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Senate

The Senate met at 9:30 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

The prophet Isaiah asked some very penetrating questions. The answers lead us to an authentic attitude for profound prayer:

''Who has measured the waters in the hollow of his hand, measured heaven with a span and calculated the dust of the earth in a measure? Weighed the mountains and the hills in a balance? Who has directed the Spirit of the Lord, or as His counselor has taught Him? With whom did He take counsel, and who instructed Him, and taught Him the path of justice? Who taught Him knowledge, and showed him the way of understanding?''—Isaiah 40:12–14.

Almighty God, these questions expose the shallowness of our understanding of prayer. So often we come to You in prayer as if it were our responsibility to brief You on world affairs or current national problems. Or we come to prayer with our shopping list of needs as if You did not know all about us. And then there are times we try to get You to bless our plans about which we never consulted You.

Father, You created prayer for us to be with You, to know You, to have our characters emulate Your character, and, most of all, to be filled with Your spirit. So we humble ourselves. Instead of telling You what to do, we open ourselves completely to receive Your marching orders and to follow You. In the name of the One who taught us to pray, ''Not my will but Yours be done.'' Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT, is recognized.

Mr. LOTT. Good morning, Mr. President.

SCHEDULE

Mr. LOTT. Mr. President, this morning, there will be a period of morning business until the hour of 11 a.m., and the first 45 minutes of morning business will be under the control of Senator HUTCHISON, and the second 45 minutes will be under the control of Senator DASCHLE, or his designee.

Following morning business at 11 a.m., the Senate will resume consideration of S. 1994, the FAA reauthorization bill. A unanimous-consent agreement limiting amendments to that bill was reached last night. Also under the order, all amendments listed must be filed at the desk by 11 a.m. this morning. It is hoped that most of those amendments can be agreed to or not be offered at all.

Upon disposition of the FAA bill, the Senate will be asked to turn to the consideration of the conference report to accompany the Transportation appropriations bill, if available, or the Magnuson fisheries bill under a previous consent agreement. In any case, there will probably be rollcall votes throughout the day, and Senators should expect those votes.

I am pleased with the progress that has been made on the FAA reauthorization bill. The Senator from Arizona, Senator MCCAIN, and the Senator from Kentucky, Senator FORD, have been working very hard on this. We need to get this done. In fact, we need to get it completed and we need to do it quickly so we can move on to other bills we need to get done. If we don't get this FAA reauthorization bill completed, there will be a prohibition at the end of the year on use of the airport trust fund. So we absolutely have to get it done.

Also, I would like to make sure Senators are aware that we are considering moving to other conference reports when they are available. We are also considering taking up, perhaps on tomorrow and Thursday, the maritime legislation from the Commerce Committee that will be managed by the Senator from Alaska, Senator STEVENS, and we are now beginning to see if we can clear the way on both sides of the aisle to take up the pipeline safety legislation, something, once again, we really need to do. Certainly, in America, we should make sure we have a program and plan for our pipelines being safe.

Until we see if we can work out some understanding that we can do our appropriations bills without a lot of delay or extraneous amendments, we will move forward on making progress on these other bills, these other issues. I had hoped we could get all of the appropriations bills done in regular order, but that has not been the case on the last two bills. Rather than just a squabble back and forth, I thought we could go on and do the people's business in other areas. I think we can do a lot of good work in that area over the next 3 or 4 days.

I yield the floor, Mr. President.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for morning business until the hour of 11 a.m., with the first 45 minutes under the control of the Senator from Texas, Mrs. HUTCHISON, and the second 45 minutes under the control of the Democratic leader, Senator DASCHLE, or his designee.

Mrs. HUTCHISON addressed the Chair.

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

The PRESIDENT pro tempore. The able Senator from Texas is recognized.

Mrs. HUTCHISON. Thank you, Mr. President. Mr. President, we are now in morning business, according to the order, and I control 45 minutes of time.

DEFENSE APPROPRIATIONS BILL AND INTERNATIONAL MILITARY COMMITMENTS

Mrs. HUTCHISON. Mr. President, the reason that I asked for the time this morning is I think we have a very crucial decision that is being made right now in our Nation's Capital, and that is how much we are going to fund the defense of our country. In fact, Congress is in a dispute with the President, as we speak, about how much we should spend to defend our Nation.

I find it ironic, if not sad, that as 3,500 of our American troops are on their way to Kuwait right this minute that the President would be threatening to veto the Defense appropriations bill if $2 to $3 billion is not cut from that bill.

Our troops are on their way, possibly for a conflict. We hope not. But, as you know, as the distinguished Presiding Officer is the chairman of the Armed Services Committee and the President pro tempore of the Senate, this is not the time to let down our defenses. This is not the time to say that we should be shifting valuable weapons systems for the protection of our troops and for their ability to protect the interests of the United States into unnamed other programs—social programs, perhaps education programs.

I don't know what the President has in mind. But I do know that the President of the United States is today saying he will veto an appropriations bill for the Defense Department at the same time that he is ratcheting up a conflict in the Middle East.

Mr. President, several people would like to speak on this issue. I have more to say, but at this time, I am going to yield to my colleague, the senior Senator from Idaho, LARRY CRAIG.

Mr. CRAIG addressed the Chair.

The PRESIDENT pro tempore. The able Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I have comments that will take probably up to about 8 minutes. The Senator from Arizona is with us, and I understand he has a scheduling conflict, so I will be more than happy to yield to him.

Mr. KYL addressed the Chair.

Mrs. HUTCHISON. I will be happy to yield to the distinguished Senator from Arizona, who has provided so much leadership in our Nation's defenses, and ask how long, approximately, he would like.

Mr. KYL. Mr. President, I inform the Senator from Texas, probably about 5 minutes, if that is acceptable.

Mrs. HUTCHISON. That is acceptable. Thank you, and I yield the floor.

The PRESIDENT pro tempore. The able Senator from Arizona is recognized.

Mr. KYL. Mr. President, first of all, let me say the Senator from Texas is to be complimented for beginning this very important discussion which I think, frankly, is going to have to go on for some time here until we can get this matter resolved.

It boils down to something very, very simple. On the one hand, you have the administration making substantial international commitments for the deployment and use of American military forces which will cost billions of dollars of money, and, at the same time, you have the administration suggesting that unless the Congress is willing to take money from the defense budget and spend it on other things that the President wants, there is the possibility of a Presidential veto of the defense appropriations bill.

Mr. President, we have been, I think, appropriately discreet here in this body in sharing our views on international policy, especially as it relates to the Middle East and the President's action in Iraq. We passed a resolution here overwhelmingly supporting the action that the administration took and supporting our troops in Iraq. We have not gone out of our way to criticize the President's policy there, even though many of us have grave concerns and questions about where that policy is leading us.

But when it comes to passing the defense authorization and defense appropriations bill, this body has a responsibility to ensure that our military forces have what they need to carry out these commitments. And nobody, Mr. President, more than you, as the chairman of the Senate Armed Services Committee, has fought harder over the years to ensure that our troops have what they need.

I remember that after the Persian Gulf war was over and everyone was passing out compliments to Secretary Cheney and to President Bush and to the Chairman of the Joint Chiefs of Staff, Colin Powell, they all pointed out that what won that war was the character and skill of our men and women who were fighting there and the decisions that were made 10 or 12 years before by the Senate, by the House, and by the administrations at that time to begin the research and development of the smart weapons and other weapons that we used in the Persian Gulf war. That is what enabled us to win that war quickly and with a minimum of casualties.

Now we are again engaged in conflict in Iraq, and we are again using those same weapons, and at the same time the President is suggesting that we have to cut the defense budget because he wants to spend more money in other areas. I remind my colleagues that last year we added money back into the defense bill to buy Tomahawk missiles, more than the President requested. He did not request that money. We said, you are going to have to buy more Tomahawk missiles because that is what we are going to need if we have another conflict in the Middle East. And what happened? We had another challenge from Saddam Hussein, and the President ordered the firing of Tomahawk missiles. I am glad that the Senate disagreed with the President on that last year, added that money in, and we had those Tomahawk missiles ready to go to fight this conflict.

Now we have the same issue again. Are we going to be permitted to properly fund the military forces? What we are suggesting is still far less than the military was provided last year. So this is not an increase over last year's spending. It is less money. It is more money than the President requested, and that is because we have identified some areas in which we think the administration's request was deficient, just as it was with the Tomahawk missiles last year.

Mr. President, it boils down to this. I have a lot of statistics here and might ask for unanimous consent to submit some matters in writing that gets into the specifics, but I know that my other colleagues here wish to add their voices to this concern. So I am just going to make this statement very generally.

Mr. President, I ask unanimous consent to have printed in the RECORD this statistical information and related material.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Press release from the House Appropriations Committee]

LIVINGSTON TO CLINTON: NOW IS NOT THE TIME TO FURTHER CUT DEFENSE

WASHINGTON, DC.—Charging that President Clinton is putting the nation's servicemen and women at risk overseas, House Appropriations Committee Chairman Bob Livingston (R–LA) urged the President to reconsider reports that his Administration is now seeking $3 billion in additional cuts to the defense bill.

''Further cuts to the defense bill will mean less medical care funding for military personnel, a weakening of the drug war, and an inability to relocate troops in Saudi Arabia. If the President wants $3 billion more cut from the defense budget, he should present our committee with a list of cuts and we'll be happy to consider them.

The defense conference report added nearly a half billion dollars to the President's request for medical care, which was cut in the Clinton Budget; added $600 million to the President's request for barracks and base repair; and added $165 million to the President's request for drug interdiction and counter-drug activities.

''President Clinton claims Congress wants to spend $10 billion more than he wants, but he won't admit that he asked for $10 billion less than last year's funding level for defense. This cut comes at a time when our nation's military is preparing for a new round of bombing in Iraq; facing more than $100 million in costs for troop relocation in Saudi Arabia; and underfunding Bosnia by more than $200 million to date. It is a bad time to cut defense, yet that's all the Commander-In-Chief offers in relation to negotiations on unfinished appropriations bills,'' said Livingston.

Even more disconcerting is the fact that the President holds the Defense Appropriations bill hostage to more spending cuts,

while he vows to sign to the $265.6 billion Defense Authorization bill (which actually authorizes more funding that the appropriation bills spends). When adjusted for inflation, defense spending actually declines between FY96 and FY97 marking the twelfth consecutive year defense spending has come down.

''I am simply amazed that the President thinks he can dupe the American public into thinking that he is pro-defense by signing the authorization bill, while threatening to veto the legislation that actually pays the defense bills. The President's veto would deny a 3% pay raise for military personnel, deny funding for a half billion dollar shortfall created in the President's request for medical programs, and deny essential upgrades to our nation's aging weapons systems, which the President's own Joint Chief of Staff say falls more than $100 billion short over the next five years,'' said Livingston.

ANOTHER CLINTON FOREIGN POLICY FAILURE—CRISIS IN IRAQ WORSENS

On August 31, 1996, Saddam Hussein sent 40,000 troops to seize the northern Kurdish city of Irbil.

The U.S. responded to this with cruise missiles in the South and by extending the ''no fly.''

Clinton declares this a success.

Rhetoric (declared victory) is inconsistent with the reality in the region.

Hussein has expanded his power over the whole Kurdish region.

A major CIA-funded effort to destabilize Saddam is virtually defunct.

The Gulf War international coalition is fractured. Kuwait balks at accepting U.S. troops and few voice opposition to Saddam's moves.

The 1991 humanitarian relief program is in shambles.

If the President is serious about achieving what he believes are U.S. goals, he must act now to set his case before the American people and to include their elected representatives in the Congress in his deliberations. Anything less would be a major failure of leadership.

3500 (not 5000) Fort Hood troops are enroute to Kuwait beginning this morning.

23 F–16s will go to Bahrain to help enforce the ''no-fly'' zone.

8 F–117 Sealth Bombers are in Kuwait with 4 B–52s at Diego Garcia.

Within days, the force will include 2 aircraft carriers with more than 150 Navy aircraft and more than 20 other warships and submarines.

Actions thus far are a replay of Administration actions in previous events, e.g., Somalia, Haiti, Bosnia, all of which are unraveling or failing to meet original administration promises.

No notification by the Administration.

No consultation with Congress.

No strategic goals/objectives presented to the American people.

Failure to state what actions Hussein must take to satisfy the U.S.

Mr. KYL. Thank you, Mr. President. Just to summarize it this way, nothing is more important than the defense of our country and ensuring that when the Commander in Chief gives the order for our young men and women to go into combat, to risk their lives, that ensuring that they have the means of achieving their missions in the safest way possible.

As I read a couple days ago about the first F–111 pilot at the beginning of the gulf war, on the very first night, who had to fly through the flak over Baghdad, he drew the lucky straw, or the unlucky straw, as it may be. He and his wing man told the story about how the night was black, it was eerie, but he could see the lights of Baghdad in the distance. And he said, as he got closer, it looked like a big fireworks display, there was so much flak over that city. He knew he had to fly through that. But he had the training and he had the equipment because we provided it, and he got through in good shape and performed his mission.

We can never shortchange the men and women that we send into combat without adequate equipment. That is why it is so important that the President get on board here and agree with us to fund the military to the degree that is necessary, to the degree that your committee has recommended.

Mrs. HUTCHISON addressed the Chair.

The PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. I yield up to 10 minutes of our time to the Senator from Idaho.

The PRESIDENT pro tempore. The able Senator from Idaho.

Mr. CRAIG. Mr. President, let me thank the Senator from Texas for requesting this morning business and special order to talk about not only the situation of Defense appropriations, but the impending foreign policy crisis in this country. And as we begin to look seriously, Mr. President, at ending this legislative session and completing our work, there are some remaining appropriations bills that simply must be dealt with in a fair and honest way to effectively close down the Congress. One of those is the 1996 Department of Defense appropriations bill.

In short, Mr. President, saber rattling by this administration has occurred in places other than Iraq. Recent indications that President Clinton will veto the bill that the Senators from Arizona and Texas and I are talking about this morning, which provides funding to our Nation's armed services—including the current deployment in the gulf and those now preparing to respond to the President's call of another 3,500 troops to be deployed, and who may well be in the air at this moment headed for Kuwait—is, to me, a position that our President should find unconscionable, but yet at this very moment the message coming out of the White House is, veto Defense authorization.

The brave men and women serving this Nation and protecting our security and the Nation's interests should not be turned into pawns for Presidential election politics. I cannot begin to express my frustration over this situation because the timing for this President and his political agenda appears to be extraordinary. Therefore, I hope the President will respond by indicating his support for our Armed Forces and his willingness to sign this critical piece of legislation.

The deployment of our troops does not occur without cost. The Senator from Arizona has already referenced that very effectively. The President has deployed U.S. forces widely in peacekeeping efforts, and it is time to respond in kind by paying for it. That is what the American public would expect of a Commander in Chief.

Mr. President, I would like also to take a moment to again address some of the concerns that I mentioned last Friday in the press about the ongoing situation in Iraq, because it is fair to talk about that situation in the context of Defense appropriations, all in one statement, because they fit so well together. As I have said, they clash at this moment in what appears to be a Presidential political agenda that just does not fit.

What is our policy? What is our mission? What is our goal in Iraq? It is a straightforward question that deserves to be answered. The President, as I mentioned, is now deploying troops to Kuwait. More American lives could well be on the line. And it is past time—it is clearly past time—for this President to tell the American people what his answer to those three questions are.

Reports yesterday from CNN stated that 3,500 troops are headed to Kuwait. Claims were made that calling off the deployment now would send the wrong message of weakness to Iraq. I would argue that the message has already been sent in the form of a lack of foreign policy to address this situation. The deployment of troops to Kuwait is clearly a case in point. This announcement of sending 3,500 troops comes on the heels of comments by the President that he was reconsidering a decision to send several thousand troops to Kuwait.

The Washington Post quotes President Clinton as saying this:

> We have sought no confrontation with Saddam Hussein. We never did, and we don't now. My concern is that we limit Saddam Hussein's ability to threaten his neighbors, that we do it with the ''no-fly'' zone, and in so doing, we keep our pilots safe.

I am not here to criticize the worthy goal of keeping our pilots safe. However, this administration's policy is changing daily. The White House has not had its press conference this morning, so we do not know what the foreign policy of today is. We were told the actions of expanding the southern no-fly zone was a reaction and a lesson to Saddam Hussein that his use of force would be met with force. However, the message did not register. We did not address the area of violation, which was the introduction of 30,000 Republican Guard troops into the Kurdish safe haven at the request for help from one of the Kurdish factions. In addition, our reaction did little to dissuade Iraqi activities.

The administration claimed that our actions were justified because of the inhumane actions of the Iraqis against the Kurds. However, we have already lost that battle.

Hussein's troops moved into the safe haven under the vigilant watch of our intelligence sources and they have remained. We have done nothing to respond to Saddam Hussein's actions. In a recent article printed by the Canadian news magazine Maclean's, an unidentified State Department official was quoted as saying:

By attacking in southern Iraq rather than striking at the forces that Saddam used against the Kurds in the north, the United States sent him a clear signal that it is concerned only about the security of the oil supplies from Kuwait and other Persian Gulf states, and does not care much about what he does inside his own borders. . . . We've not demonstrated [in all fairness, Mr. President] a lot of courage. . . . Our actions have not left the region any more secure. [Bluntly put] Saddam has gotten away with it.

Mr. President, this concern is not isolated but has been quite widely reported in news from Government officials and independent analysts.

These criticisms do not question the need to respond to Hussein. Rather, they question the nature of the response chosen by our President. An action was necessary, but it should have reflected Hussein's aggressive behavior. Brent Scowcroft, former national security adviser under Presidents Ford and Bush, put it very succinctly in an article printed in the September 23 edition of Newsweek.

We were right to strike back, but we did so in a way that did no lasting military damage to him and inflicted significant collateral damage on us. The cruise-missile attack was quick, clean, and easy. But, it may have sent Saddam the wrong message—that he would only pay the price of a pinprick. When the smoke cleared, it looked to most political leaders around the world as though Saddam was better off and the United States was worse off than before the current crisis began.

Mr. President, the article covers a number of other cogent issues on this situation. I ask unanimous consent that the article be printed in the RECORD following my statement.

The PRESIDING OFFICER (Mr. GREGG). Without objection, it is so ordered.

(See exhibit 1.)

Mr. CRAIG. In addition to the loss of this high-stake game, I argue that Saddam Hussein won the divide-and-conquer battle. It is disturbing to note how many nations who were supportive of active participation in the coalition developed by President George Bush in the gulf war, have either failed to offer support or have condemned the American strikes and the American actions.

The Russians not only opposed United States actions, but they went so far as to criticize the administration for playing electoral politics. France, once an important ally in the region, has refused to participate in patrolling the expanded area of the southern no-fly zone. Turkey, an ally since World War II, Jordan, and Saudi Arabia have all expressed concern and refused to allow the United States to base some of their actions in their countries.

By moving unilaterally, the President has isolated the United States in the region and weakened our position not only in the gulf, but it could spill over into other regional issues such as the U.S. effort to further the Middle East peace process.

One point that has come to light which bothers me greatly is the lack of action to address growing concerns about the division and strains against the various Kurdish factions. Efforts to push diplomatic negotiations could have prevented the situation from escalating to the point that both Iran and Iraq were called into the conflict for support by the various factions.

In addition, when new intelligence reports indicated troop movement, why were there no efforts to deter the looming action before troops were allowed to reach the Kurdish safe haven and quickly move into Irbil, remove the Patriotic Union of Kurdistan, and execute approximately 100 non-Kurdish Iraqi dissidents who based their anti-Hussein activities out of the area?

Mr. President, the $1 billion-plus that the United States has spent establishing and maintaining the Kurdish safe haven is also lost. It has been acknowledged by U.S. officials that Saddam Hussein has left a massive security presence. That presence will keep his political opponents muted, and serve as a constant reminder to Iraqis and, indeed the world, that he intends to regain control of his entire country. Saddam is here to stay.

In closing, while I appreciate the President's efforts to brief congressional leaders yesterday, I remain frustrated at the lack of a clear and precise direction on the part of the administration in dealing with Saddam Hussein. He is not going away, and neither are our interests in the region. We have lost ground during this go-around. But, we have been given a reprieve by the Iraqis, who recently announced a discontinuance of attacks on United States aircraft patrolling the no-fly zone, and ceased efforts to rebuild air defense systems destroyed by our missiles. Therefore, time is of the essence, and the President must get his policy on track, and this situation back into balance.

And, President Clinton, you do accomplish this by vetoing the very bill that will fund our efforts in the Middle East and keep our men and women in uniform safe.

I say in conclusion that it is time that the White House woke up, that America demand the answer to the fundamental questions: Why are we there? What is our mission? What is our end game?

I must say to President Clinton, you have not demonstrated even the simple logic of why you would want to veto a defense appropriations bill at a time when you are offering expanded activities in an area where no mission is clear. I say, Mr. President, step up to the mike and step up to the country. Do what you are supposed to do as our Commander in Chief. Respond, in a clear, unequivocal message, as to what is our mission and work with us to not only defend our troops but to finance them, because as you send them in harm's way, you have a simple and most important obligation as our Commander in Chief, and that is to make sure that they are well financed and well cared for.

EXHIBIT 1

[From Newsweek, Sept. 23, 1996]

WHY WE STOPPED THE GULF WAR

(By Brent Scowcroft)

We have been listening to the same sad refrain for five years; if only George Bush had finished off Saddam Hussein when he had the chance at the end of the gulf war, we wouldn't be in this mess today. There are two things wrong with this reinterpretation of history. The first is that we never had the objective of destroying Saddam's regime during Desert Storm. The second is that had we continued the war and overthrown Saddam, we might be worse off today.

We had a crucial but limited objective in the gulf war, to reverse Iraqi aggression, and to cripple Saddam's offensive military capabilities. The international coalition that President Bush put together to fight the gulf war was based on this carefully defined goal. We certainly hoped that Iraq's defeat would lead to Saddam's collapse, but we viewed that prospect as a potentially beneficial by-product of our victory.

If we had made Saddam's overthrow part of the objective, there would have been no international coalition; even during Desert Storm, our Arab allies stopped their troops at Iraq's border because they wanted no part of an attack on Iraqi territory. If we had continued to prosecute the gulf war after we achieved or stated objectives, we would have destroyed the coalition and squandered much of what our victory had achieved.

So if we had pressed on to Baghdad in 1991, we would have been on our own. And if we had succeeded in overthrowing Saddam, we would have confronted a choice between occupying Iraq with thousands of American troops for the indefinite future and creating a gaping power vacuum in the Persian Gulf for Iran to fill. There was no support among the American people for the first alternative in 1991, and even less so today. The second alternative would have put our vital national-security interests in jeopardy.

Put simply, we recognized that the seemingly attractive goal of getting rid of Saddam would not solve our problems, or even necessarily serve our interests, any more than the overthrow of Diem was a silver bullet to the conundrum of Vietnam. So we pursued the kind of inelegant, messy alternative that is all too often the only one available in the real world. Having driven Saddam out of Kuwait and destroyed much of his offensive military capabilities, we concentrated on keeping the pressure on Iraq so that it could not and would not once again threaten its neighbors. This is the policy that the Clinton administration inherited. Saddam may have made his move into northern Iraq two weeks ago because he thought that with a presidential campaign underway in the United States, we would not respond. Not for the first time, Saddam miscalculated. We were right to strike back, but we did so in a way that did no lasting military damage to him and inflicted significant collateral political damage on us. The cruise-missile attack was quick, clean and easy. But it may have sent Saddam the wrong message—that he would only pay the price of a pinprick. When the smoke cleared, it looked to most political

leaders around the world as though Saddam was better off and the United States was worse off than before the current crisis began.

A far more effective military response, though a more dangerous one, would have targeted the Republican Guard units that moved into northern Iraq. An air attack on those forces would have put Saddam on notice that he must pay a real price for his defiance. It also would have put on notice Iraqi soldiers—on whom Saddam depends to remain in power—that any time they march out on Saddam's orders, they will be subject to devastating aerial bombardment.

Now we are into the next round. Saddam has fired missiles at our aircraft patrolling the no-fly zones. In return, we have threatened a further ''disproportionate'' response and are ostentatiously augmenting our military forces in the area.

The next time we hit Saddam, we should hit him hard, and where it hurts him most, so that he cannot mistake our message. Airstrikes will have to focus tightly on Iraq's military machine, making it clear that we intend to punish Saddam, not harm the Iraqi people. The Republican Guard is an obvious target.

The key point, however, is that the ''Iraq problem'' is not susceptible to quick fixes. Dealing with Iraq will continue to require patience and persistence, leadership and skill. For the foreseeable future, a successful and sustainable—if unsatisfying—policy is likely to share the same objectives as the one we have followed since the end of the gulf war: relegating Saddam to the category of a nuisance and preventing him from reemerging as a threat to his neighbors or our vital interests.

Mrs. HUTCHISON. Mr. President, I ask that I be notified at the end of 40 minutes, and I ask unanimous consent the remainder of my 45 minutes then be delayed until 10:55.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, I want to thank the Senator from Idaho for talking about General Scowcroft, who is one of the great foreign policy minds of our country, and I thank the Senator for talking about the principles that we should have in foreign policy. I think it is very important we look at the principles of foreign policy with the eye toward letting our enemies, as well as our allies, know what they can expect from us.

Mr. President, what we are talking about today is a very important issue that is to be discussed in the Capitol, and that is defense spending. In fact, the President asked for $234 billion for defense spending. Congress asked the President to sign a bill for $244 billion. There is a difference of $9.5 billion between the President's request and that of Congress.

Now, Mr. President, we are in military operations in Haiti, in Bosnia, we have been in Somalia, which cost precious defense dollars, we now have an escalation in the Middle East, we have 3,500 troops as we speak on their way to Kuwait because we have an escalation there, and yet the President of the United States, while putting our troops into these missions that are costing approximately $10 billion all together, nevertheless is asking us to cut $10 billion from the defense budget.

Now, I point out some of the things that Congress would like to have in the defense budget that the President did not request. Two additional F–16's, to replace fighters that are lost due to combat, such as Captain O'Grady, who was shot down and was a true hero in surviving after being shot down by the Serbs. And, in fact, we are also sending F–16's right now to Kuwait and Saudi Arabia to try to make sure that we have enough F–16's, which are such an important base of our operations in the Middle East. In fact, we are sending 23 F–16's right now. We are asking for two additional ones, which the President wants us to cut from the budget.

We added $66 million above the President's request for additional up-armored Humvees. I am sure my colleagues will remember that it was up-armored Humvees that saved the life of one of our soldiers in the early days of the Bosnia conflict when his vehicle was destroyed—actually, it was struck by a landmine, but was not destroyed, because it was one of the up-armored Humvees. We want more of those to protect our troops if they are going to be in harm's way. But the President says ''no,'' he wants to cut those, even though they are proven to have saved at least one life in the Bosnia operation.

Next, $190 million for additional scout helicopter aircraft. They are playing a major role in Bosnia today, and the Army is critically short of these scout helicopters. We are asking to upgrade the fleet of helicopters because they are such an important part of our military readiness. But the President says ''no.''

Then there is $53 million for night vision devices that allow our soldiers to fight and win at night against this adversary that can't see us. That's what we are asking, Mr. President, among other things, for the readiness of our forces. Yet, the President, as the troops are going into harm's way for the protection of our interests, says he will veto a defense budget, unless we cut $2 to $3 billion out of it. Mr. President, you can't have it both ways. You cannot send our American troops into the world to be police and peacekeepers and to secure the interests of America—you can't ask them to do that if we don't have the equipment and the protection for them with theater defenses. Mr. President, you can't do it.

Why would you threaten to veto a bill because it has $2 to $3 billion you would like to put somewhere else, when you are asking more from our military and they are performing? Mr. President, they are performing as they always do. They are performing with guts, with patriotism, and with belief in our country. They are representing our country. Mr. President, now is not the time to argue about cutting the defense budget.

How much is this operation in Kuwait going to cost to defend against an aggression that might occur from Iraq? How much? We don't know how much. So, of course, the idea of cutting our defenses beyond bone, beyond muscle, but into contingencies, does not make sense.

How could our Commander in Chief be talking about vetoing the Defense appropriations, the Defense appropriations bill? How could he be talking about vetoing the Defense appropriations bill at the time that he is sending our troops into a heightened area of awareness and caution and readiness in the Middle East? How could he do it, Mr. President?

It's not right, and we, today, are calling on the President of the United States, the Commander in Chief, to work with us to keep our defenses funded. He is commanding our armed services, and he must fund them. Congress is trying to do that. Mr. President, work with us. If you expect our troops to do the great job they always do, you must fund them. You must give them the equipment. You must give them the ballistic missile protection in the theater.

From my home State of Texas, we are sending 3,500 troops on the ground to Kuwait. We have sent about 120 from Fort Bliss, with the Patriot missiles, to protect them. Mr. President, we even have missiles that the President, the Commander in Chief, did not ask for, that have already been used in this conflict with Iraq. As the Senator from Arizona has said, the President did not ask for the missiles that he has already used. We must have the replacements. We have already used them. How could he at this time be talking about cutting $2 to $3 billion out of our defense budget at the same time we are having cost overruns in Bosnia that will have to be funded, and we don't even know what Iraq will cost? This is not the time, and this is not leadership.

Mr. President, I yield such time as he may consume to the distinguished President pro tempore, the dean of the Senate and the chairman of the Armed Services Committee, who has done so much to make sure that our men and women that serve our country are equipped and trained and protected, the Senator from South Carolina.

Mr. THURMOND. Mr. President, I wish to commend the able Senator from Texas on this special order to have a discussion on this very important matter. She is a very able member of the Senate Armed Services Committee and stands for a strong defense. She does all she can to promote the welfare of our men and women in uniform.

Mr. President, I rise to join my colleagues in urging President Clinton to show his support for our men and women in uniform by indicating his support for the fiscal year 1997 Defense appropriations bill and conference report.

In his radio address on September 7, just days after he authorized the cruise missile strikes against Iraq, President Clinton indicated that he would sign the Defense authorization bill. This legislation, the result of our work on

the Senate Armed Services Committee this year, authorizes appropriations for defense.

In expressing his support for the Defense authorization bill, President Clinton stated:

Once more, we have seen that at home and abroad, our servicemen and women go the extra mile for us, and we must go the extra mile for them. This bill makes good our pledge to give our Armed Forces the finest equipment there is so that they have the technological edge to prevail on the battle fields of tomorrow . . . it also carries forward our commitment to give our troops the quality of life they deserve by funding family and troop housing improvements that we want and by providing a raise of 3 percent . . .

Mr. President, I believe the President was absolutely right in these statements of support for the Defense authorization bill and his decision to sign it. Yet, here we are within only a week or so of these statements, the administration is attempting to negotiate substantial reductions in the Defense appropriations bill.

I have tried to determine why the President might not want to support the Defense appropriations bill. What events have transpired that might have caused him to think that the Defense appropriations bill has too much money for defense?

The President has sent additonal airpower, seapower, and ground troops to the Middle East to bolster our military force in that troubled region. Every day, it appears more likely that the United States will have to continue some kind of military presence in Bosnia past the December 20 deadline currently set for the withdrawal of our forces currently serving in Bosnia. In addition, United States forces were recently dispatched to Haiti to help stabilize the government of President Preval.

Mr. President, the Defense authorization bill for fiscal year 1997 authorizes for appropriations $265.6 billion—$11.2 billion above the President's budget request. However, in real terms, this bill provides $7.4 billion less than last year's defense bill. Mr. President, this is a very modest bill. Is there a Senator here who believes that our military forces will be called upon to do less next fiscal year than we have done in this fiscal year?

Mr. President, the Congress has indicated strong support for the amounts of money provided for the Department of Defense in the Defense authorization bill and the Defense appropriations bill. We passed a budget resolution bill which supported this amount for defense. We passed a Defense authorization bill, voting several times in support of the amounts for defense in this bill. I do not believe we should now be negotiating these funds away for what appears to be political gamesmanship.

It is clear that this administration relies greatly on our military services. The President must recognize that we must maintain a strong military, capable of performing anywhere in the world and at a moment's notice.

Now is the time when the Congress and the administration must stand together in support of our men and women in uniform, as the President himself has stated, ''our service men and women go the extra mile for us, and we must go the extra mile for them.''

I urge the President to indicate clearly his support for the Defense appropriations bill as he has for the Defense authorization bill.

Thank you, Mr. President. I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that 3 of the 5 minutes that I have remaining at the end be allocated now to the Senator from Idaho.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Reserving the right to object, Mr. President, it is my understanding that we provided 45 minutes of morning business to begin at 9:30 for the majority side of the aisle, with 45 minutes of morning business to follow by our side of the aisle beginning at 10:15. My understanding is that the unanimous-consent request was previously propounded without objection, I think, by anyone on our side of the aisle, to segregate the first 45 minutes so that the last 5 minutes of it would occur at the end of the hour and a half block.

If the Senator from Texas wished to change the agreement that was made last evening about morning business, then I would urge that we make that change in a manner that allows the additional 5 minutes between 10:55 and 11 to be controlled by the Senator from Texas and 5 minutes controlled by me from 11 to 11:05.

The PRESIDING OFFICER. Is there objection?

Mrs. HUTCHISON. Reserving the right to object, I do object, Mr. President. What I would like to do is ask that 3 of the 5 minutes from my last 5 minutes go to the Senator from Idaho now, and then I would like to have the last 2 minutes of the morning business time. So if you would like to extend for 5 minutes, would you be willing to extend 5 minutes from 10:58 to 11:03?

Mr. DORGAN. Mr. President, I do not quite understand the request. My intention is not to prevent the Senator from Idaho from speaking in any order. My only point was that, if we are intending to change the agreement that was made last evening without consultation, then the agreement should provide, if the Senator from Texas has 5 minutes, at 10:55 to 11 o'clock, that we would have 5 minutes from 11 to 11:05.

Mrs. HUTCHISON. Let me add this. If you are wanting the last 5 minutes, how about your taking 10:55 to 11 and letting me have my last 5 minutes, giving 3 minutes to the Senator from Idaho at this time, and then 2 minutes, before you go into your last 5 minutes.

Mr. DORGAN. The only caveat to that would be, why don't we just provide that our side will have 45 minutes? To whatever extent that takes us over the 11 o'clock hour, it does. We would want to have the full 45 minutes. We have Senator FEINSTEIN who wants to speak, and Senator BIDEN may be here to speak on a couple of things. I would like to make sure that we have equal time.

I was surprised that the agreement last evening, which was 45 minutes on each side, was changed this morning without consultation. I have no objection to anyone speaking at any time except that we would like to have the last 5 minutes in this block today. So the Senator from Texas apparently now has, by unanimous consent, 5 minutes from 10:55 to 11, and she is asking consent that the Senator from Idaho be included in that.

Is that correct?

Mrs. HUTCHISON. That is correct.

Mr. DORGAN. I am asking consent that we also in that request add that we would have 5 minutes additional from 11 to 11:05 for our side to close in morning business.

Mrs. HUTCHISON. Let me see if I can make this easier. Let me just take my last 5 minutes right now and then the Senator can have—if you are still wanting to go over, I am concerned about going past 11 just because of the order of voting and what Senators have been told. So if you would like, the point is you would like to have the last part of the debate, would you be willing to let me give 3 minutes to the Senator from Idaho, let me finish with 2 minutes, and then you take until 11. Would that be acceptable?

Mr. DORGAN. No. The agreement last evening was that we would have 45 minutes. We would insist under the agreement that our side receive 45 minutes. It is certainly acceptable to having you complete your morning business now. In fact, if you wanted a couple of extra minutes, that is fine with me. We would simply provide that we would want an equal amount of time on our side.

Mrs. HUTCHISON. At this point, then, I would like to reserve my 2 minutes at the end and give the other 3 minutes to the Senator from Idaho.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, reserving the right to object, I don't mean to quibble about this. But does that include the opportunity for our side then to extend beyond 11 o'clock, as I have indicated?

Mrs. HUTCHISON. Let me ask if we could do this. Let me ask the Senator from Idaho to have up to 3 minutes now, and then the Senator from North Dakota would be able to get 45 minutes, and then I would have 2 additional minutes, whatever that would take.

Mr. DORGAN. I would object. Let me say to the Senator from Texas with

great respect that we had an agreement last evening about morning business. Without consultation, we have a unanimous-consent propounded and agreed to because no one on our side was on the floor. If you wish to propound a further unanimous-consent request, I will object unless we restore the agreement that was obtained last evening of 45 minutes on each side. You are certainly welcome to 5 minutes toward the end, provided you accord the same opportunity to us. If you choose not to do that, I would be constrained to object.

Mrs. HUTCHISON. In an effort to give the Senator everything I think he has asked for, not to be quibbling, the only reason that I would give up what I have by unanimous consent is because the Senator from Idaho has been waiting, and in order to give him 3 minutes I am going to give you whatever you want. So I will say that I will ask unanimous consent that the 3 minutes of the 5 minutes that I have left be given to the Senator from Idaho, and that then I will have 2 additional minutes for my 45 minutes, and then the Senator from North Dakota will control 45 minutes.

The PRESIDING OFFICER (Mr. DEWINE). Is there objection?

Without objection, it is so ordered. The Senator from Idaho is recognized.

Mr. KEMPTHORNE. Mr. President, I thank the Chair. These are precious 3 minutes. I will make the best use of them.

For the 11th year in a row, we have cut the defense of this Nation—11 years. Last year, the administration assured the Senate Armed Services Committee that this year there would be no further cuts and that we would see the adding of funds for procurement so that we could buy the ships and the tanks and the trucks our men and women in the military so critically need.

As passed, the current budget for the Department of Defense, the budget that is now in question and we are talking about this morning, does not even keep up with inflation. What is in it? Things that are so straightforward, such as a 3-percent pay increase for men and women in the military, a very real issue, and all of the equipment that they need.

Later today, the Senate Armed Services Committee will hold a hearing on General Downing's report on the terrorist bombing of Khobar Towers in Saudi Arabia. Nineteen Americans lost their lives in that bombing.

Yesterday, the President announced he was sending an additional 5,000 American soldiers to Kuwait to keep Saddam Hussein in Iraq. In Bosnia the elections have taken place. Now the administration is considering keeping the American soldiers in Bosnia after the 1-year deployment we were told would do the job. These so-called peacekeeping missions have shown us repeatedly that the world remains a very dangerous place for Americans and certainly for the men and women in uniform. We must make the hard decisions and spend what is required to protect our Nation's vital interests.

If the President wants to once again reduce funding for defense, I would ask him, which requirements does he propose to cut? Which requirements does he propose to cut? Is the President ready to remove our troops from Bosnia? If so, declare it. Is the President ready to end our enforcement of the no-fly zone over Iraq? If so, declare it. Is the President willing to now say there is no need to send the troops to Kuwait? If so, declare it. What do the cuts do to the responsibilities he is giving to our troops? We continually ask our troops to do more and more and we ask them to do it with less and less. That is wrong. That is not what a Commander in Chief should be asking of those troops that are under that Commander in Chief's command.

Last night, we had the celebration of the 180th anniversary of the Senate Armed Services Committee. We acknowledged the leaders that have been in that position. We acknowledged Senator STROM THURMOND and Senator SAM NUNN, who I believe are together on this issue. There was an interesting quote that was pointed out to us last night by President Calvin Coolidge who said:

> The Nation which forgets its defenders will be itself forgotten.

I think that says it all. Let us not forget our defenders. Let us not forget the men and women in uniform that we repeatedly ask to put their lives on the line.

No more cuts, Mr. President. No more cuts.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 45 minutes under the previous order.

Mrs. HUTCHISON. Mr. President, I think the previous order was that I had the last 2 minutes after Senator KEMPTHORNE's 3 minutes and then the Senator from North Dakota would have 45 minutes.

The PRESIDING OFFICER. If the Senator wishes to take the time now, that is fine, if there is no objection.

Mrs. HUTCHISON. That was the agreement. I thank the Chair.

I think the Senator from Idaho said it all. If you are going to cut the defense budget at the same time that you continue to ask our military to do more with less, tell us where you want to cut.

The President of the United States is now threatening to veto the Defense appropriations bill if we do not cut $2- to $3 billion out of it. As 3,500 troops are on their way to Kuwait to defend the interests of this country, the President is threatening to veto the Defense appropriations bill. How could he do it? With troops going into Haiti, with troops in Bosnia, overruns there right now, and more troops on the way to a hot spot in the Middle East, and he is telling Congress cut $2- to $3 billion out of the defense budget.

Mr. President, where do you want to cut? Are you going to cut F–16's, as you send 23 more to Kuwait and Saudi Arabia? Or are you going to cut the cruise missiles that you did not put in the budget in the first place which have already been used in your operation over Iraq? Is that what you want to cut? Or do you want to cut the Humvees with the added armor that has already saved one life in Bosnia when a landmine was run over by a Humvee but the protection was there and an American life was saved? Is that what you want to cut?

Those are the things in our budget that the President did not ask for and would be asking us to take out. Mr. President, step up to the line. If you are going to cut the defense budget, you tell us where you want to cut. It is very clear we are going to need Stealth bombers. We have already used them. Are we going to start cutting Stealth bombers as we are sending them into harm's way?

Mr. President, step up to the line. Tell us where you want to cut. Let us be responsible. Let us fund our men and women who are defending the interests of this country.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Under the previous unanimous consent agreement, the Senator from North Dakota is recognized for 45 minutes.

Mr. DORGAN. Mr. President, I shall not use the entire 45 minutes. Senator FEINSTEIN from California is here. I believe Senator BIDEN wishes to speak. I do want to call a couple of items to the attention of my colleagues and I do want to respond some to the comments that have been made this morning in the previous 45 minutes.

THE FEDERAL RESERVE BOARD

Mr. DORGAN. Mr. President, I wish to make a couple of comments, first, about the Federal Reserve Board and a piece in this morning's newspaper about the Federal Reserve Board and, second, about the issue of confirming U.S. judges. First, the Federal Reserve Board.

Page 1 references the story on page 2 about the Federal Reserve Board. Next Tuesday, the Federal Reserve Board is going to meet in secret and make a decision about whether or not it wants to increase interest rates in our country. Apparently 8 of the 12 regional Federal Reserve Bank boards have made a recommendation to the Federal Reserve Board that they ought to increase interest rates and somehow that was leaked to the press. ''Newspaper Story's Apparent Leak of Advice on Rates Shocks the Fed. Regional Banks' Opinions Are a Tightly Held Secret.''

Why is this interesting? Because next Tuesday the Fed will make a decision that will affect every single American. If they increase interest rates, they will tax every single American with

higher interest rate charges on their indebtedness. Will there be a debate about it? No. Will it be public? Will it be a democratic system? No. It will be done in secret, just as everything else is done in secret. That is why this story talks about the FBI being called out in other circumstances to find out who leaked information about what is happening at the Fed.

Why ought it be a crime to leak information? The American people ought to have information about what is happening in monetary policy. We ought to disinfect the Federal Reserve Board by opening the doors and providing some sunlight into their process, so the American people can become, at least in some minor way, a part of the process in determining whether this country ought to have higher interest rates.

I simply want to point out how incredible this story is, written by John Berry. John Berry always writes stories from the institutional side of the Fed. I do not know, if he stepped back, six or eight paces away, he would see the absurdity of this institution which is now a dinosaur, the last remaining dinosaur in Washington operating in secret behind closed doors with those who are coming from around the country, hired by their boards of directors in the regional Fed banks—the boards of directors are local bankers—coming to Washington, DC, to make public decisions about interest rate policy that all Americans will be confronting.

This obviously commends a much longer discussion than this. But next Tuesday the Federal Reserve Board, if it is thinking straight, will decide to just say no to higher interest rates.

Inflation is down one-tenth of 1 percent, announced last week. You can almost find no inflation in this economy. It is down 5 years in a row. Unemployment is down to 5.1 percent. The models that the Federal Reserve Board use simply are not working. They have always felt you cannot have lower unemployment because lower unemployment would mean higher inflation. Now they are scratching their heads, wondering how is this happening? How is it that unemployment has come down to 5.1 percent and there is no new inflation?

If the Fed would open its doors and send some of its folks around the country to talk to real people, they will find wage earners know what the Fed has not known for the last two decades. Wage earners know wages have not been going up, they have been going down. The pressure to create more inflation from higher wages is not happening in this global economy. The global economy and circumstances of our participation in it are pushing wages down, not up. It is time the Fed changes its models or goes out and talks to real American people about this and maybe they would come to the right conclusion next Tuesday.

FEDERAL JUDGES

Mr. DORGAN. One point about Federal judges. We are nearing the end of this congressional session. Some of us believe this Congress ought not adjourn until the majority party does for us what we did for them—yes, even in election years—and that is clear off the calendar and clear through the committee, judges, Federal judges that have been appointed by this President. The fact is, the record is not good. We have seen stutter-stepping and stalling. Some of us are going to decide, one of these days, nothing more is going to happen in this Senate until those many judges out there waiting for confirmation by this Senate are brought before this Senate for a vote.

DEFENSE POLICY AND DEFENSE SPENDING

Mr. DORGAN. Now, having said that, and there will be more discussion about that in future days, I want to turn just for a moment to the discussion we have seen on the floor of the Senate now for 45 minutes this morning.

Senators have every right to come to this floor and talk about defense policy, and the Senators who came are Senators for whom I have great respect. But I have real disagreement with those who would leverage the issue of American troops going in harm's way to the Persian Gulf this morning, leaving their loved ones because the Commander in Chief and our military people feel it is necessary to send them to the Persian Gulf. I have real concern about those who would leverage that with criticism of the President for his defense budget proposals just weeks before an election, in an obvious attempt to try to find a way to undermine President Clinton on this Senate floor. But it not only tries to pull the rug out from under President Clinton, I think it sends all the wrong signals at this moment as this country prepares to confront foreign policy initiatives that are serious.

The discussion on the floor is, ''President Clinton wants to cut defense spending.'' Let us look at the record just for a moment. Oh, the President has cut some in defense. I will give you an example of what he cut, he and Vice President GORE. There was a 16-page regulation on how to buy cream-filled cookies at the Pentagon. They cut that. It does not take 16 pages of regulations anymore to buy cream-filled cookies because this administration said that does not make any sense. That is nuts. Let us streamline all that.

They tried to buy $25,000 worth of ant bait to kill ants. It took them months and dozens and dozens of pages of regulations and forms. They cut that.

So, has the President wanted to cut some in defense? Yes—unnecessary regulations, unnecessary bureaucracy. It is about time. We ought to commend them for that, not criticize them.

Now, on the question of spending, what was sent to this Congress from the Defense Department? A budget. The cold war is over. The Soviet Union does not exist. And from the height of the cold war we are now spending less than we were spending then. Does anyone in this country think that we ought to spend now as much on military preparedness and defense as we did at the very height of the cold war? Does anyone believe that? Of course not. We are not at the height of the cold war. Things have changed. Defense spending has come down some—not a great deal, but some. So what is the debate?

