the flesh of the pollock;

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A); **[or]**

(P)(i) to remove any of the fins of a shark (including the tail) and discard the carcass of the shark at sea;

(ii) to have custody, control, or possession of any such fin aboard a fishing vessel without the corresponding carcass; or

(iii) to land any such fin without the corresponding **[carcass.]***carcass*;

(Q) *to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation; or*

(R) *to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).*

For purposes of subparagraph (P) there is a rebuttable presumption that any shark fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of subparagraph (P) if the total weight of shark fins landed or found on board exceeds 5 percent of the total weight of shark carcasses landed or found on board.

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

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

(i) recreational fishing permitted under section 201(i);

(ii) fish processing permitted under section 306(c); or

(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);

(B) in fishing, except recreational fishing permitted under section 201(i), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b), (c), or (d); or

(C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

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

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing; unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regula-

tions issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

SEC. 308. CIVIL PENALTIES AND PERMIT SANCTIONS.

[16 U.S.C. 1858]

(a) **ASSESSMENT OF PENALTY.**—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed ~~[\$100,000]~~ \$240,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, Provided, That the information is served on the Secretary at least 30 days prior to an administrative hearing.

(b) **REVIEW OF CIVIL PENALTY.**—Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) **ACTION UPON FAILURE TO PAY ASSESSMENT.**—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) **IN REM JURISDICTION.**—A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 307 shall be liable in rem for any civil penalty assessed for such violation under section 308 and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) SUBPENAS.—For the purposes of conducting any hearing under **[this section,]** *this Act (or any other marine resource law enforced by the Secretary)*, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) PERMIT SANCTIONS.—(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue, the Secretary may—

(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, *a permit, or any interest in a permit*, by sale or otherwise, shall not extinguish any permit

sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, *a permit, or any interest in a permit*, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to **the vessel** *the vessel, permit, or interest* at the time of the transfer.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, *or any amount in settlement of a civil forfeiture*, the Secretary shall reinstate the permit upon payment of the **penalty or fine** *penalty, fine, or settlement amount* and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

SEC. 309. CRIMINAL OFFENSES.

[16 U.S.C. 1859]

[(a) OFFENSES.—A person is guilty of an offense if he commits any act prohibited by—

[(1) section 307(1)(D), (E), (F), (H), (I), or (L); or

[(2) section 307(2).

[(b) PUNISHMENT.—Any offense described in subsection (a)(1) is punishable by a fine or not more than \$100,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any observer described in section 307(1)(L) or any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such observer or officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$200,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than \$200,000.

[(c) JURISDICTION.—There is Federal jurisdiction over any offense described in this section.]

SEC. 309. CRIMINAL PENALTIES.

(a) FINES AND IMPRISONMENT.—

(1) IN GENERAL.—Any person (other than a foreign government or entity thereof) who knowingly violates subparagraph (D), (E), (F), (H), (I), or (L) of paragraph (1) of section 307, or paragraph (2) of section 307, shall be imprisoned for not more than 5 years and fined—

(A) not more than \$500,000 if such person is an individual; or

(B) not more than \$1,000,000 if such person is a corporation or other legal entity other than an individual.

(2) AGGRAVATED OFFENSES.—Notwithstanding paragraph (1), the maximum term of imprisonment shall be for not more than 10 years if—

(A) the violator is an individual; and

(B) in the commission of a violation described in paragraph (1), that individual—

(A) used a dangerous weapon;

(B) engaged in conduct that caused bodily injury to any observer described in section 307, any officer authorized to enforce the provisions of this Act under section 311, or any Council member or staff; or

(C) placed any such observer, officer, Council member, or staff in fear of imminent bodily injury.

(b) *OTHER VIOLATIONS.*—Any person (other than a foreign government or entity thereof) who knowingly violates any other provision of section 307 shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

(c) *JURISDICTION.*—

(1) *IN GENERAL.*—The district courts of the United States shall have jurisdiction over any action arising under this Act.

(2) *VENUE.*—For purposes of this Act—

(A) each violation of this Act shall constitute a separate offense and the offense shall be deemed to have been committed not only in the district where it first occurred, but also in any other district as authorized by law;

(B) any offense not committed within a judicial district of the United States is subject to the venue provisions of section 3238 of title 18, United States Code; and

(C) American Samoa shall be included within the judicial district of the United States District Court for the District of Hawaii.

SEC. 310. CIVIL FORFEITURES.

[16 U.S.C. 1860]

(a) *IN GENERAL.*—Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 [(other than any act for which the issuance of a citation under section 311(c) is sufficient sanction)] shall be subject to forfeiture to the United [States.] States, except that no fishing vessel shall be subject to forfeiture under this section as the result of any act for which the issuance of a citation under section 311(a) is sufficient sanction. All or part of such vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) *JURISDICTION OF DISTRICT COURTS.*—Any district court of the United States which has jurisdiction under section 311(d) shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) *JUDGMENT.*—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to—

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

(3) the remission or mitigation of any such forfeiture; shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary.

(d) PROCEDURE.—(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 311(d) shall—

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to such process; upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court. Nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 311(d), to release on bond any seized fish or other property or the proceeds from the sale thereof.

(2) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION.—

(1) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken or retained in violation of this Act.

(2) For purposes of this Act, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.

(3) For purposes of this Act, it shall be a rebuttable presumption that any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has gear on board that is capable of use for large-scale driftnet fishing, is engaged in such fishing.

SEC. 311. ENFORCEMENT.

[16 U.S.C. 1861]

(a) **RESPONSIBILITY.**—The provisions of this [Act] Act, and the provisions of any marine resource law administered by the Secretary, shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any [State agency,] agency of any State, Territory, Commonwealth, or Tribe, in the performance of such duties.

(b) POWERS OF AUTHORIZED OFFICERS.—

(1) Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any [Federal or State] agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may—

(A) with or without a warrant or other process—

(i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307;

(ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;

(iii) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

(iv) seize any fish (wherever found) taken or retained in violation of any provision of this Act; [and]

(v) seize any other evidence related to any violation of any provision of this Act; and

(vi) access, directly or indirectly, for enforcement purposes any data or information required to be provided under this title or regulations under this title, including data from Global Maritime Distress and Safety Systems, vessel monitoring systems, or any similar system, subject to the confidentiality provisions of section 402;

(B) execute any warrant or other process issued by any court of competent jurisdiction; and

(C) exercise any other lawful authority.

(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. The arrest authority described in the preceding sentence may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as

are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations within the exclusive economic zone, the Secretary of the department in which the Coast Guard is operating.

(c) ISSUANCE OF CITATIONS.—If any officer authorized to enforce the provisions of this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this Act, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) JURISDICTION OF COURTS.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of Guam or any possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii, and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands. Any such court may, at any time—

- (1) enter restraining orders or prohibitions;
 - (2) issue warrants, process in rem, or other process;
 - (3) prescribe and accept satisfactory bonds or other security;
- and
- (4) take such other actions as are in the interest of justice.

(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this Act or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other marine resource law enforced by the Secretary with respect to that fish or other property;

[(B) a reward of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount, to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other marine resource law enforced by the Secretary;]

(B) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act

or any other marine resource law enforced by the Secretary of up to the lesser of—

- (i) 20 percent of the penalty or fine collected; or
- (ii) \$20,000;

(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

(D) any valid liens or mortgages against any property that has been forfeited;

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

(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.

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

(f) ENFORCEMENT OF NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN.—

(1) ENFORCEMENT AGREEMENTS.—Beginning not later than October 1, 1993, the Secretary shall, if requested by the Governor of a State represented on the New England Fishery Management Council, enter into an agreement under subsection (a), with each of the States represented on such Council, that authorizes the marine law enforcement agency of such State to perform duties of the Secretary relating to enforcement of the Northeast Multispecies Fishery Management Plan.

(2) REIMBURSEMENT.—An agreement with a State under this subsection shall provide, subject to the availability of appropriations, for reimbursement of the State for expenses incurred in detection and prosecution of violations of any fishery management plan approved by the Secretary.

(3) COAST GUARD ENFORCEMENT WORKING GROUP.—

(A) ESTABLISHMENT.—The Commander of the First Coast Guard District shall establish an informal fisheries enforcement working group to improve the overall compliance with and effectiveness of the regulations issued under the Northeast Multispecies Fishery Management Plan.

(B) MEMBERSHIP.—The working group shall consist of members selected by the Commander, and shall include—

- (i) individuals who are representatives of various fishing ports located in the States represented on the New England Fishery Management Council;

(ii) captains of fishing vessels that operate in waters under the jurisdiction of that Council; and

(iii) other individuals the Commander considers appropriate.

(C) NON-FEDERAL STATUS OF WORKING GROUP MEMBERS.—An individual shall not receive any compensation for, and shall not be considered to be a Federal employee based on, membership in the working group.

(D) MEETINGS.—The working group shall meet, at the call of the Commander, at least 4 times each year. The meetings shall be held at various major fishing ports in States represented on the New England Fishery Management Council, as specified by the Commander.

(4) USE OF FINES AND PENALTIES.—Amounts available to the Secretary under this Act which are attributable to fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan shall be used by the Secretary pursuant to this section to enforce that Plan.

(g) ENFORCEMENT IN THE PACIFIC INSULAR AREAS.—The Secretary, in consultation with the Governors of the Pacific Insular Areas and the Western Pacific Council, shall to the extent practicable support cooperative enforcement agreements between Federal and Pacific Insular Area authorities.

(h) JOINT ENFORCEMENT AGREEMENTS.—

(1) IN GENERAL.—*The Governor of an eligible State may apply to the Secretary for execution of a joint enforcement agreement with the Secretary that will authorize the deputization and funding of State law enforcement officers with marine law enforcement responsibilities to perform duties of the Secretary relating to law enforcement provisions under this title or any other marine resource law enforced by the Secretary. Upon receiving an application meeting the requirements of this subsection, the Secretary may enter into a joint enforcement agreement with the requesting State.*

(2) ELIGIBLE STATE.—*A State is eligible to participate in the cooperative enforcement agreements under this section if it is in, or bordering on, the Atlantic Ocean (including the Caribbean Sea), the Pacific Ocean, the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or 1 or more of the Great Lakes.*

(3) REQUIREMENTS.—*Joint enforcement agreements executed under paragraph (1)—*

(A) *shall be consistent with the purposes and intent of this section to the extent applicable to the regulated activities;*

(B) *may include specifications for joint management responsibilities as provided by the first section of Public Law 91-412 (15 U.S.C. 1525); and*

(C) *shall provide for confidentiality of data and information submitted to the State under section 402.*

(4) ALLOCATION OF FUNDS.—*The Secretary shall include in each joint enforcement agreement an allocation of funds to assist in management of the agreement. The allocation shall be fairly distributed among all eligible States participating in cooperative enforcement agreements under this subsection, based*

upon consideration of Federal marine enforcement needs, the specific marine conservation enforcement needs of each participating eligible State, and the capacity of the State to undertake the marine enforcement mission and assist with enforcement needs. The agreement may provide for amounts to be withheld by the Secretary for the cost of any technical or other assistance provided to the State by the Secretary under the agreement.