The debate is this. The Pentagon prepares a budget. The uniformed personnel, the service Secretaries going through the White House, they prepare a budget, send it to the Congress, and they say: Here is what we think, as an Army, Navy, a group of Marines, and the Air Force, here is what we think is necessary to defend America. Here is what we think we must build, what we must spend. Here is what we think we must accomplish to defend America.

That budget came to this Congress, giving us the best recommendations of those who wear our uniform in this country, the generals and the admirals, the service Secretaries, saying here is what we want to defend America. But when it got here it was not enough. We had folks in this Chamber saying, ''You know, we think you are dead wrong. It is true we are the folks who stand up and boast every morning about how much we want to cut Federal spending, but we think you are wrong. We think, Mr. and Mrs. Pentagon, over there in that big building, we think you ought to spend $13 billion more. We think you ought to buy more trucks, more ships, more planes, more submarines. We think you ought to spend more money because we think you are wrong.''

Everybody has a right to his or her opinion on what it takes to defend this country. Everybody has a right to stand up and talk about that. I do not deny that. But I would like to talk about a couple of the specifics, because I think in many respects this has a whole lot more to do with politics than it has to do with policy. It has a whole lot more to do with elections than it has to do with the defense of this country. I want to run through just a couple of charts, because I think it is instructive on this issue.

One of the big items we have been debating is the issue of star wars. I know they do not like to call it that, but star wars. There is a proposal called the Defend America Act. Who on Earth can be opposed to defending America? The Defend America Act is to build an astrodome over America, an astrodome effect that would prevent missiles from coming in and hitting our country. We have already spent somewhere around $99 billion on research and development on missiles. We have built one ABM site—incidentally, we built it in my State. It was declared mothballed the very month it was declared operational, after the equivalent of today's $25 billion was spent on it. But we have people saying that it does not matter what the cost is, we need to build this.

The Congressional Budget Office says the proposal that they have been talking about here would cost up to $60 billion to build and up to $4 billion a year to operate. And, in a reasonable time period, would cost $116 billion. The question is, where does that come from? Senator Dole held a press conference about it, feeling—and it was in the Washington Post—feeling this would give him an edge in the election. This can be a wedge issue. We support defending America with the star wars program, somebody else does not, so therefore we are better than they are. At the press conference he was asked:

Senator, how much do you think this is going to cost? And where is the money going to come from?

Well, I'll leave that up to the experts.

The majority leader, asked the same question:

We'll have to look at that . . . I don't have a fixed number in mind.

I will tell you what it costs, $60 billion to build, $4 billion a year to operate. The question is where are you going to get the money, who is going to pay for it, but, more important, do we need it? What kind of system do we need for our defense?

The reason I mention this issue is this issue happens to be one which is a very large expenditure that is proposed for which there is no proposed method of payment. It is just saying: We are for defense and the other folks are not. I happen to think the defense of this country is critically important. I think there is a lot of waste in defense. But I have been on plenty of military bases and seen men and women wearing the uniform of this country who do some wonderful things, and who sacrifice greatly for this country. They ought to have the best equipment that we can purchase for them. They ought to fly the best airplanes we can purchase. I know, despite what a lot of people say about our Defense Department, I think we have the best defense system in the world by far.

We spend far in excess of any other country or group of countries combined. If you take all the NATO countries combined and throw all their defense expenditures into one pot, they don't measure up to our knees on defense expenditures. The fact is, we spend an enormous amount of defense money, far more than any other country in the world—far more than any other country in the world—and for anyone to say somehow those men and women and the equipment we buy don't measure up, I just don't think they understand.

The controversy has not been that somebody is weak on defense. The controversy is some see defense as a jobs program. I have come to the floor and said, ''Here are trucks the Pentagon said it didn't want that some insisted be built. Here are jet fighters the Pentagon didn't want to build that some in Congress insisted they build. Here are ships that the Defense Department said it didn't want to build at this point.'' The Congress said, ''You must build.''

I even found buried deep in the Defense authorization bill an authorization, I think, for $60 million to buy blimps. No hearings, no discussion, no debate, just somebody writing in, ''Let's buy blimps.'' Lord knows what they would buy blimps for, but buried deep in an authorization bill, ''Let's buy blimps.'' When the Defense bill is on the floor, the sky is the limit.

So the question is not for this President or for this Congress of whether we should have a strong defense, a defense this country can count on. The President wants that, I want that, all my colleagues want that. The question is, What kind of investments and expenditures will provide a strong defense?

Did it strengthen our country to have 16 pages of regulations to buy cream-filled cookies? I don't think so. I suppose you can make the case the person hired to interpret the regulations on how to buy cream-filled cookies was defending America. It seems to me they were defending cream-filled cookies. If we streamline that and that person is now doing something more meaningful in this country's defense, doesn't that strengthen defense?

I urge you to look at what this Vice President and this President have done in the area of reinventing Government and see what they have done in the Pentagon in streamlining rules and regulations, especially with respect to purchases and acquisitions. And if you are not impressed by that, you will not be impressed by anything.

This administration deserves credit for that. The fact is, the Pentagon is one of the largest organizations on this Earth, and like every large organization in the public or private sector, it has an enormous amount of bureaucracy and fat. And this administration has tackled that.

But the administration has done more than that. This administration has also proposed directed, specific investments in weapons programs and systems that will strengthen this country, and I think it ill behooves other Members of Congress to come to this floor and try to use this issue for leverage for an election. That is what this is about. This is not about troops moving to Iraq or the Persian Gulf today. It is about an election that is held in early November. When I heard that this morning, I thought, ''This needs a response. This really needs a response.''

I would like to just make a couple of other points. We are often, when we discuss these issues, having to economize, as is a classic case in the field of economics. We have to try to determine what are our wants and needs and what are our resources. The wants are almost unlimited and resources are limited. How do you respond to unlimited wants with limited resources? That is true in defense, and it is true in our entire budget.

I thought it was fascinating about a year ago when I was standing at this point in the well of the Senate, and we had conflicting proposals that I thought made it stark, as clear as it can be about priorities. We had a tiny little program called the Star Program, a tiny little program, and the proposal was, ''Well, let's cut star schools 40 percent,'' and then a big program called star wars, ''Let's increase star wars 120 percent.'' I can't think of anything clearer than where the priorities were for those who opposed it.

Is there a relationship between education and defense? You bet. Where do you think F–16's came from? Where do you think the stealth bombers came from? Where do you think the Patriot missile came from? It came from the product of this country's education and genius and people who invent, create, build, construct. That is where it all comes from.

My first job out of graduate school, after I got my MBA, was with the Martin Marietta Corp. I saw firsthand the marvels of engineering and the genius of invention in not only NASA but also defense programs with weapons systems. It is quite remarkable. But the Martin Marietta Corp. knew, as do most others in this country, that that starts with education.

You tell Americans that we will short change education and somehow we will be a stronger country, we will have a better defense, and most Americans will say, ''No, no, you're not thinking very straight.'' Thomas Jefferson once said, and I have quoted this many times and I will again because it is so important, ''Any country who believes it can be both ignorant and free believes in something that never was and never can be.''

So my point is we are hearing now today about criticism of a President who some believe has not proposed enough money for defense. We have, in fact, a President who has proposed a defense budget that represents what the armed services believes is necessary to defend this country and that makes some very important strategic investments in new weapons programs and new systems, and I think the budget the President proposed is a good budget. In fact, if you take a look at last year's Republican budget enacted by the Senate and take a look at the President's proposed budget and go to the outyears, 2000 and 2002, you will see the President is proposing higher defense spending than those who are now criticizing him. I don't understand that either.

So, there is more to say, I guess, but we will likely hear a great deal about this and a dozen other issues where someone thinks they might be able to drive a wedge between now and election day. It is important, I think, now, however, for us to decide that as troops go to the Middle East and as we as a country try to speak with one voice about our goals, we ought to decide that debate about defense policy is perfectly appropriate for all of us. But mingling a defense policy debate at this point with the discussion about the role of our troops, I think, is not

what we ought to do here in the Senate or elsewhere.

Mr. President, Senator FEINSTEIN is here and is prepared to speak, I believe, on this and another subject. I, at this point, yield the floor, and I may use some time later in the special order.

Mrs. FEINSTEIN. I thank the Senator from North Dakota. I also thank the Chair.

I must say, I came to this floor to speak for the fifth time about methamphetamine this morning. However, I happened to hear the preceding speakers, and I really want to identify myself with the comments just made by the Senator from North Dakota.

Even on this side of the aisle, there is legitimate difference about how much should be in the defense budget. I, for one, voted for more than the President put forward in his budget. I think that is legitimate, but I also think we should talk about it, and I think we should debate it.

However, it is clear to all of us, I think, that we are engaged in a military operation. Therefore, the lives of our pilots, of our men and women in the Armed Forces, and of innocent civilians are at risk.

I think during a military operation, an attack on the President, on the very policy that is determining that operation is, frankly, ill-advised, I think it is highly partisan, I think it could put American and other lives at risk, and, frankly, I think it is just plain tacky.

So I want to say that. I would be hopeful that during a time of some national emergency—and I think this operation does qualify—we can come together as Republicans and as Democrats to support the Commander in Chief of the United States of America, who happens to be the President, whether that President is Democratic or whether that President is Republican. I pledge as a Democrat that should the President be a Republican, I would do the same, because I think it is important.

COMPREHENSIVE METHAMPHETAMINE CONTROL ACT OF 1996

Mrs. FEINSTEIN. Mr. President, I come here because I have spoken on this floor five times about methamphetamine. There is good news. I think it is stellar news. It is how this body can work together to solve what is a very real problem in America. I mentioned before that methamphetamine has been a major problem in the State of California. As a matter of fact, the DEA has determined that California is the ''source country'' for methamphetamine, much like Colombia is for cocaine. In Operation Pipeline, conducted by the DEA, 92.8 percent of all methamphetamine seized in a national drug operation actually originated in California. Hospital admissions are up, way above that for cocaine. Deaths are up. Medical costs are up. Methamphetamine has become a real problem and a national emergency.

Last June and July—that is 1995—I wrote to the Attorney General laying out the vast extent of the methamphetamine problem in California and asking her for proposals to crack down on this trade, especially on the precursor chemicals used to make methamphetamine.

Over the ensuing months, my staff and I worked with prosecutors, narcotics officers, and the California Department of Justice, in a bipartisan way, to try to develop solutions. In February of this year, Senator GRASSLEY and I, along with Senator REID, introduced the Methamphetamine Control Act of 1996. We had a bipartisan group of Senators which also included Senator KYL. Representatives FAZIO and RIGGS in the House introduced the same bill.

In April, President Clinton announced his national methamphetamine strategy adding additional measures to attack meth. In July of this year, Senators HATCH, BIDEN, GRASSLEY, and I and others introduced the bill which was passed last night, incorporating our earlier proposals. Frankly, thanks to Chairman HATCH and Senator BIDEN, I think this is a much better bill than the original bill we introduced.

I note with some interest that yesterday was Senator GRASSLEY's birthday. How nice to have a birthday and at the same time to have a bill that you worked on which passed the Senate of the United States unanimously, and which will solve a major problem out there.

This would not have happened had it not been bipartisan. It would not have happened had it not been for the chairman of the Judiciary Committee and the ranking member of that committee coming together to work on a problem. A lot of staffs were involved across the aisle. I think they worked in the best bipartisan way this body can muster to solve a real problem. That is practical.

You know, I often hear a lot about ideology around here. I have never been in a place that is more partisan than around here. Yet, the fact of the matter is, some problems take very conservative solutions, some take more innovative solutions, and most take just plain sitting down at a table and working out a solution. And that is methamphetamine.

So last night the Hatch-Biden-Feinstein-Grassley bill, known as the Methamphetamine Control Act, was passed.

Among some of the things it does is it adds seizure and forfeiture authority for precursor chemical violations.

It provides for stiff escalating civil penalties for the reckless sale of chemicals used to manufacturer methamphetamine.

It gives the Attorney General the authority to shut down chemical supply houses which provide chemicals to clandestine methamphetamine manufacturers.

It provides for restitution for the cost of cleaning up clandestine methamphetamine labs, which runs about $7,000, $8,000 a lab.

It allows the Attorney General to require, by regulation, reporting the sales of ordinary, over-the-counter, pseudoephedrine-containing products in quantities above 24 grams. This is really important because as there are controls on ephedrine, pseudoephedrine, which goes into over-the-counter cold medication, developed as a major source for methamphetamine makers to buy. So they would go into something like a Long's drugstore that has maybe 30 feet of display space of over-the-counter cold medication and they would buy maybe 5,000 packages, everything they could get their hands on, ring it up, not have to give a name, address, a driver's license, anything, and walk out, open the packages or bottles, get children to open the blister packs, and go into their clandestine labs and make methamphetamine.

This bill cracks down on that. I have heard that Long's, for example, is interested in being part of a major education program, which is provided for in this bill, to educate people and their own retail outlets about what is happening in methamphetamine.

I am very proud to say that pharmaceutical houses, like Warner-Lambert, became solidly in support of this legislation once they understood what was actually happening with their products.

So I think this bill is a Republican win; it is a Democratic win. It is a good, strong, tough bill. Amazingly enough, 2 months before a Presidential election, on a bipartisan basis, it passed the Senate of the United States. We hope it will be marked up either today or tomorrow in the House of Representatives and we will get something done.

Mr. President, you are a Republican. I am a Democrat. I happen to think this is what the people of America sent us both here to do. So I would like to send my warm congratulations to Chairman HATCH, to Senators GRASSLEY, KYL, REID, most particularly to ranking member Senator BIDEN, whose staff worked very, very hard, and Senator HARKIN, who came aboard and was supportive early on. This is important legislation. Oh, and, Mr. President, my staff just told me, you are part of this effort as well. Let me salute you and say thank you. Californians are grateful, and I think all of America will be as well. Thank you very much.

Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMPREHENSIVE METHAMPHETAMINE CONTROL ACT OF 1996

FINDINGS

A. Methamphetamine is a very dangerous and harmful drug. It is highly addictive and is associated with permanent brain damage in long-term users.

B. The abuse of methamphetamine has increased dramatically since 1990. This increased use has led to devastating effects on individuals and the community, including:

1. A dramatic increase in deaths associated with methamphetamine ingestion.

2. An increase in the number of violent crimes associated with methamphetamine ingestion.

3. An increase in criminal activity associated with the illegal importation of methamphetamine and precursor compounds to support the growing appetite for this drug in the United States.

C. Congress finds that illegal methamphetamine manufacturer and abuse presents an imminent public health threat that warrants aggressive law enforcement action, increased research on methamphetamine and other substance abuse, increased coordinated efforts to prevent methamphetamine abuse, and increased monitoring of the public health threat methamphetamine presents to the communities of the United States.

TITLE I.—IMPORTATION OF METHAMPHETAMINE AND PRECURSOR CHEMICALS

Sec. 101. International coordination

The Attorney General shall coordinate international drug enforcement efforts to decrease the movement of methamphetamine and methamphetamine precursors into the United States.

Sec. 102. Long arm provision

Imposes a maximum ten-year penalty on the manufacture outside the United States of a list I chemical with intent to import it into this country, by adding list I Chemicals to 21 U.S.C. §959(a).

This provision also makes it a crime to manufacture or distribute a List I chemical aboard an aircraft or to possess a List I chemical aboard an aircraft with the intention to distribute it by adding List I chemicals to 21 U.S.C. §959(b) (1) and (2).

TITLE II.—PROVISIONS TO CONTROL THE MANUFACTURE OF METHAMPHETAMINE

Sec. 201. Trafficking in precursor chemicals: seizure and forfeiture of precursor chemicals (List I chemicals)

Will amend various provisions of the Controlled Substances Act and the Tariff Act of 1930 to permit seizure and forfeiture of List I chemicals, even if the individual or firm involved is a non-registrant, or by a registrant whose registration has expired or been revoked or suspended.

Sec. 202. Study and report on measures to prevent sales of other agents used in methamphetamine production

The Attorney General is required to conduct a study and report to Congress on possible measures to effectively prevent the diversion of red phosphorous, iodine, hydrochloric gas and other agents for use in the production of methamphetamine.

Sec. 203. Increased penalties for manufacture and possession of equipment used to make controlled substances

Increases the penalties for the possession of equipment used to make controlled substances to 10 years and a $30,000 fine for the first offense and 20 years and a $60,000 fine for the second offense. Requires the Sentencing Commission to ensure that the manufacture of methamphetamine in violation of this section is treated as a significant violation.

Sec. 204. Addition of iodine and hydrochloric gas to List II

Adds iodine and hydrochloric gas to List II. Exempts iodine from the importation provisions for listed chemicals, but allows the Attorney General to impose these limitations, if warranted, under the provisions of current law.

Sec. 205. Civil penalties for firms that supply precursor chemicals

Imposes civil penalties for the distribution of a laboratory supply to a person who uses, or attempts to use that laboratory supply to manufacture a controlled substance or a listed chemical, if the distribution is done with reckless disregard for the illegal uses to which a laboratory supply will be put.

The civil penalties provided for in this provision are:

A. Up to $250,000 for the first violation, and

B. $250,000 or up to double the last previously imposed penalty, whichever is greater, for any succeeding violation.

Sec. 206. Injunctive relief

The Attorney General may commence a civil action under 21 U.S.C. §843 for appropriate relief, including a temporary or permanent injunction to shut down the production and sale of listed chemicals by individuals or companies that knowingly sell precursor agents for the purpose of methamphetamine production.

Any person convicted of a felony violation of Sec. 402. of the Controlled Substance Act related to the receipt, distribution, manufacture, exportation or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than 10 years.

Sec. 207. Restitution for clean up of clandestine laboratory sites

The court may order restitution for the costs associated with the investigation and clean up of a clandestine methamphetamine laboratory.

In addition, the court may order restitution for any person injured as a result of the operation of a clandestine lab.

Sec. 208. Record Retention

The record retention requirements for list I and II chemicals are two years after the date of the transaction.

Sec. 209. Technical Amendments

This section corrects misspellings of chemicals in the Controlled Substances Act.

TITLE III.—INCREASED PENALTIES FOR TRAFFICKING AND MANUFACTURE OF METHAMPHETAMINE AND PRECURSORS

Sec. 301. Trafficking in methamphetamine

Sentencing scheme shall be comparable to crack cocaine: 5 g pure methamphetamine=5 year mandatory minimum term (5–40 years); 50 g pure methamphetamine=10 year mandatory minimum term (10-life).

Sec. 302. Illegal sale of listed chemicals

Increases the penalties for trafficking in listed chemicals to the penalty corresponding to the quantity of controlled substance that could reasonably have been manufactured according to a table to be developed by the Sentencing Commission.

Sec. 303. Enhanced penalty for dangerous handling of controlled substances: Amendment of sentencing guidelines

Requires the Sentencing Commission to determine whether current sentencing guidelines adequately punish violation of environmental laws during the operation of clandestine labs. If punishment is not adequate, the Sentencing Commission is required to promulgate guidelines or amend existing guidelines to provide an appropriate enhancement of the punishment for a defendant convicted of such an offense.

TITLE IV.—LEGAL MANUFACTURE, DISTRIBUTION AND SALE OF PRECURSOR CHEMICALS

Sec. 401. Retail Sales

Lawfully manufactured drug products are exempt from regulation unless the Attorney General finds a need to control them because of their diversion.

Reduces the single transaction reporting requirements for all retail sales other than ordinary over-the-counter pseudoephedrine and phenylpropanolamine containing products from 1,000 grams to 24 grams.

Defines ordinary over-the-counter pseudoephedrine or phenylpropanolamine products as those sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, that is packaged in blister packs when technically feasible, each blister containing not more than two dosage units.

Except as defined below, the sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by a retail distributor shall not be a regulated transaction.

The Attorney General may, following documentation that ordinary over-the-counter pseudoephedrine and phenylpropanolamine-containing products purchased via retail sales constitute a significant source of precursor substance used in the illegal manufacture of a controlled substance, establish by a notice, comment and an informal hearing a single-transaction limit of 24 grams of pseudoephedrine or phenylpropanolamine base.

Any business or individual that violates the single transaction limit, if established, will receive a warning letter from the Attorney General for the first violation and, if a business, shall be required to conduct mandatory education of the sales employees of the firm with regard to the legal sales of pseudoephedrine. For any second violation occurring within 2 years of the first violation, the business or individual shall be subject to civil penalty of not more than $5,000. For any subsequent violation occurring within 2 years of the previous violation, the business or individual shall be subject to a civil penalty not to exceed the amount of the previous civil penalty plus $5,000.

Sec. 402. Mail Order Restrictions

Each regulated person or entity who engages in a transaction by mail with a non-regulated person involving ephedrine, pseudoephedrine, or phenylpropanolamine shall, on a monthly basis, submit to the Attorney General a record of each such transaction conducted during the previous month.

TITLE V.—EDUCATION AND RESEARCH

Sec. 501. Methamphetamine Interagency Task Force

Creates a Methamphetamine Interagency Task Force, headed by the Attorney General with DoJ, HHS and non-governmental experts in drug abuse prevention and treatment. This task force will be responsible for designing, implementing, and evaluating methamphetamine education, prevention and treatment practices and strategies.

Sec. 502. Public Health Monitoring.

Requires the Secretary, HHS to develop a public health monitoring program to monitor methamphetamine abuse in the United States. The program will include collection and dissemination of data related to methamphetamine abuse, which can be used by public health officials in policy development.

Sec. 503. Public-Private Education Program

Develop a Methamphetamine National Advisory Panel to develop a program to educate wholesale and retail distributors of precursor chemicals and supplies in the identification of suspicious transactions and their responsibility to report such transactions.

Sec. 504. Suspicious Orders Task Force

Establishes a Suspicious Orders Task Force to develop a proposal to define suspicious orders of listed chemicals and to evaluate proposals for the development of an electronic system for registrants to report suspicious orders.

Mrs. FEINSTEIN. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the call for the quorum be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. I understand there are 14 minutes left on this side.

The PRESIDING OFFICER. There are 13½ minutes left.

Mr. FORD. So, 13½ minutes. I yield myself as much time as I might use.

The PRESIDING OFFICER. The Senator from Kentucky.

EDUCATION IN AMERICA

Mr. FORD. Coming from Kentucky, and I guess in some other States, we have heard about midnight conversions or death-bed conversions. ''I've seen the light. Everything's going to be all right.'' Lo and behold, we found for a long time that this side of the aisle has been pushing for additional funding for education. And I read in the morning paper where there was a midnight conversion. Somebody has been reading the polls.

For the first time in a Presidential campaign, education is No. 1—No. 1. So rather than going out with a whimper, Republicans want to close this session down with a bang. It is not enough. If you read the stories in the press, the Republicans were forced into putting this money in the budget by Democrats. That is the story. That is the story.

The midnight conversion was one we have been pushing hard, trying to get our amendment up yesterday, were refused, objected to, everything, because you did not want Democrats to offer their amendment yesterday. That is parliamentary procedure. I understand it. Every Senator in here understands it. I think the public understood it.

So now the $2.3 billion or whatever the Republicans tried to put in last night in their midnight conversion, we think, is not enough. It should be a little over $3 billion. I hope that the Senate will allow us to vote on that amendment.

We are getting to a point now where we cannot get appropriations bills out. It is not our fault. We are left out. We have bills that are coming up here that only the Republicans have dealt with—Democrats have never been called into the room. That is the way it has happened for over 18 months now. Somebody said, ''Why should Democrats be in?'' Some old fellow in the back said, ''Well, a blind hog finds an acorn once in a while.''

Maybe, just maybe, they would have a good idea. A good idea has been education. I do not know who said it, but I want to tell you I will remember it as long as I live: A cut in education never heals—a cut in education never heals. That is what has happened here. The Republicans cutting education, that wound will never heal. I do not care how you try to paint it, how you try to phrase it in a 30-second ad, how the incumbents and challengers try to play it back home, that cut that was out there will never heal. The people will remember how you wanted to cut education.

Mr. President, I am delighted that the Republicans were converted last night. I am glad the death-bed conversion worked because at least we are a little over $2 billion closer to what the administration feels and we on this side feel should be available for education. It used to be, and now I think it is a foregone conclusion, that a high school education is not enough.

We worked hard in Kentucky with KET, with the Star Program, to get KET by television. It worked well. Practically every State in the Nation picked up on it, the Star Program, so that everybody would have an opportunity, even if they worked, they could stay at home and get their GED. I do not know how many tens of thousands of GED certificates were given as a result of the Star Program. It all came from Kentucky educational television. It was the pilot project that spread across this country.

Now the President says that 2 years of college, 2 years of college ought to be the norm. We hear all about this tax cut. I do not hear much about it now; it has kind of faded away—15 percent tax cut. For an individual making $200,000, your tax cut at the period of time proposed in the tax cut is $28,900. That is annual. That will put 19 students through the community college if my hometown. So we give one individual making over $200,000 a year, the equivalent of giving 19 students their tuition, getting them through community college.

I do not think Government ought to be in everything. I think they ought to be out of most things. But we have to give some leadership, and education is leadership in this country. The people understand it, constituents understand it, and, lo and behold, Republicans found out about it last night.

So as you read the story where Democrats forced Republicans to add over $2 billion in education, that is the story. They are cutting. The cut in education never heals, and the cut that was attempted in education under the Republican budget, under the Republican appropriations bill, that cut will never heal because the people will remember what was attempted to do.

Mr. President, I hope we will be able to bring our amendment up, and we will be able to offer it as we wanted to and which we were precluded. When you ask unanimous consent that your amendment be brought up and it is objected to, everybody understands that. You think it does not resonate beyond this Chamber? Of course it does. People that watch C–SPAN understand who is preventing the amendment to come forward to improve education, so that they, being the Republicans, could make their effort last might and make some headlines today. Read the story—the Democrats forced them to do it. The Democrats forced them to do it.

Mr. President, I am pleased at the movement in the right direction. I hope we can do a little bit more so that those students out there in my State and your State and other States will have an opportunity for education and will not continue to burden the families with the borrowing of money and the struggling in order to see that their family is educated.

I yield the floor.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from North Dakota.

FEDERAL JUDGES

Mr. DORGAN. Mr. President, let me take the remaining couple of minutes of morning business to further amplify about the number of judges we need still to clear. We have on this calendar six judges, four of them appeals judges, two district court judges. There is pending in the Judiciary Committee 22 judges, 4 appeals judges, and 17 district judges. In the last 40 years, Congress has never adjourned, ever, without confirming at least one Federal appellate court judge, and some are saying that will happen now. This would be most unfortunate.

Many of us have sent a letter on September 16 making this point. This confirmation process on judges has virtually ground to a halt. That is unfair. It is unfair to the judges that have been appointed and are awaiting confirmation. It is unfair to the Federal court system, unfair to the American people. This is only about politics—only about politics.

Now, the statistics are quite clear. In election years previously when we controlled the Senate, we did not do this. We pushed through a substantial number of judges. If you compare the numbers—I invite anybody to compare the numbers—what we see this year is a very few judges confirmed and many left on the calendar, with some proposing that that is it, we will not have time to do them, or refuse to do them, or will not do them. I think that is not fair to those awaiting confirmation or to the American people.

We have confirmed fewer than 20 district court judges and not a single appellate judge during this session of Congress. The number of confirmations—in our letter, we point out—even in past Presidential election years far exceeded what we are experiencing today. For example, the Senate confirmed an average of almost 55 Federal judges, including 10 appellate judges annually in the years 1980, 1984, 1988, 1992. In each of these years, the Senate Congress confirmed no fewer than seven appellate court judges. In our letter, we write, ''Have circumstances changed so dramatically that the Senate would now turn its back on our rich tradition of bipartisanship in appellate court confirmations?''

I hope things have not changed that much. Circuit court dockets have grown by over 20 percent in the last 5 years, we are told by the judiciary. So the failure to do this is not just a political failure, but it is a failure that has profound impact on the Federal court system. To our knowledge, none of the nominees that are awaiting action on the floor have been opposed by any member of the Judiciary Committee for any ideological reasons. Some of us, who believe that the Senate ought to complete its work on this, simply say, let us have votes on these confirmations. The names are here, the nominations have been made, and the candidates are available.

There was a need for these judges to be placed in the Federal judiciary, and this Senate has a responsibility to act. As I said previously, this is not a circumstance that existed in prior years. But this year it has been like pulling teeth to get any judgeships through this Senate, because some believe that since they control the Senate, there should be no judges appointed by an opposing party. It reminds me of the line-item veto legislation, which I supported for years in the House, and I supported it here. We passed it here, and the majority party said they wanted it, but they did not want this President to have it during his term. We passed it, but they prevented President Clinton from having it this year. They control the Senate, and they were able to do that.

That didn't make much sense to me. Nor does this make any sense to me. Let's confirm judges. That's our job and our responsibility. It doesn't matter who is President; appointments come and confirmations ought to be made. This Senate ought to act.

So if there are those who think we are going to adjourn and slap each other on the back and thank each other for a job well done and leave all these judgeships in the lurch, for political reasons, they need to think again, because a fair number of us will insist that we do our work before we adjourn.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL AVIATION REAUTHORIZATION ACT OF 1996

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1994, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1994) to amend title 49, United States Code, to reauthorize programs of the Federal Aviation Administration, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Chafee amendment No. 5361, to remove certain provisions with regard to FAA's authority to regulate aircraft engine standards.

Simon/Jeffords amendment No. 5364, to amend the Employee Retirement Income Security Act of 1974 with respect to the auditing of employee benefit plans.

AMENDMENT NO. 5364

The PRESIDING OFFICER. The pending question is the Simon amendment No. 5364.

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order for not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOWARD O. GREENE

Mr. BYRD. Mr. President, I rise today to pay tribute to a true professional, a loyal public servant, a staff member and Senate official who has served the Senate with allegiance and honor during his 28 years of working for this body, in this body, and with this body—Howard O. Greene.

It isn't enough that we say in our hearts
That we like a man for his ways;
And it isn't enough that we fill our minds
With psalms of silent praise;
Nor is it enough that we honor a man
As our confidence upward mounts;
It's going right up to the man himself
And telling him so that counts.
Then when a man does a deed that you really admire,
Don't leave a kind word unsaid,
For fear to do so might make him vain
Or cause him to lose his head;
But reach out your hand and tell him, ''Well done'',
And see how his gratitude swells;
It isn't the flowers we strew on the grave,
It's the word to the living that tells.

Yesterday, a goodly number of Senators on both sides of the aisle expressed their word to the living. Howard Greene served the Senate since 1968 as a door messenger, a Cloakroom assistant, the Assistant Secretary for the Minority, Secretary for the Majority, Secretary for the Minority, and most recently as Senate Sergeant at Arms.

Now, these are the bare facts about Howard Greene's Senate career. But there is much more than one could say about Howard Greene's work. Over the years, I found him to be an individual of unfailing courtesy and cooperativeness, one who was always respectful of the Senators on this side of the aisle as well as those on the other side. His word was always his bond, and that counts a great deal in this day and time. He was a man of strict principle in this Chamber, and absolute dedication to duty, dedication to his party, dedication to the Senate.

He carried out his many responsibilities in the various Senate offices which he held with distinction and uncommon integrity. He unfailingly presented his views in an objective and straightforward manner.

During my years in the majority as leader of my party, and during my years in the minority as leader of my party in the Senate, I always found Howard Greene to be trustworthy, forthright, straightforward, honest. It was not just a job for Howard Greene; it was a calling. He literally devoted his life to this institution. And so today, he richly deserves all of the accolades of yesterday, when a resolution commending him for his outstanding service and an outstanding career was adopted by the full Senate.

He will be missed on both sides of the aisle. I will miss him, and he will be missed on a personal and on a professional basis. I wish him all the best in his future endeavors, and I hope that he will come around and see his old friends.

I consider him to be my friend. Friendship crosses the aisle, friendship crosses party lines. ''He that hath friends must show himself friendly.''

I say to my true and dear friend, JOHN CHAFEE, a Republican Senator from the State of Rhode Island, who is my friend, has been my friend, and will always be my friend, that we should treasure friendships. I treasure a friend and a friendship like that of Howard Greene.

I shot an arrow into the air,
It fell to earth, I knew not where;
For, so swiftly it flew, the sight
Could not follow it in its flight.

I breathed a song into the air,
It fell to earth, I knew not where;
For who has sight so keen and strong,
That it can follow the flight of song?

Long, long afterward, in an oak
I found the arrow, still unbroke;
And the song, from beginning to end,
I found again in the heart of a friend——

Howard Greene.

Mr. President, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I thank the distinguished senior Senator from West Virginia for the very kind comments that he made about the friendship that we have had. I am here now in my 20th year, and as I look back on the individuals I have known here and the friends I have had and the respect I have for them, there is none that stands higher than the distinguished senior Senator from West Virginia, who I feel lucky to have known. We have worked together on issues. Sometimes we have been in opposition on issues, I will confess to that, but never with rancor and always with friendship and always with, certainly from my point of view, respect, and I would like to believe the respect was mutual.

I am absolutely confident that there is no tribute that Howard Greene has received on this floor that will mean more to him than the one he has received from the distinguished senior Senator from West Virginia, because he has, as do all the Members on this side and all the Members of the Senate, tremendous respect and affection for the gentleman who once upon a time was majority leader, and he has been minority leader. He has had every post in

the Senate. And Howard Greene, I know, will be very, very pleased to receive the accolades that came from the distinguished senior Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Rhode Island for his kind remarks. He is a gentleman, and his high dedication to purpose is worthy of adulation and emulation. I shall always treasure our associations over the years, and I look forward to the future years of service with my friend, John CHAFEE.

Mr. CHAFEE. Mr. President, again, I thank the Senator and say how flattered I am by the kind comments that the Senator from West Virginia made about me.

FEDERAL AVIATION REAUTHORIZATION ACT OF 1996

The Senate continued with the consideration of the bill.

AMENDMENT NO. 5361

Mr. CHAFEE. Mr. President, I call now for my amendment No. 5361.

The PRESIDING OFFICER. The Senator has that right. It is now the pending question.

AMENDMENT NO. 5361, AS MODIFIED

Mr. CHAFEE. Mr. President, I ask unanimous consent to modify my amendment, and I send that modification to the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 5361), as modified, is as follows:

Page 78, line 12, strike ''and aircraft engine emissions,''.

Page 78, line 19 through 24, strike all of paragraph (C) and insert the following:

(C)(1) The Environmental Protection Agency shall consult with the Federal Aviation Administration on aircraft engine emission standards.

(2) The Environmental Protection Agency shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety.

(3) The Administrator, as the Administrator deems appropriate, shall provide for the participation of a representative of the Environmental Protection Agency on such advisory committees or associated working groups that advise the Administrator on matters related to the environmental effects of aircraft and aircraft engines.

Mr. BAUCUS. Mr. President, I am pleased that we have been able to reach an agreement with the managers on this issue. The amendment offered on behalf of Senator CHAFEE and myself corrects language in the bill that creates overlapping authority in the EPA and the FAA, conflicting regulations, and fiscal waste.

The result of the Commerce Committee's proposal contained in S. 1994 would have been confusion and uncertainty for the airline industry, and unnecessary burdens for the taxpayers.

Let me explain the situation briefly. The Clean Air Act Amendments of 1990 require the EPA to set emission standards for new aircraft engines. The bill before us, however, grants the FAA the very same authority. Thus, two different agencies would have the same authority.

With all the effort by this administration and Congress to downsize the bureaucracy and trim agency budgets, I don't think the committee intended this duplication. The Secretary of Transportation acknowledges that, if this provision became law, the FAA would have had to develop the expertise and capacity to set emission standards. So this bill would have required an entirely new office, with a new budget and new workers all to do a job already being done by the EPA.

This just didn't make sense. The FAA is now straining to meet its basic responsibilities in aviation security and safety. We should not divert them from those critical missions by forcing them to duplicate work already being performed by another agency.

Mr. President, this amendment corrects the situation by eliminating the provision in S. 1994 which creates the FAA's duplicate authority over emission standards. I'm pleased that the compromise we reached with the managers also requires greater cooperation between the two agencies by directing the EPA to consult with the FAA prior to setting new emission standards for aircraft engines. The amendment also allows the FAA Administrator to include representatives from the EPA on advisory committees that deal with issues of aircraft standards.

This should facilitate coordination between EPA, the FAA and interested parties early in the development of any future regulations.

In conclusion, I believe this amendment makes good sense all around. It protects the taxpayer by eliminating unnecessary bureaucracy and duplication. It encourages better dialogue between government and industry. And it avoids any weakening of our environmental standards.

I'm pleased the managers of the bill have accepted the amendment and I thank them for their willingness to work with us on this important issue.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I thank the Senator from Rhode Island for his cooperation and the modification of his amendment. As far as this Senator is concerned, as far as our side is concerned and the administration is concerned, his modification makes his amendment now acceptable.

The chairman of the subcommittee, Senator MCCAIN, is working on one other amendment. We feel we are ready to go at some point with your amendment, which will be accepted, I am sure. I do thank him, again, for his cooperation and congeniality.

Mr. CHAFEE. Mr. President, let me express my appreciation to the distinguished Senator from Kentucky for his help on this and also Senator MCCAIN, the floor manager of this legislation. This is something that has been worked out. Amazingly enough, we seem to have everybody satisfied. Having seen these things in the past, I am a great believer in getting things done, if we can.

I will suggest the absence of a quorum and see perhaps if we can get Senator MCCAIN here just briefly and get this one accepted, if it is agreeable. If there is no other business, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered.

Mr. FORD. As far as Senator Chafee's amendment is concerned, now, as modified, this side has no objection.

Mr. MCCAIN. Mr. President, we have no objection to the amendment. But also I would like to thank Senator CHAFEE. He is the watchdog in this body for environmental issues. I am very grateful that he would reach this compromise so that we can move forward with the bill. Frankly, I think the bill will be stronger now that we have his seal of approval. So we have no objection.

The PRESIDING OFFICER. The question occurs on agreeing to the amendment No. 5361, as modified.

The amendment (No. 5361), as modified, was agreed to.

Mr. MCCAIN. I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now occurs on the Simon amendment No. 5364.

Mr. FORD. Mr. President, I ask unanimous consent that the Simon amendment be set aside temporarily.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Again, I want to express my appreciation to Senator MCCAIN and Senator FORD for their assistance in this, also the folks from the FAA and EPA. I think we have worked out a good solution here, and I am very pleased with that.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, we sometimes appear not to be working as it relates to the camera in the Senate Chamber. However, those that have been observing from the balcony and those who are staff and Senators will understand we have been working feverishly for about the last 2 hours in order to accommodate Senators who have amendments that are reworded and so forth so that we might move forward with legislation that is meaningful and that is doable.

I thank the distinguished Senator from Rhode Island, Senator CHAFEE. We arrived at an agreement and modified his amendment and we were able to accept that.

I want everyone to know we have been working hard to put this piece of legislation together. It is important. Hopefully, we will be able to finish by 2 o'clock.

AMENDMENT NO.5359

(Purpose: To express the sense of the Senate regarding acts of international terrorism)

Mr. FORD. Mr. President, I call up amendment 5359, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. REID, proposes an amendment numbered 5359.

Mr. FORD. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) there has been an intensification in the oppression and disregard for human life among nations that are willing to export terrorism;

(2) there has been an increase in attempts by criminal terrorists to murder airline passengers through the destruction of civilian airliners and the deliberate fear and death inflicted through bombings of buildings and the kidnapping of tourists and Americans residing abroad; and

(3) information widely available demonstrates that a significant portion of international terrorist activity is state-sponsored, -organized, -condoned, or -directed.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that if evidence establishes beyond a clear and reasonable doubt that any act of hostility toward any United States citizen was an act of international terrorism sponsored, organized, condoned, or directed by any nation, a state of war should be considered to exist or to have existed between the United States of America and that nation, beginning as of the moment that the act of aggression occurs.

Mr. FORD. Mr. President, this is a sense of the Senate as it relates to evidence established relating to hostilities toward any U.S. citizen as it relates to the airlines. I believe this amendment is cleared and we can move forward.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5359) was agreed to.

Mr. FORD. I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

AMENDMENT NO. 5369

(Purpose: To provide for additional days for comment for proposed regulations establishing special flight rules in the vicinity of Grand Canyon National Park)

Mr. FORD. Mr. President, I send an amendment to the desk for immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BRYAN, proposes an amendment numbered 5369.

Mr. FORD. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . SPECIAL FLIGHT RULES IN THE VICINITY OF GRAND CANYON NATIONAL PARK.

The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall take such action as may be necessary to provide 30 additional days for comment by interested persons on the special flight rules in the vicinity of Grand Canyon National Park described in the notice of proposed rulemaking issued on July 31, 1996, at 61 Fed. Reg. 40120 et seq.

Mr. FORD. On behalf of Senator BRYAN, this amendment relates to flying over the Grand Canyon National Park. I believe this is also agreed to.

The PRESIDING OFFICER. Is there debate on the amendment?

Without objection, the amendment is agreed to.

The amendment (No. 5369) was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 5372

(Purpose: To prohibit the Surface Transportation Board from increasing user fees)

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. DORGAN, for himself and Mr. PRESSLER, proposes an amendment numbered 5372.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following: ''Notwithstanding any other provision of law, the Surface Transportation Board shall not increase fees for services in connection with rail maximum rate complaints pursuant to 49 CFR Part 1002, STB Ex Parte No. 542,''.

Mr. FORD. Mr. President, I ask unanimous consent that Senator PRESSLER be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, this is an amendment relating to increasing fees in connection with rail rates. I believe this is agreed to.

The PRESIDING OFFICER. Is there debate on the amendment?

Without objection, the amendment is agreed to.

The amendment (No. 5372) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 5371

(Purpose: To assure adequate resources for the Essential Air Service program)

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. EXON, for himself, Mr. DASCHLE, Mr. DORGAN, and Mr. PRESSLER, proposes an amendment numbered 5371.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 95 at the end of line 11 insert the following new sentence: ''Services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services which are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off nor land in the United States.''

Mr. FORD. Mr. President, I ask unanimous consent that Senator DASCHLE, Senator DORGAN, and Senator PRESSLER, be added as cosponsors of this amendment by Senator EXON.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. I believe this amendment is also agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5371) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 5368

Mr. MCCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. DOMENICI, proposes an amendment numbered 5368.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 119, line 1, strike all after ''activities'', through ''collections'' on line 2.

Mr. DOMENICI. Mr. President, my amendment would make a technical change to a provision contained in the bill regarding the budgetary treatment of certain fees. The amendment would not change the budget scoring of the bill by the Congressional Budget Office, nor would it change the budget treatment of the user fees created in the bill for international overflights.

The amendment has been cleared by both managers of the bill and I urge its adoption.

Mr. McCAIN. Mr. President, this is a technical amendment that has to do with offsetting budgetary considerations. It is acceptable to both sides. I have no further comment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5368) was agreed to.

Mr. McCAIN. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCAIN. Mr. President, I ask unanimous consent for the consideration of an amendment by Senator HELMS, and I ask unanimous consent because this amendment by Senator HELMS had been intended to be included in the package last night. We neglected to do so by oversight. So, again, I ask unanimous consent that an amendment by Senator HELMS be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 5377

(Purpose: To provide for the transfer of the United States' interest in the Hickory, North Carolina Air Traffic Control Tower.)

Mr. McCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. HELMS, for himself and Mr. PRESSLER, proposes an amendment numbered 5377.

Mr. McCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. 41 . TRANSFER OF AIR TRAFFIC CONTROL TOWER; CLOSING OF FLIGHT SERVICE STATIONS.

(a) HICKORY, NORTH CAROLINA TOWER.—

(1) TRANSFER.—The Administrator of the Federal Aviation Administration may transfer any title, right, or interest the United States has in the air traffic control tower located at the Hickory Regional Airport to the City of Hickory, North Carolina, for the purpose of enabling the city to provide air traffic control services to operators of aircraft.

Mr. McCAIN. Mr. President, this amendment by Senator HELMS has to do with flight service stations and an air control tower. It is acceptable by both sides.

I have no further comment on the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment is agreed to.

The amendment (No. 5377) was agreed to.

Mr. McCAIN. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCAIN. Mr. President, Senator ROTH will be coming to the floor momentarily to propose an amendment, which is without controversy. We are ready to accept that amendment. That will leave us with three amendments remaining—one by Senator BROWN of Colorado, one by Senator GRAHAM of Florida, and one by Senator SIMON of Illinois.

We are in the process of working out language on these three final amendments, and I am hopeful that following Senator ROTH's statement, within a very short period of time, we will have completed all pending amendments on this bill. We will then be prepared to move to third reading and a vote, and that decision is to be made by the majority leader and Democratic leader.

Until Senator ROTH arrives and we finish working out this language, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Delaware is recognized.

AMENDMENT NO. 5370

(Purpose: To provide for expenditures from the Airport and Airway Trust Fund)

Mr. ROTH. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. If there is no objection, the SIMON amendment will be set aside. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Delaware [Mr. ROTH], for himself and Mr. MOYNIHAN, proposes an amendment numbered 5370.

Mr. ROTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

TITLE—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

SEC. . EXPENDITURES FROM AIRPORT AND AIRWAY TRUST FUND.

Section 9502(d)(1) of the Internal Revenue Code of 1986 (relating to expenditures from Airport and Airway Trust Fund) is amended by—

(1) striking ''1996'' and inserting ''1997''; and

(2) inserting ''or the Federal Aviation Reauthorization Act of 1996'' after ''Administration Authorization Act of 1994''.

Mr. ROTH. Mr. President, this bill calls for expenditures from the airport and airway trust fund. The airport and airway trust fund is governed by the Internal Revenue Code which is exclusively within the jurisdiction of the Finance Committee. Therefore, at the request of the Commerce Committee, Senator MOYNIHAN and I are offering an amendment to modify the Internal Revenue Code in order to allow expenditures from the airport and airway trust fund as provided in this bill. I am pleased to take action today to ensure continued funding for the airway system, particularly in light of current security and system concerns.

It is my understanding that this amendment has been cleared on both sides of the aisle and there is no objection to it.

I yield the floor.

Mr. FORD. Mr. President, this side has no objection. We accept the Senator's amendment and thank him for his interest.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 5370) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote.

Mr. McCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCAIN. Mr. President, I thank the distinguished chairman of the Finance Committee while he is in the Chamber. This legislation has a lot of implications associated with it concerning the way we are going to fund the Federal Aviation Administration, and a great deal of what is going to happen in the future falls under the authority of the Finance Committee. I thank Senator ROTH for his cooperation, for joining us in an effort at reforming the Federal Aviation Administration financially and for finding ways that we can fully fund it. I believe we could not have done so without the spirit of cooperation that he and his staff have displayed.