(i) **IMPROVED DATA SHARING.**—

(1) **IN GENERAL.**—*Notwithstanding any other provision of this Act, as soon as practicable but no later than 21 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, the Secretary shall implement data-sharing measures to make any data required to be provided by this Act from Global Maritime Distress and Safety Systems, vessel monitoring systems, or similar systems—*

(A) directly accessible by State enforcement officers authorized under subsection (a) of this section; and

(B) available to a State management agency involved in, or affected by, management of a fishery if the State has entered into an agreement with the Secretary under section 402(b)(1)(B) of this Act.

(2) **AGREEMENT REQUIRED.**—*The Secretary shall promptly enter into an agreement with a State under section 402(b)(1)(B) of this Act if—*

(A) the Attorney General or highest ranking legal officer of the State provides a written opinion or certification that State law allows the State to maintain the confidentiality of information required by Federal law to be kept confidential; or

(B) the Secretary is provided other reasonable assurance that the State can and will protect the identity or business of any person to which such information relates.

[(h)] (j) **DEFINITIONS.**—*For purposes of this section—*

(1) The term “provisions of this Act” includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201(b) or (c), or section 204(d), with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term “violation of any provision of this Act” includes (A) the commission of any act prohibited by section 307, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.

[16 U.S.C. 1861a]

(a) **FISHERIES DISASTER RELIEF.**—(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

(A) natural causes;

(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management **【measures;】** *measures, including regulatory restrictions imposed to protect human health or the marine environment and judicially imposed harvest restrictions;* or

(C) undetermined causes.

(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years **【1996, 1997, 1998, and 1999.】** *2006 through 2012.*

(b) FISHING CAPACITY REDUCTION PROGRAM.—

(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, **【or the Governor of a State for fisheries under State authority, may conduct a fishing】** *the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing* capacity reduction program (referred to in this section as the “program”) in a fishery if the Secretary determines that the program—

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, *practicable* restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(C) is **【cost-effective and】** *cost-effective and, in the instance of a program involving an industry fee system, prospectively* capable of repaying any debt obligation incurred

under section 1111 of title XI of the Merchant Marine Act, 1936.

(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

[(A) the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or]

(A) the owner of a fishing vessel, if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the vessel owner and permit holder relinquish any claim associated with the vessel or permit that could qualify such owner or holder for any present or future limited access system permit in the fishery for which the program is established and such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions (including loss of the vessel's fisheries endorsement) that permanently prohibit and effectively prevent its use in fishing in federal or state waters, or fishing on the high seas or in the waters of a foreign nation; or

(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.

(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

(4) [The Secretary shall consult, as appropriate, with Councils,] *The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.*

(c) PROGRAM FUNDING.—(1) The program may be funded by any combination of amounts—

(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);

(B) appropriated for the purposes of this section;

(C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

(D) provided from any State or other public sources or private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

(d) INDUSTRY FEE SYSTEM.—(1)(A) If an industry fee system is necessary to fund the program, the [Secretary, at the request of the appropriate Council,] *Secretary* may conduct a referendum on such system. Prior to the referendum, the [Secretary, in consultation with the Council,] *Secretary* shall—

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute [a two-thirds majority of the participants voting.] *at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.*

(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees for a program established under this section shall—

(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may [establish;] *establish, unless the Secretary determines that such fees should be collected from the seller;* and

(D) be in effect only until such time as the debt obligation has been fully paid.

[(e) IMPLEMENTATION PLAN.—(1) The Secretary, in consultation with the appropriate Council or State and other interested parties, shall prepare and publish in the Federal Register for a 60-day public comment period an implementation plan, including proposed regulations, for each program. The implementation plan shall—

[(A) define criteria for determining types and numbers of vessels which are eligible for participation in the program taking into account characteristics of the fishery, the requirements

of applicable fishery management plans, the needs of fishing communities, and the need to minimize program costs; and

[(B) establish procedures for program participation (such as submission of owner bid under an auction system or fair market-value assessment) including any terms and conditions for participation which the Secretary deems to be reasonably necessary to meet the goals of the program.

[(2) During the 60-day public comment period—

[(A) the Secretary shall conduct a public hearing in each State affected by the program; and

[(B) the appropriate Council or State shall submit its comments and recommendations, if any, regarding the plan and regulations.

[(3) Within 45 days after the close of the public comment period, the Secretary, in consultation with the appropriate Council or State, shall analyze the public comment received and publish in the Federal Register a final implementation plan for the program and regulations for its implementation. The Secretary may not adopt a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a referendum under this section.]

(e) IMPLEMENTATION PLAN.—

(1) FRAMEWORK REGULATIONS.—*The Secretary shall propose and adopt framework regulations applicable to the implementation of all programs under this section.*

(2) PROGRAM REGULATIONS.—*The Secretary shall implement each program under this section by promulgating regulations that, together with the framework regulations, establish each program and control its implementation.*

(3) HARVESTER PROPONENTS' IMPLEMENTATION PLAN.—*The Secretary may not propose implementation regulations for a program to be paid for by an industry fee system until the harvester proponents of the program provide to the Secretary a proposed implementation plan that, among other matters—*

(A) *proposes the types and numbers of vessels or permits that are eligible to participate in the program and the manner in which the program shall proceed, taking into account—*

- (i) *the requirements of this section;*
- (ii) *the requirements of the framework regulations;*
- (iii) *the characteristics of the fishery;*
- (iv) *the requirements of the applicable fishery management plan and any amendment that such plan may require to support the proposed program;*
- (v) *the general needs and desires of harvesters in the fishery;*
- (vi) *the need to minimize program costs; and*
- (vii) *other matters, including the manner in which such proponents propose to fund the program to ensure its cost effectiveness, as well as any relevant factors demonstrating the potential for, or necessary to obtain, the support and general cooperation of a substantial number of affected harvesters in the fishery (or portion of the fishery) for which the program is intended; and*

(B) proposes procedures for program participation (such as submission of owner bids under an auction system or fair market-value assessment), including any terms and conditions for participation, that the harvester proponents deem to be reasonably necessary to meet the program's proposed objectives.

(4) *PARTICIPATION CONTRACTS.*—The Secretary shall contract with each person participating in a program, and each such contract shall, in addition to including such other matters as the Secretary deems necessary and appropriate to effectively implement each program (including penalties for contract non-performance) be consistent with the framework and implementing regulations and all other applicable law.

(5) *REDUCTION AUCTIONS.*—Each program not involving fair market assessment shall involve a reduction auction that scores the reduction price of each bid offer by the data relevant to each bidder under an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary shall accept responsive bids in the rank order of their bid scores, starting with the bid whose reduction price is the lowest percentage of the productivity factor, and successively accepting each additional responsive bid in rank order until either there are no more responsive bids or acceptance of the next bid would cause the total value of bids accepted to exceed the amount of funds available for the program.

(6) *BID INVITATIONS.*—Each program shall proceed by the Secretary issuing invitations to bid setting out the terms and conditions for participation consistent with the framework and implementing regulations. Each bid that the Secretary receives in response to the invitation to bid shall constitute an irrevocable offer from the bidder.

* * * * *

SEC. 315. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.

(a) *IN GENERAL.*—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.

(b) *PROGRAM COMPONENTS.*—

(1) *IN GENERAL.*—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—

(A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure;

(B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region

that may be temporarily closed as a result of environmental or other effects associated with the disaster;

(C) funding, pursuant to the requirements of section 312(b), to fishermen who are willing to scrap a fishing vessel and permanently surrender permits for fisheries named on that vessel; and

(D) any other activities authorized under section 312(a) of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

(2) *JOB TRAINING.*—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.

(3) *STATE PARTICIPATION OBLIGATION.*—The participation by a State in the program shall be conditioned upon a commitment by the appropriate State entity to ensure that the relevant State fishery meets the requirements of section 312(b) of this Act to ensure excess capacity does not re-enter the fishery.

(4) *NO MATCHING REQUIRED.*—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—

(A) no reasonable means are available through which applicants can meet the matching requirement; and

(B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.

(5) *NET REVENUE LIMIT INAPPLICABLE.*—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.

(c) *REGIONAL IMPACT EVALUATION.*—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region's fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.

(d) *CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.*—In this section the term “catastrophic regional fishery disaster” means a natural disaster, including a hurricane or tsunami, or a judicial or regulatory closure to protect human health or the marine environment, that—

(1) results in economic losses to coastal or fishing communities;

(2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and

(3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

SEC. 316. BYCATCH REDUCTION ENGINEERING PROGRAM.

(a) *BYCATCH REDUCTION ENGINEERING PROGRAM.*—Not later than 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, the Secretary, in cooperation with the Councils and other affected interests, and based upon the best scientific information available, shall establish a bycatch reduction program to develop technological devices and other conservation engineering changes designed to minimize bycatch, seabird bycatch, bycatch mortality, and post-release mortality in Federally managed fisheries. The program shall—

(1) be regionally based;

(2) be coordinated with projects conducted under the cooperative research and management program established under this Act;

(3) provide information and outreach to fishery participants that will encourage adoption and use of technologies developed under the program; and

(4) provide for routine consultation with the Councils in order to maximize opportunities to incorporate results of the program in Council actions and provide incentives for adoption of methods developed under the program in fishery management plans developed by the Councils.

(b) *INCENTIVES.*—Any fishery management plan prepared by a Council or by the Secretary may establish a system of incentives to reduce total bycatch and seabird bycatch amounts, bycatch rates, and post-release mortality in fisheries under the Council's or Secretary's jurisdiction, including—

(1) measures to incorporate bycatch into quotas, including the establishment of collective or individual bycatch quotas;

(2) measures to promote the use of gear with verifiable and monitored low bycatch and seabird bycatch rates; and

(3) measures that, based on the best scientific information available, will reduce bycatch and seabird bycatch, bycatch mortality, post-release mortality, or regulatory discards in the fishery.

SEC. 317. COOPERATIVE RESEARCH AND MANAGEMENT PROGRAM.

(a) *IN GENERAL.*—The Secretary of Commerce, in consultation with the Councils, shall establish a cooperative research and management program to address needs identified under this Act and under any other marine resource laws enforced by the Secretary. The program shall be implemented on a regional basis and shall be developed and conducted through partnerships among Federal, State, and Tribal managers and scientists (including interstate fishery commissions), fishing industry participants, and educational institutions.

(b) *ELIGIBLE PROJECTS.*—The Secretary shall make funds available under the program for the support of projects to address critical needs identified by the Councils in consultation with the Secretary. The program shall promote and encourage efforts to utilize sources of data maintained by other Federal agencies, State agencies, or academia for use in such projects.

(c) *FUNDING.*—In making funds available the Secretary shall award funding on a competitive basis and based on regional fishery management needs, select programs that form part of a coherent

program of research focused on solving priority issues identified by the Councils, and shall give priority to the following projects:

(1) Projects to collect data to improve, supplement, or enhance stock assessments, including the use of fishing vessels or acoustic or other marine technology.

(2) Projects to assess the amount and type of bycatch or post-release mortality occurring in a fishery.

(3) Conservation engineering projects designed to reduce bycatch, including avoidance of post-release mortality, reduction of bycatch in high seas fisheries, and transfer of such fishing technologies to other nations.

(4) Projects for the identification of habitat areas of particular concern and for habitat conservation.

(5) Projects designed to collect and compile economic and social data.

(d) **EXPERIMENTAL PERMITTING PROCESS.**—Not later than 180 days after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, the Secretary, in consultation with the Councils, shall promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits.

(e) **GUIDELINES.**—The Secretary, in consultation with the Councils, shall establish guidelines to ensure that participation in a research project funded under this section does not result in loss of a participant's catch history or unexpended days-at-sea as part of a limited entry system.

(f) **EXEMPTED PROJECTS.**—The procedures of this section shall not apply to research funded by quota set-asides in a fishery.

SEC. 318. HERRING STUDY.

(a) **IN GENERAL.**—The Secretary may conduct a cooperative research program to study the issues of abundance, distribution and the role of herring as forage fish for other commercially important fish stocks in the Northwest Atlantic, and the potential for local scale depletion from herring harvesting and how it relates to other fisheries in the Northwest Atlantic. In planning, designing, and implementing this program, the Secretary shall engage multiple fisheries sectors and stakeholder groups concerned with herring management.

(b) **REPORT.**—The Secretary shall present the final results of this study to Congress within 3 months following the completion of the study, and an interim report at the end of fiscal year 2008.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$2,000,000 for fiscal year 2007 through fiscal year 2009 to conduct this study.

SEC. 319. RESTORATION STUDY.

(a) **IN GENERAL.**—The Secretary may conduct a study to update scientific information and protocols needed to improve restoration techniques for a variety of coast habitat types and synthesize the results in a format easily understandable by restoration practitioners and local communities.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$500,000 for fiscal year 2007 to conduct this study.

SEC. 401. REGISTRATION AND INFORMATION MANAGEMENT.

[16 U.S.C. 1881]

(a) **STANDARDIZED FISHING VESSEL REGISTRATION AND INFORMATION MANAGEMENT SYSTEM.**—The Secretary shall, in cooperation with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, develop recommendations for implementation of a standardized fishing vessel registration and information management system on a regional basis. The recommendations shall be developed after consultation with interested governmental and nongovernmental parties and shall—

(1) be designed to standardize the requirements of vessel registration and information collection systems required by this Act, the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), and any other marine resource law implemented by the Secretary, and, with the permission of a State, any marine resource law implemented by such State;

(2) integrate information collection programs under existing fishery management plans into a non-duplicative information collection and management system;

(3) avoid duplication of existing State, tribal, or Federal systems and shall utilize, to the maximum extent practicable, information collected from existing systems;

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

(5) provide for funding (subject to appropriations) to assist appropriate State, regional, or tribal entities and Marine Fisheries Commissions in implementation;

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

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

(8) include all species of fish within the geographic areas of authority of the Councils and all fishing vessels including charter fishing vessels, but excluding recreational fishing vessels;

(9) require United States fish processors, and fish dealers and other first ex-vessel purchasers of fish that are subject to the proposed system, to submit information (other than economic information) which may be necessary to meet the goals of the proposed system; and

(10) include procedures necessary to ensure—

(A) the confidentiality of information collected under this section in accordance with section 402(b); and

(B) the timely release or availability to the public of information collected under this section consistent with section 402(b).

(b) **FISHING VESSEL REGISTRATION.**—The proposed registration system should, at a minimum, obtain the following information for each fishing vessel—

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

(2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation (catcher, catcher processor, or other), and such other pertinent information with respect to vessel characteristics as the Secretary may require; and

(3) identification (by species, gear type, geographic area of operations, and season) of the fisheries in which the fishing vessel participates.

(c) FISHERY INFORMATION.—The proposed information management system should, at a minimum, provide basic fisheries performance information for each fishery, including—

(1) the number of vessels participating in the fishery including charter fishing vessels;

(2) the time period in which the fishery occurs;

(3) the approximate geographic location or official reporting area where the fishery occurs;

(4) a description of fishing gear used in the fishery, including the amount and type of such gear and the appropriate unit of fishing effort; and

(5) other information required under subsection 303(a)(5) or requested by the Council under section 402.

(d) USE OF REGISTRATION.—Any registration recommended under this section shall not be considered a permit for the purposes of this Act, and the Secretary may not propose to revoke, suspend, deny, or impose any other conditions or restrictions on any such registration or the use of such registration under this Act.

(e) PUBLIC COMMENT.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register for a 60-day public comment period a proposal that would provide for implementation of a standardized fishing vessel registration and information collection system that meets the requirements of subsections (a) through (c). The proposal shall include—

(1) a description of the arrangements of the Secretary for consultation and cooperation with the department in which the Coast Guard is operating, the States, the Councils, Marine Fisheries Commissions, the fishing industry and other interested parties; and

(2) any proposed regulations or legislation necessary to implement the proposal.

(f) CONGRESSIONAL TRANSMITTAL.—Within 60 days after the end of the comment period and after consideration of comments received under subsection (e), the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a recommended proposal for implementation of a national fishing vessel registration system that includes—

(1) any modifications made after comment and consultation;

(2) a proposed implementation schedule, including a schedule for the proposed cooperative agreements required under subsection (a)(4); and

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

[(g) REPORT TO CONGRESS.—Within 15 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall report to Congress on the need to include recreational fishing vessels into a national fishing vessel registration and information collection system. In preparing its report, the Secretary shall cooperate with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, and consult with governmental and nongovernmental parties.]

(g) RECREATIONAL FISHERIES.—

(1) FEDERAL PROGRAM.—*The Secretary shall establish and implement a regionally based registry program for recreational fishermen in each of the 8 fishery management regions. The program shall provide for—*

(A) *the registration (including identification and contact information) of individuals who engage in recreational fishing—*

(i) *in the Exclusive Economic Zone;*

(ii) *for anadromous species; or*

(iii) *for Continental Shelf fishery resources beyond the Exclusive Economic Zone; and*

(B) *if appropriate, the registration (including the ownership, operator, and identification of the vessel) of vessels used in such fishing.*

(2) STATE PROGRAMS.—*The Secretary shall exempt from registration under the program recreational fishermen and charter fishing vessels licensed, permitted, or registered under the laws of a State if the Secretary determines that information from the State program is suitable for the Secretary's use or is used to assist in completing marine recreational fisheries statistical surveys, or evaluating the effects of proposed conservation and management measures for marine recreational fisheries.*

(3) DATA COLLECTION.—*Within 24 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, the Secretary shall establish a program to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey, with a goal of achieving acceptable accuracy and utility for each individual fishery. Unless the Secretary determines that alternate methods will achieve this goal more efficiently and effectively, the program shall, to the extent possible, include—*

(A) *an adequate number of dockside interviews to accurately estimate recreational catch and effort;*

(B) *use of surveys that target anglers registered or licensed at the State or Federal level to collect participation and effort data;*

(C) *collection and analysis of vessel trip report data from charter fishing vessels; and*

(D) *development of a weather corrective factor that can be applied to recreational catch and effort estimates.*

(4) REPORT.—*Within 24 months after establishment of the program, the Secretary shall submit a report to Congress that*

describes the progress made toward achieving the goals and objectives of the program.

SEC. 402. INFORMATION COLLECTION.

[16 U.S.C. 1881a]

[(a) COUNCIL REQUESTS.—] (a) COLLECTION PROGRAMS.—

(1) *COUNCIL REQUESTS.*—If a Council determines that additional information [(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)] would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information [(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)] specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this [subsection] *paragraph* regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) *SECRETARIAL INITIATION.*—*If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.*

[(b) CONFIDENTIALITY OF INFORMATION.—](1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—

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

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

[(C) when required by court order;

[(D) when such information is used to verify catch under [an individual fishing quota program] *a limited access privilege*;

[(E) that observer information collected in fisheries under the authority of the North Pacific Council may be released to the public as specified in a fishery management plan or regulation for weekly summary bycatch information identified by vessel, and for haul-specific bycatch information without vessel identification; or

[(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.

(b) *CONFIDENTIALITY OF INFORMATION.*—

(1) *Any information submitted to the Secretary, a state fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act that contains confidential information shall be confidential and shall be exempt from disclosure under section 552(h)(3) of title 5, United States Code, except—*

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of confidential information relating to any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(E) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(F) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(G) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) *Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (G) of paragraph (1), or—*

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting dis-

closure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

[(2)] (3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

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

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

(d) CONTRACTING AUTHORITY.—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) RESOURCE ASSESSMENTS.—(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry—

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

SEC. 404. FISHERIES RESEARCH.

[16 U.S.C. 1881c]

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

(b) **STRATEGIC PLAN.**—Within one year after the date of enactment of the Sustainable Fisheries Act and at least every 3 years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the 5 years immediately following such publication. The plan shall—

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

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

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

(4) provide for collection and dissemination, in a timely manner, of complete and accurate information concerning fishing activities, catch, effort, stock assessments, and other research conducted under this section; and

(5) be developed in cooperation with the Councils and affected States, and provide for coordination with the Councils, affected States, and other research entities.