I thank the Senator from Delaware.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Let me join my colleague in complimenting Senator ROTH. I believe it was almost unanimous among

those Senators who were here last night who were very concerned about the so-called ticket tax expiring on December 31 and going through a 10-month hiatus as we had, and it was finally worked out. Many of our colleagues are going to be asking about additional security operations, new and innovative ideas, new machinery, LOI's, letters of intent, that we have on airports, things of that nature.

I encourage the Senator, if he could, to find a way in his good work to see if there is something we could do to extend the so-called ticket tax until such time as a report comes back with suggestions from the group on how to finance FAA. I think it would meet with a great many accolades and applause, and so forth, if he could do that.

Many of us have projects that are ongoing, and many of us have letters of intent. I do not want any Senator to look at me and say, ''Where is the money?'' and I did not make every effort to try to accomplish that. So I say that to my friend in a spirit of cooperation.

Mr. ROTH. Mr. President, I agree with my distinguished colleague as to the urgency for action in this area, and the desire for the Finance Committee to move expeditiously on the tax matters. I have to say, like the Senator from Kentucky, I am very concerned about the security of the airports and want to work very closely with the Commerce Committee in assuring it is adequate, and that whatever financing is necessary becomes available.

I yield the floor.

EMERGENCY REVOCATION AMENDMENT TO S. 1994

Mr. INHOFE. Mr. President, I had intended to offer an amendment regarding the Federal Aviation Administration's [FAA] emergency revocation powers; however, after conferring with the chairman and ranking member I have withdrawn my amendment because they have agreed to work with me on this issue in the 105th Congress.

Aviation safety not only requires consistent diligence, but also balance. It is balance that my amendment sought to achieve between the rights of the airmen to use their certificates and the need for the FAA to immediately revoke the certificates of unsafe operators. Over the past several years we have witnessed a sharp increase in the number of emergency revocations. In an revocation action, brought on an emergency basis, the airman or other certificate holder loses the use of the certificate immediately, without an intermediary review by an impartial third party. The result is that the airman is grounded and in most cases out of work until the issue is adjudicated.

My amendment would have established a procedure whereby the airman could request a hearing before the NTSB Board on an expedited basis to determine if a true emergency existed and therefore justified the immediate revocation of the airman's certificate. If the NTSB decided no emergency existed, then the airman could have use of his certificate while the FAA pursued their case against the airman. If the NTSB decided an emergency existed then the revocation would remain in effect until the case could be fully adjudicated.

Given the chairman's assurances of his willingness to work with me on this issue in the 105th Congress, I have withdrawn my amendment and look forward to working him and the ranking member to address this problem.

Mr. PRESSLER. Mr. President, if the Senator will yield, I want to assure him that it is my intention that the committee work closely with him on this issue.

Mr. McCAIN. If the Senator will yield further, I concur with Chairman PRESSLER and want to add my assurances that the Subcommittee on Aviation will throughly examine this issue through the hearing process in the 105th Congress.

Mr. HOLLINGS. If the Senator will yield, I too want to assure the Senator from Oklahoma that we will work with him to address the problem he has highlighted.

Mr. FORD. If the Senator will yield, I agree with the chairman that we should review this issue more closely in the 105th Congress.

Mr. INHOFE. I thank the chairmen and ranking members. I appreciate their willingness to not only discuss this issue but to come to some resolution.

Mr. BURNS. I join my colleagues in calling for hearings on this important issue. This issue deserves our immediate attention and I look forward to working with the chairman in developing a record on this issue.

THE ''AGE 60 RULE''

Mr. SIMPSON. Mr. President, I should like to address a critical issue that is very familiar to Members of this body who have been involved with the Federal Aviation Administration—it is the ''age 60 rule.'' In 1959, the FAA implemented a regulation to prohibit pilots, having reached the age of 60, from flying jets regulated by part 121 of the FAA regulations—that is, passenger-carrying jets with more than 30 seats. This year, the FAA has extended that ban to include commuter jets with more than 10 seats.

I do not want to hold up this very important bill in order to carry out a lengthy debate on whether or not the ban is justifiable. I am not here to overturn that rule. Indeed, few of us here would be in any way qualified to do such a thing. Instead, I believe the FAA must certainly be willing to treat pilots over the age of 60 in a manner that is fair and consistent with its treatment of other pilots.

The FAA, acting in the interest of public safety has concluded that pilots—however experienced they may be—over the age of 60 should not be allowed to fly. I would submit, however, that this conclusion has not been supported through any independent study. It can not be accurately studied because no U.S. pilot over the age of 60 has been allowed to fly ''part 121'' aircraft at any time during the last 36 years.

In light of this situation, the judiciary—in a number of cases, but notably in the October 31, 1990 Baker versus FAA (7th Circuit Court of Appeals)—has upheld the FAA's position for the reason, as they stated, that the issue of age discrimination is clearly subordinate to that of passenger safety. The court did point out, however, that one of the FAA's own studies on flight time for class III pilots indicated that pilots between 60 and 70 with more than 1,000 hours of total flight time and more than 50 hours of recent flight time had the lowest accident rates of any age group of pilots.

In conclusion, the court admitted that these pilots face a catch 22 in that they are unable to obtain exemptions from the age 60 rule until they can show they can fly large passenger aircraft safely, yet they cannot show such ability until they obtain an exemption. In the end, the court affirmed the FAA's order, saying, ''it is supported by substantial, albeit certainly not compelling evidence.''

In the FAA's ''part 121'' regulations, the FAA is empowered to grant exemptions to this rule if it ''finds that such action would be in the public interest,'' however, no exemptions have ever been granted regardless of physical condition or safety record. This is in spite of the fact that the FAA currently issues special certificates to pilots under the age of 60 with histories of alcohol abuse or even heart conditions. The FAA's explanation is that it has ''present tests that can predict the expected course of a known medical deficiency'' such as heart disease or alcoholism ''with sufficient accuracy to allow valid, individualized judgments'' but that ''the same accuracy is not possible when assessing the decrements associated with the aging process.'' I do not believe this is a consistent policy or a fair treatment of many pilots with impeccable records, but who also have more than 60 years of life behind them.

In this bill, which will do so much to advance the issue of airline safety, I think it is a tragedy that there has been no mention of the fact that hundreds of this country's potentially safest and most experienced pilots have been grounded because of a rule with little or no empirical basis. I strongly believe that the FAA should outline the criteria by which it would consider exempting certain pilots from the ''age 60 rule,'' so that even a very small number of exceptionally fit pilots could be studied in order to form the basis for a future review of this outdated rule.

I know this issue was briefly touched upon in Commerce Committee hearings, but it was not explored in enough depth, so I would like to ask my friend from Arizona, chairman of the Aviation Subcommittee of the Senate Commerce Committee, whether he would

consider calling hearings on this important issue to many airline pilots, the ''age 60 rule.''

Mr. MCCAIN. I say to my friend that the Aviation Subcommittee has held a number of hearings on this in the past and I would again consider having additional hearings on this very important matter.

Mr. SIMPSON. I thank the Senator for his courtesy and his extremely hard work on this legislation.

TERRORISM AND AVIATION SECURITY

Mr. KERRY. Mr. President, I congratulate the distinguished chairman of the Commerce Committee for moving forward on this important bill and for including provisions that seek to address terrorism and aviation security. I have worked with the chairman on these important provisions for many months. The Gore Commission recommended that the FAA move forward expeditiously with deployment of advanced explosive detection equipment, and this legislation contains provisions to implement that recommendation.

For too long our efforts have fixated on finding the perfect technology that will give us a silver bullet against terrorism at our airports. While other countries have deployed explosive detection technology that is commercially available, economically reasonable, and compatible with realistic air carrier operating conditions, our research-oriented approach has resulted in the U.S. deploying nothing, and thus becoming an attractive target for terrorists.

It is my understanding that the language in the managers' amendment requires the FAA Administrator to deploy existing, commercially available, and operationally practicable explosive detection devices.

Mr. PRESSLER. Mr. President, the Senator from Massachusetts is correct. This legislation requires the FAA to begin immediate deployment of commercially available explosive detection equipment. This deployment will occur as an interim measure to address airport and air carrier security vulnerabilities while the FAA continues to undertake research and operational testing of equipment such as the CTX.

Mr. KERRY. Mr. President, I ask the Senator from South Dakota if I am correct that the language contained in this bill will result in the speedy deployment of a variety of explosive detection systems that are cost effective, and compatible with realistic operating conditions, such as those systems manufactured by Vivid Technologies, Thermedics Detection, EG&G, IonTrack, and AS&E.

Mr. PRESSLER. Mr. President, the Senator from Massachusetts is correct—that is the intent of this bill.

Mr. KERRY. Mr. President, I thank the Senator from South Dakota for his clarification and I voice my strong support for these security provisions.

Mr. HOLLINGS. Mr. President, for years we have been asking passengers to pay money to support the safety needs of the aviation system. In 1970, Congress created the airport and airway trust fund as a means to make sure that the Federal Aviation Administration [FAA] had enough money to build and support our Nation's airports and the FAA's own air traffic control system.

The FAA's mission is to oversee the safety of the traveling public. When any accident occurs, as we have seen in the recent ValuJet and TWA accidents, there are many possible reasons for the accident. People on television are quick to rush to conclusions. We use the expertise of the National Transportation Safety Board [NTSB] to determine the cause of a crash. The Everglades crash scene, as Bob Francis, Vice Chairman of the NTSB, has indicated, was extremely treacherous and necessitated a difficult investigation. The TWA accident presents the additional complication of a criminal investigation carried on side-by-side with the accident investigation. One thing is certain—the FAA must be fully funded to meet the challenges and aviation growth in the future.

S. 1994 incorporates much of the text of S. 1239, the FAA reform bill, reported by the Commerce Committee last November. Those provisions call for an independent review of the precise needs of the FAA, followed by the submission of a funding proposal to finance the agency. The industry must recognize that ultimately we have to decide how best to support and fund the agency. Delay is no longer an option.

OVERSIGHT OF SAFETY

When we take a broad perspective, we do know that aviation is the safest form of transportation. More than 40,000 people die each year in highway accidents. According to testimony before the Commerce Committee, more people die each year because of electrocution—525—than because of airline crashes. Yet, the tragic crash of ValuJet flight 592 into the Florida Everglades on May 11 is significant because it may well have been avoidable.

We can go back over every action by the FAA, every inspector general [IG] report, every report by the General Accounting Office [GAO], and still not resolve what is safe. If someone says ''you need more inspectors or better training for inspectors,'' and a crash occurs, the person pushing for more inspectors and training is touted as a sage by the media. Anyone, however, can pick any issue in the aviation field, make a broad statement, and tomorrow there may be a crash that may make the statement appear to be the essence of wisdom.

The FAA oversees the activities of carriers and maintenance facilities through its inspector work force. Each air carrier is assigned a principal operations, maintenance, and avionics inspector. For a large carrier, there may be 30 to 60 FAA inspectors assigned to oversee its operations. In addition, the FAA uses ''geographic'' inspectors who, for example, are responsible for air carrier operations at a particular airport or area. The geographic inspector may conduct ramp inspections on a wide variety of aircraft types, even though the inspector may only be certificated on one aircraft type. As a general matter, FAA inspectors are extremely well qualified. An air carrier operations inspector, for example, is required to hold a pilot's license, with a minimum of 1,500 flight hours.

The DOT IG's office testified on April 30 before the Senate Governmental Affairs Committee on problems concerning the inspector work force. Substantial and serious concerns were raised and as a result I asked the chairman for a hearing on that matter. The concerns raised by the IG included insufficient training for inspectors and the inadequate computerization of inspection reports. These are legitimate concerns that must be addressed.

The FAA will be completing a review of its inspector work force perhaps this week. I wrote to the FAA Administrator expressing my desire to work with him to address the inspector issues. GAO has indicated that the FAA inspectors need substantial training, perhaps $17 million more than requested by the FAA. The training budget has been cut by 42 percent from the 1993 level. If we are to expect the FAA inspectors to do their job properly, they must be adequately trained and have the tools needed to do their job. For example, the FAA is struggling with developing a computer system to track inspector safety reports. The inspectors are frustrated with the new computer system, and spend far too much time inputting data, rather than doing inspections. The system is supposed to be able to aid the FAA in targeting its resources. FAA management must work with its work force to get that system back on track so that the inspectors have confidence in the system. DOT needs additional inspectors.

AVIATION SECURITY

Aviation security is an extremely complex issue. It involves technology, people, intelligence information, national security, and a recognition that there are people willing to commit heinous crimes aimed at our government and our citizens.

On December 21, 1988, Pan Am flight 103 blew up over Lockerbie, Scotland, killing 270 people. It took almost 2 years to pass legislation to address some of the problems that stemmed from that crash.

Investigators in New York have not yet identified the cause of the crash of TWA flight 800, and numerous options are being considered. We have to let the investigators complete their mission. The NTSB, Navy, FBI, and State and local personnel are working hard to determine the cause of the accident. We do know this, however—the public deserves the best technology operated by the best trained individuals, to reduce the risks of a terrorist attack.

Another thing is clear—security is going to be costly. The FAA has estimated that it will cost as much as $2.2 billion to install up to 1,800 machines at 75 airports. Today, there are approximately 14,000 to 18,000 screeners, paid an average of $10,000 to $15,000 per year. These screeners are one line of defense, but a critical one in the fight against terrorism. They need training, and they need to be paid in accordance with their responsibilities. The present turnover rate among these employees is extremely high. Unless we change the way we provide security, we cannot upgrade it. All the technology in the world still requires a person to watch a screen, listen to alarms, and be able to recognize materials that should not go on board an aircraft.

No matter what we do, safety comes first. Nothing should go onto an aircraft without being screened. Cargo, company material, and baggage all should be subject to inspection.

Security changes may require a fundamental alteration in the way air carriers provide services. Longer lines can be expected. Unfortunately, it is a price we must pay to deal with people in this world willing to stop at nothing.

I urge my colleagues to vote for passage of this bill.

NOISE MITIGATION PROGRAMS

Mr. GORTON. Within the programs authorized in S. 1994, the Federal Aviation Administration reauthorization bill, are allocations for noise mitigation. Under the Airport Improvement Program [AIP], the Federal Aviation Administration [FAA] has allocated funds to airports of all sizes to implement noise mitigation programs. Due to lower funding levels of the AIP, the FAA has recently implemented a rule that limits an airport to $8 million maximum for Federal noise mitigation funds—$5 million a year for single family housing and $3 million a year for all other uses.

Mr. President, while this type of new cap may be appropriate in certain circumstances, I believe that a single cap, regardless of an airport interests or needs, is inappropriate for two reasons. First, in evaluating existing noise programs around the country, I think it is evident that certain airports have made noise mitigation a top priority. Seattle-Tacoma International Airport, for example, has been the national leader and was the first to implement the local housing insulation program to reduce noise impacts in houses surrounding the airport. Having enacted noise mitigation programs, certain airports that enacted plans prior to imposition of this new cap, and after extensive negotiations and commitments with both the surrounding communities and the FAA, are now expected to follow through on previous commitments. If the program cost exceeds the new cap, the FAA is essentially abandoning its previous commitments. I believe that is unacceptable.

Second, it is clear that large airports in densely populated areas should have to implement broader noise mitigation programs than small, general aviation airports. For that reason, a single, hard cap for all airports, regardless of size and location, is not the best way to distribute funds in an equitable manner.

Mr. President, the Senator from Arizona knows that I included language in the fiscal year 1997 Transportation appropriations Senate report that directs the FAA to consider pledges and agreements made by the airport authority, in consultation with the FAA, to communities prior to the promulgation of the new ceiling, and to make appropriate exceptions to the policy where necessary to meet legitimate expectations of neighborhoods near airports. Because the fiscal year 1997 Transportation appropriations House report was silent on the issue, the Senate language is the prevailing language that should be followed by the FAA.

I believe it is appropriate, however, to also discuss this matter within the context of this legislation to ensure that my sentiments on this issue are correct.

Mr. McCAIN. I agree with the Senator from Washington. We all understand that, in an era of constrained budgets, it may be necessary for the FAA to try to limit noise mitigation funds per airport. As the Senator mentioned, however, I agree that where prior commitments have been made it is necessary and appropriate that the FAA show flexibility so that those commitments may be honored.

TRAIN WHISTLE PROVISION

Ms. MOSELEY-BRAUN. Mr. President, the managers' amendment to the legislation before us includes a provision that provides important direction to the Department of Transportation with regard to the implementation of a provision of the Swift Rail Development Act of 1994.

Under this 1994 law, the Federal Government is required to develop regulations that direct trains to sound their whistles at all hours of the day and night at most at-grade railroad crossings around the country, unless the local communities can afford to act on a specified list of alternatives. The Swift Rail Development Act will require trains to blow their whistles at approximately 168,000 railroad crossings in the United States and more than 9,900 in Illinois—including about 2,000 in the Chicago area and 1,000 in Cook County alone.

This provision was inserted into the 1994 law without debate or discussion. Communities had no input into the process, even though it will be communities that will be most affected.

I am acutely aware of the need to improve the safety of railroad crossings. A recent tragedy in my home State involving a train and a schoolbus in Fox River Grove, IL, killed seven children and shattered the lives of many more families. According to statistics published by the Department of Transportation, someone is hit by a train every 90 minutes. In 1994, there were nearly 2,000 injuries and 615 fatalities caused by accidents at railroad crossings around the country. Clearly, ensuring the safety of our rail crossings is imperative.

The Swift Rail Development Act mandates that trains sound their whistles at every railroad crossing around the country that does not conform to specific safety standards. It does not take into consideration the effect of this action on communities, nor does it require the Department of Transportation to take into consideration the past safety records at affected at-grade crossings.

Requiring trains to blow their whistles at every crossing would have a considerable effect on people living near these crossings. It is unclear, however, that there would be a commensurate improvement in safety. In Fox River Grove, for example, the engineer blew his whistle as he approached the road crossing, but the schoolbus did not move.

At many railroad crossings in Illinois and elsewhere, accidents never or rarely occur, while some crossings are the sites of frequent tragedies. Just as we do not impose the same safety mandates on every traffic intersection in the country, we should not universally require trains to blow their whistles at every railroad crossing in the country.

When transportation officials decide to make safety improvements at a highway intersection, they consider a wide range of factors, including its accident history, traffic patterns, and conditions in the surrounding area. Every intersection is a case study. There are guidelines, but not inflexible rules.

The approach to railroad crossing safety should be no less reasoned. The train whistle should be one tool in the transportation safety official's regulatory repertoire; it should not be the only one. Because every community has a different history and different needs, I do not believe that a one-size-fits-all, top-down approach to railroad crossing safety is appropriate.

In Dupage County, IL, for example, there are 159 public railroad crossings. In 1994, there were accidents at only 18 of these crossings, and 45 have not experienced an accident in at least 40 years. On one of METRA's commuter rail lines, 64 trains per day pass through 35 crossings. In the last 5 years, there have been a total of three accidents and one fatality along the entire length of this corridor.

Every one of the crossings on this METRA commuter line has a whistle ban in place to preserve the quiet of the surrounding communities. The imposition of a Federal train whistle mandate on this line would, therefore, have a considerable negative impact on the quality of life of area residents. The safety benefits, on the other hand, would, at best, be only marginal.

METRA's Chicago to Fox Lake line has 54 crossings and is used by 86 trains per day. A whistle ban is in place on 37

of these crossings. Between 1991 and 1995, there were a total of 13 accidents on this line, with 5 injuries and 1 fatality.

In Des Plaines, IL, one of my constituents reports that she lives near 5 crossings. In the last 11 years, there has been only one accident at any of these crossings. She will hear a train whistle at least 64 times per day and night.

In Arlington Heights, IL, there are four crossings in the downtown area about 300 feet away from one another. A total of 5,400 residents live within one-half mile of downtown, and 3,500 people commute to the area every day for work. Sixty-three commuter and four freight trains pass through Arlington Heights every weekday between the hours of 5:30 a.m. and 1:15 a.m.

Train whistles are blown at nearly 150 decibels, and depending on the weather, they can be heard for miles. According to one Burlington Northern railroad conductor, a train traveling from Downers Grove, IL to La Vergne, IL—a distance of approximately 12 miles—would have to blow its whistle 124 times. There are 144 trains traveling this route every day.

Mr. President, the residents of these communities, and others across Illinois and the country, are confused by the 1994 law that will require train whistles to sound at all hours of the day and night in their communities—in some cases hundreds of times per day—at railroad crossings that have not experienced accidents in decades, if ever.

Under a Federal train whistle mandate, homeowners in many of these communities would experience a decline in their property values, or an increase in their local taxes in order to pay for expensive safety improvements. The 1994 law, in this respect, represents either a taking of private property value, or an unfunded mandate on local communities.

The train whistle mandate places the entire burden on the community. Trains will keep rolling through quiet, densely populated towns at all hours of the night, and both the railroads and the passengers will experience no disruptions.

In aviation, by contrast, airline flights are routinely routed to minimize the disturbance to surrounding communities. Flight curfews are established, and restrictions are placed on certain types of aircraft in efforts to minimize the disruption to area residents. These restrictions place burdens on airlines, passengers, and the communities; it is a joint effort.

The pending legislation includes a provision providing the Department of Transportation with important direction on how to implement the train whistle law in a more rational and flexible manner. It directs the Secretary of Transportation to consider the interests of affected communities, as well as the past safety records at affected railroad crossings. The concerns of local communities must be heard—not just the sounds of train whistles.

It also addresses safety concerns. In situations where railroad crossings are determined not to meet the supplementary safety requirements, communities will have up to a maximum of 3 years to install additional safety measures before the train whistle mandate takes affect. In these situations, the Department of Transportation will work in partnership with affected communities to develop a reasonable schedule for the installation of additional safety measures.

Mr. President, I have been concerned about the implementation of the Swift Rail Development Act since Karen Heckmann, one of my constituents, first brought it to my attention more than a year ago. Since that time, I have spoken and met with mayors, officials, and constituents from Illinois communities, and visited areas that would be most severely affected. In response to their concerns, I have written several letters to, and met with Transportation Secretary Peña and other officials numerous times, and have been working with the Department of Transportation to ensure that they implement the 1994 law in a manner that both works for communities and protects safety.

The pending legislation provides important congressional direction to the Department of Transportation that is consistent with the ongoing discussions that I, and other members of Congress, continue to have with the Department.

The Senate adopted a functionally identical amendment to the Transportation appropriations bill this summer. During conference committee consideration of that bill, the amendment was deleted and language was instead inserted into the conference report that accompanies that bill.

I am pleased that the Senate today will again pass the strong, legislative language providing direction to the Department of Transportation. I want to thank my colleague, Senator RON WYDEN, for his work on this issue, and also the members of the Commerce Committee for again accepting this important provision.

Mr. KERRY. This bill to reauthorize the Federal Aviation Administration is good legislation. I would like to commend the diligent efforts of several Senators in drafting this legislation and in shepherding it through the committee process—including Senators FORD, MCCAIN, HOLLINGS, and PRESSLER, and also the work of their capable and helpful staffs.

Mr. President, this is a very important bill to our Nation because the FAA plays such a critical role in our nation's transportation infrastructure. We ask the FAA each year to ensure the safety of all civil aviation and to oversee the continued development of our national system of airports. Significantly, through a comprehensive program that includes a vast air traffic control network, and thousands of maintenance inspections of our nation's civilian airlines, the FAA carries out the important task of ensuring the safety of the millions of Americans that utilize air travel each year. This bill is also important to Massachusetts which relies very heavily on air transport for both people and cargo. From Logan Airport in Boston to the smaller airports located throughout Massachusetts, airports and air transport are critical to the economic and social travel needs of the people of Massachusetts.

Foremost, I support this bill because it provides the FAA with the necessary tools to carry out these important tasks. S. 1994 provides the FAA with $9.28 billion in total budget authority for fiscal year 1997 which includes $5 billion for operations, $2.28 billion for the airport improvement program, $1.8 billion for facilities and equipment, and $200 million for research, engineering, and development. This total figure represents an increase of $1.13 billion over the FAA's total budget authority for fiscal year 1996 and an increase of $1.07 billion over the administration's budget request.

But this bill does more than simply provide funding. In order to improve our civil aviation system, the bill seeks to reform and improve the FAA's operations. The bill affords the FAA a needed measure of autonomy from the larger Department of Transportation. For example, the FAA administrator will have the final authority to accept or reject proposed changes to FAA regulations. This change moves the final word to where it belongs: the agency with the expertise. In addition, the bill places time restrictions on the FAA's ability to act on pleadings from the aviation industry and other interested parties. This change will lend a measure of certainty to the timing of FAA actions and, thereby, make it easier for the industry to forge ahead with business plans that depend on FAA regulatory action.

The bill also contains a provision to make sure that smaller airports continue to receive sufficient financial assistance should FAA Federal funding levels decline. Specifically, S. 1994 caps the percentage of funding that can be allocated to large and medium airports. This provision will permit smaller airports, such as those in New Bedford and North Adams, MA, to continue to receive a substantial level of FAA funding.

I am pleased to note that the bill does not reverse the FAA's long-standing and sensible policy of permitting multi-modal independent authorities, such as the Massachusetts Port Authority, to function as intended by their enabling statutes. For years, MASSPORT has been permitted to manage a multi-modal transportation system for the Boston region, using revenues from Logan Airport, the Port of Boston, Tobin Bridge, and other activities, to administer the system as a whole. At different times, this has meant that one individual component has subsidized other components that

MASSPORT operates. Because the region relies on all components working together, federal law has recognized such subsidies as legitimate and permissible. Indeed, without the authority to merge revenues, the entire transportation infrastructure of the greater Boston region would be thrown into chaos causing disastrous consequences for the region's economy. I want to thank Senator MCCAIN and his staff for working with my staff on this issue so that a compromise could be reached that is acceptable to all parties involved. I also want to recognize the efforts of Minority Counsel Sam Whitehorn for his contributions to the discussions between our offices and the ultimate agreement.

I also would like to call the Senate's attention to the FAA's recent decision to award the contract for designing and constructing the next generation of air traffic control systems, known as the Standard Terminal Automation Replacement System or STARS, to the Raytheon Co. which is headquartered in Lexington, Massachusetts. The STARS program will provide a complete replacement of critical air traffic control radar displays of aircraft in the ''terminal area''—the airspace within 50 miles of an airport.—The systems in use today are based on outdated technologies and their replacement is absolutely essential to keep up with our Nation's increased air traffic demands. I am proud that this Massachusetts company, known for years to be on the cutting edge of important technological advances, has been given the opportunity to reconstruct our air traffic control systems for the 21st century. I am equally pleased that the location of first implementation is to be Logan Airport.

Finally, and importantly, I am very pleased that this bill contains some very important steps toward enhancing airport security that will result in greater safety for commercial flights originating at U.S. airports. I have been pushing the FAA for several years to begin to use existing advanced technologies far more capable than x-rays and metal detectors to screen passenger baggage for explosives before it is placed on aircraft. At long last, based on the conclusions of the Gore Commission established by President Clinton to address airline security in the aftermath of the TWA crash off Long Island, the FAA will be instructed to move forward in this respect. Rather than awaiting the arrival of a new sensor technology that can meet all desired sensor standards perfectly or nearly perfectly, the FAA will be instructed to procure and implement use of the best currently available technology—which is the approach taken by virtually all European nations. It is long past time for the United States to take this step. I have addressed this subject at greater length with Chairman PRESSLER previously during this debate.

Mr. President, this is a well crafted bill. I will vote for this bill, and I urge my colleagues to support it.

SUPPORT FOR FAA AUTHORIZATION BILL AIR TRAVEL SAFETY AND SECURITY PROVISIONS

Mr. REID. Mr. President, I want to express my appreciation to the managers of the FAA reauthorization bill for incorporating into the bill many of the provisions of the Travelers Rights Act which I introduced prior to the August recess.

Mr. President, air travel is fundamental to our national transportation system. Americans who travel across this Nation and globally would not be able to conduct their business without the conveniences of air travel. However, recently the dangers of air travel have become even more clear. With the risks of air travel in mind, I introduced the Travelers Rights Act to provide for a way that consumers could obtain safety information. To provide to the public the safety background on airlines is a matter of common sense. It is a matter of public policy to provide citizens the information necessary for them to make choices in most other areas basic to their health, safety, and welfare. Given that food labeling must reveal ingredients, automobile labels must indicate maintenance and mileage, and under the Safe Drinking Water Act, recently reauthorized, water contaminants must be revealed annually to the water users and communities, we should do require no less in regard to air travel.

Besides mandating intensified security and safety for air travel, the provisions of the Travelers Rights Act that have been incorporated were the travelers' access to information and the safety survey and reports that the FAA will be required to submit to Congress. There is information that ought to be available and if the customer seeks the information the airlines should expeditiously provide it. This bill is not to scare travelers about the safety and security of air travel, rather on the contrary, I believe this bill will inspire confidence through openness and knowledge. Additionally, if customers of air travel exercise their right to know about certain elements about the airlines, aircraft, and crew then that too will enhance the trust between customers and the airlines. In this effort to require knowledge and the coordination of information, Senators FORD and WYDEN have been extremely helpful in their communication with the Federal Aviation Administration.

I do regret that absent from title III of the FAA reauthorization is the Victims Rights Program, which I see as integral to expediting the distribution of information to the survivors of victims of terrible airline accidents and destruction. The responsible Federal agencies should be coordinated better to provide families the details and facts as quickly as possible and in such a manner so that survivors can grieve and cope with tragedy with all of the knowledge that they need.

But I do commend Senator FORD for integrating into title III of the bill the provisions of consumer access that the Travelers Rights Act contained.

Mr. LUGAR. Mr. President, as the Senate moves to a conference with the House of Representatives on the Federal Aviation Administration Reauthorization Act of 1996, I am hopeful conferees will give thoughtful consideration to the provisions included in the manager's amendment adopted Tuesday evening. I noted with some concern that a number of provisions in this amendment were new to the bill, and in some cases, not germane to the purpose of the legislation. I hope my colleagues will share my interest in assuring that an appropriate check and balance is maintained as the 104th Congress continues its legislative work.

While I support swift enactment of this important measure to reauthorize the Federal Aviation Administration, I am concerned about a provision of the bill included with the manager's amendment amending the Johnson Act. In response to concerns about the rapid growth of legalized gambling in the United States in recent years, Congress recently approved legislation to create a 2-year National Gambling Impact Study Commission. This Commission will conduct a comprehensive review of the social and economic impact of legalized gambling on our Nation, and will provide a report to Congress, the President, Governors, and others, on this important issue. Until we know more about the effects of this recent national trend, I have reservations about changing a Federal law that could allow for further expansion of legalized gambling in the United States.

AMENDMENT TO THE JOHNSTON ACT

Mr. SIMON. Mr. President, it is my understanding that there was language included in the manager's amendment to the Federal Aviation Authorization Act of 1996 that would allow a gambling operation off the coast of California.

I am the chief sponsor of legislation establishing a gambling commission to study the impact of gaming on municipalities, states and tribal governments. It is my feeling that we are making a mistake by sanctioning this new operation before we have a chance to study the Commission's findings.

The Federal Aviation Authorization legislation is an important bill, which is why I offered my support despite the language amending the Johnston Act.

Mr. BYRD. Mr. President, today we are considering the reauthorization of the Federal Aviation Administration [FAA]. The FAA performs a critical role in managing our nation's air traffic control system, which handles two takeoffs and landings of aircraft every second of every hour of every day. Yet most Americans are unaware of the complexity and scope of this system, and simply take it for granted.

Nonetheless, the deregulation of the airlines and expansion of the air transportation system have imposed significant strains upon the existing system.

Some air control centers are using older equipment that is not as reliable as what is currently available. Other centers, that lack both equipment and sufficient numbers of air traffic controllers, are forced to delay flights. Reform of the FAA is needed, because increasing demand for air travel will only exacerbate these problems at our nation's major airports.

My own state of West Virginia, however, does not have a major hub airport. We have not had to worry about delays of frequently scheduled, and low-priced flights. Our problems have been of an entirely different magnitude. We have had to endure the cancellation of flights, the end of airline service to some of our communities, and a huge increase in fares charged to passengers who fly out of airports in West Virginia.

This dramatic decline in airline service to my state has occurred as a result of airline deregulation. On the day that I cast my 14,000 vote, I observed that one of the votes that I most regret was supporting airline deregulation. At the time, I was told it would lead to cheaper fares. It has, but only in some regions of the country and large urban areas, while my own constituents have paid hundreds of dollars more for even shorter flights. I was told that deregulation would lead to an increase in the number of flights, and make air service more convenient. Again, it has, but only if your city is fortunate to be at the center of a major market. My own constituents have far fewer flights to choose from, and in many cases, must drive to an airport in another state in order to fly at a reasonable price. This is a far cry from convenience.

This bill addresses these concerns, as it directs the Secretary of Transportation to conduct a study to examine air fares that are charged to passengers using airports located in small communities, as compared with air fares charged to passengers using large hub airports. The purpose of the report will be to determine if passengers using airports in small communities are paying ''a disproportionately greater price'' as compared with passengers using hub airports in large urban areas, as well as to indicate the number of small communities that have lost air service as a result of the deregulation of commercial air carriers.

I strongly support this study, and believe that an examination of the impact of deregulation on rural America is long overdue. Nonetheless, from the perspective of West Virginia, it is almost self evident that small communities are paying a disproportionately greater price. For example, if I want to fly from my office in Charleston, West Virginia's capital and largest city, to my office in Washington, I will pay a one-way walk-up coach fare of $332. If I want to benefit from airline deregulation, I must spend over two hours driving to Columbus, OH, in order to fly for $179. In other words, I must drive west, consuming gasoline and adding another automobile to the highways, in order to fly east at a reasonable fare. To use another example, it costs twice as much to fly from Charleston to Houston, TX, as compared with flying from Columbus to Houston.

In a 1996 study by the General Accounting Office (GAO), the GAO found that fares have decreased at small and large hub airports. However, airports serving small and medium-sized communities in the Southeast and Appalachian region ''have experienced sharp increases in fares since deregulation.'' Not surprisingly, the GAO found that where low-cost carriers have entered a market, the fares have declined. But in areas that have not been so fortunate—where one or two higher cost airlines dominate service—fares have risen by more than 20 percent. When the GAO examined the fares charged per passenger mile at the Charleston airport, it found that fares had increased by 24.7 percent from 1979 to 1994.

Under the onslaught of deregulation, it is becoming increasingly difficult for small airports in West Virginia to continue to operate. Several of these airports benefit from Essential Air Service (EAS) support. The EAS program was created as a direct result of airline deregulation, for even as the supporters of deregulation trumpeted its benefits, they recognized that deregulation would hurt small airports. EAS was intended to be a temporary subsidy for small airports to help them develop profitable service. The impact of deregulation has been so severe that EAS has become a permanent necessity in order to keep some small airports open. This bill includes a provision that permanently funds the EAS program at a level of $50 million, which is an increase of $24.1 million, when compared to current appropriations. If less than $50 million is obligated for EAS programs, the remaining funds will be made available for grants to rural airports to improve rural air safety. This increase in EAS funding, and the provision calling for the study of rural air fares, was offered in the Commerce Committee by Senator BYRON DORGAN, and I wish to thank him for his efforts to help struggling airports in small communities.

S. 1994 also includes a provision that requires that funding to large and medium hub airports would be limited to a percentage of total AIP funding. This provision will help protect small airports from disproportionate cuts in AIP funding, in the event that future levels of appropriations to AIP should decline.

This bill is a significant and positive step in examining the impact of deregulation on small airports in our country. But it is not enough. Small airports across America are suffering under the burden of rising fares and declining service. As the Congress continues to examine the issues surrounding FAA reform in the next few years, it is my hope that the impact of deregulation on small community airports can be given additional consideration.

Mr. McCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 5378

Mr. McCAIN. Mr. President, on behalf of Senator BROWN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the Simon amendment is set aside.

Without objection, the amendment may be considered at this time.

The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona (Mr. MCCAIN), for Mr. BROWN, proposes an amendment numbered 5378.

Mr. McCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . REPORTING FOR PROCUREMENT CONTRACTS.

Section 47112 is amended by adding at the end the following new subsection:

''(d) REPORTING FOR PROCUREMENT CONTRACTS.—(1) The Secretary of Transportation shall promulgate regulations to require that each grant agreement that includes the awarding of any contract that includes Federal funds in an amount greater than or equal to $5,000,000 under this subchapter provides for a report to the Secretary that states—

''(A) the number of bids from qualified, responsive and reasonable bidders that were in amounts lower than the amount specified in the bid submitted by the bidder awarded the contract;

''(B) for each bid referred to in subparagraph A (other than the bid submitted by the bidder awarded the contract) the amount by which the bid submitted by the bidder awarded the contract exceeded the lower bid.

''(2) APPLICABILITY.—This subsection shall apply to grants referred to in this paragraph that are awarded on or after the date of enactment of this Act.''.

Mr. McCAIN. Mr. President, Senator FORD and I have examined this amendment. It has to do with disclosure of contract awards. We appreciate Senator BROWN's willingness to change the language so that it is acceptable to both sides.

I yield the floor.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from Colorado.

The amendment (No. 5378) was agreed to.

Mr. McCAIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Oregon is recognized.

Mr. WYDEN. Thank you, Mr. President.

Mr. President and colleagues, I rise in support of this legislation, S. 1994, to reauthorize the programs of the FAA. This is important legislation, and I especially want to commend the chairman of the Aviation Subcommittee, Mr. MCCAIN, and also the distinguished ranking member of the Aviation Subcommittee, Senator FORD, for working closely with me on several provisions that have been included in this legislation.

Suffice it to say that when consideration of this bill began, it was a relatively modest reauthorization measure. No safety or security issues—certainly not any dramatic changes in safety or security policy—were envisioned at that time. Now these concerns are finally back to the forefront where they belong. It is my view that with this legislation the Senate takes the first step toward meaningful action to improving aviation safety and security in our country.

I think it has to be understood that there is still a long way to go even with the enactment of this legislation, but with the passage of this bill at least the prospect has begun in earnest to strengthen safety and security for the citizens who fly in our country.

My view is that in particular it is time to adopt new policies that empower the consumer, make it possible for consumers to be in a position to get critical information about aviation safety in our country. Right now it is possible for consumers to find out if their bags get crushed, and it is possible to find out if their flight is on time. But it is pretty darned hard for consumers to find out if the airline that they fly on has been fined for violating a major safety law.

At present what happens is, if there is a violation of a major safety law by an airline, for a citizen to find out they have to file a Freedom of Information Act request in order to get the information about a safety violation on the part of an airplane on an airline that they fly regularly. I do not think that is good enough. I think consumers deserve better. And Senator FORD and I have requested that the Federal Aviation Administration undertake an effort to make this kind of information available to the citizens of our country.

In the next few weeks we expect to receive a report from the Federal Aviation Administration about the best way to make important safety information available to the public, and this legislation that the Senate considers today requires a comparable report to the National Transportation Safety Board.

Mr. President, colleagues, let me say that from my standpoint this is only part of what needs to be done to empower consumers to get relevant information about safety and security. For example, today the Federal Aviation Administration posts signs in U.S. airports about the security dangers in foreign airports, but there are not any signs about security problems at our airports. It seems to me, again, that consumers, in line with certain uniform criteria so that the airlines and all who work in aviation understand what the standards are—the airlines would be expected to act in concert with those kinds of safety and security criteria, and the public would have a right to know whether airports in our country are meeting those safety and security criteria just as we now have postings with respect to security problems at foreign airports.

So I think that in these next few weeks we will begin to get information from the FAA with respect to how to make this key safety information public. I want it understood, Mr. President and colleagues, that I think this is just the beginning.

I want to thank the chairman of the Aviation Subcommittee. Both he and his staff have been very helpful to me in this effort to empower consumers. I am going to make a couple of other quick comments with respect to the legislation, but I want Chairman MCCAIN to know that I very much appreciate the help that he and his staff, as well as Senator FORD, have given me on this; because, for the life of me, I cannot figure out why it is right for consumers to find out if their bags get crushed, find out if their flights are on time, but why they ought to have to go out and file a Freedom of Information Act request to determine whether an airline has violated major safety laws. That is not right. That has to be changed. On a bipartisan basis, working with Chairman MCCAIN and ranking member FORD, I think we can get it changed. We will get that information with respect to the FAA in the next couple of weeks.

This legislation makes a positive step forward as well as by requiring a comparable report from the National Transportation Safety Board.

I also want to say to Chairman MCCAIN that I want to work very closely with him on the matter of security postings at our airports. I have had a chance, both publicly and privately, to discuss this with officials in the aviation field. It is important to do it in line with certain recognized criteria. But it seems to me that, if an airline passenger in Phoenix, Portland, or anywhere else goes into an airport and finds out about overseas airports that have security problems, it seems to me they ought to have a right to know about the airports in our country where there are security concerns as well because I think those empowered consumers, once they have that kind of information, will help us and help us on a bipartisan basis to work for the kind of safety and security that the public deserves.

Mr. President, colleagues, one of the other aspects of this bill that I think makes a positive step forward deals with the need for uniformity in definitions relating to safety. Right now an accident involving a death or a serious injury or substantial damage to an aircraft is treated the same as an accident involving a plane backing into a truck or a coffee-cup spill that causes problems which are also reported as an accident. An incident involves less severe mishaps that affect safety in other ways, such as planes hitting birds or things of this nature. This legislation will provide some uniformity in terms of definitions in this area, and I think that is a fortunate step forward.

I also think this legislation is very helpful from the standpoint of requiring more comprehensive employment investigations, including criminal history record checks for individuals who will screen airline passengers, baggage and property. Under Senators MCCAIN and FORD, what has happened here is the legislative straitjacket that has hamstrung FAA efforts in this area are removed. I think that is a helpful step forward as well.

Finally, I think this legislation is a very important measure with respect to the small airports of our country. These airports, such as Bandon and John Day and Klamath Falls, in my home State, serve citizens in rural Oregon. This legislation makes it possible for those small airports around the country to get some help at a critical time. Without the funding formula of this legislation, the smaller airports would suffer disproportionate cuts in grant funding at a time when appropriations are especially tight.

So this is a piece of legislation that needs to be enacted. I think, with respect to safety and security, it is important to note that when this reauthorization began, safety and security were not much measured in what looked, at that time, to be a modest reauthorization. But the events of the last few months have indicated that important and much more significant action needs to be taken, especially with respect to safety and security. I think the legislation that Chairman MCCAIN and Ranking Member FORD bring to the Senate moves us significantly in the right direction.

Mr. President, I yield the floor and urge adoption of the legislation.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from Oregon for not only his kind words but, far more important, for the exuberance, passion, and knowledge that he brings to the Aviation Subcommittee and the Commerce,

Science and Transportation Committee. Obviously, he is committed and knowledgeable on these issues. We value his participation and the very important contributions he has made to this legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, let me join my colleague, Senator MCCAIN, in complimenting the Senator from Oregon, Mr. WYDEN. He has been a great asset to this institution since he arrived and has been a tremendous asset to the Commerce Committee since he has joined us there. He has been thoughtful, he has been thorough, he has been amenable, but all the time pushing forward as it relates to help in all pieces of legislation, not particularly this one, in his effort to see that his constituents are protected and are helped.

I compliment him on the contribution he has made to having S. 1994 at this point, and I look forward to working with him in the future.

AMENDMENT NO. 5364

Mr. FORD. Mr. President, it is my understanding the Simon pension amendment is pending?

The PRESIDING OFFICER. The Senator is correct.

Mrs. KASSEBAUM. Mr. President, I rise for the purpose of entering into a colloquy with the Senator from Illinois regarding his limited scope audit amendment.

Mr. SIMON. I would be delighted to enter into such a colloquy.

Mrs. KASSEBAUM. We have drafted a sponsors' memorandum to accompany the amendment to assist with the interpretation of this legislation. Would the Senator agree that this interpretative memorandum embodies what the sponsors intend to accomplish with this legislative change to ERISA?

Mr. SIMON. Yes.

Mrs. KASSEBAUM. I would ask unanimous consent that the interpretive memorandum be printed in the RECORD immediately preceding the disposition of the amendment, and I thank the Senator from Illinois.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTERPRETIVE MEMORANDUM FOR REPEAL OF PENSION LIMITED SCOPE AUDIT

This amendment addresses potential deficiencies with ERISA's current audit requirements for employee pension benefit plans. Specifically, the legislation addresses the ''limited scope audit'' provisions in ERISA. The sponsors of the amendment intend this memorandum to accompany the legislation to provide guidance to employee benefit plans, accountants, auditors, and regulated financial institutions.

Under current law, ERISA Sec. 103(a)(3) requires the administrator of a benefit plan to engage an independent qualified public accountant to examine the financial statements of the plan and render an opinion as to whether the financial statements are presented fairly in conformity with generally accepted auditing principles. However, under Sec. 103(a)(3)(C), the accountant need not render an opinion as to assets of the plan held by a bank, insurance company, or other financial institution subject to State or Federal regulation.

Since many pension plans have a material portion of their assets held by regulated financial institutions, and an accountant generally will not provide an opinion (e.g. the accountant provides a disclaimed opinion) as to a plan when a material portion of its assets are not accessible to the accountant, a great number of plans receive no opinion. The General Accounting Office and the Department of Labor's Inspector General have identified the large number of disclaimed opinions that have been issued as a source of concern.

The sponsors intend this amendment to require, in virtually every circumstance, that pension plan accountants rely upon the audits (e.g. SAS 70 reports) performed for banks and other regulated institutions. Thus, pension plan auditors, relying upon the audit report of the regulated entity, would be able to perform an audit and express an opinion on the plan's financial statements without any scope restriction.

The sponsors recognize the concerns of pension plan sponsors and regulated financial institutions regarding duplication of effort, increased cost, and disruption of operations that might otherwise be associated with modifying the limited scope audit provisions of ERISA. The sponsors do not intend that regulated institutions undergo multiple independent audits to satisfy the requirements of this legislation. Such a requirement would needlessly raise costs to plans and disrupt the operations of the regulated institution. For these reasons, the sponsors intend, in the vast majority of cases, that plan accountants will rely upon the audits (e.g. the SAS 70 report) performed by the auditors of the regulated financial institution.

However, there are a narrow set of circumstances where the SAS 70 report may not be, on its face, sufficient for the plan auditor's purpose. The auditor's response to those situations will vary depending on many factors, including the plan's own system of reviewing the results of the regulated institution's processing of the individual plan's activities. Significantly, the situations where the pension plan auditors needs physically to visit the regulated institution are very infrequent, and are most likely to occur when problems are identified with the regulated institution's processing.