(c) **AREAS OF RESEARCH.**—Areas of research are as follows:

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

tion, and other factors affecting the abundance and availability of fish.

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

(3) Research on the fisheries, including the social, cultural, and economic relationships among fishing vessel owners, crew, United States fish processors, associated shoreside labor, seafood markets and fishing communities.

(4) Information management research, including the development of a fishery information base and an information management system [under section 401] that will permit the full use of information in the support of effective fishery conservation and management.

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

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SEC. 406. FISHERIES SYSTEMS RESEARCH.

[16 U.S.C. 1882]

(a) ESTABLISHMENT OF PANEL.—Not later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an advisory panel under this Act to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities.

(b) PANEL MEMBERSHIP.—The advisory panel shall consist of not more than 20 individuals and include—

- (1) individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems; and
- (2) representatives from the Councils, States, fishing industry, conservation organizations, or others with expertise in the management of marine resources.

(c) RECOMMENDATIONS.—Prior to selecting advisory panel members, the Secretary shall, with respect to panel members described in subsection (b)(1), solicit recommendations from the National Academy of Sciences.

(d) REPORT.—Within 2 years after the date of enactment of this Act, the Secretary shall submit to the Congress a completed report of the panel established under this section, which shall include—

- (1) an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities;

(2) proposed actions by the Secretary and by the Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and

(3) such other information as may be appropriate.

(e) PROCEDURAL MATTER.—The advisory panel established under this section shall be deemed an advisory panel under section 302(g).

(f) REGIONAL ECOSYSTEM RESEARCH.—

(1) STUDY.—*Within 180 days after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, the Secretary, in consultation with the Councils, shall undertake and complete a study on the state of the science for advancing the concepts and integration of ecosystem considerations in regional fishery management. The study should build upon the recommendations of the advisory panel and include—*

(A) recommendations for scientific data, information and technology requirements for understanding ecosystem processes, and methods for integrating such information from a variety of federal, state, and regional sources;

(B) recommendations for processes for incorporating broad stake holder participation;

(C) recommendations for processes to account for effects of environmental variation on fish stocks and fisheries; and

(D) a description of existing and developing council efforts to implement ecosystem approaches, including lessons learned by the councils.

(2) AGENCY TECHNICAL ADVICE AND ASSISTANCE, REGIONAL PILOT PROGRAMS.—*The Secretary is authorized to provide necessary technical advice and assistance, including grants, to the Councils for the development and design of regional pilot programs that build upon the recommendations of the advisory panel and, when completed, the study.*

SEC. 405. GULF OF MEXICO RED SNAPPER RESEARCH.

[16 U.S.C. 1883]

(a) INDEPENDENT PEER REVIEW.—

(1) Within 30 days of the date of enactment of the Sustainable Fisheries Act, the Secretary shall initiate an independent peer review to evaluate—

(A) the accuracy and adequacy of fishery statistics used by the Secretary for the red snapper fishery in the Gulf of Mexico to account for all commercial, recreational, and charter fishing harvests and fishing effort on the stock;

(B) the appropriateness of the scientific methods, information, and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock and as the basis for the fishery management plan for the Gulf of Mexico red snapper fishery;

(C) the appropriateness and adequacy of the management measures in the fishery management plan for red snapper in the Gulf of Mexico for conserving and managing the red snapper fishery under this Act; and

(D) the costs and benefits of all reasonable alternatives to **[an individual fishing quota]** *a limited access privilege* program for the red snapper fishery in the Gulf of Mexico.

(2) The Secretary shall ensure that commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—

(A) participate in the peer review under this subsection; and

(B) provide information to the Secretary concerning the review of fishery statistics under this subsection without being subject to penalty under this Act or other applicable law for any past violation of a requirement to report such information to the Secretary.

(3) The Secretary shall submit a detailed written report on the findings of the peer review conducted under this subsection to the Gulf Council no later than one year after the date of enactment of the Sustainable Fisheries Act.

(b) PROHIBITION.—In addition to the restrictions under section 303(d)(1)(A), the Gulf Council may not, prior to October 1, 2002, undertake or continue the preparation of any fishery management plan, plan amendment or regulation under this Act for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class.

(c) REFERENDUM.—(1) On or after October 1, 2002, the Gulf Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates **[an individual fishing quota]** *a limited access privilege* program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class, only if the preparation of such plan, amendment, or regulation is approved in a referendum conducted under paragraph (2) and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum conducted under paragraph (2).

(2) The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996. Prior to each referendum, the Secretary, in consultation with the Council, shall—

(A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and

(B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility re-

quirements for the referendum and the proposed [individual fishing quota] *limited access privilege* program.

(d) CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—

(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and

(2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.

* * * * *

SEC. 408. DEEP SEA CORAL RESEARCH AND TECHNOLOGY PROGRAM.

(a) *IN GENERAL.*—The Secretary, in consultation with appropriate regional fishery management councils and in coordination with other federal agencies and educational institutions, shall establish a program—

(1) to identify existing research on, and known locations of, deep sea corals and submit such information to the appropriate Councils;

(2) to locate and map locations of deep sea corals and submit such information to the Councils;

(3) to monitor activity in locations where deep sea corals are known or likely to occur, based on best scientific information available, including through underwater or remote sensing technologies and submit such information to the appropriate Councils;

(4) to conduct research, including cooperative research with fishing industry participants, on deep sea corals and related species, and on survey methods;

(5) to develop technologies or methods designed to assist fishing industry participants in reducing interactions between fishing gear and deep sea corals; and

(6) to prioritize program activities in areas where deep sea corals are known to occur, and in areas where scientific modeling or other methods predict deep sea corals are likely to be present.

(b) *REPORTING.*—Beginning 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, the Secretary, in consultation with the Councils, shall submit biennial reports to Congress and the public on steps taken by the Secretary to identify and monitor, and the Councils to protect, deep sea coral areas, including summaries of the results of mapping, research, and data collection performed under the program.

HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT ACT

SEC. 101. DENIAL OF PORT PRIVILEGES AND SANCTIONS FOR HIGH SEAS LARGE-SCALE DRIFTNET FISHING.

[16 U.S.C. 1826a]

(a) DENIAL OF PORT PRIVILEGES.—

(1) PUBLICATION OF LIST.—Not later than 30 days after the date of enactment of this Act and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.

(2) DENIAL OF PORT PRIVILEGES.—The Secretary of the Treasury shall, in accordance with recognized principles of international law—

(A) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1); and

(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States.

(3) NOTIFICATION OF NATION.—Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding—

(A) the effect of that publication on port privileges of vessels of that nation under paragraph (1); and

(B) any sanctions or requirements, under this Act or any other law, that may be imposed on that nation if nationals or vessels of that nation continue to conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation after December 31, 1992.

(b) SANCTIONS.—

(1) IDENTIFICATIONS.—

(A) INITIAL IDENTIFICATIONS.—Not later than January 10, 1993, the Secretary of Commerce shall—

(i) identify each nation whose nationals or vessels are conducting large-scale driftnet fishing *or illegal, unreported, or unregulated fishing* beyond the exclusive economic zone of any nation; and

(ii) notify the President and that nation of the identification under clause (i).

(B) ADDITIONAL IDENTIFICATIONS.—At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing *or illegal, unreported, or unregulated fishing* beyond the exclusive economic zone of any nation, the Secretary of Commerce shall—

(i) identify that nation; and

(ii) notify the President and that nation of the identification under clause (i).

(2) CONSULTATIONS.—Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter into consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing *or illegal, unreported, or unregulated fishing* by the nationals or vessels of that nation beyond the exclusive economic zone of any nation.

(3) PROHIBITION ON IMPORTS OF FISH AND FISH PRODUCTS AND SPORT FISHING EQUIPMENT.—

(A) PROHIBITION.—The President—

(i) upon receipt of notification of the identification of a nation under paragraph (1)(A); or

(ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within ninety days, shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined in section 4162 of the Internal Revenue Code of 1986 (26 U.S.C. 4162)) from that nation.

(B) IMPLEMENTATION OF PROHIBITION.—With respect to an import prohibition directed under subparagraph (A), the Secretary of the Treasury shall implement such prohibition not later than the date that is forty-five days after the date on which the Secretary has received the direction from the President.

(C) PUBLIC NOTICE OF PROHIBITION.—Before the effective date of any import prohibition under this paragraph, the Secretary of the Treasury shall provide public notice of the impending prohibition.

(4) ADDITIONAL ECONOMIC SANCTIONS.—

(A) DETERMINATION OF EFFECTIVENESS OF SANCTIONS.—

Not later than six months after the date the Secretary of Commerce identifies a nation under paragraph (1), the Secretary shall determine whether—

(i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing *or illegal, unreported, or unregulated fishing* conducted by its nationals and vessels beyond the exclusive economic zone of any nation; or

(ii) that nation has retaliated against the United States as a result of that prohibition.

(B) CERTIFICATION.—The Secretary of Commerce shall certify to the President each affirmative determination under subparagraph (A) with respect to a nation.

(C) EFFECT OF CERTIFICATION.—Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)), as amended by this Act.

SEC. 102. DURATION OF DENIAL OF PORT PRIVILEGES AND SANCTIONS.

[16 U.S.C. 1826b]

Any denial of port privileges or sanction under section 101 with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing or *illegal, unreported, or unregulated fishing* by its nationals and vessels beyond the exclusive economic zone of any nation.

* * * * *

SEC. 607. BIENNIAL REPORT ON INTERNATIONAL COMPLIANCE.

The Secretary, in consultation with the Secretary of State, shall provide to Congress, by not later than 2 years after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, and every 2 years thereafter, a report that includes—

(1) the state of knowledge on the status of international living marine resources, including a list of all fish stocks classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with management or conservation of living marine resources;

(2) a list of nations whose vessels have been identified under sections 609(a) or 610(a), including the specific offending activities and any subsequent actions taken pursuant to section 609 or 610;

(3) a description of efforts taken by nations on those lists to comply with the provisions of sections 609 and 610, and an evaluation of the progress of those efforts, including steps taken by the United States to implement those sections and to improve international compliance;

(4) progress at the international level, pursuant to section 608, to strengthen the efforts of international fishery management organizations to end illegal, unreported, or unregulated fishing; and

(5) a plan of action for ensuring the conclusion and entry into force of international measures comparable to those of the United States to reduce impacts of fishing and other practices on protected living marine resources, if no international agreement to achieve such goal exists, or if the relevant international fishery or conservation organization has failed to implement effective measures to end or reduce the adverse impacts of fishing practices on such species.

SEC. 608. ACTION TO STRENGTHEN INTERNATIONAL FISHERY MANAGEMENT ORGANIZATIONS.

The Secretary, in consultation with the Secretary of State, and in cooperation with relevant fishery management councils, shall take actions to improve the effectiveness of international fishery management organizations in conserving and managing fish stocks under their jurisdiction. These actions shall include—

(1) urging international fishery management organizations to which the United States is a member—

(A) to incorporate multilateral sanctions against member or nonmember governments whose vessels engage in illegal, unreported, or unregulated fishing;

(B) to seek adoption of lists that identify fishing vessels engaged in illegal, unreported, or unregulated fishing, including authorized (green) and unauthorized (red) vessel lists, that can be shared among all members and other international fishery management organizations;

(C) to seek international adoption of a centralized vessel monitoring system with an independent secretariat in order to monitor and document capacity in fleets of all nations involved in fishing in areas under the an international fishery management organization's jurisdiction;

(D) to increase use of observers and technologies needed to monitor compliance with conservation and management measures established by the organization, including vessel monitoring systems and automatic identification systems; and

(E) to seek adoption of greater port state controls in all nations, particularly those nations whose vessels engage in illegal, unreported, or unregulated fishing;

(2) urging international fishery management organizations to which the United States is a member, as well as all members of those organizations, to adopt and expand the use of market-related measures to combat illegal, unreported, or unregulated fishing, including—

(A) import prohibitions, landing restrictions, or other market-based measures needed to enforce compliance with international fishery management organization measures, such as quotas and catch limits;

(B) import restrictions or other market-based measures to prevent the trade or importation of fish caught by vessels identified multilaterally as engaging in illegal, unreported, or unregulated fishing; and

(C) catch documentation and certification schemes to improve tracking and identification of catch of vessels engaged in illegal, unreported, or unregulated fishing, including advance transmission of catch documents to ports of entry; and

(3) urging other nations at bilateral, regional, and international levels, including the Convention on International Trade in Endangered Species of Fauna and Flora and the World Trade Organization to take all steps necessary, consistent with international law, to adopt measures and policies that will prevent fish or other living marine resources harvested by vessels engaged in illegal, unreported, or unregulated fishing from being traded or imported into their nation or territories.

SEC. 609. ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.

(a) IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607, a nation if—

(1) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year in illegal, unreported, or unregulated fishing; and

(2) *the relevant international fishery management organization has failed to implement effective measures to end the illegal unreported, or unregulated fishing activity by vessels of that nation or the nation is not a party to, or does not maintain cooperating status with, such organization, or where no international fishery management organization exists.*

(b) *NOTIFICATION.—An identification under subsection (a) or section 610(a) is deemed to be an identification under section 101(b)(1)(A) of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a(b)(1)(A)), and the Secretary shall notify the President and that nation of such identification.*

(c) *CONSULTATION.—No later than 60 days after submitting a report to Congress under section 607, the Secretary, in consultation with the Secretary of State, shall—*

(1) *notify nations listed in the report of the requirements of this section;*

(2) *initiate consultations for the purpose of encouraging such nations to take the appropriate corrective action with respect to the offending activities of their fishing vessels identified in the report; and*

(3) *notify any relevant international fishery management organization of the actions taken by the United States under this section.*

(d) *IUU CERTIFICATION PROCEDURE.—*

(1) *CERTIFICATION.—The Secretary shall establish a procedure, consistent with the provisions of subchapter II of chapter 5 of title 5, United States Code, and including notice and an opportunity for comment by the governments of any nation listed by the Secretary under subsection (a), for determining if that government has taken appropriate corrective action with respect to the offending activities of its fishing vessels identified in the report under section 607. The Secretary shall determine, on the basis of the procedure, and certify to the Congress no later than 90 days after the date on which the Secretary promulgates a final rule containing the procedure, and biennially thereafter in the report under section 607—*

(A) *whether the government of each nation identified under subsection (b) has provided documentary evidence that it has taken corrective action with respect to the offending activities of its fishing vessels identified in the report; or*

(B) *whether the relevant international fishery management organization has implemented measures that are effective in ending the illegal, unreported, or unregulated fishing activity by vessels of that nation.*

(2) *ALTERNATIVE PROCEDURE.—The Secretary may establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation not certified under paragraph (1) if the Secretary determines that—*

(A) *the vessel has not engaged in illegal, unreported, or unregulated fishing under an international fishery management agreement to which the United States is a party; or*

(B) the vessel is not identified by an international fishery management organization as participating in illegal, unreported, or unregulated fishing activities.

(3) **EFFECT OF CERTIFICATION.**—The provisions of section 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4)) shall apply to any nation identified under subsection (a) that has not been certified by the Secretary under this subsection, or for which the Secretary has issued a negative certification under this subsection, but shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

(e) **ILLEGAL, UNREPORTED, OR UNREGULATED FISHING DEFINED.**—

(1) **IN GENERAL.**—In this Act the term “illegal, unreported, or unregulated fishing” has the meaning established under paragraph (2).

(2) **SECRETARY TO DEFINE TERM WITHIN LEGISLATIVE GUIDELINES.**—Within 3 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, the Secretary shall publish a definition of the term “illegal, unreported, or unregulated fishing” for purposes of this Act.

(3) **GUIDELINES.**—The Secretary shall include in the definition, at a minimum—

(A) fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

(B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

(C) fishing activity, including bottom trawling, that have adverse impacts on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary for fiscal years 2006 through 2012 such sums as are necessary to carry out this section.

SEC. 610. EQUIVALENT CONSERVATION MEASURES.

(a) **IDENTIFICATION.**—The Secretary shall identify, and list in the report under section 607, a nation if—

(A) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year in fishing activities or practices beyond the exclusive economic zone that result in bycatch of a protected living marine resource;

(2) the relevant international organization for the conservation and protection of such species or the relevant international or regional fishery organization has failed to implement effective measures to end or reduce the impacts of the fishing practices of the nation’s vessels on such spe-

cies, or the nation is not a party to, or does not maintain cooperating status with, such organization; and

(3) the nation has not adopted a regulatory program governing such fishing practices and associated bycatch of protected living marine resources that are comparable to those of the United States, taking into account different conditions.

(b) CONSULTATION AND NEGOTIATION.—The Secretary, acting through the Secretary of State, shall—

(1) notify, as soon as possible, other nations whose vessels engage in fishing activities or practices described in subsection (a), about the requirements of this section and this Act;

(2) initiate discussions as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, fishing activities or practices described in subsection (a), for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species;

(3) seek agreements calling for international restrictions on fishing activities or practices described in subsection (a) through the United Nations, the Food and Agriculture Organization's Committee on Fisheries, and appropriate international fishery management bodies; and

(4) initiate the amendment of any existing international treaty for the protection and conservation of such species to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section.

(c) CONSERVATION CERTIFICATION PROCEDURE.—

(1) CERTIFICATION.—The Secretary shall determine, on the basis of a procedure consistent with the provisions of subchapter II of chapter 5 of title 5, United States Code, and including notice and an opportunity for comment by the governments of any nation identified by the Secretary under subsection (a). The Secretary shall certify to the Congress by January 31, 2007, and annually thereafter whether the government of each harvesting nation—

(A) has provided documentary evidence of the adoption of a regulatory program governing the conservation of the protected living marine resource, including measures to ensure maximum probability for survival after release, that is comparable to that of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(B) has established a management plan containing requirements that will assist in gathering species-specific data to support international stock assessments and conservation enforcement efforts for protected living marine resources.

(2) ALTERNATIVE PROCEDURE.—The Secretary shall establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation not certified under paragraph (1) if the Secretary determines that such imports were harvested by

practices that do not result in bycatch of a protected marine species, or were harvested by practices that—

(A) are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(B) include the gathering of species specific data that can be used to support international and regional stock assessments and conservation efforts for protected living marine resources.

(3) EFFECT OF CERTIFICATION.—The provisions of section 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4)) shall apply to any nation identified under subsection (a) that has not been certified by the Secretary under this subsection, or for which the Secretary has issued a negative certification under this subsection, but shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

(d) INTERNATIONAL COOPERATION AND ASSISTANCE.—To the greatest extent possible consistent with existing authority and the availability of funds, the Secretary shall—

(1) provide appropriate assistance to nations identified by the Secretary under subsection (a) and international organizations of which those nations are members to assist those nations in qualifying for certification under subsection (c);

(2) undertake, where appropriate, cooperative research activities on species statistics and improved harvesting techniques, with those nations or organizations;

(3) encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for certification under subsection (c); and

(4) provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

(e) PROTECTED LIVING MARINE RESOURCE DEFINED.—In this section the term “protected living marine resource”—

(1) means non-target fish, sea turtles, or marine mammals occurring in areas beyond United States jurisdiction that are protected under United States law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; but

(2) does not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal years 2006 through 2012 such sums as are necessary to carry out this section.

PUBLIC LAW 105-384

SEC. 203. AUTHORITY OF STATES OF WASHINGTON, OREGON, AND CALIFORNIA TO MANAGE DUNGENESS CRAB FISHERY.

[16 U.S.C. 1856 note]

(a) **IN GENERAL.**—Subject to the provisions of this section and notwithstanding section 306(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1856(a)), each of the States of Washington, Oregon, and California may adopt and enforce State laws and regulations governing fishing and processing in the exclusive economic zone adjacent to that State in any Dungeness crab (*Cancer magister*) fishery for which there is no fishery management plan in effect under that Act.

(b) **REQUIREMENTS FOR STATE MANAGEMENT.**—Any law or regulation adopted by a State under this section for a Dungeness crab fishery—

(1) except as provided in paragraph (2), shall apply equally to vessels engaged in the fishery in the exclusive economic zone and vessels engaged in the fishery in the waters of the State, and without regard to the State that issued the permit under which a vessel is operating;

(2) shall not apply to any fishing by a vessel in exercise of tribal treaty rights except as provided in *United States v. Washington*, D.C. No. CV-70-09213, United States District Court for the Western District of Washington; and

(3) shall include any provisions necessary to implement tribal treaty rights pursuant to the decision in *United States v. Washington*, D.C. No. CV-70-09213.

(c) **LIMITATION ON ENFORCEMENT OF STATE LIMITED ACCESS SYSTEMS.**—Any law of the State of Washington, Oregon, or California that establishes or implements a limited access system for a Dungeness crab fishery may not be enforced against a vessel that is otherwise legally fishing in the exclusive economic zone adjacent to that State and that is not registered under the laws of that State, except a law regulating landings.