The instances where the sponsors anticipate that plan auditors may need to perform additional audit work, beyond the SAS 70 report, include the following:

1. The SAS 70 report is a so-called Type I audit, which includes a description of whether the policies and procedures in place at the regulated institution's operation are fairly represented and are suitably designed. However, the Type I audit does not include an assurance on the functional, operating effectiveness of the regulated institution's policies and procedures, as would be provided under a Type II SAS 70 report. In this situation, the plan auditor may need to perform tests of the controls, depending upon whether it is more efficient to reduce the assessed level of control risk at the regulated institution or to perform additional work at the plan.

2. If the SAS 70 report covers a different reporting period than the plan's fiscal year, then the auditor may need to inquire of the regulated institution as to whether there were any changes to the institution's policies and procedures during the period not covered by the SAS 70 report. If the difference in coverage period is significant, or there have been material changes to the regulated institution's policies and procedures as they relate to the plan's transactions, then the plan auditor may need to gain an understanding of the policies and procedures in effect during the period not covered by the SAS 70.

3. If the SAS 70 report is limited as to its coverage of the regulated institution's policies and procedures as they relate to the plan being audited, then the auditor may need to gain an understanding of the policies and procedures not covered in the SAS 70 report. For instance, if the SAS 70 report does not address the policies and procedures specific to the services performed for the plan, or the report does not cover activities performed by subservices, then additional work may be required (such as, in the latter case, obtaining a SAS 70 report from the subservicer).

4. If the SAS 70 report identifies instances of noncompliance with the regulated institution's internal control structure policies and procedures, then the auditor would have to consider the effect of those findings on the assessed level of control risk of assertions in the plan's financial statements.

Mr. KENNEDY. I strongly support the Jeffords-Simon amendment, and I strongly urge the Senate to approve the Pension Audit Improvement Act of 1996. This will make a significant improvement in the safety of working Americans' pensions.

The amendment will require that every penny of assets held by pension plans is subject to rigorous annual audit. Plan participants and the Department of Labor will be able to identify where plan assets are held and what investment vehicles are being used to fund pension benefits.

Under current law, if a pension plan invests a large percentage of its assets in a highly leveraged insurance company, plan participants often have no way to know that their benefits are at risk.

Current law exempts nearly one-third of the $3 trillion in assets held by pension plans from the strict audit requirements of the ERISA statute. That's more than $950 billion in pension plan assets that pension plan participants and the Department of Labor cannot track.

This amendment will change all that. Under the amendment, plan sponsors will be required every year to provide a detailed audit of 100 percent of a plan's assets. Plan participants and the Department of Labor will have the tools necessary to assess whether plan sponsors are living up to strict fiduciary requirements. Hard-working Americans should not have to fear that their pensions will disappear before they retire.

This amendment is sensible and needed. It enhances the safety of the vast assets held by America's pension plans. Working Americans deserve the pensions they have labored hard and long to earn. This amendment will significantly advance that goal and I urge its adoption.

Mr. FORD. We are ready to accept the Simon amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 5364) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. McCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 5373

(Purpose: To amend the Tariff Act of 1930 to clarify the authority of the Customs Service to require air carriers to provide by electronic transmission advance cargo and passenger manifest information)

Mr. FORD. Mr. President, I call up an amendment by Senator GRAHAM of Florida.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. GRAHAM, proposes an amendment numbered 5373.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . ADVANCE ELECTRONIC TRANSMISSION OF CARGO AND PASSENGER INFORMATION.

(a) CARGO INFORMATION.—

(1) IN GENERAL.—Section 431(b) of the Tariff Act of 1930 (19 U.S.C. 1431(b)) is amended—

(A) by striking ''Any manifest'' and inserting ''(1) Any manifest'', and

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

''(2)(A) Every passenger air carrier required to make entry or to obtain clearance under the customs laws of the United States (or the authorized agent of such carrier) shall provide by electronic transmission cargo manifest information described in subparagraph (B) in advance of such entry or clearance in such manner as the Secretary shall prescribe.

''(B) The information described in this subparagraph is as follows:

''(i) The airport of arrival or departure, which ever is appropriate.

''(ii) The airline prefix code.

''(iii) The carrier code.

''(iv) The flight number.

''(v) The date of scheduled arrival or date of departure, whichever is appropriate.

''(vi) The permit to proceed to the destination, if applicable.

''(vii) The master and house air waybill numbers and quantities.

''(viii) The first airport of lading of the cargo.

''(ix) A description and weight of the cargo.

''(x) The shipper's name and address from all air waybills.

''(xi) The consignee name and address from all air waybills.

''(xii) Notice that actual boarded quantities are not equal to air waybill quantities.

''(xiii) Transfer or transit information.

''(xiv) Warehouse or other location of the cargo.

''(xv) Any other data that the Secretary may by regulation prescribe.''.

(2) CONFORMING AMENDMENT.—Subsection (d)(1)(A) of section 431 of such Act is amended by inserting before the semicolon ''or subsection (b)(2)''.

(b) PASSENGER INFORMATION.—The Part II of title IV of the Tariff Act of 1930 is amended by inserting after section 431 the following new section:

''SEC. 432. PASSENGER MANIFEST INFORMATION REQUIRED FOR AIR CARRIERS.

''(a) IN GENERAL.—Every passenger air carrier required to make entry or obtain clearance under the customs laws of the United States (or the authorized agent of such carrier) shall provide by electronic transmission passenger manifest information described in subsection (b) in advance of such entry or clearance in such manner and form as the Secretary shall prescribe.

''(b) INFORMATION DESCRIBED.—The information described in this subsection is as follows:

''(1) Full name of each passenger.

''(2) Date of birth and citizenship of each passenger.

''(3) Passport number and country of issuance of each passenger.

''(4) Passenger name record.

''(5) Any additional data that the Secretary, by regulation, determines is reasonably necessary to ensure aviation safety pursuant to the Customs laws of the United States.''.

(c) DEFINITION.—Section 401 of the Tariff Act of 1930 is amended by adding at the end the following new subsection:

''(t) PASSENGER AIR CARRIER.—The term 'passenger air carrier' means an air carrier (as defined in section 40102(a)(2) of title 49, United States Code) or foreign air carrier (as defined in section 40102(a)(21) of such title 49) that provides transportation of passengers to or from any place in the United States.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 45 days after the date of the enactment of this Act.

Mr. FORD. Mr. President, we are now in a position to accept this amendment. I think our colleagues will be thankful that this is the last amendment on the agenda.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 5373) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. McCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 5379

(Purpose: To change the caption of title III)

Mr. McCAIN. Mr. President, I have a technical amendment at the desk. I ask unanimous consent that it be considered at this time.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. McCAIN] proposes an amendment numbered 5379.

Mr. McCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, in the item relating to title III, strike ''AIRPORT'' and insert ''AVIATION''.

On page 14, line 11, strike ''AIRPORT'' and insert ''AVIATION''.

Mr. McCAIN. Mr. President, this is an amendment which is purely technical in nature. It was requested by the Finance Committee and is simply changing one word. I yield the floor.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 5379) was agreed to.

Mr. McCAIN. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 5374

(Purpose: To provide for sequential referral of an implementing bill to the Committee on Commerce, Science, and Transportation and the Committee on Finance)

Mr. McCAIN. Mr. President, it is my understanding that amendment No. 5374 had never been called up. It was an oversight. I believed it had been called up last night. That was part of our unanimous-consent managers' amendment.

I ask that amendment No. 5374 be considered at this time.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. McCAIN] proposes an amendment numbered 5374.

Mr. McCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 113, beginning with line 16, strike through line 10 on page 115 and insert the following:

''(c) CONSIDERATION IN SENATE.—An implementing bill introduced in the Senate shall be referred to the Committee on Commerce, Science, and Transportation. The Committee on Commerce, Science, and Transportation shall report the bill with its recommendations within 60 days following the date of introduction of that bill. Upon the reporting of the bill by the Committee on Commerce, Science, and Transportation, the reported bill shall be referred sequentially to the Committee on Finance for a period of 60 legislative days.

''On page 116, strike lines 3 through 9.''

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 5374) was agreed to.

Mr. McCAIN. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCAIN. Mr. President, there may be additional colloquies that may be submitted between now and 2 o'clock, when I intend to propound a unanimous consent agreement concerning a vote on this bill today. But, according to the unanimous consent agreement entered into last night, that completes the amendments that are applicable to the omnibus FAA bill. That would complete our consideration of the bill, with the exception of the entry of colloquies and final passage, on which we will be asking for a rollcall vote.

In that case, Mr. President, before I turn to my friend from Kentucky, I

want to express my deep and profound appreciation for his effort on this legislation. This legislation is the product of many years of work together. He and I have been concerned about issues of aviation safety for the last 10 years that we have closely worked together. We have been concerned about the very serious issue of FAA reform and providing the right amount of funding for the FAA. We have been concerned about so many aspects of this bill from FAA reform to airport security to airline safety to airport revenue diversion and many others. We have been through a very long hearing process in all areas of this omnibus aviation bill. I think, when you look at the broad scope of this bill, it is really a fundamental piece of legislation as far as aviation in America is concerned. It would not have been possible without the bipartisan effort, especially led by my friend from Kentucky.

I want to express my appreciation to the chairman of the committee, Senator PRESSLER, who urged us on, who made valuable and important contributions, and without whose leadership this legislation would not be possible. Senator HOLLINGS, of course, who is one of the more knowledgeable individuals on the Commerce, Science, and Transportation Committee, has been extremely helpful, as well as Senator STEVENS.

Mr. President, I also would be remiss in not pointing out that Senator FORD, Senator PRESSLER, Senator HOLLINGS and I worked very closely with the Administration on this very important legislation. The Secretary of Transportation, Secretary Federico Peña, the Administrator of the Federal Aviation Administration, Mr. David Hinson, and especially—certainly especially—Ms. Linda Daschle, who did, really, the difficult spade work involved with this bill, especially FAA reform, spending literally hundreds of hours of negotiations in crafting this legislation between the Administration and Congress and Democrats and Republicans. So I especially thank Linda Daschle for her tireless stamina and outstanding work.

I also would like to thank our staff: Paddy Link, Tom Hohenthaner, Mike Reynolds, and Mike Korens of Senator PRESSLER's staff, Mitch Rose of Senator STEVENS' staff, of course, Sam Whitehorn of Senator HOLLINGS' staff and Tom Zoeller of Senator FORD's staff. Sam and Tom have been extremely helpful and cooperative. Finally, I would like to personally thank the tireless efforts of Chris Paul and Mark Buse on my staff. They worked very hard and spent many long hours, and I am especially grateful to them, as well. As I have said earlier, the staff of the Finance Committee worked with us in order to complete this bill and I wish to recognize them.

I would like to add one final note before yielding the floor to my friend from Kentucky.

Last night and again today, the Senator from Kentucky and I talked about this issue of the ticket tax. Mr. President, it was a disaster. It was a disaster when we let this ticket tax lapse last December. I value the opinion of my friend from Kentucky on this. It is almost unconscionable for us to go out of session and let this ticket tax lapse again. We all know that the ticket tax lapses on the 31st of December. Congress will not be doing anything until, at best, late in January, and it could be much longer than that.

I would like to tell my colleagues that the Senator from Kentucky and I will be having to, if necessary, resort to parliamentary measures in order to get this ticket tax extended, ideally until such time as the commission reports out its recommendations or the Finance Committee will complete the entire process, but certainly a year, I would say, as a bare minimum. There is going to be a big crush of business coming up in a week or so. I do not intend to inflict further damage on our ability to complete our obligations—they are not our privileges; our obligations—to the American public concerning the maintenance, the improvement of and the safety of America's aviation system.

Again, I thank all of my colleagues for their cooperation on this bill. It is a very complex piece of legislation, encompassing a lot of different issues concerning aviation, in fact, just about everything we can think of. I thank my colleagues for their consideration.

I yield the floor, Mr. President. I know the Senator from Kentucky has comments before I propound the request concerning the vote at 2 p.m. I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky [Mr. FORD] is recognized.

Mr. FORD. Mr. President, I am pleased to support S. 1994, the Federal Aviation Administration Reauthorization Act of 1996. As the ranking member of the Aviation Subcommittee, I want to thank the chairman of the subcommittee, Senator MCCAIN, for his leadership and determination in bringing this bill to the Senate floor.

Mr. President, as the 104th Congress comes to a close, there are many bills which are labeled as ''must pass.'' But this bill truly is a must-pass piece of legislation.

The FAA reauthorization act includes provisions which reauthorize the Airport Improvement Program [AIP]. The AIP program funds hundreds of airport improvement and construction projects throughout our Nation. But the program expires on September 30. Without this reauthorization bill, the FAA would be unable to fund many worthy aviation infrastructure projects. We cannot let that happen. The FAA's forecasts for the aviation industry project tremendous growth. Those forecasts project an average increase of 3.7 percent in domestic passenger traffic by the year 2007. One of the big growth areas will most likely be in the regional and commuter industry. In 1995, regional and commuter air carriers carried 53.7 million passengers. By the year 2007, the FAA projects these same carriers to carry 96.9 million passengers—an annual growth of 5.4 percent.

The tremendous growth of air traffic will place tremendous challenges on airports and airways management. That is why it is so important for the Senate to pass S. 1994. We cannot permit the AIP program to lapse. We must continue to support many worthy airport construction and improvement projects that will help to sustain and support the growing demand for air carrier services, both passenger and cargo.

These increased demands on the air transport system require the Congress to re-examine the way in which the FAA is managed and funded. The FAA is predominantly funded through the airport and airway trust fund. The monies which are in the trust fund are distributed among specific programs and functions, including the FAA's operations account, the facilities and equipment account, research, the engineering and development account, as well as the Airport Improvement Program.

The trust funds is supported solely through revenue derived by a 10 percent passenger ticket tax, interest paid on Treasury certificates, and other taxes associated with air travel and aviation. However, on January 1, 1996, the aviation excise taxes lapsed. That lapse in the taxes resulted in a loss of $500 million a month in trust fund revenues. With the enactment of the minimum wage and small business tax credits act, the aviation excise taxes were reinstated, but only to the end of this calendar year.

This experience has highlighted some problems and concerns with the FAA. Without a steady and reliable source of revenue, the FAA cannot fulfill its mission to promote a safe and reliable aviation system. To that end, S. 1994 establishes a 11-member panel to conduct an independent assessment of the FAA financing and cost allocations through 2002. This independent panel shall include individuals who have expertise in the aviation industry and who are able, collectively, to represent a balanced view of the issues which are important to all segments of the aviation industry, including: general aviation, major air carriers, air cargo carriers, regional air carriers, business aviation, airports, aircraft manufacturers, the financial community, aviation industry workers, and airline passengers.

This independent assessment is required to complete its work within 12 months. At which time the panel will make a report to the Secretary of Transportation. S. 1994 includes provisions which would provide for expedited consideration of any legislative proposal forwarded by the independent panel.

It is important to point out that we want this panel to be independent. It is

important that this panel consider all the options which can be considered for funding the FAA. By including all segments of the aviation industry, it is our hope that the independent panel will produce an unbiased and balanced report which considers all the pros and cons to funding options. We need to depoliticize the process for funding the FAA. By creating this independent panel, it is our hope that we can get a fair and reliable assessment of needs and funding sources. And through the expedited procedures contemplated in the bill, we hope to be able to enact those funding options as quickly as possible so that we will not face another funding lapse to the trust fund and the FAA.

This funding study will build upon personnel and procurement reforms already in place at the FAA, which were included in the Transportation Appropriations Act for fiscal year 1996.

In addition to the independent study on funding solutions for the FAA, the bill also includes provisions for the creation of a Management Advisory Council. Mr. President, I think we all acknowledge that the FAA has been an agency with its problems. Some of that criticism is well-deserved. But, I think that most Members will also acknowledge, that under the current leadership of David Hinson, the FAA is beginning to respond to the challenges. We want to build on these improvements and we want to enable the FAA to improve its management so that it is prepared to face the challenges of the 21st century.

The Management Advisory Council [MAC] will be composed of 15 members to provide the Administrator with input from the aviation industry and community. Membership on the MAC will include representatives from all government and all segments of the aviation industry; all of whom will be appointed by the President with the advice and consent of the Senate. Members of the MAC should be selected from among individuals who are experts in disciplines relevant to the aviation community and who are collectively able to represent a balanced view of the issues before the FAA. It is important to note that selection for MAC membership is not required to be based on political affiliation or other partisan considerations.

As was noted in the committee's report on S. 1994, the MAC is not another paper tiger. Rather, it is intended that the MAC's recommendations be taken under serious consideration by the Administrator.

Among the issues that we expect that the MAC to examine are: air traffic control modernization; FAA acquisition management; rulemakings and cost-benefit analysis; review the process by which the FAA determines to use advisory circulars and service bulletins; review of old rules, including FAR part 145.

Mr. President, since the Commerce Committee reported S. 1994, we experienced another air tragedy: the destruction of TWA flight 800 over the Atlantic Ocean. At this time, we do not know what caused that tragedy. But we do know that we need to reexamine our aviation security measures. Following this tragedy, the President appointed Vice President GORE to head a special commission on aviation security. Earlier this month, the Gore commission presented to the President's its initial report to the President. That report made a number of recommendations including the purchase of explosive detection equipment; the placing of security equipment at our major airports; increasing the use of passenger profiling through the use of existing data bases and air carrier computer reservation systems; criminal background checks and FBI fingerprint checks for all security screeners and other airport and airline personnel with access to secure areas; increasing funding to be used to facilitate a greater role for the U.S. Customs Service and other law enforcement agencies; designate the National Transportation Safety Board to deal with the families and relatives of crash victims; and provide additional funds for the training of airport security screeners. Within the managers amendment, we have included legislative language that will give the FAA the legal authority to undertake and implement the recommendations of the Gore commission.

It is important to note, however, Mr. President, that the Gore commission has not completed its work. In fact, the review of aviation security and safety is a dynamic and evolving process. While we have attempted to include security provisions within this bill, it is anticipated that the Congress will be considering further security recommendations and enhancements as the Gore commission continues its work.

I want to express my thanks to the Senator from New Jersey [Mr. LAUTENBERG] and the Senator from Texas [Mrs. HUTCHISON] for their contributions to this effort. I look forward to working with them in the future on this issue.

Mr. President, let me thank all Members who have expressed an interest in this bill. As my colleagues are aware, last night, Senator MCCAIN and myself worked throughout the evening to fashion a managers' amendment. Within that amendment, we have tried to include provisions and language that are of concern to other Members. I want to express my appreciation to my colleagues for their willingness to work with us on drafting this managers' amendment. Because of their cooperation and assistance, I believe that we will be able to move this bill forward quickly and complete action prior to September 30.

Mr. President, let me conclude by addressing one particular issue, the privatization of airports. I am aware that the House bill includes a provision which would establish a pilot program for six airports. I oppose those efforts because the definition of privatization allows the new airport owner to divert revenues off of the airport; to receive Federal grants; to collect federally authorized PFC's; allow major carriers to dictate who runs an airport; and gives general aviation no say in privatization. In my mind, this form of privatization is a new form of corporate welfare. Moreover, Mr. President, privatization is opposed by the airlines, by general aviation, and by the airports. I am not opposed to finding new and innovative solutions to financing our airports. But I do not believe that privatization is a means to achieve that end.

Mr. President, let me thank my friend from Arizona, the chairman of the Subcommittee on Aviation of the Commerce and Transportation Committee. It is always a joy to watch him work. It is a joy to work with him. He has the kind of tenacity that is needed around here at times to accomplish something that is important not only to this country but internationally.

Senator MCCAIN is called on for more than just aviation. Senator MCCAIN is leaned on quite often as it relates to our defense policy. His love of the country and his defense of military personnel is always above reproach and without doubt.

So I am pleased that we have had this opportunity to work together, because the ingredients in this piece of legislation, if we can maintain it in conference, bring us to a point, I think, I say to Senator MCCAIN, that we have been striving for for a long time.

We have learned something, and I hope a lot of our colleagues have learned something. One of the top five Senators in the U.S. Senate over the centuries is from Kentucky. He is Henry Clay. Henry Clay was known as ''the Great Compromiser.'' Compromise is not a nasty word, it is not a word that you ought to run from. But that is how you accomplish things around here.

Henry Clay described compromise as ''a negotiated hurt.'' A compromise is a negotiated hurt. Sure, it hurts to lose something that you feel strongly about, but you usually get something. My father always told me, ''You give up something, you get something,'' and that is compromise.

So I think in the proceedings on this bill, once it was brought up, that we have injected the Henry Clay philosophy. We have worked together. We have had give and take. We have had Senators who were very reluctant to give up what they wanted, but somehow or another we found a way to modify their amendment so that it would not be so onerous to some and yet pleasing to the offeror of the amendment.

So the experience of the moment is always something that builds on the education of the time spent in this institution.

Let me join with my friend in thanking his staff—I will not go through the list—for all of their fine cooperation,

and my two—I want to say staffers, but they are my friends. That is the way I look at them, Sam Whitehorn and Tom Zoeller, and the others on the staff and those from other committees who have been working with us. We found an air of cooperation and camaraderie that has been unusual, I think. So I am very pleased with the cooperation we have had, and I thank my friends.

Mr. President, let me thank all Members, too, who have expressed an interest in this piece of legislation. As my colleagues are aware, last night, Senator MCCAIN and I worked throughout the evening to fashion what we referred to here as a ''managers' amendment.'' Those are amendments to be offered to the bill that we were able to work out and find agreement on. Rather than go through the long harangue of debate and running back and forth, our staffs worked together and our Senators cooperated. So we worked hard to fashion what we refer to and what was offered, what was adopted, as the ''managers' amendment.'' Of course, the leadership in putting that together is given to Senator MCCAIN for his extraordinary effort in putting this managers' amendment together.

Within that amendment, we have tried to include provisions and language that are of concern to not only our Members but others, because when we pass legislation, we either help or hurt our constituents. We either make it better or worse. So we have to be careful, once we agree on it, of what it does for the safety, for the betterment of the economy, whatever it might be. Even though we may agree, it is for those beyond this Chamber for whom we are here to work.

Sometimes I don't always vote the way I personally feel. I think it was Hamilton who said in referring to the Congress, ''In these Halls, the people's voice shall be heard by their immediate representative.'' That is us, and we vote what we hear from our constituents. Sometimes it is not exactly the way we would want it, but you try to respond to those who are interested.

I think we have another interested group out there that we have not had before, and it is the so-called ''C-SPAN junkies.'' I read the other day where some tape C-SPAN and come home at night and watch us. I didn't know we were that good. I thought maybe some of them just turned us off. But these are people who have watched us, listened to us, and have become informed.

I don't know how many calls you get, but every once in a while, someone will call and say, ''I heard you speak. I don't agree with that. I think you ought to do this,'' and it has been an interesting period in the institution of the Senate.

I want to express my gratitude and appreciation to all my colleagues for their willingness to work with us in drafting this piece of legislation. Because of that cooperation and assistance, I believe we will be able to move this bill forward quickly and complete action, hopefully, before September 30.

So we have some time. I assure my colleagues, as Senator MCCAIN and I have assured each other, as soon as this bill is passed, we are going to work. We are not going to rest on our laurels and beat our chests, We passed a bill. We are not finished. We have a conference to go to. We have a final bill to complete. We have to have one that the administration will agree to. As Senator MCCAIN said, we have worked with the administration. We have tried to work with all parties. I believe in the end we will have a piece of legislation that will be acceptable all around.

Mr. President, let me conclude by reiterating one particular issue, and that is the privatization of airports. I am aware that the House bill includes a provision which would establish a pilot project of six airports. Up front—I am not trying to kid anybody—I oppose those efforts because the definition of privatization allows the new airport owner to divert revenues off of the airport, to receive Federal grants, to collect Federally authorized PFC's, allow major carriers to dictate who runs an airport, and gives general aviation no say—gives general aviation no say—in the privatization.

So in my mind, Mr. President, this form of privatization is a new form of corporate welfare—a new form of corporate welfare. Moreover, Mr. President, privatization is opposed by the airlines, by general aviation, and by the airports. I am not opposed to finding new and innovative solutions to financing our airports, but I do not believe that privatization is a means to achieve that end.

So having said that, Mr. President, I believe we are ready to go to third reading.

I yield the floor.

The PRESIDING OFFICER. Are there further amendments? If not, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. Under the previous order, the clerk will report calendar No. 588, H.R. 3539.

The bill clerk read as follows:

A bill (H.R. 3539) to amend title 49, United States Code, to reauthorize programs of the Federal Aviation Administration, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause is stricken, and the text of S. 1994 as passed by the Senate is inserted in lieu thereof.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona [Mr. MCCAIN] is recognized.

Mr. MCCAIN. Mr. President, again, I would like to thank my friend from Kentucky. I remember when I was a new Member of the Senate, he was kind enough, as chairman of the Aviation Subcommittee, to come to my State and have a hearing on the Grand Canyon and other issues. That has characterized our relationship now for more than 10 years.

Mr. President, I ask unanimous consent that final passage occur on H.R. 3539, at 2 p.m. today, and that paragraph 4 of rule 12 be waived.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I ask for the yeas and nays on the pending legislation.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

MORNING BUSINESS

Mr. MCCAIN. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business until the hour of 2 p.m., with Senators permitted to speak for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I ask unanimous consent that I be allowed to continue for up to 15 minutes as in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator is recognized for 15 minutes.

A NATIONAL MONUMENT IN UTAH

Mr. BENNETT. Mr. President, something is going to happen today in the State of Arizona that will have great impact on the State of Utah. I would like to discuss that issue in somewhat greater detail than I have been able to do in the press. Unfortunately, we now live in a time where the press looks for the 7-second sound bite or the two-sentence summary to print in the newspaper, and the overall issue gets lost. So I appreciate the opportunity to lay out the whole circumstance of what has happened, and is happening, for the record.

Several weeks ago in the Washington Post there was a story about a leak out of the White House saying that the President was considering creating a national monument in the State of Utah, somewhere in the neighborhood of 2 million acres. That came as unexpected news to me and the other Members in the Utah delegation, and we raised the issue. ''Oh, no,'' we were assured, ''nothing is really under consideration. These are just discussions that are taking place in the White House, and they probably should not have

been leaked. There shouldn't be any press discussion about it because nothing really is going to happen.''

But the rumors persisted. The build-up continued to the point that our Governor decided to call Secretary Babbitt. I also called Secretary Babbitt and asked about this issue. Finally, last Saturday, Senator HATCH and I were invited to go to the Interior Department to meet with Secretary Babbitt and members of the White House staff to talk about this proposed national monument.

When we got there, having been told in advance that the Secretary was going to calm our fears and lay out a full statement of what was going on, I got a little startled when the Secretary began the presentation by saying, ''We're here just to listen.'' And that was all. Well, Senator HATCH and I indicated that we were very concerned that something as significant as this was going to be done without any consultation with Congress, let alone Members of the Utah delegation. Congress as a whole, having historically played a significant role in the creation of national monuments, was being cut out.

''Well,'' said Secretary Babbitt, ''I can tell you categorically, no decision has been made with respect to this.'' We said, ''We read in the newspapers that the President is going to announce it on Wednesday, when he's in Arizona at the Grand Canyon.'' And Secretary Babbitt repeated, ''I tell you categorically, no decision has been made.''

When we met with the press afterward, they asked us, ''What do you think will happen?'' I am afraid I am cynical enough, Mr. President, and I said, ''I believe the President will make the announcement on Wednesday.'' Senator HATCH—perhaps he is a little more trusting—said, ''I can't believe that the President would do that, given the assurances we've just been given.''

It is not just Republicans that are involved; the Democratic Congressman who represents the district in which this monument will be formed, uttered the same concern, expressed the same amazement on the fact that he had not been consulted, and came away from his interview with Secretary Babbitt saying ''I have been assured there is nothing imminent going to happen.''

So we had the Democratic Congressman saying, ''nothing imminent.'' We had the senior Senator from Utah saying he was sure there would be no announcements. As I say, I was more cynical. I predicted that there would be an announcement. I went away from the meeting convinced that, in spite of the assurances we were given that no decision had been made, in fact we were on a track toward a certainty of an announcement on Wednesday—today.

We then went through the weekend. And at the beginning of the week, the news reports started to come in, from CNN and elsewhere, that the President was going to announce the formation of a major national monument in Utah when he was at the Grand Canyon. ''Oh, no,'' said the White House. ''We deny these news reports. Anybody who says that is going to happen does not know what he is talking about. No decision has been made.''

Once again, I continued to believe that the President was going to do it.

Today I received a phone call from Leon Panetta. He told me, to my great surprise, that today the President will announce the creation of a new national monument in the State of Utah in the neighborhood of 2 million acres. Among the other things Mr. Panetta told me was that there will be a 3-year period for the development of a management plan for this land. In that 3-year period, he said, all of the issues will be dealt with and sorted out.

That is, frankly, Mr. President, a ''trust us'' kind of statement on the part of the administration. ''We are going to turn the process completely around. Instead of going through the development of the plan and then creating the monument, we will create the monument, and develop the plan after the fact,'' but ''trust us, we will take care of all of your concerns.'' Given the history leading up to this announcement, Mr. President, it is fairly difficult for many people in Utah to trust the administration on this one.

That having been said, I want to take the balance of the time to talk about the misconceptions surrounding this entire circumstance. I cannot find a better place to summarize most of those misconceptions than today's New York Times. They have an editorial entitled ''A New and Needed National Monument.'' Once again, Mr. President, the fact that this appears in the New York Times the day the President is making his announcement says to me that they knew far in advance of Leon Panetta's call to me that the President was going to do this, their protestations to the contrary notwithstanding. Based on the New York Times editorial, there are several misconceptions about western land use which continue to perpetuate myths, at least in Manhattan, if not all of the Eastern States that are unfamiliar with the realities in the West.

The editorial starts out praising the President for placing an area off limits to development. Now, I am sure that to the people in the New York area, development means hotels, condominiums, and other commercial activities. But this land is already developed in many areas by western definition; that is, there are grazing activities going on in this land.

Mr. Panetta assured me that the grazing would be allowed to continue. There is hunting that goes on in this area. Mr. Panetta assured me that the hunting would be allowed to continue. There are State parks already in this land, which means tourism. Mr. Panetta assured me the State parks would be excluded from the designation and tourism would be allowed to continue. Finally, there are thousands of people who live within the boundaries of this national monument. I assume they will be allowed to continue to live there under the same circumstances. We will not find out until we go through this 3-year process.

All these activities constitutes, in western terms, development, Mr. President, and I was assured by the Chief of Staff in the White House that that kind of development will be allowed to continue. So when the New York Times says the President is setting the area ''off limits to development,'' the New York Times is at odds with the statement of the President's Chief of Staff.

It goes on to say:

> The President's move is also virtually certain to block plans by a Dutch company, Andalex Resources, to develop a coal reserve twice the size of Manhattan that sits right in the middle of the wilderness area. The administration has tried to persuade the company to swap these lands for an equivalent amount of coal in less vulnerable parts of the State, but the company has said no.

Two items, Mr. President. No. 1, the suggestion that the coal reserve is right in the middle of the wilderness area—''wilderness,'' by definition in the law, means land where there is no evidence of the presence of humans and, very specifically, land where there are no roads. I have, myself, driven over the existing road to the mine site. You cannot, by any stretch of the imagination, say that an area where there is an existing, used road, constitutes wilderness. The mine site is not smack in the middle of the wilderness area. The mine site is miles away from the wilderness area.

Second, the New York Times says the administration has tried to persuade the company to swap out for lands of equal value. That is a very interesting statement to make in the newspaper. Here are some of the facts, if you take the Bruce Babbitt method of appraisal of value.

The market value of the coal in this area is $1.2 trillion. There are some who say, why, that is an inflated figure. You cannot expect to get that much out. They are right. But that is the way Bruce Babbitt appraises minerals in the ground when he wants to make press release statements about how valuable a developing gold mine is. So we will use the Bruce Babbitt method of appraisal here and say we have 1.2 trillion dollars' worth of coal. I do not know of any other coalfield in the State, or the Nation or the world that comes to $1.2 trillion in projected value. How can they say ''we are going to swap out equal value, but you, nasty coal company, are not willing to cooperate?'' I would say to the administration, find me another coalfield with an estimated value of $1.2 trillion before you start talking about swaps. The New York Times conveniently does not mention that when they talk about the swap.

The New York Times goes on to talk about the way the President has done

this. He is doing it under the Antiquities Act. He says that is what gives him the right to act without consulting Congress, and the New York Times obviously agrees. It says:

> The Antiquities Act, inspired by the discovery of archaeological treasures in the Southwest at the turn of the century, has served as a useful mechanism for Presidents to preserve valuable public lands without congressional consent. The act has been invoked 66 times, and many of the Nation's most treasured sites, including the Grand Canyon, where Mr. Clinton will make his announcement, began as protected monuments and ended up as national parks by act of Congress.

All true. What they do not tell us, however, Mr. President—and, indeed, what they may not know—is that the Antiquities Act has never been used by a President since the passage of the two landmark land usage acts by Congress, NEPA and FLMPA. For the C–SPAN junkies, NEPA is the National Environment Policy Act; FLMPA, the Federal Land Management Policy Act. NEPA and FLMPA were Congress' attempt to bring order to the process. NEPA and FLMPA have clear procedures for moving ahead on a matter of this kind, and no President has ever ignored NEPA and FLMPA to create a national monument until now. Citing the precedence of Theodore Roosevelt and his use of the Antiquities Act, as the New York Times by implication does, does not excuse Mr. Clinton from violating appropriate processes.

Enough about the misconceptions in the editorial. There are other things that need to be brought to our attention that we should understand about this proposal. One thing I hope the editorial writers in the New York Times will realize, if they do not already, is that there is a great difference between a national monument and wilderness. Wilderness, as defined by the law, is a territory that is set aside because there is no evidence that human beings have ever been there.

Although there is clear evidence of human activity in most of this area, there are about 350,000 acres that qualify as wilderness, under the most strict definition of that term. The Utah delegation wanted to set aside those 350,000 acres as wilderness. We were prevented from doing so by a filibuster on this floor. We had enough votes to pass it, but we did not have enough votes to shut off debate.

Those 350,000 acres of pristine wilderness will now be included in the national monument. What does that mean? That means that tourists can go there; that means people can camp there; that means people can take mechanized vehicles there, because all of that is permitted at a national monument. It is not permitted in a wilderness area, but it is permitted in a national monument.

Ironically, when you create a national monument, you must, of necessity, create visitor centers. There are buildings within a national monument, which would not be allowed in a wilderness area. You must pave the roads because the tourists don't go over Jeep trails. We have plenty of national monuments in Utah, with miles and miles of paved roads. Ironically, we are now going to see the road, which they are trying to stop the coal company from using, paved, so that tourist buses can go over it.

And then we must have concessions. If you have a 2 million acre area set apart for tourism, you have to have a place for them to relieve themselves, a place to refresh themselves. And you are going to see refreshment stands, hot dog stands; and you are going to maybe even see, in as in the big national parks, hotels, cafeterias, and movie theaters—all set up to meet the demands of the tourists. Do you do this to protect the wilderness? I am not sure that the people who are applauding this set-aside as being a way to protect the wilderness understand that a national monument is not a road to wilderness. A national monument is a road to a national park, and a national park is a major tourist attraction with hundreds of thousands, if not millions, of people coming to an area that is now completely desolate. This is what the New York Times thinks is a really good way to protect the wilderness and the pristine nature of this land.

Going on to further misconceptions, one thing that the folks in Manhattan have probably never heard of, because it is unheard of in the East, is something we in the West call school trust lands. When the Western States were created, the Congress, in addition to holding most of the land in Federal ownership, created a series of alternate sections every so often along the land. Almost thrown across the face of the land like smallpox eruptions, these sections would be owned by the State and held in trust for the value of the school children in that State. There are over 200,000 acres of school trust lands in the area that the President will set apart as a national monument. Oh, we are assured that the money that would come to the school children, if these lands were used for mineral development, will be made up some other way. If you go, again, to the Bruce Babbitt method of appraisal, at $1.2 trillion, the amount the schoolchildren would get out of it would be on the billions of dollars. Are we prepared in this Congress to appropriate billions of dollars to make the Utah schoolchildren whole? Of course, we are not. And, of course, that number is too high. But whatever the appropriate number is, the President is asking us to trust him that Utah schoolchildren will be made whole. I can tell you how Utah's schoolchildren have reacted. In Kane County, the county where the majority of this monument will lie, the city of Kanab has, today, shut down in protest. The schoolchildren have been let out of school and they are walking the streets of Kanab wearing black armbands and carrying posters protesting the administration's decision. The president of the Utah Education Association—a group not known for its Republican proclivities—has publicly said that the administration has committed ''felonious assault on Utah schoolchildren'' by the way they are approaching this.

That may come as news to the New York Times, who has never heard of school trust lands, but those are the reactions of the education leaders—not the Utah congressional delegation, not the Republican establishment—but the education leaders in the State of Utah.

So, Mr. President, I summarize this way. We have a proposal from the President to create a massive, new national monument in my State. Am I opposed to a new national monument in Utah? I can't be opposed in principle. A new national monument will indeed mean many tourists and great activity in my State. But we have been given this proposal after assurances that it was not going to happen, at a time when we were told it wasn't going to happen, with a presentation that we should now trust the administration to work out all of the details.

If, indeed, the whole thing is done in proper good faith, I believe we could end up with a national monument that makes sense in one area, wilderness that made sense in another area, and mineral activity that made sense, environmentally, in the third area.

The President's actions do not lead me to believe that that will be the result. On the contrary, the way he has proceeded leads me to believe that we are in for a protracted period of controversy and difficulty over this issue. I wish the President had followed the procedures laid down by the Congress in NEPA and FLPMA and had given us an orderly process to produce a worthwhile result. Instead, he has chosen a photo op that will undoubtedly be gorgeous. As we look at the evening news, we will see the President with the Grand Canyon in the background, with Vice President GORE standing at one side and Carol Browner at the other side, proclaiming his protection of the beauties of nature from the plunderers. Then when the photo op has passed and the television images have faded from our screen, the realities of what he has done will leave us with 3 years of hard slogging trying to sort this out and come up with the proper kind of result.

I don't wish to say that I do not trust the administration. They say, ''Trust us in this circumstance,'' but I conclude with the advice that was left by Ronald Reagan: ''Trust but verify.''

I intend to do whatever I can through this process to see that the administration keeps its initial pledges of guaranteeing that existing rights will not be trampled, and that the schoolchildren of Utah will be taken care of. ''Trust but verify'' should become our watchword.

Mr. President, there is one other thing about the coal mine that people should understand and is not outlined in most of the press reports dealing

with this land. We have images of coal mining that are very, very hurtful. We see strip mines in Kentucky and West Virginia. We see smokestacks belching out black smoke and blaming it on coal. When the administration talks about stopping coal mining in this area, there is an immediate emotional reaction that this is a good thing to do. I have personally been to the proposed location of this mine. We are not talking about strip mining here, Mr. President, we are talking about mining below the surface of the ground. The only impact on the ground would be a mine opening smaller than one of the walls here on the side of the Senate — an opening just wide enough to bring out the trams carrying the coal, and that is it. With long-wall mining technology, you can go into the mine and produce the coal with no more impact on the surface than that.

Second, we are not talking about the kind of coal that comes out of West Virginia and Kentucky, a high-sulfur coal which when burned produces dramatic damage to the atmosphere. We are talking about the low-sulfur coal that the environmentalists are hoping we can find to burn in this country. We are talking about coal that will produce the right kind of environmental impact when it ultimately ends up in a furnace somewhere.

So, by saying we are going to stop the production of low-sulfur coal in Utah, people are in fact admitting they are going to increase or at least maintain the burning of high-sulfur coal that comes from elsewhere with the appropriate damage to the environment.

Finally, all of this talk about a Dutch company implies that you are going to see a giant come from overseas to somehow fasten itself on Utah and suck things out of Utah's ground. The company may indeed have its shareholders as citizens of a European country. I do not know exactly where they live. I do know the company has been a responsible, tax-paying, job-producing corporate citizen of the State of Utah for decades. It is already mining coal in an environmentally sensitive way in central Utah. It has demonstrated that it knows how to do it, minimizing any kind of environmental impact. If there ever was a company I would want to proceed with the development of these coal resources, it would be one with the experience and the track record of good corporate citizenship which this company has shown in the years it has operated in Utah. So it is true to say that their shareholders don't live in Utah or maybe in the United States. But that I find is irrelevant when one recognizes what they have done for our State and how important the economic activity that they have generated for our State has been.

I thank the Chair. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. MOSELEY-BRAUN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL AVIATION REAUTHORIZATION ACT OF 1996

Ms. MOSELEY-BRAUN. Mr. President, I would like for a moment to comment on the pending legislation, the FAA Reauthorization Act, to add a few words in support of comments made by Senator WYDEN earlier regarding the train whistle amendment.

I am particularly gratified at the activity of the managers in accepting the language of the train whistle amendment because I think it does represent a step in the right direction in calling for Federal-State cooperation, Federal-State partnership and engagement and involvement of local governments in the decisionmaking process.

Certainly, we are all concerned about safety, and safety is at the core of the legislative authority pertaining to the train whistle requirement. At the same time, our laws have to achieve a balance. We have to balance the various interests, particularly the interests of local communities in maintaining quality of life in those communities—areas like my own and those represented by Senator WYDEN. There are parts of my State, for example, in which you have the confluence of many different railroad lines, in particular in suburban communities, which may mean that, at the behest of safety, the communities lose whatever quality of life they have because you may have train whistles sounding every 5 minutes.

As you know, Mr. President, the Chicago area has been known historically as the transportation hub of the United States. So in the hub, when we have the confluence of many different rail lines, the train whistle issue cuts to the heart of our ability to balance the needs of communities, to maintain communities where people can live versus our national need for safety.

So I think the language of this amendment goes a long way in encouraging local input, in encouraging flexibility, and encouraging the kind of cooperation we need. The days of heavy-handed bureaucratic responses to these kinds of issues have to be over. We have to begin to explore ways in which we can maximize local input, at the same time recognizing our connection as a national community.

I believe the train whistle language does that, recognizes the overarching interests that bring us together, but it also provides local governments the capacity and ability to be heard without having to spend a lot of money for lawyers and hiring specialists and the like, that they can do it in a simplified and straightforward manner.

So I thank the managers of this legislation. I thank Senator WYDEN for his leadership in this area.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, morning business is now concluded.

FEDERAL AVIATION REAUTHORIZATION ACT OF 1996

The Senate continued with the consideration of the bill.

VOTE

The PRESIDING OFFICER. Under the previous order, the question is on passage of H.R. 3539, as amended. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from West Virginia [Mr. ROCKEFELLER] is necessarily absent.

The PRESIDING OFFICER (Ms. SNOWE). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 293 Leg.]

YEAS—99

Abraham	Feinstein	Lott
Akaka	Ford	Lugar
Ashcroft	Frahm	Mack
Baucus	Frist	McCain
Bennett	Glenn	McConnell
Biden	Gorton	Mikulski
Bingaman	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grams	Murkowski
Bradley	Grassley	Murray
Breaux	Gregg	Nickles
Brown	Harkin	Nunn
Bryan	Hatch	Pell
Bumpers	Hatfield	Pressler
Burns	Heflin	Pryor
Byrd	Helms	Reid
Campbell	Hollings	Robb
Chafee	Hutchison	Roth
Coats	Inhofe	Santorum
Cochran	Inouye	Sarbanes
Cohen	Jeffords	Shelby
Conrad	Johnston	Simon
Coverdell	Kassebaum	Simpson
Craig	Kempthorne	Smith
D'Amato	Kennedy	Snowe
Daschle	Kerrey	Specter
DeWine	Kerry	Stevens
Dodd	Kohl	Thomas
Domenici	Kyl	Thompson
Dorgan	Lautenberg	Thurmond
Exon	Leahy	Warner
Faircloth	Levin	Wellstone
Feingold	Lieberman	Wyden

NOT VOTING—1

Rockefeller

The bill (H.R. 3539), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 3539) entitled ''An Act to amend title 49, United States Code, to reauthorize programs of the Federal Aviation Administration, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Aviation Reauthorization Act of 1996''.

(b) TABLE OF CONTENTS.—

SEC. 2. AMENDMENTS TO TITLE 49, UNITED STATES CODE.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

TITLE I—REAUTHORIZATION OF FAA PROGRAMS

SEC. 101. FEDERAL AVIATION ADMINISTRATION OPERATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS FROM GENERAL FUND.—Section 106(k) is amended—

(1) by striking ''and'' after ''1995,''; and

(2) by inserting before the period at the end the following: '', and $5,000,000,000 for fiscal year 1997.''.

(b) AUTHORIZATION OF APPROPRIATIONS FROM TRUST FUND.—Section 48104(b) is amended—

(1) in the subsection heading by striking ''FOR FISCAL YEARS 1993''; and

(2) by striking the phrase ''for fiscal year 1993''.

(c) CLERICAL AMENDMENT.—Section 48108 is amended by striking subsection (c).

SEC. 102. AIR NAVIGATION FACILITIES.

Section 48101(a) is amended by adding at the end the following:

''(5) For the fiscal years ending September 30, 1991–1997, $17,929,000,000.''.

SEC. 103. RESEARCH AND DEVELOPMENT.

Section 48102(a) is amended by striking ''title:'' and all that follows through the end of the subsection, and inserting the following: ''title, $206,000,000 for fiscal year 1997.''.

SEC. 104. AIRPORT IMPROVEMENT PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 48103 is amended—

(1) by striking ''and $21,958,500,000'' and inserting ''$19,200,500,000''; and

(2) by inserting before the period at the end the following: '', $21,480,500,000 for fiscal years ending before October 1, 1997.

(b) OBLIGATIONAL AUTHORITY.—Section 47104(c) is amended by striking ''1996'' and inserting ''1997''.

SEC. 105. INTERACCOUNT FLEXIBILITY.

Section 106 is amended by adding at the end the following new subsection:

''(l) INTERACCOUNT FLEXIBILITY.—

''(1) Except as provided in paragraph (2), the Administrator may transfer budget authority derived from trust funds among appropriations authorized by subsection (k) and sections 48101 and 48102, if the aggregate estimated outlays in such accounts in the fiscal year in which the transfers are made will not be increased as a result of such transfer.

''(2) The transfer of budget authority under paragraph (1) may be made only to the extent that outlays do not exceed the aggregate estimated outlays.

''(3) A transfer of budget authority under paragraph (1) may not result in a net decrease of more than 5 percent, or a net increase of more than 10 percent, in the budget authority available under any appropriation involved in that transfer.

''(4) Any action taken pursuant to this section shall be treated as a reprogramming of funds that is subject to review by the appropriate committees of the Congress.

''(5) The Administrator may transfer budget authority pursuant to this section only after—

''(A) submitting a written explanation of the proposed transfer to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

''(B) 30 days have passed after the explanation is submitted and none of the committees notifies the Administrator in writing that it objects to the proposed transfer within the 30 day period.''.