(d) **STATE PERMIT OR TREATY RIGHT REQUIRED.**—No vessel may harvest or process Dungeness crab in the exclusive economic zone adjacent to the State of Washington, Oregon, or California, except as authorized by a permit issued by any of those States or pursuant to any tribal treaty rights to Dungeness crab pursuant to the decision in *United States v. Washington*, D.C. No. CV-70-09213.

(e) **STATE AUTHORITY OTHERWISE PRESERVED.**—Except as expressly provided in this section, nothing in this section reduces the authority of any State under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to regulate fishing, fish processing, or landing of fish.

(f) **TERMINATION OF AUTHORITY.**—The authority of the States of Washington, Oregon, and California under this section with respect to a Dungeness crab fishery shall expire on the effective date of a fishery management plan for the fishery under the Magnuson-Stevens Fishery Conservation and Management Act.

(g) [Omitted. Subsection (g) repealed section 112(d) of the Magnuson-Stevens Fishery Conservation and Management Act.]

(h) DEFINITIONS.—The definitions set forth in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) shall apply to this section.

(i) SUNSET.—This section shall have no force or effect on and after **September 30, 2006.** *September 30, 2016.*

(j) Not later than December 31, 2001, and every 2 years thereafter, the Pacific State Marine Fisheries Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report on the **health** *status* and management of the Dungeness Crab fishery located off the coasts of the States of Washington, Oregon, and **California.** *California, including—*

(1) *stock status and trends throughout its range;*

(2) *a description of applicable research and scientific review processes used to determine stock status and trends; and*

(3) *measures implemented or planned that are designed to prevent or end overfishing in the fishery.*

MERCHANT MARINE ACT, 1936

TITLE XI—FEDERAL SHIP FINANCING GUARANTEE PROGRAM

SEC. 607. CAPITAL CONSTRUCTION FUND.

[46 U.S.C. App. 1177]

(a) AGREEMENT RULES; PERSONS ELIGIBLE; REPLACEMENT, ADDITIONAL, OR RECONSTRUCTED VESSELS FOR PRESCRIBED TRADE AND FISHERY OPERATIONS; AMOUNT OF DEPOSITS, ANNUAL LIMITATION; CONDITIONS AND REQUIREMENTS FOR DEPOSITS AND WITHDRAWALS.—Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the “fund”) with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person’s taxable income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels.

(b) CEILING ON DEPOSITS; LESSEES; “AGREEMENT VESSEL” DEFINED.—

(1) The amount deposited under subsection (a) in the fund for any taxable year shall not exceed the sum of;

(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1954 but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

(B) the amount allowable as a deduction under section 167 of the Internal Revenue Code of 1954 for such year with respect to the agreement vessels,

(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from (i) the sale or other disposition of any agreement vessel, or (ii) insurance or indemnity attributable to any agreement vessel, and

(D) the receipts from the investment or reinvestment of amounts held in such fund.

(2) In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under this section, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

(3) For purposes of paragraph (1), the term "agreement vessel" includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

(c) INVESTMENT REQUIREMENTS; DEPOSITORIES; FIDUCIARY REQUIREMENTS; INTEREST-BEARING SECURITIES; STOCK: PERCENTAGE FOR DOMESTIC ISSUES, LISTING AND REGISTRATION, PRUDENT ACQUISITIONS, VALUE AND PERCENTAGE EQUILIBRIUM, AND TREATMENT OF PREFERRED ISSUES.—Amounts in any fund established under this section shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary. They may be invested only in interest-bearing securities approved by the Secretary; except that, if the Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage. For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the

preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(d) NONTAXABILITY OF DEPOSITS; ELIGIBLE DEPOSITS.—

(1) For purposes of the Internal Revenue Code of 1954—

(A) taxable income (determined without regard to this section and section 7518 of such Code) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A),

(B) gain from a transaction referred to in subsection (b)(1)(C) shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

(C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,

(D) the earnings and profits of any corporation (within the meaning of section 316 of such Code) shall be determined without regard to this section and section 7518 of such Code, and

(E) in applying the tax imposed by section 531 of such Code (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

(2) Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

(e) ACCOUNTS WITHIN FUND: CAPITAL ACCOUNT, CAPITAL GAIN ACCOUNT, AND ORDINARY INCOME ACCOUNT; LIMITATION ON CAPITAL LOSSES.—For purposes of this section—

(1) Within the fund established pursuant to this section three accounts shall be maintained:

- (A) the capital account,
- (B) the capital gain account, and
- (C) the ordinary income account.

(2) The capital account shall consist of—

(A) amounts referred to in subsection (b)(1)(B),

(B) amounts referred to in subsection (b)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B),

(C) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C)) be allowed a deduction under section 243 of the Internal Revenue Code of 1954, and

(D) interest income exempt from taxation under section 103 of such Code.

(3) The capital gain account shall consist of—

(A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (b)(1)(C) or (b)(1)(D) reduced by

(B) amounts representing capital losses on assets held in the fund for more than 6 months.

(4) The ordinary income account shall consist of—

(A) amounts referred to in subsection (b)(1)(A),

(B)(i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (b)(1)(C) or (b)(1)(D), reduced by—

(ii) amounts representing capital losses on assets held in the fund for 6 months or less,

(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

(D) ordinary income from a transaction described in subsection (b)(1)(C), and

(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

(5) Except on termination of a fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

(f) PURPOSES OF QUALIFIED WITHDRAWALS; NONQUALIFIED WITHDRAWAL TREATMENT FOR NONFULFILLMENT OF SUBSTANTIAL OBLIGATIONS.—

(1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is **for:** *for*—

(A) the acquisition, construction, or reconstruction of a qualified **vessel,** *vessel*;

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified **vessel, or** *vessel*;

(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified **vessel.** *vessel*;

(D) *in the case of any person for whose benefit the fund was established and who participates in the fishing capacity reduction program under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a)—*

(i) if such person remains in the fishery, the satisfaction of any debt obligation undertaken pursuant to such program; and

(ii) if such person withdraws 1 or more vessels from the fishery, the substitution of amounts the person would otherwise receive under such program for such person's vessel or permit to engage in the fishery;

(E) *the repair, maintenance, or upgrade of an eligible vessel or its equipment for the purpose of—*

(i) making conservation engineering changes to reduce bycatch, improve selectivity of fishing gear, or reduce adverse impacts of fishing gear;

- (ii) *improving vessel safety; or*
- (iii) *acquiring, installing, or upgrading equipment to improve collection, reporting, or accuracy of fishery data; or*
- (F) *the acquisition, construction, reconstruction, upgrading, or investment in shoreside fishery-related facilities or infrastructure in the United States for the purpose of promoting United States ownership of fishery-related facilities in the United States without contributing to overcapacity in the sector.*

Except to the extent provided in regulations prescribed by the Secretary subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

- (2) Under joint regulations, if the Secretary determines that any substantial obligation under or any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

(g) TAX TREATMENT OF QUALIFIED WITHDRAWALS; BASIS: REDUCTION.—

- (1) Any qualified withdrawal from a fund shall be treated—
 - (A) first as made out of the capital account,
 - (B) second as made out of the capital gain account, and
 - (C) third as made out of the ordinary income account.
- (2) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.
- (3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.
- (4) If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.
- (5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (h)(3)(A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount

determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

(h) TAX TREATMENT OF NONQUALIFIED WITHDRAWALS; FIFO AND LIFO BASES; INTEREST RATE.—

(1) Except as provided in subsection (i), any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(2) Any nonqualified withdrawal from a fund shall be treated—

(A) first as made out of the ordinary income account,

(B) second as made out of the capital gain account, and

(C) third as made out of the capital account. For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (g)(4), shall be treated as withdrawn on a last-in-first-out basis.

(3) For purposes of the Internal Revenue Code of 1954—

(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made—

(i) no interest shall be payable under section 6601 of such Code and no addition to the tax shall be payable under section 6651 of such Code,

(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act of 1936 as in effect on December 31, 1969.

(4) For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal—

(A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or

(B) made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of

the Treasury and the Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

(5) AMOUNT NOT WITHDRAWN FROM FUND AFTER 25 YEARS FROM DEPOSIT TAXED AS NONQUALIFIED WITHDRAWAL.—

(A) IN GENERAL.—The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

If the amount remains in the fund at the close of the—	The applicable percentage is—
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent.

(B) EARNINGS TREATED AS DEPOSITS.—The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

(C) AMOUNTS COMMITTED TREATED AS WITHDRAWN.—For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

(D) AUTHORITY TO TREAT EXCESS FUNDS AS WITHDRAWN.—If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

(E) AMOUNTS IN FUND ON JANUARY 1, 1987.—For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

(6) NONQUALIFIED WITHDRAWALS TAXED AT HIGHEST MARGINAL RATE.—

(A) IN GENERAL.—In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be determined—

(i) by excluding such withdrawal from gross income, and

(ii) by increasing the tax imposed by chapter 1 of such Code by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation) of such Code. With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code applies, the rate of tax taken into account under the preceding sentence shall not exceed 15 percent (34 percent in the case of a corporation).

(B) TAX BENEFIT RULE.—If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

(i) such portion shall not be taken into account under subparagraph (A), and

(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 of such Code for the taxable year in which such withdrawal occurs.

(i) CORPORATE REORGANIZATIONS AND PARTNERSHIP CHANGES.—Under joint regulations—

(1) a transfer of a fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1954 applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and

(2) a similar rule shall be applied in the case of a continuation of a partnership (within the meaning of subchapter K of such Code).

(j) TREATMENT OF EXISTING FUNDS; RELATION OF OLD TO NEW FUND.—

(1) Any person who was maintaining a fund or funds (hereinafter in this subsection referred to as "old fund") under this section (as in effect before the enactment of this subsection) may elect to continue such old fund but—

(A) may not hold moneys in the old fund beyond the expiration date provided in the agreement under which such old fund is maintained (determined without regard to any extension or renewal entered into after April 14, 1970),

(B) may not simultaneously maintain such old fund and a new fund established under this section, and

(C) if he enters into an agreement under this section to establish a new fund, may agree to the extension of such agreement to some or all of the amounts in the old fund.