TITLE II—AIRPORT IMPROVEMENT PROGRAM MODIFICATIONS

SEC. 201. PAVEMENT MAINTENANCE PROGRAM.

(a) PAVEMENT MAINTENANCE.—Chapter 471 is amended by adding the following section at the end of subchapter I:

"§ 47132. Pavement maintenance

''(a) IN GENERAL.—The Administrator of the Federal Aviation Administration shall issue guidelines to carry out a pavement maintenance pilot project to preserve and extend the useful life of runways, taxiways, and aprons at airports for which apportionments are made under section 47114(d). The regulations shall provide that the Administrator may designate not more than 10 projects. The regulations shall provide criteria for the Administrator to use in choosing the projects. At least 2 such projects must be in States without a primary airport that had 0.25 percent or more of the total boardings in the United States in the preceding calendar year. In designating a project, the Administrator shall take into consideration geographical, climatological, and soil diversity.

''(b) EFFECTIVE DATE.—This section shall be effective beginning on the date of enactment of the Federal Aviation Reauthorization Act of 1996 and ending on September 30, 1999.''.

(b) COMPLIANCE WITH FEDERAL MANDATES.—

(1) USE OF AIP GRANTS.—Section 47102(3) is amended—

(A) in subparagraph (E) by inserting ''or under section 40117'' before the period at the end; and

(B) in subparagraph (F) by striking ''paid for by a grant under this subchapter and''.

(2) USE OF PASSENGER FACILITY CHARGES.—Section 40117(a)(3) is amended—

(A) by inserting ''and'' at the end of subparagraph (D);

(B) by striking ''; and'' at the end of subparagraph (E) and inserting a period; and

(C) by striking subparagraph (F).

(c) CONFORMING AMENDMENT.—The chapter analysis for subchapter I of chapter 471 is amended by inserting after the item relating to section 47131 the following new item:

''47132. Pavement maintenance.''.

SEC. 202. MAXIMUM PERCENTAGES OF AMOUNT MADE AVAILABLE FOR GRANTS TO CERTAIN PRIMARY AIRPORTS.

Section 47114 is amended by adding at the end thereof the following:

''(g) SLIDING SCALE.—

''(1) Notwithstanding any other provision of this title, of the amount newly made available under section 48103 of this title for fiscal year 1997 to make grants, not more than the percentage of such amount newly made available that is specified in paragraph (2) shall be distributed in total in such fiscal year for grants described in paragraph (3).

''(2) If the amount newly made available is—

''(A) not more than $1,150,000,000, then the percentage is 47.0;

''(B) more than $1,150,000,000 but not more than $1,250,000,000, then the percentage is 46.0;

''(C) more than $1,250,000,000 but not more than $1,350,000,000, then the percentage is 45.4;

''(D) more than $1,350,000,000 but not more than $1,450,000,000, then the percentage is 44.8; or

''(E) more than $1,450,000,000 but not more than $1,550,000,000, then the percentage is 44.3.

''(3) This subsection applies to the aggregate amount of grants in a fiscal year for projects at those primary airports that each have not less than 0.25 per centum of the total passenger boardings in the United States in the preceding calendar year.''.

SEC. 203. DISCRETIONARY FUND.

Section 47115 is amended—

(1) by striking ''and'' at the end of subsection (d)(2) and inserting a comma and the following: '', including, in the case of a project at a reliever airport, the number of operations projected to be diverted from a primary airport to that reliever airport as a result of the project, as well as the cost savings projected to be realized by users of the local airport system;'';

(2) by redesignating paragraph (3) of subsection (d) as paragraph (5), and by inserting after paragraph (2) of that subsection the following:

''(3) the airport improvement priorities of the States, and regional offices of the Administration, to the extent such priorities are not in conflict with paragraphs (1) and (2) of this subsection;

''(4) any increase in the number of passenger boardings in the preceding 12-month period at the airport at which the project will be carried out, with priority consideration to be given to projects at airports at which, during that period, the number of passenger boardings was 20 percent or greater than the number of such boardings during the 12-month period preceding that period; and'';

(3) by redesignating the second subsection (f) as subsection (g); and

(4) by adding at the end the following:

''(h) PRIORITY FOR LETTERS OF INTENT.—In making grants in a fiscal year with funds made available under this section, the Secretary shall fulfill intentions to obligate under section 47110(e).''.

SEC. 204. DESIGNATING CURRENT AND FORMER MILITARY AIRPORTS.

(a) GENERAL REQUIREMENTS.—Section 47118(a) is amended to read as follows:

''(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall designate current or former military airports for which grants may be made under section 47117(e)(1)(E) of this title. The maximum number of airports bearing such designation at any time is 12. The Secretary may only so designate an airport (other than an airport so designated before August 24, 1994) if—

''(1) the airport is a former military installation closed or realigned under—

''(A) section 2687 of title 10;

''(B) section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note); or

''(C) section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

''(2) the Secretary finds that such grants would—

''(A) reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

''(B) enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.''.

(b) ADDITIONAL DESIGNATION PERIODS.—Section 47118(d) is amended by striking ''designation.'' and inserting ''designation, and for subsequent 5-fiscal-year periods if the Secretary determines that the airport satisfies the designation criteria under subsection (a) at the beginning of each such subsequent 5-fiscal-year period.''.

(c) PARKING LOTS, FUEL FARMS, AND UTILITIES.—Subsection (f) of section 47118 is amended by striking ''the fiscal years ending September 30, 1993–1996,'' and inserting ''for fiscal years beginning after September 30, 1992,''.

(d) ONE-YEAR EXTENSION.—Section 47117(e)(1)(E) is amended by striking ''and 1996,'' and inserting ''1996, and 1997,''.

SEC. 205. STATE BLOCK GRANT PROGRAM.

(a) PARTICIPATING STATES.—Section 47128(b) is amended—

(1) by striking paragraph (2);

(2) by redesignating subparagraphs (A) through (E) of paragraph (1) as paragraphs (1) through (5), respectively; and

(3) by striking ''(1) A State'' and inserting ''A State''.

(b) USE OF STATE PRIORITY SYSTEM.—Section 47128(c) is amended by adding at the end the following: ''In carrying out this subsection, the Secretary shall permit a State to use the priority system of the State if such system is not inconsistent with the national priority system.''.

(c) CHANGE OF EXPIRATION DATE.—Section 47128(d) is amended by striking ''1996'' and inserting ''1997''.

SEC. 206. ACCESS TO AIRPORTS BY INTERCITY BUSES.

Section 47107 (a) is amended—

(1) by striking ''and'' at the end of paragraph (18);

(2) by striking the period at the end of paragraph (19) and inserting ''; and''; and

(3) by adding at the end the following:

''(20) the airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, but the sponsor does not have any obligation under this paragraph, or because of it, to fund special facilities for intercity bus service or for other modes of transportation.''.

TITLE III—AVIATION SAFETY AND SECURITY

SEC. 301. REPORT INCLUDING PROPOSED LEGISLATION ON FUNDING FOR AIRPORT SECURITY.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Administrator shall conduct a study and submit to the Congress a report on whether, and if so, how to transfer certain responsibilities of air carriers under Federal law for security activities conducted onsite at airports to airport operators who are subject to section 44903 of title 49, United States Code, or to the Federal Government or providing for shared responsibilities between air carriers and airport operators or the Federal Government.

(b) CONTENTS OF REPORT.—The report submitted under this section shall—

(1) examine potential sources of Federal and non-Federal revenue that may be used to fund security activities including but not limited to providing grants from funds received as fees collected under a fee system established under subpart C of this title and the amendments made by that subpart; and

(2) provide legislative proposals, if necessary, for accomplishing the transfer of responsibilities referred to in subsection (a).

(c) CERTIFICATION OF SCREENING COMPANIES.—The Federal Aviation Administrator is directed to certify companies providing security screening and to improve the training and testing of security screeners through development of uniform performance standards for providing security screening services.

SEC. 302. FAMILY ADVOCACY.

(a) IN GENERAL.—Subchapter III of chapter 11 of title 49, United States Code, is amended by adding at the end the following new section:

"§ 1136. Family advocacy

''(a) IN GENERAL.—The National Transportation Safety Board shall establish a program consistent with its existing authority to provide family advocacy services for aircraft accidents described in subsection (b)(1) and serve as the lead agency in coordinating the provision of the services described in subsection (b). The National Transportation Safety Board shall, as necessary, in carrying out the program, cooperate with the Secretary of Transportation, the Administrator of the Federal Aviation Administration, and such other public and private organizations as may be appropriate.

''(b) FAMILY ADVOCACY SERVICES.—

''(1) IN GENERAL.—The National Transportation Safety Board shall work with an air carrier involved in an accident in air commerce and facilitate the procurement by that air carrier of the services of family advocates who are not otherwise employed by an air carrier and who are not employed by the Federal Aviation Administration to, in the event of an accident in air commerce—

''(A) apply standards of conduct specified by the National Transportation Safety Board;

''(B) to the extent practicable, direct and facilitate all communication among air carriers, surviving passengers, families of passengers, news reporters, the Federal Government, and the governments of States and political subdivisions thereof;

''(C) coordinate with a representative of the air carrier to jointly direct the notification of the next of kin of victims of the accident; and

''(D) carry out such other related duties as the National Transportation Safety Board determines to be appropriate.

''(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) AIR CARRIER.—The term 'air carrier' has the meaning provided that term in section 40102(a)(2).

''(B) FAMILY ADVOCATE.—The term 'family advocate' shall have the meaning provided that term by the National Transportation Safety Board by regulation.''.

(b) GUIDELINES.—Not later than 90 days after the date of enactment of this Act, the National Transportation Safety Board shall issue guidelines for the implementation of the program established by the Board under section 1136 of title 49, United States Code, as added by subsection (a).

(c) CONFORMING AMENDMENT.—The chapter analysis for subchapter III of chapter 11 of title 49, United States Code, is amended by adding at the end the following:

''1136. Family advocacy.''.

SEC. 303. ACCIDENT AND SAFETY DATA CLASSIFICATION; REPORT ON EFFECTS OF PUBLICATION AND AUTOMATED SURVEILLANCE TARGETING SYSTEMS.

(a) ACCIDENT AND SAFETY DATA CLASSIFICATION.—

(1) IN GENERAL.—Subchapter II of chapter 11 of title 49, United States Code, is amended by adding at the end the following new section:

''§1119. Accident and safety data classification and publication

''(a) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the National Transportation Safety Board (hereafter in this section referred to as the 'Board') shall, in consultation and coordination with the Administrator of the Federal Aviation Administration (hereafter in this section referred to as the 'Administrator'), develop a system for classifying air carrier accident and pertinent safety data maintained by the Board.

''(b) REQUIREMENTS FOR CLASSIFICATION SYSTEM.—

''(1) IN GENERAL.—The system developed under this section shall provide for the classification of accident and safety data in a manner that, in comparison to the system in effect on the date of enactment of this section, provides for—

''(A) safety-related categories that provide clearer descriptions of the passenger safety effects associated with air transportation;

''(B) clearer descriptions of passenger safety concerns associated with air transportation accidents; and

''(C) a report to the Congress by the Board that describes methods for accurately informing the public of the concerns referred to in subparagraph (B) through regular reporting of accident and safety data obtained through the system developed under this section.

''(2) PUBLIC COMMENT.—Upon developing a system of classification under paragraph (1), the Board shall provide adequate opportunity for public review and comment.

''(3) FINAL CLASSIFICATION.—After providing for public review and comment, and after consulting with the Administrator, the Board shall issue final classifications. The Board shall ensure that air travel accident and safety data covered under this section is classified in accordance with the final classifications issued under this section for data for calendar year 1997, and for each subsequent calendar year.

''(4) REPORT ON THE EFFECTS ASSOCIATED WITH PUBLICATION OF AIR TRANSPORTATION ACCIDENT AND SAFETY INFORMATION.—

''(A) IN GENERAL.—Not later than the date specified in subsection (a), the Board shall prepare and submit to the Congress a report on the effects and potential of the publication of air transportation accident safety information.

''(B) CONTENT AND FORM OF REPORT.—The report prepared under this paragraph shall include recommendations concerning the adoption or revision of requirements for reporting accident and safety data.

''(5) RECOMMENDATIONS OF THE ADMINISTRATOR.—The Administrator may, from time to time, request the Board to consider revisions (including additions to the classification system developed under this section). The Board shall respond to any request made by the Administrator under this section not later than 90 days after receiving that request.

''(c) PRESENTATION OF FINAL CLASSIFICATIONS TO THE INTERNATIONAL CIVIL AVIATION ORGANIZATION.—Not later than 90 days after final classifications are issued under subsection (b)(3), the Administrator shall—

''(1) present to the International Civil Aviation Organization the final classification system developed under this section; and

''(2) seek the adoption of that system by the International Civil Aviation Organization.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for subchapter II of chapter 11 of title 49, United States Code, is amended by adding at the end the following new item:

''1119. Accident and safety data classification and publication.''.

(b) AUTOMATED SURVEILLANCE TARGETING SYSTEMS.—Section 44713 is amended by adding at the end the following new subsection:

''(e) AUTOMATED SURVEILLANCE TARGETING SYSTEMS.—

''(1) IN GENERAL.—The Administrator shall give high priority to developing and deploying a fully enhanced safety performance analysis system that includes automated surveillance to assist the Administrator in prioritizing and targeting surveillance and inspection activities of the Federal Aviation Administration.

''(2) DEADLINES FOR DEPLOYMENT.—

''(A) INITIAL PHASE.—The initial phase of the operational deployment of the system developed under this subsection shall begin not later than December 31, 1997.

''(B) FINAL PHASE.—The final phase of field deployment of the system developed under this subsection shall begin not later than December 31, 1999. By that date, all principal operations and maintenance inspectors of the Administration, and appropriate supervisors and analysts of the Administration shall have been provided access to the necessary information and resources to carry out the system.

''(3) INTEGRATION OF INFORMATION.—In developing the system under this section, the Administration shall consider the near-term integration of accident and incident data into the safety performance analysis system under this subsection.''.

SEC. 304. WEAPONS AND EXPLOSIVE DETECTION STUDY.

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration (hereafter in this section referred to as the ''Administrator'') shall enter into an arrangement with the Director of the National Academy of Sciences (or if the National Academy of Sciences is not available, the head of another equivalent entity) to conduct a study in accordance to this section.

(b) PANEL OF EXPERTS.—

(1) IN GENERAL.—In carrying out a study under this section, the Director of the National Academy of Sciences (or the head of another equivalent entity) shall establish a panel (hereinafter in this section as the ''panel'').

(2) EXPERTISE.—Each member of the panel established under this subsection shall have expertise in weapons and explosive detection technology, security, air carrier and airport operations, or another appropriate area. The Director of the National Academy of Sciences (or the head of another equivalent entity) shall ensure that the panel has an appropriate number of representatives of the areas specified in the preceding sentence.

(c) STUDY.—The panel established under subsection (b), in consultation with the National Science and Technology Council, representatives of appropriate Federal agencies, and appropriate members of the private sector, shall—

(1) assess the weapons and explosive detection technologies that are available at the time of the study that are capable of being effectively deployed in commercial aviation;

(2) determine how the technologies referred to in paragraph (1) may more effectively be used for promotion and improvement of security at airport and aviation facilities and other secured areas; and

(3) on the basis of the assessments and determinations made under paragraphs (1) and (2), identify the most promising technologies for the improvement of the efficiency and cost-effectiveness of weapons and explosive detection.

(d) COOPERATION.—The National Science and Technology Council shall take such action as may be necessary to facilitate, to the maximum extent practicable and upon request of the Director of the National Academy of Sciences (or the head of another equivalent entity), the cooperation of representatives of appropriate Federal agencies, as provided for in subsection (c), in providing the panel, for the study under this section—

(1) expertise; and

(2) to the extent allowable by law, resources and facilities.

(e) REPORTS.—The Director of the National Academy of Sciences (or the head of another equivalent entity) shall, pursuant to an arrangement entered into under subsection (a), submit to the Administrator such reports as the Administrator considers to be appropriate. Upon receipt of a report under this subsection, the Administrator shall submit a copy of the report to the appropriate committees of the Congress.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, for each of fiscal years 1997 through 2001, such sums as may be necessary to carry out this section.

SEC. 305. REQUIREMENT FOR CRIMINAL HISTORY RECORDS CHECKS.

(a) IN GENERAL.—Section 44936(a)(1) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) by striking ''(1)'' and inserting ''(1)(A)''; and

(3) by adding at the end the following:

''(B) The Administrator shall require by regulation that an employment investigation (including a criminal history record check in any case described in subparagraph (C)) be conducted for—

''(i) individuals who will be responsible for screening passengers or property under section 44901 of this title;

''(ii) supervisors of the individuals described in clause (i); and

''(iii) such other individuals who exercise security functions associated with baggage or cargo, as the Administrator determines is necessary to ensure air transportation security.

''(C) Under the regulations issued under subparagraph (B), a criminal history record check shall, as a minimum, be conducted in any case in which—

''(i) an employment investigation reveals a gap in employment of 12 months or more that the individual who is the subject of the investigation does not satisfactorily account for;

''(ii) that individual is unable to support statements made on the application of that individual;

''(iii) there are significant inconsistencies in the information provided on the application of that individual; or

''(iv) information becomes available during the employment investigation indicating a possible conviction for one of the crimes listed in subsection (b)(1)(B).''.

(b) APPLICABILITY.—The amendment made by subsection (a)(3) shall apply to individuals hired to perform functions described in section

44936(a)(1)(B) of title 49, United States Code, after the date of the enactment of this Act, except that the Administrator may, as the Administrator determines to be appropriate, require such employment investigations or criminal history records checks for individuals performing those functions on the date of enactment of this Act. Nothing in section 44936 of title 49, United States Code, as amended by subsection (a) precludes the Administration from permitting the employment of an individual on an interim basis while employment or criminal history record checks required by that section are being conducted.

SEC. 306. INTERIM DEPLOYMENT OF COMMERCIALLY AVAILABLE EXPLOSIVE DETECTION EQUIPMENT.

Section 44913(a) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

''(3) Until such time as the Administrator determines that equipment certified under paragraph (1) is commercially available and has successfully completed operational testing as provided in paragraph (1), the Administrator shall facilitate the deployment of such approved commercially available explosive detection devices as the Administrator determines will enhance aviation security significantly. The Administrator shall require that equipment deployed under this paragraph be replaced by equipment certified under paragraph (1) when equipment certified under paragraph (1) becomes commercially available. The Administrator is authorized, based on operational considerations at individual airports, to waive the required installation of commercially available equipment under paragraph (1) in the interests of aviation security.''.

SEC. 307. AUDIT OF PERFORMANCE OF BACKGROUND CHECKS FOR CERTAIN PERSONNEL.

Section 44936(a) is amended by adding at the end the following:

''(3) The Administrator shall provide for the periodic audit of the effectiveness of criminal history record checks conducted under paragraph (1) of this subsection.''.

SEC. 308. SENSE OF THE SENATE ON PASSENGER PROFILING.

It is the sense of the Senate that the Administrator of the Federal Aviation Administration, in consultation with the intelligence and law enforcement communities, should continue to assist air carriers in developing computer-assisted and other appropriate passenger profiling programs which should be used in conjunction with other security measures and technologies.

SEC. 309. AUTHORITY TO USE CERTAIN FUNDS FOR AIRPORT SECURITY PROGRAMS AND ACTIVITIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, funds referred to in subsection (b) may be used to expand and enhance air transportation security programs and other activities (including the improvement of facilities and the purchase and deployment of equipment) to ensure the safety and security of passengers and other persons involved in air travel.

(b) COVERED FUNDS.—The following funds may be used under subsection (a):

(1) Project grants made under subchapter 1 of chapter 471 of title 49, United States Code.

(2) Passenger facility fees collected under section 40117 of title 49, United States Code.

SEC. 310. DEVELOPMENT OF AVIATION SECURITY LIAISON AGREEMENT.

The Secretary of Transportation and the Attorney General, acting through the Administrator of the Federal Aviation Administration and the Director of the Federal Bureau of Investigation, shall enter into an interagency agreement providing for the establishment of an aviation security liaison at existing appropriate Federal agencies' field offices in or near cities served by a designated high-risk airport.

SEC. 311. REGULAR JOINT THREAT ASSESSMENTS.

The Administrator of the Federal Aviation Administration and the Director of the Federal Bureau of Investigation shall carry out joint threat and vulnerability assessments on security every 3 years, or more frequently, as necessary, at airports determined to be high risk.

SEC. 312. BAGGAGE MATCH REPORT.

Within 30 days after the completion of the passenger bag match pilot program recommended by the Vice President's Commission on Aviation Security, the Administrator shall submit a report to Congress on the safety effectiveness and operational effectiveness of the pilot program. The report shall also assess the extent to which implementation of baggage match requirements, coupled with the best available technologies and methodologies, such as passenger profiling, enhance domestic aviation security.

SEC. 313. ENHANCED SECURITY PROGRAMS.

(a) IN GENERAL.—Chapter 449 is amended by adding at the end of subchapter I the following:

''§ 44916. Assessments and evaluations

''(a) IN GENERAL.—

''(1) PERIODIC ASSESSMENTS.—The Administrator shall require each air carrier and airport (including the airport owner or operator in cooperation with the air carriers and vendors serving each airport) that provides for intrastate, interstate, or foreign air transportation to conduct periodic vulnerability assessments of the security systems of that air carrier or airport, respectively. The Administration shall perform periodic audits of the assessments referred to in paragraph (1).

''(2) INVESTIGATIONS.—The Administrator shall conduct periodic and unannounced inspections of security systems of airports and air carriers to determine the effectiveness and vulnerabilities of such systems. To the extent allowable by law, the Administrator may provide for anonymous tests of those security systems.''.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 44915 the following:

''44916. Assessments and evaluations.''.

SEC. 314. REPORT ON AIR CARGO.

Within —— days after the date of enactment of this Act, the Secretary of Transportation shall prepare a report for the Congress on any changes recommended and implemented as a result of the Vice President's Commission on Aviation Security to enhance and supplement screening and inspection of cargo, mail, and company-shipped materials transported in air commerce. The report shall include an assessment of the effectiveness of such changes, any additional recommendations, and, if necessary, any legislative proposals necessary to carry out additional changes.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. ACQUISITION OF HOUSING UNITS.

Section 40110 is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

''(b) ACQUISITION OF HOUSING UNITS.—

''(1) AUTHORITY.—In carrying out this part, the Administrator may acquire interests in housing units outside the contiguous United States.

''(2) CONTINUING OBLIGATIONS.—Notwithstanding section 1341 of title 31, United States Code, the Administrator may acquire an interest in a housing unit under paragraph (1) even if there is an obligation thereafter to pay necessary and reasonable fees duly assessed upon such unit, including fees related to operation, maintenance, taxes, and insurance.

''(3) CERTIFICATION TO CONGRESS.—The Administrator may acquire an interest in a housing unit under paragraph (1) only if the Administrator transmits to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate at least 30 days before completing the acquisition a report containing—

''(A) a description of the housing unit and its price; and

''(B) a certification that acquiring the housing unit is the most cost-beneficial means of providing necessary accommodations in carrying out this part.

''(4) PAYMENT OF FEES.—The Administrator may pay, when due, fees resulting from the acquisition of an interest in a housing unit under this subsection from any amounts made available to the Administrator.''.

SEC. 402. PROTECTION OF VOLUNTARILY SUBMITTED INFORMATION.

(a) IN GENERAL.—Chapter 401 is amended by redesignating section 40120 as section 40121 and by inserting after section 40119 the following:

''§ 40120. Protection of voluntarily submitted information

''(a) IN GENERAL.—Notwithstanding any other provision of law, neither the Administrator of the Federal Aviation Administration, nor any agency receiving information from the Administrator, shall disclose voluntarily-provided safety or security related information if the Administrator finds that—

''(1) the disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and

''(2) withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities.

''(b) REGULATIONS.—The Administrator shall issue regulations to carry out this section.''.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 401 is amended by striking the item relating to section 40120 and inserting the following:

''40120. Protection of voluntarily submitted information.

''40121. Relationship to other laws.''.

SEC. 403. APPLICATION OF FAA REGULATIONS.

In revising title 14, Code of Federal Regulations, in a manner affecting intrastate aviation in Alaska, the Administrator of the Federal Aviation Administration shall consider the extent to which Alaska is not served by transportation modes other than aviation, and shall establish such regulatory distinctions as the Administrator deems appropriate.

SEC. 404. SENSE OF THE SENATE REGARDING THE FUNDING OF THE FEDERAL AVIATION ADMINISTRATION.

(a) FINDINGS.—The Senate finds that—

(1) the Congress is responsible for ensuring that the financial needs of the Federal Aviation Administration, the agency that performs the critical function of overseeing the Nation's air traffic control system and ensuring the safety of air travelers in the United States, are met;

(2) the number of air traffic control equipment and power failures is increasing, which could place at risk the reliability of our Nation's air traffic control system;

(3) aviation excise taxes that constitute the Airport and Airway Trust Fund, which provides most of the funding for the Federal Aviation Administration, have expired;

(4) the surplus in the Airport and Airway Trust Fund will be spent by the Federal Aviation Administration by December 1996;

(5) the existing system of funding the Federal Aviation Administration will not provide the agency with sufficient short-term or long-term funding;

(6) this Act creates a sound process to review Federal Aviation Administration funding and develop a funding system to meet the Federal Aviation Administration's long-term funding needs; and

(7) without immediate action by the Congress to ensure that the Federal Aviation Administration's financial needs are met, air travelers' confidence in the system could be undermined.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that there should be an immediate enactment of an 18-month reinstatement of the aviation excise taxes to provide short-term funding for the Federal Aviation Administration.

SEC. 405. AUTHORIZATION FOR STATE-SPECIFIC SAFETY MEASURES.

There are authorized to be appropriated to the Federal Aviation Administration not more than $10,000,000 for fiscal year 1997 for the purpose of addressing State-specific aviation safety problems identified by the National Transportation Safety Board.

SEC. 406. SENSE OF THE SENATE REGARDING THE AIR AMBULANCE EXEMPTION FROM CERTAIN FEDERAL EXCISE TAXES.

It is the sense of the Senate that, if the excise taxes imposed by section 4261 or 4271 of the Internal Revenue Code of 1986 are reinstated, the exemption from those taxes provided by section 4261(f) of such Code for air transportation by helicopter for the purpose of providing emergency medical services should be broadened to include air transportation by fixed-wing aircraft for that purpose.

SEC. 407. FAA SAFETY MISSION.

(a) IN GENERAL.—Section 40104 is amended—

(1) by inserting ''safety of'' before ''air commerce'' in the section caption;

(2) by inserting ''SAFETY OF'' before ''AIR COMMERCE'' in the caption of subsection (a); and

(3) by and inserting ''safety of'' before ''air commerce'' in subsection (a).

(b) CLERICAL AMENDMENT.—The table of sections for chapter 401 is amended by striking the item relating to section 40104 and inserting:

''40104. Promotion of civil aeronautics and air commerce safety.''.

SEC. 408. CARRIAGE OF CANDIDATES IN STATE AND LOCAL ELECTIONS.

The Administrator of the Federal Aviation Administration shall revise section 91.321 of the Administration's regulations (14 C.F.R. 91.321), relating to the carriage of candidates in Federal elections, to make the same or similar rules applicable to the carriage of candidates for election to public office in State and local government elections.

SEC. 409. TRAIN WHISTLE REQUIREMENTS.

The Secretary of Transportation may not implement regulations issued under section 20153(b) of title 49, United States Code, requiring audible warnings to be sounded by a locomotive horn at highway-rail grade crossings, unless—

(1) in implementing the regulations or providing an exception to the regulations under section 20158(c) of such title, the Secretary of Transportation takes into account, among other criteria—

(A) the interest of the communities that, as of July 30, 1996—

(i) have in effect restrictions on sounding of a locomotive horn at highway-rail grade crossings; or

(ii) have not been subject to the routine (as the term is defined by the Secretary) sounding of a locomotive horn at highway-rail grade crossings; and

(B) the past safety record at each grade crossing involved; and

(2) whenever the Secretary determines that supplementary safety measures (as that term is defined in section 20153(a) of title 49, United States Code) are necessary to provide an exception referred to in paragraph (1), the Secretary—

(A) having considered the extent to which local communities have established public awareness initiatives and highway-rail crossing traffic law enforcement programs allows for a period of not to exceed 3 years, beginning on the date of that determination, for the installation of those measures; and

(B) works in partnership with affected communities to provide technical assistance and to develop a reasonable schedule for the installation of those measures.

SEC. 410. LIMITATION ON AUTHORITY OF STATES TO REGULATE GAMBLING DEVICES ON VESSELS.

Subsection (b)(2) of section 5 of the Act of January 2, 1951 (commonly referred to as the ''Johnson Act'') (64 Stat. 1135, chapter 1194; 15 U.S.C. 1175), is amended by adding at the end the following:

''(C) EXCLUSION OF CERTAIN VOYAGES AND SEGMENTS.—Except for a voyage or segment of a voyage that occurs within the boundaries of the State of Hawaii, a voyage or segment of a voyage is not described in subparagraph (B) if such voyage or segment includes or consists of a segment—

''(i) that begins that ends in the same State;

''(ii) that is part of a voyage to another State or to a foreign country; and

''(iii) in which the vessel reaches the other State or foreign country within 3 days after leaving the State in which such segment begins.''.

SEC. 411. SPECIAL FLIGHT RULES IN THE VICINITY OF GRAND CANYON NATIONAL PARK.

The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall take such action as may be necessary to provide 30 additional days for comment by interested persons on the special flight rules in the vicinity of Grand Canyon National Park described in the notice of proposed rulemaking issued on July 31, 1996, at 61 Fed. Reg. 40120 et seq.

SEC. 412. INCREASED FEES.

Notwithstanding any other provision of law, the Surface Transportation Board shall not increase fees for services in connection with rail maximum rate complaints pursuant to 49 CFR part 1002, STB Ex Parte No. 542.

SEC. 413. TRANSFER OF AIR TRAFFIC CONTROL TOWER; CLOSING OF FLIGHT SERVICE STATIONS.

(a) HICKORY, NORTH CAROLINA TOWER.—

(1) TRANSFER.—The Administrator of the Federal Aviation Administration may transfer any title, right, or interest the United States has in the air traffic control tower located at the Hickory Regional Airport to the City of Hickory, North Carolina, for the purpose of enabling the city to provide air traffic control services to operators of aircraft.

(2) STUDY.—The Administrator shall conduct a study to determine whether the number of operations at Hickory Regional Airport meet the criteria for contract towers and shall certify in writing to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce and Infrastructure of the House of Representatives whether that airport meets those criteria.

(b) NEW BERN–CRAVEN COUNTY STATION.—The Administrator shall not close the New Bern–Craven County flight services station or the Hickory Regional Airport flight service station unless the Administrator certifies in writing to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that such closure will not result in a derogation of air safety and that it will reduce costs to taxpayers.

SEC. 414. SENSE OF THE SENATE REGARDING ACTS OF INTERNATIONAL TERRORISM.

(a) FINDINGS.—The Senate finds that—

(1) there has been an intensification in the oppression and disregard for human life among nations that are willing to export terrorism;

(2) there has been an increase in attempts by criminal terrorists to murder airline passengers through the destruction of civilian airliners and the deliberate fear and death inflicted through bombings of buildings and the kidnapping of tourists and Americans residing abroad; and

(3) information widely available demonstrates that a significant portion of international terrorist activity is state-sponsored, -organized, -condoned, or -directed.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that if evidence establishes beyond a clear and reasonable doubt that any act of hostility towards any United States citizen was an act of international terrorism sponsored, organized, condoned, or directed by any nation, a state of war should be considered to exist or to have existed between the United States of America and that nation, beginning as of the moment that the act of aggression occurs.

SEC. 415. REPORTING FOR PROCUREMENT CONTRACTS.

Section 47112 is amended by adding at the end the following new subsection:

''(d) REPORTING FOR PROCUREMENT CONTRACTS.—(1) The Secretary of Transportation shall promulgate regulations to require that each grant agreement that includes the awarding of any contract that includes Federal funds in an amount greater than or equal to $5,000,000 under this subchapter provides for a report to the Secretary that states—

''(A) the number of bids from qualified, responsive and reasonable bidders that were in amounts lower than the amount specified in the bid submitted by the bidder awarded the contract;

''(B) for each bid referred to in subparagraph A (other than the bid submitted by the bidder awarded the contract) the amount by which the bid submitted by the bidder awarded the contract exceeded the lower bid.

''(2) APPLICABILITY.—This subsection shall apply to grants referred to in this paragraph that are awarded on or after the date of enactment of this Act.''.

SEC. 416. PROVISIONS RELATING TO LIMITED SCOPE AUDIT.

(a) IN GENERAL.—Subparagraph (C) of section 103(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(C)) is amended by adding at the end the following new clause:

''(ii) If an accountant is offering his opinion under this section in the case of an employee pension benefit plan, the accountant shall, to the extent consistent with generally accepted auditing standards, rely on the work of any independent public accountant of any bank or similar institution or insurance carrier regulated and supervised and subject to periodic investigation by a State or Federal agency that holds assets or processes transactions of the employee pension benefit plan.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 103(a)(3)(A) of such Act (29 U.S.C. 1023(a)(3)(A)) is amended by striking ''subparagraph (C)'' and inserting ''subparagraph (C)(i)''.

(2) Section 103(a)(3)(C) of such Act (29 U.S.C. 1023(a)(3)(C)) is amended by striking ''(C) The'' and inserting ''(C)(i) In the case of an employee benefit plan other than an employee pension benefit plan, the''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to opinions required under section 103(a)(3)(A) of the Employee Retirement Income Security Act of 1974 for plan years beginning on or after January 1 of the calendar year following the date of the enactment of this Act.

SEC. 417. ADVANCE ELECTRONIC TRANSMISSION OF CARGO AND PASSENGER INFORMATION.

(a) CARGO INFORMATION.—

(1) IN GENERAL.—Section 431(b) of the Tariff Act of 1930 (19 U.S.C. 1431(b)) is amended—

(A) by striking ''Any manifest'' and inserting ''(1) Any manifest'', and

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

''(2)(A) Every passenger air carrier required to make entry or to obtain clearance under the customs laws of the United States (or the authorized agent of such carrier) shall provide by electronic transmission cargo manifest information described in subparagraph (B) in advance of such entry or clearance in such manner as the Secretary shall prescribe.

''(B) The information described in this subparagraph is as follows:

''(i) The airport of arrival or departure, whichever is appropriate.

''(ii) The airline prefix code.

''(iii) The carrier code.

''(iv) The flight number.

''(v) The date of scheduled arrival or date of departure, whichever is appropriate.

''(vi) The permit to proceed to the destination, if applicable.

''(vii) The master and house air waybill numbers and quantities.

''(viii) The first airport of lading of the cargo.

''(ix) A description and weight of the cargo.

''(x) The shipper's name and address from all air waybills.

''(xi) The consignee name and address from all air waybills.

''(xii) Notice that actual boarded quantities are not equal to air waybill quantities.

''(xiii) Transfer or transit information.

''(xiv) Warehouse or other location of the cargo.

''(xv) Any other data that the Secretary may by regulation prescribe.''.

(2) CONFORMING AMENDMENT.—Subsection (d)(1)(A) of section 431 of such Act is amended by inserting before the semicolon ''or subsection (b)(2)''.

(b) PASSENGER INFORMATION.—The Part II of title IV of the Tariff Act of 1930 is amended by inserting after section 431 the following new section:

''SEC. 432. PASSENGER MANIFEST INFORMATION REQUIRED FOR AIR CARRIERS.

''(a) IN GENERAL.—Every passenger air carrier required to make entry or obtain clearance under the customs laws of the United States (or the authorized agent of such carrier) shall provide by electronic transmission passenger manifest information described in subsection (b) in advance of such entry or clearance in such manner and form as the Secretary shall prescribe.

''(b) INFORMATION DESCRIBED.—The information described in this subsection is as follows:

''(1) Full name of each passenger.

''(2) Date of birth and citizenship of each passenger.

''(3) Passport number and country of issuance of each passenger.

''(4) Passenger name record.

''(5) Any additional data that the Secretary, by regulation, determines is reasonably necessary to ensure aviation safety pursuant to the Customs laws of the United States.''.

(c) DEFINITION.—Section 401 of the Tariff Act of 1930 is amended by adding at the end the following new subsection:

''(t) PASSENGER AIR CARRIER.—The term 'passenger air carrier' means an air carrier (as defined in section 40102(a)(2) of title 49, United States Code) or foreign air carrier (as defined in section 40102(a)(21) of such title 49) that provides transportation of passengers to or from any place in the United States.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 45 days after the date of the enactment of this Act.

TITLE V—COMMERCIAL SPACE LAUNCH ACT AMENDMENTS

SEC. 501. COMMERCIAL SPACE LAUNCH AMENDMENTS.

(a) AMENDMENTS.—Chapter 701 of title 49, United States Code, is amended—

(1) in the table of sections—

(A) by amending the item relating to section 70104 to read as follows:

''70104. Restrictions on launches, operations, and reentries.'';

(B) by amending the item relating to section 70108 to read as follows:

''70108. Prohibition, suspension, and end of launches, operation of launch sites and reentry sites, and reentries.'';

and

(C) by amending the item relating to section 70109 to read as follows:

''70109. Preemption of scheduled launches or reentries.'';

(2) in section 70101—

(A) by inserting ''microgravity research,'' after ''information services,'' in subsection (a)(3);

(B) by inserting '', reentry,'' after ''launching'' both places it appears in subsection (a)(4);

(C) by inserting '', reentry vehicles,'' after ''launch vehicles'' in subsection (a)(5);

(D) by inserting ''and reentry services'' after ''launch services'' in subsection (a)(6);

(E) by inserting '', reentries,'' after ''launches'' both places it appears in subsection (a)(7);

(F) by inserting '', reentry sites,'' after ''launch sites'' in subsection (a)(8);

(G) by inserting ''and reentry services'' after ''launch services'' in subsection (a)(8);

(H) by inserting ''reentry sites,'' after ''launch sites,'' in subsection (a)(9);

(I) by inserting ''and reentry site'' after ''launch site'' in subsection (a)(9);

(J) by inserting ''reentry vehicles,'' after ''launch vehicles'' in subsection (b)(2);

(K) by striking ''launch'' in subsection (b)(2)(A);

(L) by inserting ''and reentry'' after ''commercial launch'' in subsection (b)(3);

(M) by striking ''launch'' after ''and transfer commercial'' in subsection (b)(3); and

(N) by inserting ''and development of reentry sites,'' after ''launch-site support facilities,'' in subsection (b)(4);

(3) in section 70102—

(A) by striking ''and any payload'' and inserting in lieu thereof ''or reentry vehicle and any payload from Earth'' in paragraph (3);

(B) by inserting ''or reentry vehicle'' after ''means of a launch vehicle'' in paragraph (8);

(C) by redesignating paragraphs (10) through (12) as paragraphs (14) through (16), respectively;

(D) by inserting after paragraph (9) the following new paragraphs:

''(10) 'reenter' and 'reentry' mean to return or attempt to return, purposefully, a reentry vehicle and its payload, if any, from Earth orbit or from outer space to Earth.

''(11) 'reentry services' means—

''(A) activities involved in the preparation of a reentry vehicle and its payload, if any, for reentry; and

''(B) the conduct of a reentry.

''(12) 'reentry site' means the location on Earth to which a reentry vehicle is intended to return (as defined in a license the Secretary issues or transfers under this chapter).

''(13) 'reentry vehicle' means a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from outer space substantially intact.''; and

(E) by inserting ''or reentry services'' after ''launch services'' each place it appears in paragraph (15), as so redesignated by subparagraph (C) of this paragraph;

(4) in section 70103(b)—

(A) by inserting ''AND REENTRIES'' after ''LAUNCHES'' in the subsection heading;

(B) by inserting ''and reentries'' after ''space launches'' in paragraph (1); and

(C) by inserting ''and reentry'' after ''space launch'' in paragraph (2);

(5) in section 70104—

(A) by amending the section designation and heading to read as follows:

''§ 70104. Restrictions on launches, operations, and reentries'';

(B) by inserting ''or reentry site, or to reenter a reentry vehicle,'' after ''operate a launch site'' each place it appears in subsection (a);

(C) by inserting ''or reentry'' after ''launch or operation'' in subsection (a)(3) and (4);

(D) in subsection (b)—

(i) by striking ''launch license'' and inserting in lieu thereof ''license'';

(ii) by inserting ''or reenter'' after ''may launch''; and

(iii) by inserting ''or reentering'' after ''related to launching''; and

(E) in subsection (c)—

(i) by amending the subsection heading to read as follows: ''PREVENTING LAUNCHES AND REENTRIES.—'';

(ii) by inserting ''or reentry'' after ''prevent the launch''; and

(iii) by inserting ''or reentry'' after ''decides the launch'';

(6) in section 70105—

(A) by inserting ''or a reentry site, or the reentry of a reentry vehicle,'' after ''operation of a launch site'' in subsection (b)(1); and

(B) by striking ''or operation'' and inserting in lieu thereof '', operation, or reentry'' in subsection (b)(2)(A);

(7) in section 70106(a)—

(A) by inserting ''or reentry site'' after ''observer at a launch site'';

(B) by inserting ''or reentry vehicle'' after ''assemble a launch vehicle''; and

(C) by inserting ''or reentry vehicle'' after ''with a launch vehicle'';

(8) in section 70108—

(A) by amending the section designation and heading to read as follows:

''§ 70108. Prohibition, suspension, and end of launches, operation of launch sites and reentry sites, and reentries'';

and

(B) in subsection (a)—

(i) by inserting ''or reentry site, or reentry of a reentry vehicle,'' after ''operation of a launch site''; and

(ii) by inserting ''or reentry'' after ''launch or operation'';

(9) in section 70109—

(A) by amending the section designation and heading to read as follows:

''§ 70109. Preemption of scheduled launches or reentries'';

(B) in subsection (a)—

(i) by inserting ''or reentry'' after ''ensure that a launch'';

(ii) by inserting '', reentry site,'' after ''United States Government launch site'';

(iii) by inserting ''or reentry date commitment'' after ''launch date commitment'';

(iv) by inserting ''or reentry'' after ''obtained for a launch'';

(v) by inserting '', reentry site,'' after ''access to a launch site'';

(vi) by inserting '', or services related to a reentry,'' after ''amount for launch services''; and

(vii) by inserting ''or reentry'' after ''the scheduled launch''; and

(C) in subsection (c), by inserting ''or reentry'' after ''prompt launching'';

(10) in section 70110—

(A) by inserting ''or reentry'' after ''prevent the launch'' in subsection (a)(2); and

(B) by inserting ''or reentry site, or reentry of a reentry vehicle,'' after ''operation of a launch site'' in subsection (a)(3)(B);

(11) in section 70111—

(A) by inserting ''or reentry'' after ''launch'' in subsection (a)(1)(A);

(B) by inserting ''and reentry services'' after ''launch services'' in subsection (a)(1)(B);

(C) by inserting ''or reentry services'' after ''or launch services'' in subsection (a)(2);

(D) by inserting ''or reentry'' after ''commercial launch'' both places it appears in subsection (b)(1);

(E) by inserting ''or reentry services'' after ''launch services'' in subsection (b)(2)(C);

(F) by striking ''or its payload for launch'' in subsection (d) and inserting in lieu thereof ''or reentry vehicle, or the payload of either, for launch or reentry''; and

(G) by inserting '', reentry vehicle,'' after ''manufacturer of the launch vehicle'' in subsection (d);

(12) in section 70112—

(A) by inserting ''or reentry'' after ''one launch'' in subsection (a)(3);

(B) by inserting ''or reentry services'' after ''launch services'' in subsection (a)(4);

(C) by inserting ''or reentry services'' after ''launch services'' each place it appears in subsection (b);

(D) by inserting ''applicable'' after ''carried out under the'' in paragraphs (1) and (2) of subsection (b);

(E) by striking '', Space, and Technology'' in subsection (d)(1);

(F) by inserting ''OR REENTRIES'' after ''LAUNCHES'' in the heading for subsection (e); and

(G) by inserting ''or reentry site or a reentry'' after ''launch site'' in subsection (e);

(13) in section 70113(a)(1) and (d)(1) and (2), by inserting ''or reentry'' after ''one launch'' each place it appears;

(14) in section 70115(b)(1)(D)(i)—

(A) by inserting ''reentry site,'' after ''launch site,''; and

(B) by inserting ''or reentry vehicle'' after ''launch vehicle'' both places it appears; and

(15) in section 70117—

(A) by inserting ''or reentry site, or to reenter a reentry vehicle'' after ''operate a launch site'' in subsection (a);

(B) by inserting ''or reentry'' after ''approval of a space launch'' in subsection (d);

(C) by amending subsection (f) to read as follows:

''(f) LAUNCH NOT AN EXPORT; REENTRY NOT AN IMPORT.—A launch vehicle, reentry vehicle, or payload that is launched or reentered is not, because of the launch or reentry, an export or import, respectively, for purposes of a law controlling exports or imports.''; and

(D) in subsection (g)—

(i) by striking ''operation of a launch vehicle or launch site,'' in paragraph (1) and inserting in lieu thereof ''reentry, operation of a launch vehicle or reentry vehicle, or operation of a launch site or reentry site,''; and

(ii) by inserting ''reentry,'' after ''launch,'' in paragraph (2).

(b) ADDITIONAL AMENDMENTS.—(1) Section 70105 of title 49, United States Code, is amended—

(A) by inserting ''(1)'' before ''A person may apply'' in subsection (a);

(B) by striking ''receiving an application'' both places it appears in subsection (a) and inserting in lieu thereof ''accepting an application in accordance with criteria established pursuant to subsection (b)(2)(D)'';

(C) by adding at the end of subsection (a) the following new paragraph:

''(2) In carrying out paragraph (1), the Secretary may establish procedures for certification of the safety of a launch vehicle, reentry vehicle, or safety system, procedure, service, or personnel that may be used in conducting licensed commercial space launch or reentry activities.'';

(D) by striking ''and'' at the end of subsection (b)(2)(B);

(E) by striking the period at the end of subsection (b)(2)(C) and inserting in lieu thereof ''; and'';

(F) by adding at the end of subsection (b)(2) the following new subparagraph:

''(D) regulations establishing criteria for accepting or rejecting an application for a license under this chapter within 60 days after receipt of such application.''; and

(G) by inserting '', or the requirement to obtain a license,'' after ''waive a requirement'' in subsection (b)(3).

(2) The amendment made by paragraph (1)(B) shall take effect upon the effective date of final regulations issued pursuant to section 70105(b)(2)(D) of title 49, United States Code, as added by paragraph (1)(F) of this subsection.

(3) Section 70102(5) of title 49, United States Code, is amended—

(A) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(B) by inserting before subparagraph (B), as so redesignated by subparagraph (A) of this paragraph, the following new subparagraph:

''(A) activities directly related to the preparation of a launch site or payload facility for one or more launches;''.

(4) Section 70103(b) of title 49, United States Code, is amended—

(A) in the subsection heading, as amended by subsection (a)(4)(A) of this section, by inserting ''AND STATE SPONSORED SPACEPORTS'' after ''AND REENTRIES''; and

(B) in paragraph (1), by inserting ''and State sponsored spaceports'' after ''private sector''.

(5) Section 70105(a)(1) of title 49, United States Code, as amended by subsection (b)(1) of this section, is amended by inserting at the end the following: ''The Secretary shall submit to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a written notice not later than 7 days after any occurrence when a license is not issued within the deadline established by this subsection.''.

(6) Section 70111 of title 49, United States Code, is amended—

(A) in subsection (a)(1), by inserting after subparagraph (B) the following:

''The Secretary shall establish criteria and procedures for determining the priority of competing requests from the private sector and State governments for property and services under this section.'';

(B) by striking ''actual costs'' in subsection (b)(1) and inserting in lieu thereof ''additive costs only''; and

(C) by inserting after subsection (b)(2) the following new paragraph:

''(3) The Secretary shall ensure the establishment of uniform guidelines for, and consistent implementation of, this section by all Federal agencies.''.

(7) Section 70112 of title 49, United States Code, is amended—

(A) in subsection (a)(1), by inserting ''launch, reentry, or site operator'' after ''(1) When a'';

(B) in subsection (b)(1), by inserting ''launch, reentry, or site operator'' after ''(1)A''; and

(C) in subsection (f), by inserting ''launch, reentry, or site operator'' after ''carried out under a''.

(c) REGULATIONS.—(1) Chapter 701 of title 49, United States Code, is amended by adding at the end the following new section:

''§ 70120. Regulations

''The Secretary of Transportation, within 6 months after the date of the enactment of this section, shall issue regulations to carry out this chapter that include—

''(1) guidelines for industry to obtain sufficient insurance coverage for potential damages to third parties;

''(2) procedures for requesting and obtaining licenses to operate a commercial launch vehicle and reentry vehicle;

''(3) procedures for requesting and obtaining operator licenses for launch and reentry; and

''(4) procedures for the application of government indemnification.''.

(2) The table of sections for such chapter 701 is amended by adding after the item relating to section 70119 the following new item:

''70120. Regulations.''.

TITLE VI—AIR TRAFFIC MANAGEMENT SYSTEM PERFORMANCE IMPROVEMENT ACT

SEC. 601. SHORT TITLE.

This title may be cited as the ''Air Traffic Management System Performance Improvement Act of 1996''.

SEC. 602. DEFINITIONS.

For the purposes of this title, the following definitions shall apply:

(1) ADMINISTRATION.—The term ''Administration'' means the Federal Aviation Administration.

(2) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Aviation Administration.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

SEC. 603. EFFECTIVE DATE.

The provisions of this title and the amendments made by this title shall take effect on the date that is 30 days after the date of the enactment of this Act.

Subtitle A—General Provisions

SEC. 621. FINDINGS.

The Congress finds the following:

(1) In many respects the Administration is a unique agency, being one of the few non-defense government agencies that operates 24 hours a day, 365 days of the year, while continuing to rely on outdated technology to carry out its responsibilities for a state-of-the-art industry.

(2) Until January 1, 1996, users of the air transportation system paid 70 percent of the budget of the Administration, with the remaining 30 percent coming from the General Fund. The General Fund contribution over the years is one measure of the benefit received by the general public, military, and other users of Administration's services.

(3) The Administration must become a more efficient, effective, and different organization to meet future challenges.

(4) The need to balance the Federal budget means that it may become more and more difficult to obtain sufficient General Fund contributions to meet the Administration's future budget needs.

(5) Congress must keep its commitment to the users of the national air transportation system by seeking to spend all moneys collected from them each year and deposited into the Airport and Airway Trust Fund. Existing surpluses representing past receipts must also be spent for the purposes for which such funds were collected.

(6) The aviation community and the employees of the Administration must come together to improve the system. The Administration must continue to recognize who its customers are and what their needs are, and to design and redesign the system to make safety improvements and increase productivity.

(7) The Administration projects that commercial operations will increase by 18 percent and passenger traffic by 35 percent by the year 2002. Without effective airport expansion and system modernization, these needs cannot be met.

(8) Absent significant and meaningful reform, future challenges and needs cannot be met.

(9) The Administration must have a new way of doing business.

(10) There is widespread agreement within government and the aviation industry that reform of the Administration is essential to safely and efficiently accommodate the projected growth of aviation within the next decade.

(11) To the extent that the Congress determines that certain segments of the aviation community are not required to pay all of the costs of the government services which they require and benefits which they receive, the Congress should appropriate the difference between such costs and any receipts received from such segment.

(12) Prior to the imposition of any new charges or user fees on segments of the industry,

an independent review must be performed to assess the funding needs and assumptions for operations, capital spending, and airport infrastructure.

(13) An independent, thorough, and complete study and assessment must be performed of the costs to the Administration and the costs driven by each segment of the aviation system for safety and operational services, including the use of the air traffic control system and the Nation's airports.

(14) Because the Administration is a unique Federal entity in that it is a participant in the daily operations of an industry, and because the national air transportation system faces significant problems without significant changes, the Administration has been authorized to change the Federal procurement and personnel systems to ensure that the Administration has the ability to keep pace with new technology and is able to match resources with the real personnel needs of the Administration.

(15) The existing budget system does not allow for long-term planning or timely acquisition of technology by the Administration.

(16) Without reforms in the areas of procurement, personnel, funding, and governance, the Administration will continue to experience delays and cost overruns in its major modernization programs and needed improvements in the performance of the air traffic management system will not occur.

(17) All reforms should be designed to help the Administration become more responsive to the needs of its customers and maintain the highest standards of safety.

SEC. 622. PURPOSES.

The purposes of this title are—

(1) to ensure that final action shall be taken on all notices of proposed rulemaking of the Administration within 18 months after the date of their publication;

(2) to permit the Administration, with Congressional review, to establish a program to improve air traffic management system performance and to establish appropriate levels of cost accountability for air traffic management services provided by the Administration;

(3) to establish a more autonomous and accountable Administration within the Department of Transportation; and

(4) to make the Administration a more efficient and effective organization, able to meet the needs of a dynamic, growing industry, and to ensure the safety of the traveling public.

SEC. 623. REGULATION OF CIVILIAN AIR TRANSPORTATION AND RELATED SERVICES BY THE FEDERAL AVIATION ADMINISTRATION AND DEPARTMENT OF TRANSPORTATION.

(a) IN GENERAL.—Section 106 is amended—

(1) by striking ''The Administrator'' in the fifth sentence of subsection (b) and inserting ''Except as provided in subsection (f) of this section or in other provisions of law, the Administrator''; and

(2) by striking subsection (f) and inserting the following:

''(f) AUTHORITY OF THE SECRETARY AND THE ADMINISTRATOR.—

''(1) AUTHORITY OF THE SECRETARY.—Except as provided in paragraph (2), the Secretary of Transportation shall carry out the duties and powers of the Administration.

''(2) AUTHORITY OF THE ADMINISTRATOR.—The Administrator—

''(A) is the final authority for carrying out all functions, powers, and duties of the Administration relating to—

''(i) except as otherwise provided in paragraph (3), the promulgation of regulations, rules, orders, circulars, bulletins, and other official publications of the Administration; and

''(ii) any obligation imposed on the Administrator, or power conferred on the Administrator, by the Air Traffic Management System Performance Improvement Act of 1996 (or any amendment made by that Act);

''(B) shall offer advice and counsel to the President with respect to the appointment and qualifications of any officer or employee of the Administration to be appointed by the President or as a political appointee;

''(C) may delegate, and authorize successive redelegations of, to an officer or employee of the Administration any function, power, or duty conferred upon the Administrator, unless such delegation is prohibited by law; and

''(D) except as otherwise provided for in this title, and notwithstanding any other provision of law to the contrary, shall not be required to coordinate, submit for approval or concurrence, or seek the advice or views of the Secretary or any other officer or employee of the Department of Transportation on any matter with respect to which the Administrator is the final authority.

''(3) DEFINITION OF POLITICAL APPOINTEE.—For purposes of this subsection, the term 'political appointee' means any individual who—

''(A) is employed in a position on the Executive Schedule under sections 5312 through 5316 of title 5;

''(B) is a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service as defined under section 3132(a) (5), (6), and (7) of title 5, respectively; or

''(C) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under Schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.''.

(b) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this title or the amendments made by this title limits any authority granted to the Administrator by statute or by delegation that was in effect on the day before the date of enactment of this Act.

SEC. 624. REGULATIONS.

Section 106(f), as amended by section 623, is further amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

''(3) REGULATIONS.—

''(A) IN GENERAL.—In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to issue, rescind, and revise such regulations as are necessary to carry out those functions. The issuance of such regulations shall be governed by the provisions of chapter 5 of title 5. The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 18 months after the date of publication in the Federal Register of a notice of proposed rulemaking or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after that date.

''(B) APPROVAL OF SECRETARY OF TRANSPORTATION.—

''(i) The Administrator may not issue a proposed regulation or final regulation that is likely to result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $50,000,000 or more (adjusted annually for inflation beginning with the year following the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996) in any 1 year, or any regulation which is significant, unless the Secretary of Transportation approves the issuance of the regulation in advance. For purposes of this paragraph, a regulation is significant if it is likely to—

''(I) have an annual effect on the economy of $100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

''(II) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

''(III) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

''(IV) raise novel legal or policy issues arising out of legal mandates.

''(ii) In an emergency, the Administrator may issue a regulation described in clause (i) without prior approval by the Secretary, but any such emergency regulation is subject to ratification by the Secretary after it is issued and shall be rescinded by the Administrator within 5 days (excluding Saturdays, Sundays, and legal public holidays) after issuance if the Secretary fails to ratify its issuance.

''(iii) Any regulation that does not meet the criteria of clause (i), and any regulation or other action that is a routine or frequent action or a procedural action, may be issued by the Administrator without review or approval by the Secretary.

''(iv) The Administrator shall submit a copy of any regulation requiring approval by the Secretary under clause (i) to the Secretary, who shall either approve it or return it to the Administrator with comments within 45 days after receiving it.

''(C) PERIODIC REVIEW.—(i) Beginning on the date which is 3 years after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall review any unusually burdensome regulation issued by the Administrator after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996 beginning not later than 3 years after the effective date of the regulation to determine if the cost assumptions were accurate, the benefit of the regulations, and the need to continue such regulations in force in their present form.

''(ii) The Administrator may identify for review under the criteria set forth in clause (i) unusually burdensome regulations that were issued before the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996 and that have been in force for more than 3 years.

''(iii) For purposes of this subparagraph, the term 'unusually burdensome regulation' means any regulation that results in the annual expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $25,000,000 or more (adjusted annually for inflation beginning with the year following the date of enactment of the Air Traffic Management System Performance Act of 1996) in any year.

''(iv) The periodic review of regulations may be performed by advisory committees and the Management Advisory Council established under subsection (p).''.

SEC. 625. PERSONNEL AND SERVICES.

Section 106 is amended by adding at the end the following new subsection:

''(l) PERSONNEL AND SERVICES.—

''(1) OFFICERS AND EMPLOYEES.—Except as provided in section 40121(a) of this title and section 347 of Public Law 104–50, the Administrator is authorized, in the performance of the functions of the Administrator, to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. In fixing compensation and benefits of officers and employees, the Administrator shall not engage in any type of bargaining, except to the extent provided for in section 40121(a), nor shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.

''(2) EXPERTS AND CONSULTANTS.—The Administrator is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5.

''(3) TRANSPORTATION AND PER DIEM EXPENSES.—The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5.

''(4) USE OF PERSONNEL FROM OTHER AGENCIES.—The Administrator is authorized to utilize the services of personnel of any other Federal agency (as such term is defined under section 551(1) of title 5).

''(5) VOLUNTARY SERVICES.—

''(A) IN GENERAL.—(i) In exercising the authority to accept gifts and voluntary services under section 326 of this title, and without regard to section 1342 of title 31, the Administrator may not accept voluntary and uncompensated services if such services are used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

''(ii) The Administrator is authorized to provide for incidental expenses, including transportation, lodging, and subsistence for volunteers who provide voluntary services under this subsection.

''(iii) An individual who provides voluntary services under this subsection shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, relating to compensation for work injuries, and chapter 171 of title 28, relating to tort claims.''.

SEC. 626. CONTRACTS.

Section 106(l), as added by section 625 of this title, is amended by adding at the end the following new paragraph:

''(6) CONTRACTS.—The Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any Federal agency (as such term is defined in section 551(1) of title 5) or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.''.

SEC. 627. FACILITIES.

Section 106, as amended by section 625 of this title, is further amended by adding at the end the following new subsection:

''(m) COOPERATION BY ADMINISTRATOR.—With the consent of appropriate officials, the Administrator may, with or without reimbursement, use or accept the services, equipment, personnel, and facilities of any other Federal agency (as such term is defined in section 551(1) of title 5) and any other public or private entity. The Administrator may also cooperate with appropriate officials of other public and private agencies and instrumentalities concerning the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, supplies and equipment other than administrative supplies or equipment.''.

SEC. 628. PROPERTY.

Section 106, as amended by section 627 of this title, is further amended by adding at the end the following new subsection:

''(n) ACQUISITION.—

''(1) IN GENERAL.—The Administrator is authorized—

''(A) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain—

''(i) air traffic control facilities and equipment;

''(ii) research and testing sites and facilities; and

''(iii) such other real and personal property (including office space and patents), or any interest therein, within and outside the continental United States as the Administrator considers necessary;

''(B) to lease to others such real and personal property; and

''(C) to provide by contract or otherwise for eating facilities and other necessary facilities for the welfare of employees of the Administration at the installations of the Administration, and to acquire, operate, and maintain equipment for these facilities.

''(2) TITLE.—Title to any property or interest therein acquired pursuant to this subsection shall be held by the Government of the United States.''.

SEC. 629. TRANSFERS OF FUNDS FROM OTHER FEDERAL AGENCIES.

Section 106, as amended by section 628 of this title, is further amended by adding at the end the following new subsection:

''(o) TRANSFERS OF FUNDS.—The Administrator is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions transferred by law to the Administrator or functions transferred pursuant to law to the Administrator on or after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996.''.

SEC. 630. MANAGEMENT ADVISORY COUNCIL.

Section 106, as amended by section 629 of this title, is further amended by adding at the end the following new subsection:

''(p) MANAGEMENT ADVISORY COUNCIL.—

''(1) ESTABLISHMENT.—Within 3 months after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall establish an advisory council which shall be known as the Federal Aviation Management Advisory Council (in this subsection referred to as the 'Council'). With respect to Administration management, policy, spending, funding, and regulatory matters affecting the aviation industry, the Council may submit comments, recommended modifications, and dissenting views to the Administrator. The Administrator shall include in any submission to Congress, the Secretary, or the general public, and in any submission for publication in the Federal Register, a description of the comments, recommended modifications, and dissenting views received from the Council, together with the reasons for any differences between the views of the Council and the views or actions of the Administrator.

''(2) MEMBERSHIP.—The Council shall consist of 15 members, who shall consist of—

''(A) a designee of the Secretary of Transportation;

''(B) a designee of the Secretary of Defense; and

''(C) 13 members representing aviation interests, appointed by the President by and with the advice and consent of the Senate.

''(3) QUALIFICATIONS.—No member appointed under paragraph (2)(C) may serve as an officer or employee of the United States Government while serving as a member of the Council.

''(4) FUNCTIONS.—

''(A) IN GENERAL.—(i) The Council shall provide advice and counsel to the Administrator on issues which affect or are affected by the operations of the Administrator. The Council shall function as an oversight resource for management, policy, spending, and regulatory matters under the jurisdiction of the Administration.

''(ii) The Council shall review the rulemaking cost-benefit analysis process and develop recommendations to improve the analysis and ensure that the public interest is fully protected.

''(iii) The Council shall review the process through which the Administration determines to use advisory circulars and service bulletins.

''(B) MEETINGS.—The Council shall meet on a regular and periodic basis or at the call of the chairman or of the Administrator.

''(C) ACCESS TO DOCUMENTS AND STAFF.—The Administration may give the Council appropriate access to relevant documents and personnel of the Administration, and the Administrator shall make available, consistent with the authority to withhold commercial and other proprietary information under section 552 of title 5 (commonly known as the 'Freedom of Information Act'), cost data associated with the acquisition and operation of air traffic service systems. Any member of the Council who receives commercial or other proprietary data from the Administrator shall be subject to the provisions of section 1905 of title 18, pertaining to unauthorized disclosure of such information.

''(5) FEDERAL ADVISORY COMMITTEE ACT NOT TO APPLY.—The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Council or such aviation rulemaking committees as the Administrator shall designate.

''(6) ADMINISTRATIVE MATTERS.—

''(A) TERMS OF MEMBERS.—(i) Except as provided in subparagraph (B), members of the Council appointed by the President under paragraph (2)(C) shall be appointed for a term of 3 years.

''(ii) Of the members first appointed by the President—

''(I) 4 shall be appointed for terms of 1 year;

''(II) 5 shall be appointed for terms of 2 years; and

''(III) 4 shall be appointed for terms of 3 years.

''(iii) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

''(iv) A member whose term expires shall continue to serve until the date on which the member's successor takes office.

''(B) CHAIRMAN; VICE CHAIRMAN.—The Council shall elect a chair and a vice chair from among the members appointed under paragraph (2)(C), each of whom shall serve for a term of 1 year. The vice chair shall perform the duties of the chairman in the absence of the chairman.

''(C) TRAVEL AND PER DIEM.—Each member of the Council shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his or her usual place of residence, in accordance with section 5703 of title 5.

''(D) DETAIL OF PERSONNEL FROM THE ADMINISTRATION.—The Administrator shall make available to the Council such staff, information, and administrative services and assistance as may reasonably be required to enable the Council to carry out its responsibilities under this subsection.

''(7) REPORT TO CONGRESS.—The Council, in conjunction with the Administration, shall undertake a review of the overall condition of aviation safety in the United States and emerging trends in the safety of particular sections of the aviation industry. This shall include an examination of—

''(A) the extent to which the dual mission of the Administration to promote and regulate civil aviation may affect aviation safety and provide recommendations to Congress for any necessary changes the Council, in conjunction with Administration, deems appropriate; and

''(B) the adequacy of staffing and training resources for safety personnel of the Administration, including safety inspectors.

The Council shall report to Congress within 180 days after the date of enactment of this Act on its findings and recommendations under this paragraph.

SEC. 631. AIRCRAFT ENGINE STANDARDS.

Subsection (a)(1) of section 44715 is amended to read as follows:

''(a) STANDARDS AND REGULATIONS.—(1) To relieve and protect the public health and welfare

from aircraft noise, sonic boom, the Administrator of the Federal Aviation Administration, as he deems necessary, shall prescribe—

''(A) standards to measure aircraft noise and sonic boom;

''(B) regulations to control and abate aircraft noise and sonic boom; and

''(C)(i) the Environmental Protection Agency shall consult with the Federal Aviation Administration on aircraft engine emission standards;

''(ii) the Environmental Protection Agency shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety;

''(iii) the Administrator, as the Administrator deems appropriate, shall provide for the participation of a representative of the Environmental Protection Agency on such advisory committees or associated working groups that advise the Administrator on matters related to the environmental effects of aircraft and aircraft engines.''.

SEC. 632. RURAL AIR FARE STUDY.

(a) IN GENERAL.—The Secretary shall conduct a study to—

(1) compare air fares paid (calculated as both actual and adjusted air fares) for air transportation on flights conducted by commercial air carriers—

(A) between—

(i) nonhub airports located in small communities; and

(ii) large hub airports; and

(B) between large hub airports;

(2) analyze—

(A) the extent to which passenger service that is provided from nonhub airports is provided on—

(i) regional commuter commercial air carriers; or

(ii) major air carriers;

(B) the type of aircraft employed in providing passenger service at nonhub airports; and

(C) whether there is competition among commercial air carriers with respect to the provision of air service to passengers from nonhub airports.

(b) FINDINGS.—The Secretary shall include in the report of the study conducted under subsection (a) findings concerning—

(1) whether passengers who use commercial air carriers to and from rural areas (as defined by the Secretary) pay a disproportionately greater price for that transportation than passengers who use commercial air carriers between urban areas (as defined by the Secretary);

(2) the nature of competition, if any, in rural markets (as defined by the Secretary) for commercial air carriers;

(3) whether a relationship exists between higher air fares and competition among commercial air carriers for passengers traveling on jet aircraft from small communities (as defined by the Secretary) and, if such a relation exists, the nature of that relationship;

(4) the number of small communities that have lost air service as a result of the deregulation of commercial air carriers with respect to air fares;

(5) the number of small communities served by airports with respect to which, after commercial air carrier fares were deregulated, jet aircraft service was replaced by turboprop aircraft service; and

(6) where such replacement occurred, any corresponding decreases in available seat capacity for consumers at the airports referred to in that subparagraph.

(c) REPORT.—Not later than 60 days after the date of enactment of this Act, the Secretary shall submit a final report on the study carried out under subsection (a) to the Committee on Commerce, Science, and Transportation of the Senate.

(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) ADJUSTED AIR FARE.—The term ''adjusted air fare'' means an actual air fare that is adjusted for distance traveled by a passenger.

(2) AIR CARRIER.—The term ''air carrier'' is defined in section 40102(a)(2) of title 49, United States Code.

(3) AIRPORT.—The term ''airport'' is defined in section 40102(9) of such title.

(4) COMMERCIAL AIR CARRIER.—The term ''commercial air carrier'' means an air carrier that provides air transportation for commercial purposes (as determined by the Secretary).

(5) HUB AIRPORT.—The term ''hub airport'' is defined in section 41731(a)(2) of such title.

(6) LARGE HUB AIRPORT.—The term ''large hub airport'' shall be defined by the Secretary but the definition may not include a small hub airport, as that term is defined in section 41731(a)(5) of such title.

(7) MAJOR AIR CARRIER.—The term ''major air carrier'' shall be defined by the Secretary.

(8) NONHUB AIRPORT.—The term ''nonhub airport'' is defined in section 41731(a)(4) of such title.

(9) REGIONAL COMMUTER AIR CARRIER.—The term ''regional commuter air carrier'' shall be defined by the Secretary.

Subtitle B—Federal Aviation Administration Streamlining Programs

SEC. 651. REVIEW OF ACQUISITION MANAGEMENT SYSTEM.

Not later than April 1, 1999, the Administration shall employ outside experts to provide an independent evaluation of the effectiveness of its acquisition management system within 3 months after such date. The Administrator shall transmit a copy of the evaluation to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 652. AIR TRAFFIC CONTROL MODERNIZATION REVIEWS.

Chapter 401, as amended by section 402 of this Act, is amended by redesignating section 40121 as 40123, and by inserting after section 40120 the following new section:

''§ 40121. Air traffic control modernization reviews

''(a) REQUIRED TERMINATIONS OF ACQUISITIONS.—The Administrator of the Federal Aviation Administration (hereafter referred to in this section as the 'Administrator') shall terminate any program initiated after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996 and funded under the Facilities and Equipment account that—

''(1) is more than 50 percent over the cost goal established for the program;

''(2) fails to achieve at least 50 percent of the performance goals established for the program; or

''(3) is more than 50 percent behind schedule as determined in accordance with the schedule goal established for the program.

''(b) AUTHORIZED TERMINATIONS OF ACQUISITIONS.—The Administrator shall consider terminating, under the authority of subsection (a), any substantial acquisition that—

''(1) is more than 10 percent over the cost goal established for the program;

''(2) fails to achieve at least 90 percent of the performance goals established for the program; or

''(3) is more than 10 percent behind schedule as determined in accordance with the schedule goal established for the program.

''(c) EXCEPTIONS AND REPORT.—

''(1) CONTINUANCE OF PROGRAM, ETC.—Notwithstanding subsection (a), the Administrator may continue an acquisitions program required to be terminated under subsection (a) if the Administrator determines that termination would be inconsistent with the development or operation of the national air transportation system in a safe and efficient manner.

''(2) DEPARTMENT OF DEFENSE.—The Department of Defense shall have the same exemptions from acquisition laws as are waived by the Administrator under section 348(b) of Public Law 104–50 when engaged in joint actions to improve or replenish the national air traffic control system. The Administration may acquire real property, goods, and services through the Department of Defense, or other appropriate agencies, but is bound by the acquisition laws and regulations governing those cases.

''(3) REPORT.—If the Administrator makes a determination under paragraph (1), the Administrator shall transmit a copy of the determination, together with a statement of the basis for the determination, to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.''.

SEC. 653. FEDERAL AVIATION ADMINISTRATION PERSONNEL MANAGEMENT SYSTEM.

Chapter 401, as amended by section 652, is further amended by inserting after section 40121 the following new section:

''§ 40122. Federal Aviation Administration personnel management system

''(a) IN GENERAL.—

''(1) CONSULTATION AND NEGOTIATION.—In developing and making changes to the personnel management system initially implemented by the Administrator on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the Administration certified under section 7111 of title 5 and consult with other employees of the Administration.

''(2) MEDIATION.—If the Administrator does not reach an agreement under paragraph (1) with the exclusive bargaining representatives, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement. If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Administrator's proposed change to the personnel management system shall not take effect until 60 days have elapsed after the Administrator has transmitted the proposed change, along with the objections of the exclusive bargaining representatives to the change, and the reasons for such objections, to the Congress.

''(3) COST SAVINGS AND PRODUCTIVITY GOALS.—The Administration and the exclusive bargaining representatives of the employees shall use every reasonable effort to find cost savings and to increase productivity within each of the affected bargaining units.

''(4) ANNUAL BUDGET DISCUSSIONS.—The Administration and the exclusive bargaining representatives of the employees shall meet annually for the purpose of finding additional cost savings within the Administration's annual budget as it applies to each of the affected bargaining units and throughout the agency.

''(b) EXPERT EVALUATION.—On the date that is 3 years after the personnel management system is implemented, the Administration shall employ outside experts to provide an independent evaluation of the effectiveness of the system within 3 months after such date. For this purpose, the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary.

''(c) PAY RESTRICTION.—No officer or employee of the Administration may receive an annual rate of basic pay in excess of the annual rate of basic pay payable to the Administrator.

''(d) ETHICS.—The Administration shall be subject to Executive Order No. 12674 and regulations and opinions promulgated by the Office of Government Ethics, including those set forth in section 2635 of title 5 of the Code of Federal Regulations.

''(e) EMPLOYEE PROTECTIONS.—Until July 1, 1999, basic wages (including locality pay) and

operational differential pay provided employees of the Administration shall not be involuntarily adversely affected by reason of the enactment of this section, except for unacceptable performance or by reason of a reduction in force or reorganization or by agreement between the Administration and the affected employees' exclusive bargaining representative.

''(f) LABOR-MANAGEMENT AGREEMENTS.—Except as otherwise provided by this title, all labor-management agreements covering employees of the Administration that are in effect on the effective date of the Air Traffic Management System Performance Improvement Act of 1996 shall remain in effect until their normal expiration date, unless the Administrator and the exclusive bargaining representative agree to the contrary.''.

SEC. 654. CONFORMING AMENDMENT.

The chapter analysis for chapter 401, as amended by section 403(b) of this Act, is amended by striking the item relating to section 40120 and inserting the following new items:

''40121. Air traffic control modernization reviews.
''40122. Federal Aviation Administration personnel management system.
''40123. Relationship to other laws.''.

Subtitle C—System To Fund Certain Federal Aviation Administration Functions

SEC. 671. FINDINGS.

The Congress finds the following:

(1) The Administration is recognized throughout the world as a leader in aviation safety.

(2) The Administration certifies aircraft, engines, propellers, and other manufactured parts.

(3) The Administration certifies more than 650 training schools for pilots and nonpilots, more than 4,858 repair stations, and more than 193 maintenance schools.

(4) The Administration certifies pilot examiners, who are then qualified to determine if a person has the skills necessary to become a pilot.

(5) The Administration certifies more than 6,000 medical examiners, each of whom is then qualified to medically certify the qualifications of pilots and nonpilots.

(6) The Administration certifies more than 470 airports, and provides a limited certification for another 205 airports. Other airports in the United States are also reviewed by the Administration.

(7) The Administration each year performs more than 355,000 inspections.

(8) The Administration issues more than 655,000 pilot's licenses and more than 560,000 nonpilot's licenses (including mechanics).

(9) The Administration's certification means that the product meets worldwide recognized standards of safety and reliability.

(10) The Administration's certification means aviation-related equipment and services meet world-wide recognized standards.

(11) The Administration's certification is recognized by governments and businesses throughout the world and as such may be a valuable element for any company desiring to sell aviation-related products throughout the world.

(12) The Administration's certification may constitute a valuable license, franchise, privilege or benefits for the holders.

(13) The Administration also is a major purchaser of computers, radars, and other systems needed to run the air traffic control system. The Administration's design, acceptance, commissioning, or certification of such equipment enables the private sector to market those products around the world, and as such confers a benefit on the manufacturer.

(14) The Administration provides extensive services to public use aircraft.

SEC. 672. PURPOSES.

The purposes of this title are—

(1) to provide a financial structure for the Administration so that it will be able to support the future growth in the national aviation and airport system;

(2) to review existing and alternative funding options, including incentive-based fees for services, and establish a program to improve air traffic management system performance and to establish appropriate levels of cost accountability for air traffic management services provided by the Administration;

(3) to ensure that any funding will be dedicated solely for the use of the Administration;

(4) to authorize the Administration to recover the costs of its services from those who benefit from, but do not contribute to, the national aviation system and the services provided by the Administration;

(5) to consider a fee system based on the cost or value of the services provided and other funding alternatives;

(6) to develop funding options for the Congress in order to provide for the long-term efficient and cost-effective support of the Administration and the aviation system; and

(7) to achieve a more efficient and effective Administration for the benefit of the aviation transportation industry.

SEC. 673. USER FEES FOR VARIOUS FEDERAL AVIATION ADMINISTRATION SERVICES.

(a) IN GENERAL.—Chapter 453 is amended by striking section 45301 and inserting the following new section:

''§ 45301. General provisions

''(a) SCHEDULE OF FEES.—The Administrator shall establish a schedule of new fees, and a collection process for such fees, for the following services provided by the Administration:

''(1) Air traffic control and related services provided to aircraft other than military and civilian aircraft of the United States government or of a foreign government that neither take off from, nor land in, the United States.

''(2) Services (other than air traffic control services) provided to a foreign government.

''(b) LIMITATIONS.—

''(1) AUTHORIZATION AND IMPACT CONSIDERATIONS.—In establishing fees under subsection (a), the Administrator—

''(A) is authorized to recover in fiscal year 1997 $100,000,000; and

''(B) shall ensure that each of the fees required by subsection (a) is directly related to the Administration's costs of providing the service rendered. Services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services which are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off nor land in the United States.

''(2) PUBLICATION; COMMENT.—The Administrator shall publish in the Federal Register an initial fee schedule and associated collection process as an interim final rule, pursuant to which public comment will be sought and a final rule issued.

''(c) USE OF EXPERTS AND CONSULTANTS.—In developing the system, the Administrator may consult with such nongovernmental experts as the Administrator may employ and the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary. Notwithstanding any other provision of law to the contrary, the Administrator may retain such experts under a contract awarded on a basis other than a competitive basis and without regard to any such provisions requiring competitive bidding or precluding sole source contract authority.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 453 is amended by striking the item relating to section 45301 and inserting the following new item:

''45301. General provisions.''.

(c) REPEAL.—

(1) IN GENERAL.—Section 70118 is repealed.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 701 is amended by striking the item relating to section 70118.

SEC. 674. INDEPENDENT ASSESSMENT AND TASK FORCE TO REVIEW EXISTING AND INNOVATIVE FUNDING MECHANISMS.

(a) INDEPENDENT ASSESSMENT.—

(1) INITIATION.—As soon as all members of the task force are appointed under subsection (b) of this section, the Administrator shall contract with an entity independent of the Administration and the Department of Transportation to conduct a complete independent assessment of the financial requirements of the Administration through the year 2002.

(2) ASSESSMENT CRITERIA.—The Administrator shall provide to the independent entity estimates of the financial requirements of the Administration for the period described in paragraph (1), using as a base the fiscal year 1997 authorization levels established by the Congress. The independent assessment shall be based on an objective analysis of agency funding needs.

(3) CERTAIN FACTORS TO BE TAKEN INTO ACCOUNT.—The independent assessment shall take into account all relevant factors, including—

(A) anticipated air traffic forecasts;

(B) other workload measures;

(C) estimated productivity gains, if any, which contribute to budgetary requirements;

(D) the need for programs; and

(E) the need to provide for continued improvements in all facets of aviation safety, along with operational improvements in air traffic control.

(4) COST ALLOCATION.—The independent assessment shall also assess the costs to the Administration occasioned by the provision of services to each segment of the aviation system.

(5) DEADLINE.—The independent assessment shall be completed no later than 90 days after the contract is awarded, and shall be submitted to the task force, the Secretary, the Secretary of the Treasury, the Committee on Commerce, Science, and Transportation and the Committee on Finance of the Senate, and the Committee on Transportation and Infrastructure and the Committee on Ways and Means of the House of Representatives.

(b) TASK FORCE.—

(1) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of the Treasury, shall establish an 11-member task force, independent of the Administration and the Department of Transportation.

(2) MEMBERSHIP.—The members of the task force shall be selected from among individuals who have expertise in the aviation industry and who are able, collectively, to represent a balanced view of the issues important to general aviation, major air carriers, air cargo carriers, regional air carriers, business aviation, airports, aircraft manufacturers, the financial community, aviation industry workers, and airline passengers. At least one member of the task force shall have detailed knowledge of the congressional budgetary process.

(3) HEARINGS AND CONSULTATION.—

(A) HEARINGS.—The task force shall take such testimony and solicit and receive such comments from the public and other interested parties as it considers appropriate, shall conduct 2 public hearings after affording adequate notice to the public thereof, and is authorized to conduct such additional hearings as may be necessary.

(B) CONSULTATION.—The task force shall consult on a regular and frequent basis with the Secretary of Transportation, the Secretary of the Treasury, the Committee on Commerce, Science, and Transportation and the Committee on Finance of the Senate, and the Committee on

Transportation and Infrastructure and the Committee on Ways and Means of the House of Representatives.

(C) FACA NOT TO APPLY.—The task force shall not be considered an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(4) DUTIES.—

(A) REPORT TO SECRETARY.—

(i) IN GENERAL.—The task force shall submit a report setting forth a comprehensive analysis of the Administration's budgetary requirements through fiscal year 2002, based upon the independent assessment under subsection (a), that analyzes alternative financing and funding means for meeting the needs of the aviation system through the year 2002. The task force shall submit a preliminary report of that analysis to the Secretary not later than 6 months after the independent assessment is completed under subsection (a). The Secretary shall provide comments on the preliminary report to the task force within 30 days after receiving it. The task force shall issue a final report of such comprehensive analysis within 30 days after receiving the Secretary's comments on its preliminary report.

(ii) CONTENTS.—The report submitted by the task force under clause (i)—

(I) shall consider the independent assessment under subsection (a);

(II) shall consider estimated cost savings, if any, resulting from the procurement and personnel reforms included in this Act or in sections 347 and 348 of Public Law 104–50, and additional financial initiatives;

(III) shall include specific recommendations to the Congress on how the Administration can reduce costs, raise additional revenue for the support of agency operations, and accelerate modernization efforts; and

(IV) shall include a draft bill containing the changes in law necessary to implement its recommendations.

(B) RECOMMENDATIONS.—The task force shall make such recommendations under subparagraph (A)(III) as the task force deems appropriate. Those recommendations may include—

(i) alternative financing and funding proposals, including linked financing proposals;

(ii) modifications to existing levels of Airport and Airways Trust Fund receipts and taxes for each type of tax;

(iii) establishment of a cost-based user fee system based on, but not limited to, criteria under subparagraph (F) and methods to ensure that costs are borne by users on a fair and equitable basis;

(iv) methods to ensure that funds collected from the aviation community are able to meet the needs of the agency;

(v) methods to ensure that funds collected from the aviation community and passengers are used to support the aviation system;

(vi) means of meeting the airport infrastructure needs for large, medium, and small airports; and

(vii) any other matter the task force deems appropriate to address the funding and needs of the Administration and the aviation system.

(C) ADDITIONAL RECOMMENDATIONS.—The task force report may also make recommendations concerning—

(i) means of improving productivity by expanding and accelerating the use of automation and other technology;

(ii) means of contracting out services consistent with this Act, other applicable law, and safety and national defense needs;

(iii) methods to accelerate air traffic control modernization and improvements in aviation safety and safety services;

(iv) the elimination of unneeded programs; and

(v) a limited innovative program based on funding mechanisms such as loan guarantees, financial partnerships with for-profit private sector entities, government-sponsored enterprises, and revolving loan funds, as a means of funding specific facilities and equipment projects, and to provide limited additional funding alternatives for airport capacity development.

(D) IMPACT ASSESSMENT FOR RECOMMENDATIONS.—For each recommendation contained in the task force's report, the report shall include a full analysis and assessment of the impact implementation of the recommendation would have on—

(i) safety;

(ii) administrative costs;

(iii) the congressional budget process;

(iv) the economics of the industry (including the proportionate share of all users);

(v) the ability of the Administration to utilize the sums collected; and

(vi) the funding needs of the Administration.

(E) TRUST FUND TAX RECOMMENDATIONS.—If the task force's report includes a recommendation that the existing Airport and Airways Trust Fund tax structure be modified, the report shall—

(i) state the specific rates for each group affected by the proposed modifications;

(ii) consider the impact such modifications shall have on specific users and the public (including passengers); and

(iii) state the basis for the recommendations.

(F) FEE SYSTEM RECOMMENDATIONS.—If the task force's report includes a recommendation that a fee system be established, including an air traffic control performance-based user fee system, the report shall consider—

(i) the impact such a recommendation would have on passengers, air fares (including low-fare, high frequency service), service, and competition;

(ii) existing contributions provided by individual air carriers toward funding the Administration and the air traffic control system through contributions to the Airport and Airways Trust Fund;

(iii) continuing the promotion of fair and competitive practices;

(iv) the unique circumstances associated with interisland air carrier service in Hawaii and rural air service in Alaska;

(v) the impact such a recommendation would have on service to small communities;

(vi) the impact such a recommendation would have on services provided by regional air carriers;

(vii) alternative methodologies for calculating fees so as to achieve a fair and reasonable distribution of costs of service among users;

(viii) the usefulness of phased-in approaches to implementing such a financing system;

(ix) means of assuring the provision of general fund contributions, as appropriate, toward the support of the Administration; and

(x) the provision of incentives to encourage greater efficiency in the provision of air traffic services by the Administration and greater efficiency in the use of air traffic services by aircraft operators.

(G) ACCESS TO DOCUMENTS AND STAFF.—The Administration may give the task force appropriate access to relevant documents and personnel of the Administration, and the Administrator shall make available, consistent with the authority to withhold commercial and other proprietary information under section 552 of title 5, United States Code (commonly known as the 'Freedom of Information Act') cost data associated with the acquisition and operation of air traffic service systems. Any member of the task force who receives commercial or other proprietary data from the Administrator shall be subject to the provisions of section 1905 of title 18, United States Code, pertaining to unauthorized disclosure of such information.

(H) TRAVEL AND PER DIEM.—Each member of the task force shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his or her usual place of residence, in accordance with section 5703 of title 5, United States Code.

(I) DETAIL OF PERSONNEL FROM THE ADMINISTRATION.—The Administrator shall make available to the task force such staff, information, and administrative services and assistance as may reasonably be required to enable the task force to carry out its responsibilities under this subsection.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

(c) REPORT BY SECRETARY TO CONGRESS.—

(1) CONSIDERATION OF TASK FORCE'S PRELIMINARY REPORT.—Within 30 days after receiving the preliminary report of the task force under subsection (b), the Secretary, in consultation with the Secretary of the Treasury, shall furnish comments on that report to the task force.

(2) SECRETARY'S REPORT TO CONGRESS.—Within 30 days after receiving the final report of the task force and in no event more than 1 year after the date of enactment of this Act, the Secretary, after consulting the Secretary of the Treasury, shall submit a report, based upon the final report of the task force, containing the Secretary's recommendations for funding the needs of the aviation system through the year 2002 to the Committee on Commerce, Science, and Transportation and the Committee on Finance of the Senate and the Committee on Transportation and Infrastructure and the Committee on Ways and means of the House of Representatives.

(3) CONTENTS.—The Secretary shall include in his report to the Congress under paragraph (2)—

(A) a copy of the final report of the task force; and

(B) a draft bill containing the changes in law necessary to implement the Secretary's recommendations.

(4) PUBLICATION.—The Secretary shall cause a copy of the reports to be printed in the Federal Register upon their submission to Congress.

(d) GAO AUDIT OF COST ALLOCATION.—The Comptroller General shall conduct an assessment of the manner in which costs for air traffic control services are allocated between the Administration and the Department of Defense. The Comptroller General shall report the results of the assessment, together with any recommendations the Comptroller General may have for reallocation of costs and for opportunities to increase the efficiency of air traffic control services provided by the Administration and by the Department of Defense, to the task force, the Administrator, the Secretary of Defense, the Committee on Transportation and Infrastructuree of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate not later than 120 days after the date of enactment of this Act.

SEC. 675. PROCEDURE FOR CONSIDERATION OF CERTAIN FUNDING PROPOSALS.

(a) IN GENERAL.—Chapter 481 is amended by adding at the end thereof the following:

"§ 48111. Funding proposals

''(a) INTRODUCTION AND REFERRAL.—Within 15 days (not counting any day on which either House is not in session) after a funding proposal is submitted to the House of Representatives and the Senate by the Secretary of Transportation under section 674(c) of the Air Traffic Management System Performance Improvement Act of 1996, an implementing bill with respect to such funding proposal shall be introduced in the House by the Majority Leader of the House, for himself and the Minority Leader of the House, or by Members of the House designated by the Majority Leader and Minority Leader of the House; and shall be introduced in the Senate by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate. The implementing bill shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a

bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

''(b) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

''(1) REFERRAL AND REPORTING.—Any committee of the House of Representatives to which an implementing bill is referred shall report it, with or without recommendation, not later than the 45th calendar day of session after the date of its introduction. If any committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill. A motion to discharge may be made only by a Member favoring the bill (but only at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion). The motion is highly privileged. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between a proponent and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

''(2) CONSIDERATION OF IMPLEMENTING BILL.—After an implementing bill is reported or a committee has been discharged from further consideration, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If reported and the report has been available for at least one calendar day, all points of order against the bill and against consideration of the bill are waived. If discharged, all points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed one hour equally divided and controlled by a proponent and an opponent of the bill. The bill shall be considered as read for amendment under the five-minute rule. Only one motion to rise shall be in order, except if offered by the manager. No amendment to the bill is in order except an amendment that is relevant to aviation funding and the Federal Aviation Administration. Consideration of the bill for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except pro forma amendments for the purposes of debate only. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

''(3) APPEALS OF RULINGS.—Appeals from decision of the Chair regarding application of the rules of the House of Representatives to the procedure relating to an implementing bill shall be decided without debate.

''(4) CONSIDERATION OF MORE THAN ONE IMPLEMENTING BILL.—It shall not be in order to consider under this subsection more than one implementing bill under this section, except for consideration of a similar Senate bill (unless the House has already rejected an implementing bill) or more than one motion to discharge described in paragraph (1) with respect to an implementing bill.

''(c) CONSIDERATION IN THE SENATE.—An implementing bill introduced in the Senate shall be referred to the Committee on Commerce, Science, and Transportation. The Committee on Commerce, Science, and Transportation shall report the bill with its recommendations within 60 days following the date of introduction of that bill. Upon the reporting of the bill by the Committee on Commerce, Science, and Transportation, the reported bill shall be referred sequentially to the Committee on Finance for a period of 60 legislative days.

''(d) CONSIDERATION IN CONFERENCE.—

''(1) CONVENING OF CONFERENCE.—In the case of disagreement between the two Houses of Congress with respect to an implementing bill passed by both Houses, conferees should be promptly appointed and a conference promptly convened, if necessary.

''(2) HOUSE CONSIDERATION.—Notwithstanding any other rule of the House of Representatives, it shall be in order to consider the report of a committee of conference relating to an implementing bill if such report has been available for one calendar day (excluding Saturdays, Sundays, and legal holidays, unless the House is in session on such a day) and the accompanying statement shall have been filed in the House.

''(3) SENATE CONSIDERATION.—Consideration in the Senate of the conference report and any amendments in disagreement on an implementing bill shall be limited to not more than 4 hours equally divided and controlled by the Majority Leader and the Minority Leader or their designees. A motion to recommit the conference report is not in order.

''(e) DEFINITIONS.—For purposes of this section—

''(1) IMPLEMENTING BILL.—The term 'implementing bill' means only a bill of either House of Congress which is introduced as provided in subsection (a) with respect to one or more Federal Aviation Administration funding proposals which contain changes in existing laws or new statutory authority required to implement such funding proposal or proposals.

''(2) FUNDING PROPOSAL.—The term 'funding proposal' means a proposal to provide interim or permanent funding for operations of the Federal Aviation Administration.

''(f) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by the Congress—

''(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (d); and they supersede other rules only to the extent that they are inconsistent therewith; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 481 is amended by adding at the end thereof the following:

''48111. Funding proposals.''.

SEC. 676. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—Chapter 453, as amended by section 654 of this title, is further amended by—

(1) redesignating section 45303 as section 45304; and

(2) by inserting after section 45302 the following:

''§ 45303. Administrative provisions

''(a) IN GENERAL.—

''(1) FEES PAYABLE TO ADMINISTRATOR.—All fees imposed and amounts collected under this chapter for services performed, or materials furnished, by the Federal Aviation Administration (hereafter in this section referred to as the 'Administration') are payable to the Administrator.

''(2) REFUNDS.—The Administrator may refund any fee paid by mistake or any amount paid in excess of that required.

''(3) RECEIPTS CREDITED TO ACCOUNT.—Notwithstanding section 3302 of title 31 all fees and amounts collected by the Administration, except insurance premiums and other fees charged for the provision of insurance and deposited in the Aviation Insurance Revolving Fund and interest earned on investments of such Fund, and except amounts which on the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996 are required to be credited to the general fund of the Treasury (whether imposed under this section or not)—

''(A) shall be credited to a separate account established in the Treasury and made available for Administration activities;

''(B) shall be available immediately for expenditure but only for congressionally authorized and intended purposes; and

''(C) shall remain available until expended.