(2) In the case of any extension of an agreement pursuant to paragraph (1)(C), each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund established under this section. For purposes of subsection (h)(3)(C), the date of the deposit of any item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

(k) DEFINITIONS.—For the purposes of this section—

(1) The term “eligible vessel” means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) operated in the foreign or domestic commerce of the United States or in the fisheries of the United States. Any vessel which (i) was constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or (ii) constructed outside the United States for use in the United States foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of subparagraph (A) of this paragraph and the requirements of subparagraph (A) of paragraph (2).

(2) The term “qualified vessel” means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) which the person maintaining the fund agrees with the Secretary of Commerce will be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.

(3) The term “agreement vessel” means any eligible vessel or qualified vessel which is subject to an agreement entered into under this section.

(4) The term “United States”, when used in a geographical sense, means the continental United States including Alaska, Hawaii, and Puerto Rico.

(5) The term “United States foreign trade” includes (but is not limited to) those areas in domestic trade in which a vessel built with construction-differential subsidy is permitted to operate under the first sentence of section 506 of this Act.

(6) The term “joint regulations” means regulations prescribed under subsection (l).

(7) The term “vessel” includes cargo handling equipment which the Secretary of Commerce determines is intended for use primarily on the vessel. The term “vessel” also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated on the Great Lakes.

(8) The term “noncontiguous trade” means (i) trade between the contiguous forty-eight States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand, and (ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.

(9) The term "Secretary" means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States, and the Secretary of Transportation with respect to all other vessels.

(1) RECORDS; REPORTS; RULES AND REGULATIONS; TERMINATION OF AGREEMENT UPON CHANGES IN REGULATIONS WITH SUBSTANTIAL EFFECT ON RIGHTS OR OBLIGATIONS.—Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate to the determination of tax liability under this section. If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

(m) DEPARTMENTAL REPORTS AND CERTIFICATION.—

(1) IN GENERAL.—For each calendar year, the Secretaries shall each provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds that are under their jurisdiction.

(2) CONTENTS OF REPORTS.—Each report shall set forth the name and taxpayer identification number of each person—

(A) establishing a capital construction fund during such calendar year;

(B) maintaining a capital construction fund as of the last day of such calendar year;

(C) terminating a capital construction fund during such calendar year;

(D) making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

* * * * *

SEC. 1104A. ELIGIBILITY FOR GUARANTEE.

[46 U.S.C. App. 1274]

(a) PURPOSE OF OBLIGATIONS.—Pursuant to the authority granted under section 1103(a), the Secretary upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel),

which is designed principally for research, or for commercial use

(A) in the coastwise or intercoastal trade;

(B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States;

(C) in foreign trade as defined in section 905 of this Act for purposes of title V of this Act; or

(D) as an ocean thermal energy conversion facility or plantship;

(E) with respect to floating drydocks in the construction, reconstruction, reconditioning, or repair of vessels; or

(F) with respect to an eligible export vessel, in worldwide trade; Provided, however, That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;

(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities for which obligations were guaranteed under this title that, under the provisions of section 1105:

(A) are vessels or fishery facilities for which obligations were accelerated and paid;

(B) were acquired by the Fund; or

(C) were sold at foreclosure instituted by the Secretary;

(4) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act, as amended;

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this title, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time;

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery facilities; or

[(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).]

(7) financing or refinancing including,

(A) *the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act;*

(B) *activities that assist in the transition to reduced fishing capacity; or*

(C) *technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety.*

Any obligation guaranteed under paragraphs (6) and (7) shall be treated, for purposes of this title, in the same manner and to the same extent as an obligation guaranteed under this title which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this title that by their nature can only be applied to vessels.】

(b) CONTENTS OF OBLIGATIONS.—Obligations guaranteed under this title—

(1) shall have an obligor approved by the Secretary as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary;

(2) subject to the provisions of subsection (c)(1) and subsection (i), shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel which is used as security for the guarantee of the Secretary: Provided, however, That in the case of a vessel, the size and speed of which are approved by the Secretary, and which is or would have been eligible for mortgage aid for construction under section 509 of this Act (or would have been eligible for mortgage aid under section 509 of this Act except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been 12½ per centum of the cost of such vessel, such obligations may be in an amount which does not exceed 87½ per centum of such actual cost or depreciated actual cost: Provided, further, That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost thereof: Provided further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount not to exceed 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank: Provided further, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed 87½ per-

cent of the actual cost or depreciated actual cost of the facility or plantship: Provided further, That in the case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed 87½ of the actual cost or depreciated actual cost of the eligible export vessel;

(3) shall have maturity dates satisfactory to the Secretary but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed twenty-five years from the date of the delivery of the vessel which serves as security for the guarantee of the Secretary or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) twenty-five years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the Secretary;

(4) shall provide for payments by the obligor satisfactory to the Secretary;

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary is a delivered vessel, the vessel shall be in class A-1, American Bureau of Shipping, or shall meet such other standards as may be acceptable to the Secretary, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary permits a deferment of such repairs, and shall be tight, staunch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service; and

(7) may provide, or a related agreement may provide, if the vessel used as security for the guarantee of the Secretary is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in title V of this Act, as amended, and if the Secretary approves, that the sole recourse against the obligor by the United States for any payments under the guarantee shall be limited to repossession of the vessel and the assignment of insurance claims and that the liability of the obligor for any payments of principal and interest under the guarantee shall be satisfied and discharged by the surrender of the vessel and all right, title, and interest therein to the United States: Provided, That the vessel upon surrender shall be—

(i) free and clear of all liens and encumbrances whatsoever except the security interest conveyed to the Secretary under this title,

(ii) in class, and

(iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the obligor, except that any deficiencies with respect to freedom from encumbrances, condition and class may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the Secretary of claims of the obligor under such policies. The Secretary may not establish, as a condition of eligibility for guarantee under this title, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this title, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

(c) SECURITY.—(1) The security for the guarantee of an obligation by the Secretary under this title may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the Secretary under this title may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the Secretary under this title relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: Provided, That the Secretary may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

(d) RESTRICTIONS.—(1)(A) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Transportation unless the Secretary finds that the property or project with respect to which the obligation will be executed will be economically sound. In making that determination, the Secretary shall consider—

(i) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(ii) the market potential for the employment of the vessel over the life of the guarantee;

(iii) projected revenues and expenses associated with employment of the vessel;

(iv) any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) other relevant criteria; and

(vi) for inland waterways, the need for technical improvements, including but not limited to increased fuel efficiency, or improved safety.

(B) No commitment to guarantee, or guarantee of, and obligation shall be made by the Secretary of Commerce unless the Secretary finds, at or prior to the time such commitment is made or guar-

antee becomes effective, that the property or project with respect to which the obligation will be executed will be, in the Secretary's opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, or with the need for technical improvements including but not limited to increased fuel efficiency or improved safety.

(2) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title for the purchase of a used fishing vessel or used fishery facility unless—

(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1101(k) with respect to, an underutilized fishery.

(3) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title for the construction, reconstruction, or reconditioning of an eligible export vessel unless—

(A) the Secretary finds that the construction, reconstruction, or reconditioning of that vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency, and

(B) the owner of the vessel agrees with the Secretary of Transportation that the vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(4) The Secretary shall promulgate regulations concerning circumstances under which waivers of or exceptions to otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

(A) the economic soundness requirements set forth in paragraph (1)(A) of this subsection are met after the waiver of the financial condition requirement; and

(B) the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for the increased risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

(e) GUARANTEE FEES.—

(1) Except as otherwise provided in this subsection, the Secretary shall prescribe regulations to assess in accordance with this subsection a fee for the guarantee of an obligation under this title.

(2)(A) The amount of a fee under this subsection for a guarantee is equal to the sum determined by adding the amounts determined under subparagraph (B) for the years in which the guarantee is in effect.

(B) The amount referred to in subparagraph (A) for a year is the present value (determined by applying the discount rate determined under subparagraph (F)) of the amount determined by multiplying—

- (i) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (determined in accordance with subparagraph (E)), by
- (ii) the fee rate established under subparagraph (C) for the obligation for each year.

(C) The fee rate referred to in subparagraph (B)(ii) for an obligation shall be—

- (i) in the case of an obligation for a delivered vessel or equipment, not less than one-half of 1 percent and not more than 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D); or
- (ii) in the case of an obligation for a vessel to be constructed, reconstructed, or reconditioned, or of equipment to be delivered, not less than one-quarter of 1 percent and not more than one-half of 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D).

(D) The Secretary shall establish a formula for determining the fee rate for an obligation for purposes of subparagraph (C), that—

- (i) is a sliding scale based on the creditworthiness of the obligor;
- (ii) takes into account the security provided for a guarantee under this title for the obligation; and
- (iii) uses—
 - (I) in the case of the most creditworthy obligors, the lowest rate authorized under subparagraph (C)(i) or (ii), as applicable; and
 - (II) in the case of the least creditworthy obligors, the highest rate authorized under subparagraph (C)(i) or (ii), as applicable.

(E) For purposes of subparagraph (B)(i), the estimated average unpaid principal amount does not include the average amount (except interest) on deposit in a year in the escrow fund under section 1108.

(F) For purposes of determining present value under subparagraph (B) for an obligation, the Secretary shall apply a discount rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding obligations of the United States having periods to maturity comparable to the period to maturity for the obligation with respect to which the determination of present value is made.

(3) A fee under this subsection shall be assessed and collected not later than the date on which amounts are first paid under an obligation with respect to which the fee is assessed.

(4) A fee paid under this subsection is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the guaranteed obligation if the obligation

is refinanced and guaranteed under this title after such refinancing.

(5) A fee paid under subsection (e) shall be included in the amount of the actual cost of the obligation guaranteed under this title and is eligible to be financed under this title.

(f) INVESTIGATION OF APPLICATIONS.—

(1) The Secretary shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, for services in connection with the escrow fund authorized by section 1108 and for the inspection of such properties during construction, reconstruction, or reconditioning: Provided, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed.

(2) The Secretary may make a determination that aspects of an application under this title require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary. Any independent analysis conducted pursuant to this provision shall be performed by a party chosen by the Secretary.

(3) Notwithstanding any other provision of this title, the Secretary may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary.

(4) The Secretary may charge and collect fees to cover the costs of independent analysis under paragraph (2). Notwithstanding section 3302 of title 31, United States Code, any fee collected under this paragraph shall—

(A) be credit as an offsetting collection to the account that finances the administration of the loan guarantee program;

(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(C) shall remain available until expended.

(g) DISPOSITION OF MONEYS.—All moneys received by the Secretary under the provisions of sections 1101-1107 of this title shall be deposited in the Fund.