''(4) ANNUAL BUDGET REPORT BY ADMINISTRATOR.—The Administrator shall, on the same day each year as the President submits the annual budget to the Congress, provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

''(A) a list of fee collections by the Administration during the preceding fiscal year;

''(B) a list of activities by the Administration during the preceding fiscal year that were supported by fee expenditures and appropriations;

''(C) budget plans for significant programs, projects, and activities of the Administration, including out-year funding estimates;

''(D) any proposed disposition of surplus fees by the Administration; and

''(E) such other information as those committees consider necessary.

''(5) DEVELOPMENT OF COST ACCOUNTING SYSTEM.—The Administration shall develop a cost accounting system that adequately and accurately reflects the investments, operating and overhead costs, revenues, and other financial measurement and reporting aspects of its operations.

''(6) COMPENSATION TO CARRIERS FOR ACTING AS COLLECTION AGENTS.—The Administration shall prescribe regulations to ensure that any air carrier required, pursuant to the Air Traffic Management System Performance Improvement Act of 1996 or any amendments made by that Act, to collect a fee imposed on another party by the Administrator may collect from such other party an additional uniform amount that the Administrator determines reflects the necessary and reasonable expenses (net of interest accruing to the carrier after collection and before remittance) incurred in collecting and handling the fee.

''(7) COST REDUCTION AND EFFICIENCY REPORT.—Prior to the submission of any proposal for establishment, implementation, or expansion of any fees or taxes imposed on the aviation industry, the Administrator shall prepare a report for submission to the Congress which includes—

''(A) a justification of the need for the proposed fees or taxes;

''(B) a statement of steps taken by the Administrator to reduce costs and improve efficiency within the Administration;

''(C) an analysis of the impact of any fee or tax increase on each sector of the aviation transportation industry; and

''(D) a comparative analysis of any decrease in tax amounts equal to the receipts from which are credited to the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 453 is amended by striking the item relating to section 45303 and inserting the following:

''45303. Administrative provisions.

''45304. Maximum fees for private person services.''.

SEC. 677. ADVANCE APPROPRIATIONS FOR AIRPORT AND AIRWAY TRUST FUND ACTIVITIES.

(a) IN GENERAL.—Part C of subtitle VII is amended by adding at the end the following new chapter:

"CHAPTER 482—ADVANCE APPROPRIATIONS FOR AIRPORT AND AIRWAY TRUST FACILITIES

"Sec.
"48201. Advance appropriations.

"§ 48201. Advance appropriations

"(a) MULTIYEAR AUTHORIZATIONS.—Beginning with fiscal year 1998, any authorization of appropriations for an activity for which amounts are to be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 shall provide funds for a period of not less than 3 fiscal years unless the activity for which appropriations are authorized is to be concluded before the end of that period.

"(b) MULTIYEAR APPROPRIATIONS.—Beginning with fiscal year 1998, amounts appropriated from the Airport and Airway Trust Fund shall be appropriated for periods of 3 fiscal years rather than annually.".

(b) CONFORMING AMENDMENT.—The analysis for subtitle VIII is amended by adding at the end the following new item:

"482. Advance appropriations for airport and airway trust facilities ....48201.".

SEC. 678. RURAL AIR SERVICE SURVIVAL ACT.

(a) SHORT TITLE.—This section may be cited as the "Rural Air Service Survival Act".

(b) FINDINGS.—The Congress finds that—

(1) air service in rural areas is essential to a national transportation network;

(2) the rural air service infrastructure supports the safe operation of all air travel;

(3) rural air service creates economic benefits for all air carriers by making the national aviation system available to passengers from rural areas;

(4) rural air service has suffered since deregulation;

(5) the essential air service program under the Department of Transportation—

(A) provides essential airline access to rural and isolated rural communities throughout the Nation;

(B) is necessary for the economic growth and development of rural communities;

(C) is a critical component of the national transportation system of the United States; and

(D) has endured serious funding cuts in recent years; and

(6) a reliable source of funding must be established to maintain air service in rural areas and the essential air service program.

(c) ESSENTIAL AIR SERVICE AUTHORIZATION.—Section 41742 is amended to read as follows:

"§ 41742. Essential air service authorization

"(a) IN GENERAL.—Out of the amounts received by the Administration credited to the account established under section 45303(a)(3) or otherwise provided to the Administration, the sum of $50,000,000 is authorized and shall be made available immediately for obligation and expenditure to carry out the essential air service program under this subchapter for each fiscal year.

"(b) FUNDING FOR SMALL COMMUNITY AIR SERVICE.—Notwithstanding any other provision of law, moneys credited to the account established under section 45303(a), including the funds derived from fees imposed under the authority contained in section 45301(a), shall be used to carry out the essential air service program under this subchapter. Notwithstanding section 47114(g) of this title, any amounts from those fees that are not obligated or expended at the end of the fiscal year for the purpose of funding the essential air service program under this subchapter shall be made available to the Administration for use in improving rural air safety under subchapter I of chapter 471 of this title and shall be used exclusively for projects at rural airports under this subchapter.".

(d) CONFORMING AMENDMENT.—The chapter analysis for chapter 417 is amended by striking the item relating to section 41742 and inserting the following:

"41742. Essential air service authorization.".

(e) SECRETARY MAY REQUIRE MATCHING LOCAL FUNDS.—Section 41737 is amended by adding at the end thereof the following:

"(e) MATCHING FUNDS.—No earlier than 2 years after the effective date of section 679 of the Air Traffic Management System Performance Improvement Act of 1996, the Secretary may require an eligible agency, as defined in section 40117(a)(2) of this title, to provide matching funds of up to 10 percent for any payments it receives under this subchapter.".

(f) TRANSFER OF ESSENTIAL AIR SERVICE PROGRAM TO FAA.—The responsibility for administration of subchapter II of chapter 417 is transferred from the Secretary of Transportation to the Administrator.

TITLE VII—PILOT RECORDS

SEC. 701. SHORT TITLE.

This title may be cited as the "Pilot Records Improvement Act of 1996".

SEC. 702. EMPLOYMENT INVESTIGATIONS OF PILOT APPLICANTS.

(a) IN GENERAL.—Section 44936 is amended by adding at the end the following new subsection:

"(f) RECORDS OF EMPLOYMENT OF PILOT APPLICANTS.—

"(1) IN GENERAL.—Before hiring an individual as a pilot, an air carrier shall request and receive the following information:

"(A) FAA RECORDS.—From the Administrator of the Federal Aviation Administration (hereafter in this subsection referred to as the 'Administrator'), records pertaining to the individual that are maintained by the Administrator concerning—

"(i) current airman certificates (including airman medical certificates) and associated type ratings, including any limitations to those certificates and ratings; and

"(ii) summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.

"(B) AIR CARRIER AND OTHER RECORDS.—From any air carrier or other person that has employed the individual at any time during the 5-year period preceding the date of the employment application of the individual, or from the trustee in bankruptcy for such air carrier or person—

"(i) records pertaining to the individual that are maintained by an air carrier under regulations set forth in—

"(I) section 121.683 of title 14, Code of Federal Regulations;

"(II) paragraph (A) of section VI, appendix I, part 121 of such title;

"(III) paragraph (A) of section IV, appendix J, part 121 of such title;

"(IV) section 125.401 of such title; and

"(V) section 135.63(a)(4) of such title; and

"(ii) other records pertaining to the individual that are maintained by the air carrier or person concerning—

"(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;

"(II) any disciplinary action taken with respect to the individual that was not subsequently overturned; and

"(III) any release from employment or resignation, termination, or disqualification with respect to employment.

"(C) NATIONAL DRIVER REGISTER RECORDS.—In accordance with section 30305(b)(7), from the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual.

"(2) WRITTEN CONSENT; RELEASE FROM LIABILITY.—An air carrier making a request for records under paragraph (1)—

"(A) shall be required to obtain written consent to the release of those records from the individual that is the subject of the records requested; and

"(B) may, notwithstanding any other provision of law or agreement to the contrary, require the individual who is the subject of the records to request to execute a release from liability for any claim arising from the furnishing of such records to or the use of such records by such air carrier (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute).

"(3) 5-YEAR REPORTING PERIOD.—A person shall not furnish a record in response to a request made under paragraph (1) if the record was entered more than 5 years before the date of the request, unless the information concerns a revocation or suspension of an airman certificate or motor vehicle license that is in effect on the date of the request.

"(4) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator shall maintain pilot records described in paragraph (1)(A) for a period of at least 5 years.

"(5) RECEIPT OF CONSENT; PROVISION OF INFORMATION.—A person shall not furnish a record in response to a request made under paragraph (1) without first obtaining a copy of the written consent of the individual who is the subject of the records requested. A person who receives a request for records under this paragraph shall furnish a copy of all of such requested records maintained by the person not later than 30 days after receiving the request.

"(6) RIGHT TO RECEIVE NOTICE AND COPY OF ANY RECORD FURNISHED.—A person who receives a request for records under paragraph (1) shall provide to the individual who is the subject of the records—

"(A) written notice of the request and of the right of that individual to receive a copy of such records; and

"(B) a copy of such records, if requested by the individual.

"(7) REASONABLE CHARGES FOR PROCESSING REQUESTS AND FURNISHING COPIES.—A person who receives a request under paragraph (1) or (6) may establish a reasonable charge for the cost of processing the request and furnishing copies of the requested records.

"(8) STANDARD FORMS.—The Administrator shall promulgate—

"(A) standard forms that may be used by an air carrier to request records under paragraph (1); and

"(B) standard forms that may be used by an air carrier to—

"(i) obtain the written consent of the individual who is the subject of a request under paragraph (1); and

"(ii) inform the individual of—

"(I) the request; and

"(II) the individual right of that individual to receive a copy of any records furnished in response to the request.

"(9) RIGHT TO CORRECT INACCURACIES.—An air carrier that maintains or requests and receives the records of an individual under paragraph (1) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

"(10) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS.—Notwithstanding any other provision of law or agreement, an air carrier shall, upon written request from a pilot employed by such carrier, make available, within a reasonable time of the request, to the pilot for review, any and all employment records referred to in paragraph (1)(B) (i) or (ii) pertaining to the employment of the pilot.

''(11) PRIVACY PROTECTIONS.—An air carrier that receives the records of an individual under paragraph (1) may use such records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot. The air carrier shall take such actions as may be necessary to protect the privacy of the pilot and the confidentiality of the records, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

''(12) PERIODIC REVIEW.—Not later than 18 months after the date of enactment of the Pilot Records Improvement Act of 1996, and at least once every 3 years thereafter, the Administrator shall transmit to the Congress a statement that contains, taking into account recent developments in the aviation industry—

''(A) recommendations by the Administrator concerning proposed changes to Federal Aviation Administration records, air carrier records, and other records required to be furnished under subparagraphs (A) and (B) of paragraph (1); or

''(B) reasons why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (A).

''(13) REGULATIONS.—The Administrator may prescribe such regulations as may be necessary—

''(A) to protect—

''(i) the personal privacy of any individual whose records are requested under paragraph (1); and

''(ii) the confidentiality of those records;

''(B) to preclude the further dissemination of records received under paragraph (1) by the person who requested those records; and

''(C) to ensure prompt compliance with any request made under paragraph (1).

''(g) LIMITATION ON LIABILITY; PREEMPTION OF STATE LAW.—

''(1) LIMITATION ON LIABILITY.—No action or proceeding may be brought by or on behalf of an individual who has applied for or is seeking a position with an air carrier as a pilot and who has signed a release from liability, as provided for under paragraph (2), against—

''(A) the air carrier requesting the records of that individual under subsection (a)(1);

''(B) a person who has complied with such request; or

''(C) an agent or employee of a person described in subparagraph (A) or (B);

in the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any Federal or State law with respect to the furnishing or use of such records in accordance with subsection (a).

''(2) PREEMPTION.—No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any regulation, standard, or other provision having the force and effect of law) that prohibits, penalizes, or imposes liability for furnishing or using records in accordance with subsection (a).

''(3) PROVISION OF KNOWINGLY FALSE INFORMATION.—Paragraphs (1) and (2) shall not apply with respect to a person who furnishes information in response to a request made under subsection (f)(1), that—

''(A) the person knows is false; and

''(B) was maintained in violation of a criminal statute of the United States.''.

(b) CONFORMING AMENDMENT.—Section 30305(b) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following:

''(7) An individual who is seeking employment by an air carrier as a pilot may request the chief driver licensing official of a State to provide information about the individual under paragraph (2) to the prospective employer of the individual or to the Secretary of Transportation. Information may not be obtained from the National Driver Register under this subsection if the information was entered in the Register more than 5 years before the request unless the information is about a revocation or suspension still in effect on the date of the request.''.

(c) APPLICABILITY.—The amendments made by this section shall apply to any air carrier hiring an individual as a pilot whose application was first received by the carrier on or after the 120th day after the date of enactment of this Act.

SEC. 703. STUDY OF MINIMUM STANDARDS FOR PILOT QUALIFICATIONS.

The Administrator shall appoint a task force consisting of appropriate representatives of the aviation industry to conduct a study directed toward the development of—

(1) standards and criteria for preemployment screening tests measuring the psychomotor coordination, general intellectual capacity, instrument and mechanical comprehension, and physical and mental fitness of an applicant for employment as a pilot by an air carrier; and

(2) standards and criteria for pilot training facilities to be licensed by the Administrator and which will assure that pilots trained at such facilities meet the preemployment screening standards and criteria described in paragraph (1).

TITLE VIII—ABOLITION OF BOARD OF REVIEW

SEC. 801. ABOLITION OF BOARD OF REVIEW AND RELATED AUTHORITY.

(a) ABOLITION OF BOARD OF REVIEW.—Section 6007 of the Metropolitan Washington Airports Act of 1986 (formerly 49 U.S.C. App. 2456) is amended—

(1) by striking subsections (f) and (h);

(2) by redesignating subsection (g) as subsection (f); and

(3) by redesignating subsection (i) as subsection (g).

(b) CONFORMING AMENDMENTS.—

(1) RELATIONSHIP TO AND EFFECT OF OTHER LAWS.—Section 6009(b) of the Metropolitan Washington Airports Act of 1986 (formerly 49 U.S.C. App. 2458(b)) is amended by striking ''or by reason of the authority'' and all that follows through the end of the subsection and inserting a period.

(2) SEPARABILITY.—Section 6011 of the Metropolitan Washington Airports Act of 1986 (formerly 49 U.S.C. App. 2460) is amended by striking ''Except as provided in section 6007(h), if'' and inserting ''If''.

(c) PROTECTION OF CERTAIN ACTIONS.—Any action taken by the Airports Authority and submitted to the Board of Review pursuant to section 6007(f)(4) of the Metropolitan Washington Airports Act of 1986 before April 1, 1995, shall remain in effect and shall not be set aside solely by reason of a judicial order invalidating certain functions of the Board.

SEC. 802. SENSE OF THE SENATE.

It is the sense of the Senate that the Airports Authority—

(1) should not provide any reserved parking areas free of charge to Members of Congress, other Government officials, or diplomats at Washington National Airport or Washington Dulles International Airport; and

(2) should establish a parking policy for such airports that provides equal access to the public, and does not provide preferential parking privileges to Members of Congress, other Government officials, or diplomats.

SEC. 803. CONFORMING AMENDMENTS IN OTHER LAW.

Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority to the Board of Review or the provisions of law repealed under this title is hereby repealed.

SEC. 804. DEFINITIONS.

For purposes of this title—

(1) the terms ''Airports Authority'', ''Washington National Airport'', and ''Washington Dulles International Airport'' have the same meanings as in section 6004 of the Metropolitan Washington Airports Act of 1986; and

(2) the term ''Board of Review'' means the Board of Review of the Airports Authority.

SEC. 805. INCREASE IN NUMBER OF PRESIDENTIALLY APPOINTED MEMBERS OF BOARD.

(a) IN GENERAL.—Section 6007(e) of the Metropolitan Washington Airports Act of 1986 (formerly 49 U.S.C. 2456(e)) is amended—

(1) by striking ''11 members,'' in paragraph (1) and inserting ''13 members,'';

(2) by striking ''one member'' in paragraph (1)(D) and inserting ''3 members''; and

(3) by striking ''Seven'' in paragraph (5) and inserting ''Eight''.

(b) STAGGERING TERMS FOR PRESIDENTIAL APPOINTEES.—Of the members first appointed by the President after the date of enactment of this Act—

(1) one shall be appointed for a term that expires simultaneously with the term of the member of the Metropolitan Washington Airports Authority board of directors serving on that date (or, if there is a vacancy in that office, the member appointed to fill the existing vacancy and the member to whom this paragraph applies shall be appointed for 2 years);

(2) one shall be appointed for a term ending 2 years after the term of the member (or members) to whom paragraph (1) applies expires; and

(3) one shall be appointed for a term ending 4 years after the term of the member (or members) to whom paragraph (1) applies expires.

SEC. 806. RECONSTITUTED BOARD TO FUNCTION WITHOUT INTERRUPTION.

Notwithstanding any provision of State law, including those provisions establishing, providing for the establishment of, or recognizing the Metropolitan Washington Airports Authority, and based upon the Federal interest in the continued functions of the Metropolitan Washington Airports (as defined in section 6004(4) of the Metropolitan Washington Airports Authority Act of 1986 (formerly 49 U.S.C. 2451(4)), the board of directors of such Authority, including any members appointed under the amendments made by section 805, shall continue to meet and act after the date of enactment of this Act until such time as necessary conforming changes in State law are made in the same manner as if those conforming changes had been enacted on the date of enactment of this Act.

SEC. 807. OPERATIONAL SLOTS AT NATIONAL AIRPORT.

Nothing in this title shall affect the number or distribution of operational slots at National Airport.

SEC. 808. AIRPORTS AUTHORITY SUPPORT OF BOARD.

Section 6005 of the Metropolitan Washington Airports Authority Act of 1986 (formerly 49 U.S.C. 2454) is amended by adding at the end thereof the following:

''(f) FEDERAL AGENCY OVERSIGHT.—The Airports Authority shall not be required—

''(1) to pay any person;

''(2) to provide office space or administrative support; or

''(3) to reimburse the Secretary of Transportation for expenses incurred,

for carrying out any Federal agency oversight responsibilities under this Act. Nothing in this subsection precludes the Airport Authority from providing services or expenses to any member of the Board of Directors.''.

TITLE IX—AIRPORT REVENUE PROTECTION

SEC. 901. SHORT TITLE.

This title may be cited as the ''Airport Revenue Protection Act of 1996''.

SEC. 902. FINDINGS; PURPOSE.

(a) IN GENERAL.—The Congress finds that—

(1) section 47107 of title 49, United States Code, prohibits the diversion of certain revenue

generated by a public airport as a condition of receiving a project grant;

(2) a grant recipient that uses airport revenue for purposes that are not airport related in a manner inconsistent with chapter 471 of title 49, United States Code, illegally diverts airport revenues;

(3) any diversion of airport revenues in violation of the condition referred to in paragraph (1) undermines the interest of the United States in promoting a strong national air transportation system that is responsive to the needs of airport users;

(4) the Secretary and the Administrator have not enforced airport revenue diversion rules adequately and must have additional regulatory tools to increase enforcement efforts; and

(5) sponsors who have been found to have illegally diverted airport revenues—

(A) have not reimbursed or made restitution to airports in a timely manner; and

(B) must be encouraged to do so.

(b) PURPOSE.—The purpose of this title is to ensure that airport users are not burdened with hidden taxation for unrelated municipal services and activities by—

(1) eliminating the ability of any State or political subdivision thereof that is a recipient of a project grant to divert airport revenues for purposes that are not related to an airport, in violation of section 47107 of title 49, United States Code;

(2) imposing financial reporting requirements that are designed to identify instances of illegal diversions referred to in paragraph (1);

(3) establishing a statute of limitations for airport revenue diversion actions;

(4) clarifying limitations on revenue diversion that are permitted under chapter 471 of title 49, United States Code; and

(5) establishing clear penalties and enforcement mechanisms for identifying and prosecuting airport revenue diversion.

SEC. 903. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Aviation Administration.

(2) AIRPORT.—The term ''airport'' has the meaning provided that term in section 47102(2) of title 49, United States Code.

(3) PROJECT GRANT.—The term ''project grant'' has the meaning provided that term in section 47102(14) of title 49, United States Code.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(5) SPONSOR.—The term ''sponsor'' has the meaning provided that term in section 47102(19) of title 49, United States Code.

SEC. 904. RESTRICTION ON USE OF AIRPORT REVENUES.

(a) IN GENERAL.—Subchapter I of chapter 471, as amended by section 201(a) of this Act, is further amended by adding at the end of subchapter I the following new section:

''§ 47133. Restriction on use of revenues

''(a) PROHIBITION.—Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of—

''(1) the airport;

''(2) the local airport system; or

''(3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.

''(b) EXCEPTIONS.—Subsection (a) shall not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

''(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for subchapter I of chapter 471 is amended by adding at the end the following new item:

''47133. Restriction on use of revenues.''.

SEC. 905. REGULATIONS; AUDITS AND ACCOUNTABILITY.

(a) IN GENERAL.—Section 47107 is amended by adding at the end the following new subsections:

''(m) AUDIT CERTIFICATION.—

''(1) IN GENERAL.—The Secretary of Transportation (hereafter in this section referred to as the 'Secretary'), acting through the Administrator of the Federal Aviation Administration (hereafter in this section referred to as the 'Administrator'), shall promulgate regulations that require a recipient of a project grant (or any other recipient of Federal financial assistance that is provided for an airport) to include as part of an annual audit conducted under sections 7501 through 7505 of title 31, a review and opinion of the review concerning the funding activities with respect to an airport that is the subject of the project grant (or other Federal financial assistance) and the sponsors, owners, or operators (or other recipients) involved.

''(2) CONTENT OF REVIEW.—A review conducted under paragraph (1) shall provide reasonable assurances that funds paid or transferred to sponsors are paid or transferred in a manner consistent with the applicable requirements of this chapter and any other applicable provision of law (including regulations promulgated by the Secretary or the Administrator).

''(3) REQUIREMENTS FOR AUDIT REPORT.—The report submitted to the Secretary under this subsection shall include a specific determination and opinion regarding the appropriateness of the disposition of airport funds paid or transferred to a sponsor.

''(n) RECOVERY OF ILLEGALLY DIVERTED FUNDS.—

''(1) IN GENERAL.—Not later than 180 days after the issuance of an audit or any other report that identifies an illegal diversion of airport revenues (as determined under subsections (b) and (l) and section 47133), the Secretary, acting through the Administrator, shall—

''(A) review the audit or report;

''(B) perform appropriate factfinding; and

''(C) conduct a hearing and render a final determination concerning whether the illegal diversion of airport revenues asserted in the audit or report occurred.

''(2) NOTIFICATION.—Upon making such a finding, the Secretary, acting through the Administrator, shall provide written notification to the sponsor and the airport of—

''(A) the finding; and

''(B) the obligations of the sponsor to reimburse the airport involved under this paragraph.

''(3) ADMINISTRATIVE ACTION.—The Secretary may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor—

''(A) receives notification that the sponsor is required to reimburse an airport; and

''(B) has had an opportunity to reimburse the airport, but has failed to do so.

''(4) CIVIL ACTION.—If a sponsor fails to pay an amount specified under paragraph (3) during the 180-day period beginning on the date of notification and the Secretary is unable to withhold a sufficient amount under paragraph (3), the Secretary, acting through the Administrator, may initiate a civil action under which the sponsor shall be liable for civil penalty in an amount equal to the illegal diversion in question plus interest (as determined under subsection (o)).

''(5) DISPOSITION OF PENALTIES.—

''(A) AMOUNTS WITHHELD.—The Secretary or the Administrator shall transfer any amounts withheld under paragraph (3) to the Airport and Airway Trust Fund.

''(B) CIVIL PENALTIES.—With respect to any amount collected by a court in a civil action under paragraph (4), the court shall cause to be transferred to the Airport and Airway Trust Fund any amount collected as a civil penalty under paragraph (4).

''(6) REIMBURSEMENT.—The Secretary, acting through the Administrator, shall, as soon as practicable after any amount is collected from a sponsor under paragraph (4), cause to be transferred from the Airport and Airway Trust Fund to an airport affected by a diversion that is the subject of a civil action under paragraph (4), reimbursement in an amount equal to the amount that has been collected from the sponsor under paragraph (4) (including any amount of interest calculated under subsection (o)).

''(7) STATUTE OF LIMITATIONS.—No person may bring an action for the recovery of funds illegally diverted in violation of this section (as determined under subsections (b) and (l)) or section 47133 after the date that is 6 years after the date on which the diversion occurred.

''(o) INTEREST.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary, acting through the Administrator, shall charge a minimum annual rate of interest on the amount of any illegal diversion of revenues referred to in subsection (n) in an amount equal to the average investment interest rate for tax and loan accounts of the Department of the Treasury (as determined by the Secretary of the Treasury) for the applicable calendar year, rounded to the nearest whole percentage point.

''(2) ADJUSTMENT OF INTEREST RATES.—If, with respect to a calendar quarter, the average investment interest rate for tax and loan accounts of the Department of the Treasury exceeds the average investment interest rate for the immediately preceding calendar quarter, rounded to the nearest whole percentage point, the Secretary of the Treasury may adjust the interest rate charged under this subsection in a manner that reflects that change.

''(3) ACCRUAL.—Interest assessed under subsection (n) shall accrue from the date of the actual illegal diversion of revenues referred to in subsection (n).

''(4) DETERMINATION OF APPLICABLE RATE.—The applicable rate of interest charged under paragraph (1) shall—

''(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3); and

''(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

''(p) PAYMENT BY AIRPORT TO SPONSOR.—If, in the course of an audit or other review conducted under this section, the Secretary or the Administrator determines that an airport owes a sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport, interest on that amount shall be determined in the same manner as provided in paragraphs (1) through (4) of subsection (o), except that the amount of any interest assessed under this subsection shall be determined from the date on which the Secretary or the Administrator makes that determination.''.

(b) REVISION OF POLICIES AND PROCEDURES; DEADLINES.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary, acting through the Administrator, shall revise the policies and procedures established under section 47107(l) of title 49, United States Code, to take into account the amendments made to that section by this title.

(2) STATUTE OF LIMITATIONS.—Section 47107(l) is amended by adding at the end the following new paragraph:

''(5) STATUTE OF LIMITATIONS.—In addition to the statute of limitations specified in subsection (n)(7), with respect to project grants made under this chapter—

''(A) any request by a sponsor to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

''(B) any amount of airport funds that are used to make a payment or reimbursement as described in subparagraph (A) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).''.

SEC. 906. CONFORMING AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

Section 9502 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''and'' at the end of subsection (b)(3);

(2) by striking the period at the end of subsection (b)(4) and inserting '', and''; and

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

''(5) amounts determined by the Secretary of the Treasury to be equivalent to the amounts of civil penalties collected under section 47107(n) of title 49, United States Code.''; and

(4) in subsection (d), by adding at the end of subsection (d) the following:

''(4) TRANSFERS FROM THE AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF CERTAIN AIRPORTS.—The Secretary of the Treasury may transfer from the Airport and Airway Trust Fund to the Secretary of Transportation or the Administrator of the Federal Aviation Administration an amount to make a payment to an airport affected by a diversion that is the subject of an administrative action under paragraph (3) or a civil action under paragraph (4) of section 47107(n) of title 49, United States Code.''.

TITLE X—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

SEC. 1001. EXPENDITURES FROM AIRPORT AND AIRWAY TRUST FUND.

Section 9502(d)(1) of the Internal Revenue Code of 1986 (relating to expenditures from Airport and Airway Trust Fund) is amended by—

(1) striking ''1996'' and inserting ''1997''; and

(2) inserting ''or the Federal Aviation Reauthorization Act of 1996'' after ''Administration Authorization Act of 1994''.

Mr. LOTT. I move to reconsider the vote.

Mrs. FEINSTEIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Was that motion to reconsider laid on the table?

The PRESIDING OFFICER. It was.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The distinguished Senate majority leader.

Mr. LOTT. Thank you, Madam President. I ask unanimous consent that the Senate insist on its amendments to H.R. 3539, that the Senate request a conference with the House on the disagreeing votes, and the Chair be authorized to appoint conferees.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Madam President, for the information of all of our colleagues, we are awaiting receipt of the Transportation appropriations conference report. We expect to have it here momentarily, hopefully in 10 minutes or so. We would then ask consent to take up that Transportation conference report and proceed to its conclusion.

Following that, then we would go to the Magnuson fisheries bill. I know that the Senators from Massachusetts and Alaska and the two from Washington are interested in that. It is our intent to go to Magnuson as soon as we complete action on the Transportation appropriations conference report. In view of that, while we await the receipt momentarily of the Transportation conference report, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Madam President, I ask that I be allowed to speak as in morning business.

Mr. LOTT. I do reserve objection just to make this point. How long?

Mr. BINGAMAN. Eight minutes I was planning to speak.

MORNING BUSINESS

Mr. LOTT. Madam President, at this point I ask unanimous consent that there be a period of morning business for 15 minutes. Would that be all right?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BINGAMAN. I thank the Chair, Madam President.

EDUCATION IN AMERICA

Mr. BINGAMAN. Madam President, I want to speak for a few minutes on the issue of education funding, which is of vital importance to most Americans and certainly is to the people in my State.

First of all, I think we need to put the issue into context. When I go around my State of New Mexico, I talk to people at townhall meetings and I ask, what percentage of the Federal budget do you believe is committed to improving education? Usually I start by saying, ''How many of you think 15 percent of the Federal budget is committed to education?'' Quite a few hands go up in the audience. Then I say, ''How about 10 percent?'' and even more hands go up. I say, ''Five percent?'' and not that many hands. So the consensus in my State is that perhaps we are spending about 10 percent of our Federal budget on education.

Madam President, the truth is, we are spending 1.4 percent, less than 2 percent, of our Federal budget on education. It is in this context that we need to consider the proposals which have come forward in this Congress to actually cut back on Federal support for education.

At the same time, as baby boomers' children enter the schools, as enrollment grows in my State, as it is growing in many States around this country, we are seeing Federal support for education dropping in absolute terms.

I had a chance to visit Las Cruces, NM, with a group of experts on education who were looking at the problem of Hispanic students who are dropping out of our schools in very large numbers in my State and throughout the country. We were having lunch in a restaurant, an excellent restaurant named Roberto's in Las Cruces. I recommend it to anybody. But we were having lunch there, and a woman recognized me and came over to introduce herself.

She said that she was a seventh grade teacher. She taught math in the seventh grade. So I suggested she sit down with this group of experts and talk to them about what needs she saw in education.

The first thing she raised was, ''We would certainly appreciate anything that you can do to get us more money for supplies.'' And I said, ''What do you mean, 'supplies?' '' She said, ''We get an allocation. I, as a seventh grade teacher, get an allocation of $50 a year for supplies for my entire class, and that includes the cost of copying materials that I want to pass out to my students. So we wind up either with me not providing the materials or with me paying for it out of my pocket or having bake sales or depending upon charity of some kind to cover this cost.''

Madam President, it is in that context that we are talking about cutting funds for education here at the national level. It is also in the context of a defense bill which is pending or will be pending soon here in the Senate that goes $9.4 billion over what the Pentagon requested this year.

So we are cutting back on education funds and adding over $9 billion to what the Defense Department requested, and I think the American people believe that our priorities are out of whack. The priorities of this Congress are not the priorities of the American people. The American people would like us to spend more than 1.4 percent of the Federal budget on education.

I also want to say that this issue about whether the Federal Government should help or whether it is none of the Federal Government's business is really an inside-the-beltway kind of an issue, as far as I can tell. When I go home and talk to teachers and parents, they are not particularly concerned about which level of government is providing the support. What they want is to see the local school district and the

State and the Federal Government working together to solve the real problems of providing quality education.

This is a real issue here. Today, as I understand it, some Members on the House side announced yet another proposal to repeal Goals 2000. They did so by making a statement about how this is a first step toward eliminating Federal involvement in education. Madam President, this is not the burning issue, this issue of eliminating Federal involvement. It is not the burning issue in my State. The issue is how do we get the resources and the support to educate our children in the way we believe they should be educated.

In a State like mine, which is growing, student enrollment is also growing. It is estimated by the year 2002 we will have 20,000 additional students in my State. These are students who we are not presently planning funding to support.

We need technology in our schools. I think everybody here, the Presiding Officer, has been a leader in trying to assist schools in obtaining technology to improve education.

We need to put our money where our mouth is on this issue of technology for education, and begin here at the Federal level to support local school districts and States in their efforts to obtain technology and upgrade the quality of education through the use of technology.

We simply have to do more than the House has proposed to do. In my view, I am encouraged that there have been negotiations. I am encouraged there seems to be a bipartisan consensus to restore funds to a previous level in most areas. Frankly, Madam President, I believe we need to do better than this bipartisan discussion seems to be taking us.

As I understand it, the majority leader has an amendment he will offer in this area. It should be praised in several respects. It is strong in such areas as special education grants to the States and title I funding and several smaller student aid programs. However, as I understand the amendment, it would be at a level of $2.3 billion, which is still substantially less than the $3.1 billion that Senator HARKIN would propose in his alternative amendment. By cutting away at some of those funds that Senator HARKIN would provide, it keeps us from addressing some key areas.

In particular, as I understand it, the Lott amendment provides no additional funds for key programs such as the Goals 2000 Program, for bilingual education, for school-to-work, for teacher training, for the TRIO Program, nor does the Lott amendment provide $68 million in additional funds the Department needs to continue its very successful direct lending program. This amendment also fails to increase education technology programs to the same extent that the Harkin amendment would. In addition, the Lott amendment would appear to not include any additional funding for Head Start or job training programs.

As I understand the Harkin amendment, in contrast, it increases spending levels for key programs well beyond the previous year's level in the committee bill or in the Lott amendment. There is $136 million more for Goals 2000, $77 million for bilingual and immigrant education, $227 million more for education technology programs. Clearly, those are very important to us as we approach the new century.

Cutting, freezing, or even reluctantly supporting minor increases in education funding is simply the wrong way to go, in my opinion. We need some restructuring in our schools. All of the problems in our schools cannot be solved by additional resources. That is clear. We need smaller schools. We need better trained teachers. We need to have classrooms that are better equipped. Clearly, funding is part of the solution. Just as funding is part of the solution to improving and modernizing our defense capability, adequate resources are part of the solution to improving and upgrading the quality of education for our students.

I hope very much, Madam President, before the Congress adjourns, we can get a chance here on the floor of the Senate to vote for a level of funding which is equal to what the President requested in education. I do not think his request was in any way excessive. It still keeps us at about 1.5 percent of the official budget. It is a very modest increase by any measure. I believe that is consistent with what the American people would like to see in the area of education.

I hope, very much, that we will have a chance to vote on that level which is represented by the Harkin amendment. I urge my colleagues to support that. I know it is consistent with the people I speak to in my home State. I believe it is consistent with the majority view throughout this country.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1997—CONFERENCE REPORT

Mr. LOTT. Madam President, I submit a report of the committee of conference on H.R. 3675 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3675) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1997, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 16, 1996.)

Mr. LOTT. Madam President, I understand the managers of the legislation are on their way here. The Senator from New Jersey will be here momentarily. We will proceed at that time.

For now, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Without objection, it is so ordered.

MEASURE RETURNED TO THE CALENDAR—S. 1994

Mr. HATFIELD. Mr. President, I ask unanimous consent that S. 1994 be returned to the calendar.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1997—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. HATFIELD. Mr. President, I understand the conference report on the Transportation Subcommittee of the Appropriations Committee is now before us.

The PRESIDING OFFICER. The Senator is correct.

Mr. HATFIELD. I move that the Senate adopt the conference report.

Mr. President, I withhold making that motion at this time.

Mr. President, we are here to present the conference report, myself and Senator FRANK LAUTENBERG, representing the State of New Jersey and the ranking member of the Transportation Subcommittee of the Appropriations Committee. We have enjoyed a marvelous working relationship, and I take another opportunity to thank Senator LAUTENBERG for his fine support. His contribution has been great. We have had not only a wonderful working relationship, but we enjoy a deep personal friendship as well, by which I am blessed.

Also, at this time I would like to comment that Anne Miano of my staff took on this role as being the chief clerk of the Transportation Subcommittee really kind of in the winding down days of the Senate, showing her great capacity to move into the No. 1 slot upon the retirement of Pat McCann, who had held that position for many years. I thank her especially for her efficiency and her quick comprehension of all the details which she now has performed so well as the chief clerk for the majority on this subcommittee.

Peter Rogoff is also a very fundamental part of our operation. As I have said frequently and I say again, Mr. President, the relationship that exists between the minority and the majority—and I have been in both—is that we hardly know a distinction, at the staff level especially, and he has filled in, provided me with information as well as Senator LAUTENBERG. We have no distinctions of partisanship, no labels that separate us. It is a marvelous kind of collaborative effort that Peter Rogoff and Anne Miano now—and before Pat McCann—enjoy.

We have now concluded our conference for the fiscal year 1997 Department of Transportation and related agencies appropriations bill, H.R. 3675. In total, this conference report contains $12 billion in new budget authority for transportation programs and projects and $35 billion in outlays.

The conference report includes funds to continue the vital air traffic control operations for the Federal Aviation Administration, the search and rescue activities of the U.S. Coast Guard, as well as many other critical functions of the department. In addition, it will provide billions of dollars for needed infrastructure projects across the Nation.

I am particularly pleased to point out that this report includes $150 million for State infrastructure banks programs. This program will permit interested States to use innovative financing to stretch their transportation dollars and maximize the Federal investment in transportation. Ten States are already in the program and this appropriation will allow even more States to participate. I believe that the SIB's Program will become increasingly important in the years ahead as States work to find modern financing tools to help improve their State's transportation networks.

The Essential Air Service has been funded at $25.9 million, the Senate-passed level for this Program. I have heard from many Senators in support of the EAS Program. They have told me that without the EAS program, people in communities dependent on EAS service would find themselves isolated and be forced to drive long distances to reach their destinations. I am pleased that we were able to increase the funds for this program, which had received only $10 million in the House-passed bill. In other words, we are now more than 2½ times that House figure.

The conference report includes an increase for FAA operations of $254.3 million above the fiscal year 1996 level. This 5-percent increase will support the hiring of 500 new air traffic controllers, 367 new aviation safety inspectors, and other regulatory oversight personnel. It also provides a 9-percent increase in funding for field maintenance of air traffic equipment.

In light of the recent TWA flight 800 tragedy, the conferees have fully funded the administration's request of $36.055 million for aviation security technology. This amount includes $27.4 million for research and development into new devices to detect explosives and weapons, and $1.3 million to harden aircraft against the effects of explosives. We have fully funded the administration's request for operational security by providing $71.9 million to fund about 780 security personnel.

The conferees included $13 million for FAA research, engineering, and development in order to improve aviation safety in hazardous weather. This amount is about $6.6 million above the administration's request for weather research and will enable FAA to place a higher priority on aviation weather safety research.

The conference report contains $1.46 billion for grants for the Airport Improvement Program [AIP]. This is an increase of $10 million above the fiscal year 1996 level and $110 million above the administration's request. I believe that these grants are very important for airports around the Nation and will do much to improve the quality of aviation service for the public.

I would also like to underscore that we have provided an obligation limitation of $18 billion for grants to States from the highway trust fund. This amount is $450 million above the fiscal year 1996 level for the Federal-aid highway program. We have rejected the administration's request to make some previously exempt highway programs part of the overall obligation ceiling and rescind $300 million of previously authorized ISTEA projects. The conferees were not able to include an amendment that was adopted on the Senate floor to address the impact of the reporting of excise tax data on the allocation of Federal-aid highway funds. This issue and other related issues will be taken up during next year's debate on reauthorizing the ISTEA Program.

A total of $760.45 million is provided for all Amtrak accounts—including the Northeast corridor—an increase of $10.45 million above the fiscal year 1996 level. This appropriation includes $115 million for the Northeast corridor, a freeze at the current level. It also includes $80 million in high-speed rail funds for Amtrak, as well as $342 million for operations, the amount requested by the administration. Amtrak capital is funded at $223.45 million, which is close to the fiscal year 1996 level of $230 million.

The conferees were mindful of Amtrak's need for more funds and added $38 million to the Transportation Subcommittee's conference allocation in order to increase Amtrak's capital account. Amtrak's long-term problems require legislative solutions that cannot be addressed by the Appropriations Committee on this bill. The conference report includes language assuring States where Amtrak has announced service cuts that they may use their CMAQ—Congestion Mitigation and Air Quality Improvement Program—funds to preserve rail service.

In addition, this conference report contains $1.9 billion for discretionary transit capital grants. This includes $380 million for bus-related projects, $760 million for new starts, and $760 million for fixed guideway modernization. The conferees also added $97 million to transit formula capital grants, and agreed to the Senate-passed level of $2.149 billion—this program includes $400 million in operating aid.

Transit helps to provide affordable, efficient, and reliable transportation to get people to work, school, and to reach needed services. Moreover, transit funds help to improve air quality, mitigate highway congestion, and provide expanded mobility for elderly and disabled persons.

I believe that the funds contained in this conference report will assist States in making their transportation systems more efficient. They also will enhance transportation safety throughout the Nation.

Mr. President, I could go on at considerable length in identifying many of these accounts. I think these that I have identified very clearly indicate what the committee's priorities have been, both from our creating the Senate bill, as well as our defense of that Senate action in the conference with the House of Representatives. I want to say, we have had excellent support from the House of Representatives in our conference. It was a very efficient conference. It did not drag on forever. I believe we had over 170 amendments that we had to deal with in conference. As I recall, at the staff level the staff had resolved over 153 of them. Then, as the principals got together prior to the formal conference, we resolved further. This was, I would say, a harmonious, effective, cooperative conference experience.

So, I really do not think we have any unresolved, vital, important issues. We have not been able to get the level of funding we would like for many of these important issues, but nevertheless I think we have covered the basic priorities of the administration, of the Senate, and of the House of Representatives.

In closing, I want to say I do not believe we can overemphasize the important and vital need of addressing our national infrastructure, whether it be by water, by highway, by rail, by air, by all the modes we have employed in transportation. Urban centers are in deep need of further assistance in the infrastructure to maintain the viability of urban centers. And rural areas,

which figure so much into our overall economy, have to have, certainly, consideration as well in their special needs.

I always like to repeat a factor, here, that I think sometimes we forget. A lot of people think the infrastructure is sort of a local matter, a local interest, a local priority. Let us not forget, when the great President, and the great general, Dwight Eisenhower, out in Topeka, KS, in his administration, launched the Interstate Highway System, he launched it as an Interstate Defense Highway System. He said such a tying together by a complex infrastructure of transportation was as vital to our national security as were the armaments in our arsenal.

He also said that about his Education Defense Act, relating to moneys for education, for health, for housing, for a productive economy.

So, I hope we will see this, not as individual States, individual communities, as important as that is, but also as a national interest of high priority for the security of the Nation.

Again, it was not only President Eisenhower who gave us that lesson, but we have been reminded frequently by the Senator from West Virginia [Mr. BYRD] of the importance of maintaining our commitment to the infrastructure, as I have sat on everything from a summit with the White House settling certain budget problems, as well as having heard his admonitions on the floor of the Senate. I yield the floor at this time.

Mr. BYRD. Will the Senator yield? I do not believe Senator LAUTENBERG has spoken yet, but I want to respond to something the distinguished Senator from Oregon said.

Daniel Webster, in his reply to Hayne, in 1830, January 26, was critical of Hayne for asking a question as to why he, the Senator from South Carolina, should support a canal of importance to the State of Ohio.

And Webster said that we who represent the people of New England do not limit our patriotic feeling to geographical limits such as ''rivers and mountains, and lines of latitude, beyond which public improvements do not benefit us.''

But, he said, ''I look upon a road over the Alleghanies''—and that struck me as being pretty significant. Daniel Webster, speaking of a road across the Alleghenies, or ''a canal round the falls of the Ohio, or a . . . railway from the Atlantic to the western waters'' saw these as being ''an object large and extensive enough to be . . . for the common benefit.'' If he were to question such things, said Webster, since they are of sufficient import to be ''for the common benefit,'' he would not be willing to face his constituents in New England.

So, long before our time, Webster and Clay—Clay was an advocate of the great American system which dealt with the banks, with tariffs, and with public investments in highways and canals and railroads, so these were early advocates of infrastructure. They looked at the importance and benefits that would accrue to the Nation, not just to a locality or community or a State. I wish that some of those critics who criticize what they call pork, which is really infrastructure, will go back and read the speeches of those great Senators—Clay and Webster.

Perhaps those of today will get a new understanding and light upon these very important subjects, and 10, 15, 20 years from today, people are going to look at the crumbling infrastructure and wonder where we have been.

When God went to the Garden of Eden looking for Adam in the cool of the evening, Adam hid from God. God said, ''Adam, where art thou? Adam, where art thou?'' And one day our constituents will say, ''Where were you? Where were you when you failed to build infrastructure for the future?''

I have a statement commending the chairman and ranking member, but I will withhold my statement until Members have had an opportunity to respond. I just could not resist recalling the words of Webster when he spoke of the significance of building for the future, building highways, canals and railroads. I shall remember MARK HATFIELD as one who thought and believed the same way as Daniel Webster. I thank the Senator.

Mr. HATFIELD. Mr. President, I thank the Senator from West Virginia. His eloquence is always very commending. But I couldn't help but reflect when he goes back to Daniel Webster, that this bill has been crafted across this aisle, between Democrats and Republicans. But if we lived in that period of time, I am convinced all three of us would have been Whigs, because we have to attribute to the Whig Party, even though we sort of fluff it off as an insignificant part of our great history, that it was the Whig Party that held fast in the words of Daniel Webster and Henry Clay and others that building a national infrastructure was of the utmost priority. It was the Democrats who took issue with them on that subject, and is an interesting way of how our political labels and our political philosophies tend to evolve and flow. But I have no doubt that on this issue, the three of us would have been of one party.

Mr. BYRD. We're Whigs at heart. We're Whigs at heart.

Mr. HATFIELD. I yield to my colleague at this time for his opening remarks.

Mr. LAUTENBERG. Thank you very much, Mr. President.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, obviously, as the ranking member of the Subcommittee on Transportation of Appropriations, I strongly support H.R. 3675, the Transportation appropriations bill for this coming fiscal year. The conference report was filed by the Transportation appropriations conference on September 16, just a couple of days ago. But this bill is marked by more than just dollar amounts or designated programs. This bill exhibits the extraordinary leadership of the distinguished chairman of the Appropriations Committee, the chairman of the subcommittee, as well as the very distinguished former chairman of the Appropriations Committee—two gentlemen who have left, to use the expression, a mark on this body that will endure far beyond the lives of anybody within earshot of our voices.