(h) ADDITIONAL REQUIREMENTS.—Obligations guaranteed under this title and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, assumptions, and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payments of taxes, and such other matters as the Secretary may, in his discretion, prescribe.

(i) LIMITATION ON ESTABLISHMENT OF PERCENTAGE.—The Secretary may not, with respect to—

(1) the general 75 percent or less limitation in subsection (b)(2);

(2) the 87½ percent or less limitation in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or section 1112(b); or

(3) the 80 percent or less limitation in the 3rd proviso to such subsection; establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

(j) PROCEDURE UPON RECEIVING LOAN GUARANTEE APPLICATION.—(1) Upon receiving an application for a loan guarantee for an eligible export vessel, the Secretary shall promptly provide to the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the Secretary of the potential use of the vessel in a manner that may cause harm to United States national security interests. The Secretary of Defense may not disapprove a loan guarantee under this section solely on the basis of the type of vessel to be constructed with the loan guarantee. The authority of the Secretary to disapprove a loan guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary of Transportation may not make a loan guarantee disapproved by the Secretary of Defense under paragraph (1).

(k) MONITORING.—The Secretary shall monitor the financial conditions and operations of the obligor on a regular basis during the term of the guarantee. The Secretary shall document the results of the monitoring on an annual or quarterly basis depending upon the condition of the obligor. If the Secretary determines that the financial condition of the obligor warrants additional protections to the Secretary, then the Secretary shall take appropriate action under subsection (m) of this section. If the Secretary determines that the financial condition of the obligor jeopardizes its continued ability to perform its responsibilities in connection with the guarantee of obligations by the Secretary, the Secretary shall make an immediate determination whether default should take place and whether further measures described in subsection (m) should be taken to protect the interests of the Secretary while insuring that program objectives are met.

(l) REVIEW OF APPLICATIONS.—No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary unless the Secretary certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to obligors and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application has been made.

(m) AGREEMENT WITH OBLIGOR.—The Secretary shall include provisions in loan agreements with obligors that provide additional authority to the Secretary to take action to limit potential losses in connection with defaulted loans or loans that are in jeopardy due to the deteriorating financial condition of obligors. Provisions that the Secretary shall include in loan agreements include require-

ments for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligors financial condition or the status of the vessel or shipyard project.

(n) DECISION PERIOD.—

(1) IN GENERAL.—The Secretary of Transportation shall approve or deny an application for a loan guarantee under this title within 270 days after the date on which the signed application is received by the Secretary.

(2) EXTENSION.—Upon request by an applicant, the Secretary may extend the 270-day period in paragraph (1) to a date not later than 2 years after the date on which the signed application for the loan guarantee was received by the Secretary.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2000

[SEC. 623. (a) NORTHERN FUND AND SOUTHERN FUND.—]

[16 U.S.C. 3645]

SEC. 16. NORTHERN AND SOUTHERN FUNDS; TREATY IMPLEMENTATION; ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

(a) NORTHERN FUND AND SOUTHERN FUND.—

(1) As provided in the June 30, 1999, Agreement of the United States and Canada on the Treaty Between the Government of the United States and the Government of Canada Concerning Pacific Salmon, 1985 (hereafter referred to as the “1999 Pacific Salmon Treaty Agreement”) there are hereby established a Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund (hereafter referred to as the “Northern Fund”) and a Southern Boundary Restoration and Enhancement Fund (hereafter referred to as the “Southern Fund”) to be held by the Pacific Salmon Commission. The Northern Fund and Southern Fund shall be invested in interest bearing accounts, bonds, securities, or other investments in order to achieve the highest annual yield consistent with protecting the principal of each Fund. Income from investments made pursuant to this paragraph shall be available until expended, without appropriation or fiscal year limitation, for programs and activities relating to salmon restoration and enhancement, salmon research, the conservation of salmon habitat, and implementation of the Pacific Salmon Treaty and related agreements. Amounts provided by grants under this subsection may be held in interest bearing accounts prior to the disbursement of such funds for program purposes, and any interest earned may be retained for program purposes without further appropriation. The Northern Fund and Southern Fund are subject to the laws governing Federal appropriations and funds and to unrestricted circulars of the Office of Management and Budget. Recipients of amounts from either Fund shall keep separate accounts and such records as are reasonably necessary to disclose the use of the funds as well as to facilitate effective audits.

(2) FUND MANAGEMENT.—

(A) As provided in the 1999 Pacific Salmon Treaty Agreement, amounts made available from the Northern Fund pursuant to paragraph (1) shall be administered by a Northern Fund Committee, which shall be comprised of three representatives of the Government of Canada, and three representatives of the United States. The three United States representatives shall be the United States Commissioner and Alternate Commissioner appointed (or designated) from a list submitted by the Governor of Alaska for appointment to the Pacific Salmon Commission and the Regional Administrator of the National Marine Fisheries Service for the Alaska Region. Only programs and activities consistent with the purposes in paragraph (1) which affect the geographic area from Cape Caution, Canada to Cape Suckling, Alaska may be approved for funding by the Northern Fund Committee.

(B) As provided in the 1999 Pacific Salmon Treaty Agreement, amounts made available from the Southern Fund pursuant to paragraph (1) shall be administered by a Southern Fund Committee, which shall be comprised of three representatives of Canada and three representatives of the United States. The United States representatives shall be appointed by the Secretary of Commerce: one shall be selected from a list of three qualified individuals submitted by the Governors of the States of Washington and Oregon; one shall be selected from a list of three qualified individuals submitted by the treaty Indian tribes (as defined by the Secretary of Commerce); and one shall be the Regional Administrator of the National Marine Fisheries Service for the Northwest Region. Only programs and activities consistent with the purposes in paragraph (1) which affect the geographic area south of Cape Caution, Canada may be approved for funding by the Southern Fund Committee.

(b) PACIFIC SALMON TREATY IMPLEMENTATION.—(1) None of the funds authorized by this section for implementation of the 1999 Pacific Salmon Treaty Agreement shall be made available until each of the following conditions to the 1999 Pacific Salmon Treaty Agreement has been fulfilled—

(A) stipulations are revised and court orders requested as set forth in the letter of understanding of the United States negotiators dated June 22, 1999. If such orders are not requested by December 31, 1999, this condition shall be considered unfulfilled; and

(B) a determination is made that—

(i) the entry by the United States into the 1999 Pacific Salmon Treaty Agreement;

(ii) the conduct of the Alaskan fisheries pursuant to the 1999 Pacific Salmon Treaty Agreement, without further clarification or modification of the management regimes contained therein; and

(iii) the decision by the North Pacific Fisheries Management Council to continue to defer its management au-

thority over salmon to the State of Alaska are not likely to cause jeopardy to, or adversely modify designated critical habitat of, any salmonid species listed under Public Law 93-205, as amended, in any fishery subject to the Pacific Salmon Treaty.

(2) If the requests for orders in subparagraph (1)(A) are withdrawn after December 31, 1999, or if such orders are not entered by March 1, 2000, amounts in the Northern Fund and the Southern Fund shall be transferred to the general fund of the United States Treasury.

(3) During the term of the 1999 Pacific Salmon Treaty Agreement, the Secretary of Commerce shall determine whether Southern United States fisheries are likely to cause jeopardy to, or adversely modify designated critical habitat of, any salmonid species listed under Public Law 93-205, as amended, before the Secretary of Commerce may initiate or reinstate consultation on Alaska fisheries under such Act.

(4) During the term of the 1999 Pacific Salmon Treaty Agreement, the Secretary of Commerce may not initiate or reinstate consultation on Alaska fisheries under section 7 of Public Law 93-205, as amended, until—

(A) the Pacific Salmon Commission has had a reasonable opportunity to implement the provisions of the 1999 Pacific Salmon Treaty Agreement, including the harvest responses pursuant to paragraph 9, chapter 3 of Annex IV to the Pacific Salmon Treaty; and

(B) he determines, in consultation with the United States Section of the Pacific Salmon Commission, that implementation actions under the 1999 Agreement will not return escapements as expeditiously as possible to maximum sustainable yield or other biologically-based escapement objectives agreed to by the Pacific Salmon Commission.

(5) The Secretary of Commerce shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives of his intent to initiate or reinstate consultation on Alaska fisheries.

(6)(A) For purposes of this section, “Alaska fisheries” means all directed Pacific salmon fisheries off the coast of Alaska that are subject to the Pacific Salmon Treaty.

(B) For purposes of this section, “Southern United States fisheries” means all directed Pacific salmon fisheries in Washington, Oregon, and the Snake River basin of Idaho that are subject to the Pacific Salmon Treaty.

(c) [Omitted. Subsection (c) amended section 3(g) of Public Law 99-5.]

(d)(1) PACIFIC SALMON TREATY.—

(A) For capitalizing the Northern Fund there is authorized to be appropriated in fiscal years 2000, 2001, 2002, and 2003 a total of \$75,000,000.

(B) For capitalizing the Southern Fund there is authorized to be appropriated in fiscal years 2000, 2001, 2002, and 2003 a total of \$65,000,000.

(C) To provide economic adjustment assistance to fishermen pursuant to the 1999 Pacific Salmon Treaty Agreement,

there is authorized to be appropriated in fiscal years 2000, 2001, and 2002 a total of \$30,000,000.

(2) PACIFIC COASTAL SALMON RECOVERY.—

(A) For salmon habitat restoration, salmon stock enhancement, *sustainable salmon fisheries*, and salmon research, including the construction of salmon research and related facilities, there is authorized to be appropriated for each of fiscal years 2005, 2006, 2007, 2008, and 2009, \$90,000,000 to the States of Alaska, Washington, Oregon, Idaho, and California. Amounts appropriated pursuant to this subparagraph shall be made available as direct payments. The State of Alaska may allocate a portion of any funds it receives under this subsection to eligible activities outside Alaska.

(B) For salmon habitat restoration, salmon stock enhancement, salmon research, and supplementation activities, there is authorized to be appropriated in each of fiscal years 2000, 2001, 2002, and 2003, \$10,000,000 to be divided between the Pacific Coastal tribes (as defined by the Secretary of Commerce) and the Columbia River tribes (as defined by the Secretary of Commerce).

Funds appropriated to the States under the authority of this section shall be subject to a 25 percent non-Federal match requirement. In addition, not more than 3 percent of such funds shall be available for administrative expenses, with the exception of funds used in the Washington State for the Forest and Fish Agreement.