It has been a real privilege for me to work with these gentlemen. I came here at a rather mature status in life. I spent 30 years in the corporate world before coming to the U.S. Senate. But one of the great delights of serving here is to have the occasional respite from the tensions and the differences that are so prominent in this body of ours when we hear from people like Senator MARK HATFIELD or Senator ROBERT BYRD, who bring not only experience but wisdom to our deliberations.

Frankly, Mr. President, I have to tell you that I worry about the U.S. Senate. I worry about our governance and our congressional responsibilities when we lose contact with someone like MARK HATFIELD, who has chosen to retire, and many other fine colleagues who have also chosen to make this their last year in the U.S. Senate.

I find it to be a very depressing prospect, because so much experience and so much knowledge will leave the floor of this U.S. Senate, and I hope those of us who are left to carry on for however long that is, can learn from the examples set by Senator MARK HATFIELD and by Senator ROBERT BYRD.

Senator BYRD is going to stay with us and he is going to keep working, thank the Lord for that. But this bill is uniquely marked by the fact that it is the last transportation bill that Senator MARK HATFIELD is going to manage. His is a very special legacy. He will be remembered for his spirit, his integrity, for his character, for his intelligence, and for his friendship. I will sorely miss him. I don't want this to turn into a eulogy, Mr. President, but I couldn't let this bill be considered without noting the unique contribution made to our country in these transportation programs by Senator HATFIELD.

Given the funding limitations we face in this year's appropriations process, I think this conference agreement does a very good job. It addresses numerous and sometimes competing transportation needs throughout the country.

There is no question that the conference agreement before us represents a much more balanced approach than did the House-passed bill. The conference agreement goes a long way toward addressing the priorities of Members. Moreover, the conference agreement also addresses many of the priorities of the administration.

As such, the President has indicated that he will sign this bill when he receives it. I almost want to say ''hallelujah,'' because it gives us added reason to get it over there.

As is the case with all appropriations conferences, I cannot say that the Senate position ruled the day on all contentious matters addressed by the conferees. Indeed, I am disappointed with several individual issues contained in the conference report. However, by no means is it the fault of our distinguished chairman. After hours of tough negotiation, matters were necessarily resolved in a fashion that would ensure the passage of the separate and independent transportation bill, again, that will gain the President's signature and avoid getting caught up in the quagmire of a continuing resolution.

One result that I find to be exceedingly disappointing is the action by the conferees in rejecting an amendment that I offered to ensure that no State endures a cut in its annual highway funding from the huge Federal-Aid Highway Program.

The conference agreement before us calls for the overall obligation ceiling for the major highway formula program for the Nation to increase to a record-high level of $18 billion. This level is a full $450 million higher than the current year's level, $450 million higher than the House-passed level, and $350 million higher than the original Senate-passed bill.

I have always—and again I join with the other Whigs here—I have always supported increased infrastructure spending, especially in the highway area. I was shocked, however, to find that under formulas contained in the authorizing law, ISTEA, 28 States—28—will actually receive less money from the highway program in 1997 than they did in 1996. I want to restate that. At the same time as we are going to be providing an unprecedented increase in the highway formula program, a larger increase than was granted in either the House or Senate bill, a majority of the States will actually endure a cut in their highway obligation ceiling below the current year's level.

This situation stems from the formulas contained in ISTEA, Mr. President. It is a formula already established. However, I do feel that, when we provide historic funding increases to the program, States should at least be held harmless—they should be guaranteed at least what they received for the preceding year.

Mr. President, I ask unanimous consent that a table be printed in the RECORD which displays each State's highway obligation ceiling at the current funding level opposite the level they can expect to receive in fiscal year 1997.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

COMPARISON OF ESTIMATED FY 1997 OBLIGATION LIMITATION

[Dollars in thousands]

State	Fiscal year 1996 actual	Conference	Percent	Dollar loss/ gain
Alabama	270,610	329,746	122	59,136
Alaska	203,994	182,075	89	(21,919)
Arizona	196,433	244,013	124	47,580
Arkansas	175,359	205,117	117	29,758
California	1,406,489	1,528,545	109	122,056
Colorado	199,342	198,171	99	(1,171)
Connecticut	353,689	316,202	89	(37,487)
Delaware	77,484	69,282	89	(8,202)
Dist. of Col	78,920	73,582	93	(5,338)
Florida	598,880	711,991	119	113,111
Georgia	403,493	526,148	130	122,655
Hawaii	121,729	108,983	90	(12,746)
Idaho	105,691	98,510	93	(7,181)
Illinois	660,503	589,620	89	(70,883)
Indiana	341,554	390,495	114	48,941
Iowa	197,960	177,316	90	(20,644)
Kansas	205,052	183,204	89	(21,848)
Kentucky	225,745	286,319	127	60,574
Louisiana	235,699	265,287	113	29,588
Maine	91,559	84,182	82	(7,377)
Maryland	265,587	262,322	99	(3,265)
Massachusetts	690,634	617,631	89	(73,103)
Michigan	467,061	491,589	105	24,528
Minnesota	252,289	219,855	87	(32,434)
Mississippi	183,481	203,112	111	19,631
Missouri	356,657	402,267	113	45,610
Montana	154,849	133,659	86	(21,190)
Nebraska	139,084	124,262	89	(14,822)
Nevada	104,575	105,029	100	454
New Hampshire	85,554	76,434	89	(9,120)
New Jersey	478,929	434,884	91	(44,045)
New Mexico	169,082	149,360	88	(19,722)
New York	1,044,890	933,790	89	(111,100)
North Carolina	399,218	446,693	112	47,475
North Dakota	102,064	91,086	89	(10,978)
Ohio	594,508	575,591	97	(18,917)
Oklahoma	227,795	258,883	114	31,088
Oregon	202,782	204,437	101	1,655
Pennsylvania	660,889	671,171	102	10,282
Rhode Island	85,850	71,582	83	(14,268)
South Carolina	211,129	263,985	125	52,856
South Dakota	111,380	99,417	89	(11,963)
Tennessee	325,654	371,667	114	46,013
Texas	984,970	1,167,763	119	182,793
Utah	125,684	121,489	97	(4,195)
Vermont	78,511	70,155	89	(8,356)
Virginia	341,432	393,580	115	52,148
Washington	324,150	291,059	90	(33,091)
West Virginia	158,810	141,509	89	(17,301)
Wisconsin	291,760	296,896	102	5,136
Wyoming	111,281	99,388	89	(11,893)
Puerto Rico	76,122	73,648	97	(2,474)
Subtotal	15,956,846	16,432,881	.....	.....
Administration	529,843	521,119	.....	.....
Federal lands	416,000	426,000	.....	.....
Reserve	647,311	620,000	.....	.....
Total	17,550,000	18,000,000	.....	.....

Mr. LAUTENBERG. As I earlier stated, I offered an amendment in the conference on this bill to implement a hold-harmless provision to ensure that, as we added a half billion dollars to the National Highway Program, no State would be cut below the current year's level. Unfortunately, my amendment was not accepted, and we are where we are.

Mr. President, this is a scenario that will serve as the backdrop as we attempt to reauthorize ISTEA in the next congressional session. More than half the States will actually see their highway funding cut as we appropriate—a historic funding increase to the National Highway Program. As we approach ISTEA reauthorization, I hope and expect that all Members will focus on these formula issues and work to restore fairness to the highway program so all States will benefit when we add substantial sums to the program.

Mr. President, Amtrak funding is a favorite subject of mine; it is a favorite subject, I know, of the chairman of the Finance Committee and of our other colleagues who recognize the value of having Amtrak, the national passenger rail service, improved, maintained and available. When it comes to Amtrak funding, the conference agreement is a vast improvement over the House-passed bill.

I am grateful to my many Senate colleagues who joined us to try to get an adjustment. I am disappointed, however, that the funding for Amtrak's Northeast Corridor Improvement Program—that is the corridor that runs from Washington up through Boston—will be funded at $115 million, which is well below the President's request.

Mr. President, the key to Amtrak's future is the expeditious completion of the major infrastructure improvements that have begun in the Northeast corridor. If these things are forced to drag out, costs go up, changes come in, and as we all know, sometimes even political influences begin to change the course of events.

Amtrak's own studies indicate that all—and I emphasize all—of the increased revenue that Amtrak can hope to capture in the near-term will come from the Northeast corridor. That is where the traffic is, the largest share of the population that is served by the railroad.

In recent months we have heard the usual arguments from Members of Congress that Amtrak must become self-sufficient. Now many of the Members who have advocated substantial cuts in the railroad's operating subsidy are bemoaning the fact that they are going to lose Amtrak service. The conference agreement before us, they should be aware, cuts Amtrak's operating account some $50 million below Amtrak's request.

Some of these Members are now trying to find a way to restore service to their constituents. I know that Amtrak service is valuable wherever it exists, but funding cuts cannot be inflicted without pain. The solution is improving Amtrak's revenue wherever possible.

I have long believed, Mr. President, that we should have a financially healthy and adequately capitalized national railroad that serves as many areas of the country as possible. I want to support Members' efforts to maintain service throughout the country, but I also believe that my colleagues need to recognize that the key to Amtrak's self-sufficiency, the key to Amtrak having enough revenue to operate these lines throughout the Midwest and the Far West, is adequate funding for Amtrak's Northeast corridor. That is where the revenue opportunities lie. That is where the investment has to be made in order to generate the revenue to feed these less productive, less revenue-producing parts of the system.

Amtrak's president, Tom Downs, recently testified at the Senate Commerce Committee. He explained that, were it not for the recent positive financial performance of the Northeast corridor, the trains now slated for termination in the next few months would have been terminated several months ago.

The corridor carries half of all Amtrak riders, and generates well over

half of Amtrak's passenger-related revenues. As I stated during the conference on the transportation bill, I expect to seek increased funding for the Northeast corridor on any legislative vehicle seeks to provide funding to Amtrak to maintain service on the lines currently slated for termination.

Finally, I want to point out where this bill sits in regard to the funding stream for the airport and airways trust fund. As many Members know, the tax-writing committees extended the ticket tax, which finances the aviation trust fund, only through December of this year. Once again, come the beginning of the year, the ticket tax will expire, leaving the trust fund without an adequate revenue stream.

The conference agreement before us assumes obligations from the aviation trust fund totaling $5.1 billion in fiscal year 1997. I am told by the FAA that, with the termination of the ticket tax this coming December, the trust fund will be between $400 and $500 million short in financing the FAA's 1997 appropriation.

I want everybody to think about that, that while there are substantial funds in there right now, they are drawn down at a rate of half a billion dollars a month. With the expiration of the ticket tax, the FAA will literally run out of money absent any further action of the tax-writing committees. The agency will either be required to cease making airport grants, terminate certain procurements, terminate some research projects, or slow down expenditures in critical operating areas, such as controller training and safety inspections.

Mr. President, these shenanigans with the aviation trust fund must come to a stop. It is not fair to the employees of the FAA, not fair to the airports, not fair to the traveling public. So I want to add my voice to those of Senator MCCAIN, Senator FORD, Senator DORGAN, and others who are insisting that some action be taken before the end of this session to make sure that the ticket tax is extended beyond the end of the year. I feel that it is critical to point out that no Senator has been more diligent in advocating appropriate action by the authorizing and tax-writing committees than our distinguished chairman of the full committee and subcommittee, Senator HATFIELD.

The conference agreement on the transportation bill was truly a bipartisan effort. Throughout the process, Chairman HATFIELD exhibited his customary openness, fair-mindedness, and delicate hand. He was, once again, the conductor of the orchestra, trying to make rhythm and good sound out of the cacophony that prevails at times during these conferences.

In those 2 years as chairman of the Transportation Subcommittee, once again, Senator HATFIELD has left his mark. He is an informed, wise, just policymaker in the transportation arena. He believes deeply in the infrastructure investment that our country has to make. I agree with him. I admire his leadership and will always treasure his friendship.

The Senator from Oregon mentioned President Eisenhower and his creation of the highway system in 1952. My graduation certificate from my Columbia diploma carries President Eisenhower's signature because he was then president of Columbia. I served under his leadership in World War II. I do not think he knew I existed. I knew he existed because he came through my area one time and we scraped and cleaned and made sure everything looked right. I did join him here, but I came a long time later. It was a pleasure to have him lead our country.

Once again, Mr. President, I voice my support for the conference agreement, and thank Senator HATFIELD for his courtesy throughout his tenure as chairman of the Appropriations Committee and the Transportation Subcommittee. I also want to note the excellent job done by staff, by Peter Rogoff on my side, Anne Miano on the other side, Mike Brennan, and those staff people who worked throughout the process. We had a retirement take place in the middle of this bill, and Anne jumped into the fray, as did Peter. We are grateful to them for superb and loyal service.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I rise to express my thanks to the chairman of the Appropriations Committee for his dedicated work throughout the year in this body, his work on the Appropriations Committee, where he has always stood as a solid rock in the interest of the economy, in the interest of improving our country's infrastructure, and where he has been a dedicated servant of his State.

This will be the last appropriations bill he will manage on the floor of the Senate. I say to him I shall not forget him in the coming years. I shall remember him as one who demonstrated supreme courage, high integrity and steadfast patriotism always. I also should think of him as one who could very well have sat during the deliberations of the Constitutional Convention, which operated behind closed doors during those days, from May into September, and which, 209 years ago yesterday, completed its work.

Benjamin Franklin, according to a story, which may or may not have been apocryphal, said in response to a lady's question after the Convention had finished its work—the lady's question was, ''Dr. Franklin, what have you given us?'' And his answer, according to the story, was, ''A republic, madam, if you can keep it.'' He did not say, ''A democracy.'' He said, ''A republic, madam, if you can keep it.''

I think of that, and Senator HATFIELD as someone who could very well have graced the membership of that Convention, along with Benjamin Franklin, Elbridge Gerry, James Madison, Alexander Hamilton, and George Washington, who presided over the Convention.

So it was on yesterday, 209 years ago, that that conference completed its work. It was a gamble. Those who wrote the Constitution did not know, of course, what the future would be, how their work would be accepted, or how long they would be in the minds of their countrymen.

MARK HATFIELD is one who has stood steadfast in the defense of that Constitution. I remember him for many things. I will thank him again and again for the inspiration he has provided to me and to others in this body.

While I did sign the conference report to accompany this bill, the RECORD will note that I excepted myself as to the disposition of amendment No. 150, to which the distinguished Senator from New Jersey, Mr. LAUTENBERG, has referred. This amendment pertained to the Baucus amendment and the overall issues surrounding the distribution of Federal aid highway funds for the coming fiscal year. I was disappointed that the Senate receded to the House regarding the Baucus amendment, since it sought to correct an error made by the Treasury Department in calculating highway gas tax revenues.

The result of the insistence in the House conferees in not correcting the error is that my State of West Virginia will see $6 million less in Federal aid highway funding than it would have received had this genuine mistake been corrected.

Moreover, I am especially disappointed that the conferees did not accept Senator LAUTENBERG's amendment which would have ensured that no State would see a cut in Federal aid highway funding below the 1996 level. Members should take note of the fact that the conferees on the transportation bill increased the Federal aid highway formula obligation ceiling to a historically high level of $18 billion.

Now, I have been an advocate for increased infrastructure spending in our Nation especially in the area of highways. Normally, I would be here to praise the conferees' work in finding more money for highways than was contained in either the House or Senate bill. But a thorough review of the impact of the existing highway formulas on this program shows, as Senator LAUTENBERG has just stated, that only 22 States will enjoy any increase at all in highway formula funding next year. Those States will see very sizable increases of up to 25 percent, while a majority of States—28 in number—will see their funding cut below the current year's level, by anywhere from 1 percent to 17 percent. All of this takes place as the overall obligation ceiling for highways is increased 2.6 percent. I cannot support a policy of this kind, which directs all the increased funds for the highway program to 22 States and indeed reallocates funds from those other States to give more money to the

22 States. The problem that gives rise to this situation is embedded in the formulas pertaining to the highway program as contained in ISTEA.

I, perhaps, ought to do as Demosthenes did, speak with pebbles in my mouth, so that I can better be heard above the sound of the ''waves of the sea.''

I fully expect these issues to be revisited thoroughly during the upcoming reauthorization of that bill. Careful review of the distribution of highway obligation authority for next year indicates that the two States that will lose a larger percentage than any others are Rhode Island and Montana—precisely the two States represented by our chairman and ranking member of the Environment and Public Works Committee. As such, I am confident that Senators CHAFEE and BAUCUS will take a hard look at these formula issues and rectify this problem as we reauthorize ISTEA next year—and I hope that my voice is better by then. I apologize to the Senators for such a weak voice today. I am imposing on other Senators who are straining to hear me, I am sure. But I intend to work with the Senators to rectify this and other problems in connection with next year's ISTEA reauthorization.

Let me make clear that my upset concerning the disposition of this item should not be viewed as a reflection on the efforts made by the chairman of the Transportation Subcommittee and the chairman of the full committee, Senator HATFIELD, nor on the very capable ranking member, Senator LAUTENBERG. Senator HATFIELD has been very attentive to my transportation concerns throughout this year's process. He has been a most able and conscientious steward of the transportation budget of the Nation. I appreciate his efforts, as well as those of Senator LAUTENBERG, who has been an excellent chairman in the past and an equally excellent ranking member. I appreciate not only their efforts, but that of all the conferees on this very important transportation measure.

Mr. President, I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, first of all, I want to join my distinguished colleague from New Jersey in the very kind and gracious remarks he made about the chairman, the distinguished senior Senator from Oregon. Like him, it has been my pleasure to join with him from time to time. I have often sought his counsel. He is a leader, he is a doer, he has brought great wisdom to the Senate, and we will be poorer as an institution without him.

I say to the distinguished Senator from New Jersey, as I was listening to his remarks and I looked at these two Senators—one from West Virginia and one from Oregon—it seemed to me one of the best reasons to be against a two-term limitation, because of the expertise, knowledge, and good judgment they bring to this institution. We are indeed all richer for it.

I must rise to express my disappointment in the funding levels for Amtrak in the fiscal year 1997 Department of Transportation conference report. While the House-Senate conference committee did not reduce Amtrak funding as drastically as the House originally proposed, I am, as I already stated, very disappointed that Amtrak will not receive the full funding contained in the Senate-passed bill.

Frankly, we would not have done as well if it hadn't been for the Senate conferees. I do want to express my great appreciation to Senator HATFIELD and Senator LAUTENBERG for their leadership, for their efforts on behalf of Amtrak, and I say that the fight is not over.

Mr. President, I believe the appropriation numbers for Amtrak are, frankly, shortsighted and do not help the Nation's transportation needs. Our goal is for Amtrak to be self-sufficient, and we cannot achieve that goal without adequate funding for capital improvements. How can Amtrak be expected to provide better service and attract more riders without the needed funding to modernize?

Now, as you know, twice this year, the Senate has voted in support of providing Amtrak the capital funds needed to preserve innercity passenger rail as a critical component of our country's transportation network. On May 23, the Senate overwhelmingly approved a sense-of-the-Senate resolution supporting the creation of a capital trust fund for Amtrak. On July 30, the Senate resoundingly defeated—82–17—an attempt to cut fiscal year 1997 appropriations for Amtrak expenses to a level which would have crippled passenger rail services. But those votes of confidence from the Senate cannot balance Amtrak's books. Financial investment in the system by Congress is critical. Recently, Amtrak announced that fiscal year 1997 included cost-cutting and revenue-enhancing initiatives, designed to keep Amtrak on a course of reducing its dependence on Federal operating grants.

Amtrak is committed to the goal of totally eliminating its dependence on Federal operating grants by the year 2002. But it cannot do this without a strong source of capital funding. As my colleagues are well aware, I have been working to provide a dedicated source of capital funding for Amtrak to avoid just this sort of annual appropriation crisis, in which Amtrak's viability hangs by a thread.

My staff and Senator ROBERT BYRD's staff have been meeting in an effort to craft a proposal that would take 4.3 cents per gallon fuel tax to the highway trust fund, with one-half cent of that tax going to Amtrak for 5 years. The legislation would provide a total of $2.8 billion for Amtrak over the next 5 years. Under this proposal, for the first time ever, Amtrak would have a dedicated source of funding. New revenue for capital improvements would allow Amtrak to purchase new locomotives, to operate more efficiently, and to attract new passengers.

As my good friend, the Senator from New Jersey, pointed out, there must be Northeast corridor improvement if we are going to increase the number of passengers that utilize the system and thereby increase the revenue available to help make the railroad system self-supporting.

As a Nation I believe that we must take steps now to make sure that passenger rail service remains a viable means of transportation into the next century. The current funding levels for Amtrak will not allow this to happen.

I might add that the conference report does include my earlier proposal to allow States to use remaining dollars for Amtrak, and I believe this is a wise move.

In closing, I want to again restate my disappointment in this conference report but urge my colleagues to support Senator LAUTENBERG's and other efforts to boost Amtrak's funding for next year through an omnibus appropriations bill.

In addition, I also ask that my colleagues continue to support my efforts to give Amtrak a secure funding source for capital improvements to avoid just this sort of appropriations crisis.

In closing, I once more thank my distinguished chairman and ranking member for their efforts in this regard, and for that I am indeed grateful.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I thank the Senator from Delaware for his kind personal remarks. I also thank him for focusing again on this vital part of our national transportation system, Amtrak.

I have to say to the Senator that I can't disagree with a word he said vis-a-vis the importance of Amtrak not only to the East and Northeast corridor specifically but throughout the whole Nation. I have to say that we lost a leg of that Amtrak due to cutbacks and reductions from Portland to Boise, the Pioneer. It was a hard pill to swallow. That affected my constituency very directly. We lost a number of other legs to the Amtrak.

But, Mr. President, I have to come back to some fundamentals here in which we operate, and to say not only have we at the Senate level—we came into the conference with $872 million for Amtrak. That is all the funding relating to Amtrak; and had to deal with the House of Representatives with $542 million. We came out with $760 million which is still $10 million more than the level of 1996.

When I say we have to look at the context in which we in the Appropriations Committee operate, we have to go back to the budget resolution. We have to go back to the proposition that there are those who think we can balance the budget by only an 18 percent

baseline; namely, the nondefense discretionary programs.

Mr. President, I want to say—now from my perspective—that we will never balance the budget on that kind of a baseline. But we exempt all entitlements, we exempt all mandated spending programs, we exempt the military, or the defense programs, and then we come down to 18 percent which is the nondefense discretionary part of the budget. We say we are going to balance the budget on that. With the expansion of these others, particularly the entitlement programs, by the year 2011 or 2015—wherever you want to light on with these economic projections—we will not have a penny of money left for nondefense programs and challenging even defense programs because they will all be swallowed up by the entitlements. But, oh, we get so nervous any time we talk about touching those entitlements. When I say ''entitlements,'' I mean including Social Security. You can say, ''Well, HATFIELD, it is easy for you to say that. You are on your way out. You do not have to face the consequences.'' I want you to know that I voted in 1986 for an across-the-board freeze on all entitlements. I had a reelection campaign facing me in 1990.

Nevertheless, that is not the important part of it. I am making the point simply that we cut $22 billion off of Federal spending levels, and it was all in nondefense discretionary.

A lot of people talk about reducing the size of Government. It is easy to talk that. But let me tell you. It has been the appropriators that have been really at the business of reducing the size of Government, but with, of course, the assistance of the Budget Committee, and many other committees as well. But I am saying we are the executioners. And we have been put into a situation, as I have said before, of performing surgery without the benefit of anesthetics. We have to face up to these. And we shoulder the burden.

So I say that we are going to have to begin to really put this into context when we are dealing with the lesser amount for Amtrak—or the lesser amount for some other favorite program, or worthy program such as Amtrak—that what the appropriators ended up doing was the command of the reductions made by the body. And that command took place in many different forms—not just the Budget Committee or the budget resolution. I am happy to say that we have raised the level for Amtrak. Maybe it is a very small amount. But many other accounts went down 10 percent, or 15 percent, or 20 percent. Amtrak went up a fraction. But, nevertheless, we had what you might call a freeze level of Amtrak.

I want to say, too, at this point that I am very, very impressed with Tom Downs. I am a staunch supporter of Tom Downs. He has been given a tremendous task of administering Amtrak, and he has not been given the tools really to do the job or to fulfill the mission which has been set for Amtrak. The Senator from Delaware, Mr. ROTH, made that very clear—about Amtrak ultimately becoming self-supporting.

So, Mr. President, I join with the critics of this appropriations bill. But all I can say is we have done our very best under limited conditions of not only dollars but policies that surround us.

Senator BYRD brought up the Baucus amendment. I have to say again that my State was not affected that much one way or the other. But when you get into rewriting formulas, it is very, very difficult to do that without the support or the acquiescence of the authorizing committees. I have to say that we dropped that. We receded to the House because the information we had was the House authorizing committee would not consent to those formula changes proposed by the Baucus amendment. The House operates under perhaps more structure than the Senate. Being a much larger body it is incumbent that they do operate that way. I am not being critical. But the chairman of the Subcommittee on Transportation of the Appropriations Committee brings in a statement of the chairman of the House authorizing committee that he will in no way acquiesce for the appropriators to take this kind of action, that sort of freezes in the appropriators on the House side more so than it does with us because we are a smaller body and we operate a little more informally, and we communicate quickly maybe even on the floor while we are debating an authorization action that is being offered on an appropriations bill as a rider. Not so the House.

So I think there we were really in a situation where we needed a bill. We wanted a bill. We have a bill now that I am convinced the administration will sign, and we can have one less bill in the continuing resolution that we are going to face this next week. My friends, it is going to be a very, very difficult continuing resolution even with fewer bills but it certainly would be more complex with more bills.

So I am only here to say that we have done our very best under the circumstances. So it is not just a decision rendered by Senator LAUTENBERG and myself as leaders of this appropriations subcommittee. Much of the problem we are facing here responding to critics has been imposed by the body, by the Congress, through the budget resolution process, and by their orders to exclude military spending—exclude the programs of entitlements from this commitment we have to balance the budget by the year 2002 and the reductions have to take place in Government spending. I just want to put it in that context.

One last thing I want to do here today before I yield the floor. I was negligent a moment ago because I did mention Anne Miano and Peter Rogoff on their contributions as staff people. I did forget Joyce Rose because, like many people in this institution who quietly operate at staff level, in the background, we sometimes forget them, and I apologize for that. I cannot really say I have forgotten her because it was merely an oversight. She has been an integral part of our operation by which we have been able to bring this bill to the floor, and I am very grateful.

Mr. NICKLES. Mr. President, I thank the chairman of the committee, Senator HATFIELD, for his support of Oklahoma City's proposal to construct a rail trolley system in the downtown area, which includes the acquisition of additional buses and bus routes connecting various parts of the city to the downtown circulator. The transportation system is an integral component of the city's $285 million locally funded Metropolitan Area Projects [MAPS] Program. MAPS, funded through a 5-year, 1-cent city sales tax, is an aggressive project which includes the construction of an indoor sports arena, a professional baseball park, renovations of convention and civic centers, and construction of a canal system in downtown Oklahoma City. Federal funding for the transportation system is the only Federal assistance included in the MAPS program.

The conference report for fiscal year 1997 transportation appropriations includes $2 million for the Oklahoma City project. It is my understanding the committee supports the city's proposal to acquire equipment with these funds, such as buses and bus stops, which will be an integral component of the downtown transportation system. The Federal funds provided in this bill for this purpose will be matched with local funds.

Mr. HATFIELD. I applaud the city's effort and support its proposal to proceed in the manner outlined by the Senator from Oklahoma.

Mr. DOMENICI. Mr. President, I wish to speak on the conference report to the Department of Transportation and related agencies appropriations bill for fiscal year 1997.

I commend both the distinguished chairman of the Appropriations Committee, Chairman HATFIELD, and the chairman of the House Appropriations Subcommittee on Transportation, Congressman WOLF, for bringing us a balanced bill considering current budget constraints.

The conference report provides $12.6 billion in budget authority and $12.3 billion in new outlays to fund the programs of the Department of Transportation, including Federal-aid highway, mass transit, aviation, and maritime activities.

When outlays from prior-year budget authority are taken into account, the bill totals $36.1 billion in outlays.

The subcommittee is essentially at 602(b) allocation in both budget authority and outlays.

While I am pleased with many aspects of the bill, I must object to the

manner in which the conference dealt with the Baucus amendment. The Senate had unanimously agreed to this important amendment during floor consideration of H.R. 3675.

The rejection of the Baucus amendment will directly lead to 31 States losing 1997 highway funding. New Mexico will lose $20 million when compared to 1996—a reduction of 12 percent.

This reduction is totally unacceptable and I will be working with my colleagues over the next few weeks to address this critical issue before the end of this congressional session.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of the final bill be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TRANSPORTATION SUBCOMMITTEE SPENDING TOTALS—CONFERENCE REPORT

[Fiscal year 1997, in millions of dollars]

	Budget authority	Outlays
Defense discretionary:		
Outlays from prior-year BA and other actions completed	.....	37
H.R. 3675, conference report	.....	.....
Scorekeeping adjustment	.....	.....
Subtotal defense discretionary	.....	37
Nondefense discretionary:		
Outlays from prior-year BA and other actions completed	.....	23,748
H.R. 3675, conference report	11,991	11,668
Scorekeeping adjustment	.....	.....
Subtotal nondefense discretionary	11,991	35,416
Mandatory:		
Outlays from prior-year BA and other actions completed	.....	.....
H.R. 3675, conference report	.....	.....
Adjustment to conform mandatory programs with Budget	.....	.....
Resolution assumptions	605	602
Subtotal mandatory	605	602
Adjusted bill total	12,596	36,055
Senate Subcommittee 602(b) allocation:		
Defense discretionary	.....	37
Nondefense discretionary	12,050	35,416
Violent crime reduction trust fund	.....	.....
Mandatory	605	602
Total allocation	12,655	36,055
Adjusted bill total compared to Senate Subcommittee 602(b) allocation:		
Defense discretionary	.....	.....
Nondefense discretionary	−59	.....
Violent crime reduction trust fund	.....	.....
Mandatory	.....	.....
Total allocation	−59	.....

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

HOOD RIVER, OREGON BUSES

Mr. HATFIELD. The bus and bus facilities distribution table included in the statement of managers accompanying the conference report—House Report 104–785—directs funds to Hood River, OR, for buses. However, it has lately been brought to my attention that these funds can best be used for intermodal purposes. I ask my colleague if he will agree that the notation ''buses'' should be interpreted by the Federal Transit Administration to include an intermodal project at Hood River?

Mr. LAUTENBERG. Yes. It is my understanding that this interpretation is acceptable to the conferees.

Mr. HATFIELD. I thank the Senator. This interpretation will enable Hood River to make the best use of these funds according to local priorities.

AMTRAK PRIVATIZATION STUDY

Mr. GORTON. Mr. President, I am pleased that the conference report on H.R. 3675, the Department of Transportation and related agencies appropriations bill for FY 1997, incorporated the Amtrak Privatization Study that was included in the Senate report.

As my colleagues know, within 1 year, the Federal Railroad Administration is to conduct a study of reforms and specific privatization options that I believe hold the potential to revitalizing intercity passenger rail service in the United States. As the sponsor of the Senate report language, I want to emphasize that this is a very important undertaking. Congress has failed to enact much-needed reforms in liability and other areas during this Congress, and Amtrak is facing numerous financial difficulties. Accordingly, Amtrak announced its intention last month to cut back routes as a means of reducing its current operating deficit. In my view, Congress must not sit by and watch Amtrak wither away.

The language included in the ''Statement of Managers'' refers to the Senate initiative, which permits the Federal Railroad Administration's study to include the recommendations of the Discovery Institute Inquiry on Passenger Rail Privatization of October 1995. As many may know, representatives from the Discovery Institute in Seattle, WA, have already done substantial work on passenger rail privatization. In fact, I recently met with Bruce Chapman, president of Discovery Institute, who indicated that the Discovery Institute intends to give this matter high priority. Already, Discovery has scripted plans to form a high-level Public-Private Council, which would assist in the study process, analyze various options, and make recommendations to the Federal Railroad Administrator for the final report, which is to be transmitted to Congress by August 1, 1997. Because of its continued enthusiasm regarding this issue, I would hope that the Discovery Institute is allowed to play a significant role in the Federal Railroad Administration study following its commencement later this year.

Mr. HATFIELD. Let me thank the Senator from Washington for his thoughts on this matter. I was pleased to work with Senator GORTON on this issue because I recognize the importance of passenger rail in the Pacific Northwest, and I agree with his comments.

Mr. KERRY. Mr. President, I wish to commend the leadership of my colleagues from Oregon and New Jersey, Senators HATFIELD and LAUTENBERG, for their key role in bringing this Transportation appropriations bill to this point, which should take it to a White House signature.

No bill is ever all that we might like it to be, of course, and this bill is not an exception. Among its disappointments is the fact it does not reverse the troubling course of this Congress towards disinvestment in critical areas of our infrastructure such as passenger rail. Amtrak continues to be underfunded; this bill contains $565 million for Amtrak in fiscal year 1997. This number is simply not sufficient for Amtrak to function effectively and to meet the intercity passenger rail needs of our Nation's rail passengers. We continue, for ideological and other reasons, to insist on inadequately funding Amtrak. The results are already apparent. The difficult cuts in Amtrak service with which we now struggle in central and western Massachusetts and other areas of the country are a direct result of this course. Ironically, as Amtrak is beginning to cut service and eliminate routes, Senators who often oppose Amtrak funding suddenly emerged at a hearing last week as strong proponents of intercity passenger rail service. I hope these Senators will join me next year as I continue to fight for increased funding for Amtrak and to ensure that we have a sufficiently capitalized intercity passenger rail system.

In addition, the conference report appropriates only $115 million for the Northeast Corridor Improvement Project. This is another example of the Congress failing to respond to important needs of its citizens. The Northeast corridor is where the greatest proportion of Amtrak's passengers are, and NECIP, therefore, represents the key to Amtrak's future. We cannot continue to attract riders if we do not furnish them with a first class mode of transportation. Those Members who seek to see Amtrak ''whither on the vine,'' in the words of the Speaker of the House, are attempting to achieve this goal by short-funding NECIP. I will continue to fight in the future for sufficient funding of this important project.

Before I depart this topic, I want to express my sincere gratitude to Senator LAUTENBERG of New Jersey, who continues to be one of the best friends that Amtrak has in the Congress. I know that the Senator from New Jersey did all he could to maximize funding for Amtrak in the coming year, and I look forward to working with my friend next year as we continue to fight for Amtrak and our Nation's rail passengers.

Senator LAUTENBERG also sought through this bill to ameliorate the effects of a formula alteration affecting highway funding under the Intermodal Surface Transportation Efficiency Act—or ISTEA. His efforts would have been helpful to Massachusetts and 27 other States who are losers under that alteration. I regret his proposal for a temporary hold harmless was rejected. The result is that this important funding distribution issue will have to be confronted next year when ISTEA reauthorization legislation is considered.

As much as I wish the conference report could have provided more adequately for Amtrak and provided the hold harmless for highway funding, I still deeply appreciate the work of Chairman HATFIELD and Senator LAUTENBERG with respect to many other provisions in this bill. This bill makes extremely important commitments to Massachusetts on several projects which form the backbone of intracity and commuter rail traffic in my State, and in these very tight fiscal times, such commitments are all the more important.

This bill continues the Federal Government's commitment to the rebuilding of Worcester's historic Union Station, the hub of transportation in that city and, indeed, for all of central Massachusetts. It continues the Federal Government's commitment to the further development of the Gallagher Terminal in Lowell, which has become one of the Nation's most successful intermodal facilities, and a pivot point for commuter traffic among and between the Merrimack Valley, southern New Hampshire, and greater Boston.

This bill makes a critical initial commitment to the creation of a true intermodal facility at Springfield's Union Station, which, like Worcester's, will become the focal point for expanded transit in its area—which is the Pioneer Valley. And this bill makes a similar commitment to Cape Cod, which will create a new intermodal center in Hyannis to help the Cape address its need to provide alternative transportation in a region often choked with cars.

Finally, this bill continues the government's commitment to the South Boston Piers Transitway Project, on which the city of Boston has rested so much hope and expectation for a renaissance along its waterfront.

On another matter, with regard to the Coast Guard budget, I would like to bring attention to the fact that this is the 7th year in a row where the Congress has failed to appropriate for the Coast Guard the amount sought in the President's budget. I am pleased that we came closer than we have the past 6 years, but we still failed to meet the mark. I find this action very troubling when the Coast Guard has been one of the star performers in the administration's efforts to reduce the size of Government and eliminate all excess waste from the budget. Just this past year, the Coast Guard executed, very successfully I might add, a very aggressive internal streamlining effort without commensurate reductions in any of the services that it provides to the American public. The Coast Guard continues to do more with less.

With the renewed focus on the war on drugs, the Coast Guard will be one of the lead agencies in our effort to stop drugs from entering our country and ultimately ending up in the hands of people—even children—in our neighborhoods and schools, yet no additional resources are being provided for this purpose, so the Coast Guard will have to absorb the cost of executing this renewed effort. If we want the Coast Guard to continue to provide the services that many Americans have come to take for granted, we must not continue to shoulder it with greater responsibilities and more missions without adequate resources to do the job.

We must be vigilant in our obligation to the men and women of our Nation's oldest continuous seagoing service, and the world's premier maritime experts and guardians of the sea. We must ensure that they have what they need to do the job, and to remain ''Semper Paratus'' (always ready).

This bill bears the mark of Chairman HATFIELD's thoughtful leadership, which we will so sorely miss in the next Senate, and of the distinguished ranking member of the subcommittee, Senator LAUTENBERG, on whose knowledge and leadership on transportation issues I and many of my colleagues have come to depend.

We in Massachusetts owe Senator LAUTENBERG a continuing debt of gratitude, not only for the work he has done in this Congress under very difficult conditions, but for the work he has done for so many years past. Senator LAUTENBERG understands the needs and priorities of our State and all the Northeastern States, and he understands them almost instinctively. He has been our champion for a fair and equitable approach to Federal transportation policy that supports the economies and the public convenience of every area of this country, including the kind of enormously complex urban areas that we both represent. I want to thank him, once again, for his help with these important matters. It also is fitting that I say thanks to his staff, Peter Rogoff, who consistently has been helpful and accessible to me and my staff. In fact, it is a pleasure to deal with all the staff for this subcommittee, who epitomize the professionalism that enables this institution to get its work done for the American people.

Mr. BINGAMAN. Mr. President, when we passed the fiscal year 1997 Transportation appropriations bill in this Chamber, it passed with an important amendment offered by my distinguished colleague, Senator BAUCUS. The Baucus amendment would have corrected an accounting error made by the Treasury Department with regard to the State distribution formula for highway trust fund obligation authority.

When the Transportation appropriations bill went to conference, the conferees refused to accept the Baucus amendment, which would have empowered the Federal Highway Administration to remedy this error and would have given Congress the time needed to adjust this formulaic distribution issue next year when we consider ISTEA's reauthorization.

The bottom line result in this conference report is that 28 States are losing money for general road repair, construction, maintenance, and service in a year in which the overall obligation ceiling for these expenditures is rising to its highest level in history. This conference report increases overall highway spending authority to $18 billion, a full $450 million higher than the current year's level. Thus, in a year in which we are pumping half a billion dollars into this program, 28 States are getting hit with reductions, some of which are very serious.

In contrast, there are some big winners because of this accounting error. Texas is receiving a $183 million increase, which is about 19 percent greater than last year. Arizona, which also borders New Mexico, is receiving a 24 percent increase; and California is receiving a 9 percent increase. Clearly, in a year in which we are raising the level of expenditures for highways, some States will naturally see an increase in spending authority. But I do not feel that there is any justification for the serious cuts that many States are now facing because of this conference report.

My own State of New Mexico received approximately $169 million from the Federal Highway Administration during the last fiscal year. New Mexico would have received roughly the same level of spending authority if the conference report had followed the Senate bill recommendation. But as we can now see, New Mexico is getting a real decrease of about 12 percent, amounting to a $20 million reduction from last year's levels. New Mexico's total obligation limitation from Federal Highway Administration funds is $149 million. I can't accept this.

I had intended to support this year's Transportation Appropriations Conference Report. I was pleased that the Albuquerque, NM-based Urban/Rural Intelligent Corridor Application [URICA] project had been funded at a level of $2 million. The Alliance for Transportation Research, a consortia of Sandia National Laboratory, the city of Albuquerque, Los Alamos National Laboratory, and the University of New Mexico, has been at the forefront of many important innovative transportation initiatives. New Mexico has been well-positioned in advanced efforts in transportation system problem solving.

The goal of this URICA project is to implement a system that helps integrate the transportation needs of physically challenged citizens with fixed transportation systems in both rural and urban regions.

This conference report also encourages cities and regions in the United States to consult with Los Alamos National Laboratory on the problem of transportation and air emissions. Los Alamos has also worked within the New Mexico-based Alliance for Transportation Research to tie together technologies from this important national laboratory with air quality monitoring programs and remediation efforts.

This report also provided ongoing essential air service funding, which is critically important to three regions in my State which are Clovis, Alamogordo, and Silver City.

And I also endorse the $1 million appropriation included in this bill that would be provided to Texas, New Mexico, Arizona, and California for increased Mexican border law enforcement activities.

I did want to support this conference report, but unfortunately, without much warning and little fanfare, 28 States will be seeing less highway funding authority next year while 22 States will be reaping increases, some of which are very large increases.

Mr. President, I regret that I must vote against this Transportation Appropriations Conference Report, and if asked by the President about my opposition, I will recommend that he veto this legislation from the Congress. We were not sent here to protect and defend the results of accounting errors. I urge my colleagues to reject this conference result as well.

I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, let me begin by saying that the criticisms I am about to make are in no way directed at the chairman of the full committee and the ranking member of the subcommittee. I think they share my views on these issues. I am under no illusions; the chairman said earlier that the Senate had straitjacketed the committee in many ways and the House had stiffed the committee in other ways, that what we were able to do here on the Senate side in conference was not made extremely difficult. I understand that.

I rise today to point out what I believe to be some serious flaws in this legislation. This Transportation appropriations bill, I am sorry to say, is unacceptable.

I do not want to mislead my colleagues. I am not sure there was a request for a time agreement, but I indicated to floor staff if there was I would object, and to be completely blunt with my two colleagues, I have never engaged in a filibuster in my 23 years, almost 24 years in the Senate, and I am, quite frankly, weighing as I speak and my staff talks whether or not there would be any utility in my doing that.

The chairman makes a very important point relative to the continuing resolution. My fear and concern is that even were I successful in keeping this bill from passing, the continuing resolution would, in effect, include the numbers that, in fact, are the ones that disturb me the most about the bill.

So to the extent that I do not want to mess up their schedules and be straightforward with them, which is what I am going to do, I would just suggest they stay tuned for another few minutes. I will, quite frankly, make that judgment and determine whether to do what I have never done before, to engage in what we say is extended debate.

Let me direct my comments this afternoon to what I think are the most serious flaws in this legislation.

First, I think this appropriations bill badly fumbles the task of putting our Nation's passenger rail service, Amtrak, on its feet, earning operating income and ending its operating subsidies. I want to remind you that is the goal we all signed on to—we, the Congress. We said that our goal is, in the Senate and the House, that Amtrak will be able to operate without subsidies by the year 2002, or, put another way, we are not going to help them after that.

Implicit in setting that goal—and I remember how reluctant some of us were to agree to that goal because there is no other major passenger rail service in the world that does not have some government subsidy, none that I am aware of. It always surprises me; my friends in my home State, my friends in the Senate will be somewhere on business or pleasure that takes them to another country, and they will come back and they will talk about, gosh, I was on that bullet train in Japan, or, gosh, I was on the train in Germany, or, gosh, I was on that train in Sweden. It is remarkable. They are clean and they are fast and they are on time. Why can't we have that here?

The reason we do not have it is we do not support the passenger rail service like they do in other countries. Now, there are a lot of reasons we do not do that, not the least of which is our industries, like the cement industry, like the blacktop industry, the trucking industry, see rail as a threat. They do not see it as an adjunct to the economic growth and vitality of the Nation. They see it as a threat.

So we have had incredible difficulty doing what other countries have done, and that is to look at transportation as a whole, not look at transportation as airplanes and highways but looking at the entire component of what constitutes transportation—passenger transportation and freight transportation in this country.

I know Senator LAUTENBERG has labored mightily, and I mean that literally, to try to convince people—along with Senator MOYNIHAN, before he went over to the Finance Committee—that we have to look at transportation in a different way than we have up to now, thinking only in terms of highways.

There is a lot of money in it, and for the life of me I cannot understand why the highway interests in this country, which we support by hundreds of millions of dollars—it is not as if we are against highways if you are for mass transit or you are for mass transit passenger service. They have fought tooth and nail anything that spends any of our highway trust fund moneys or any moneys for anything other than laying concrete and blacktop.

Now, it does not take a rocket scientist to figure out that in certain parts of our country we cannot lay much more concrete and blacktop. In the Northeast corridor, from Richmond up to Boston, there is not a whole lot more land available to accommodate the increased traffic patterns.

What do we do, make I–95 20 lanes wide? By the way, you think I am joking. In some places, I–95 is already 10 lanes wide. Where are we going to accommodate this extra movement of people when Amtrak is no longer available in our corridor? And also, what happens when, as we repeatedly see happening, there is a constant cutback in Amtrak into rural areas and into States in the Midwest and the Northwest that profited very much from the access to Amtrak?

It is a funny thing, it seems, that old expression of ''the more things change, the more they remain the same.'' I used to be a county councilman in 1970 in our State's largest county before I was elected to the Senate. I was a big booster in the late 1960's and 1970 when I was a council person, for mass transportation, because it was obvious at that time the county I lived in, was the fastest growing county in America. As a matter of fact, ''Candid Camera,'' Allen Funt's ''Candid Camera,'' did a whole program on taking the four-lane highway that connected Pennsylvania and Delaware at the Pennsylvania-Delaware border at the northern part of the county and on the Pennsylvania side as they crossed into Delaware put up a giant sign with the permission of the highway department: ''Sorry, Delaware Closed Today,'' and people were actually stopping. People actually stopped. It was a ''Candid Camera'' stunt.

So, in the midst of all of that, some of us, myself in particular, started to turn toward trying to deal with mass transit, a minor thing. We are talking about 450,000 people in the county. It is not like we are talking about—there are 10 counties in New Jersey bigger than that and there are probably 20 cities bigger than that. And so we are not talking about a vast number of people in relative terms in relation to other places.

I found something interesting. This is the part about ''the more things change, the more they remain the same.'' I would be told that the bus service—we had no rail service—the bus service we have, that is, servicing the community, is losing money. And so when it starts to lose money, what we do is we go out and cut out a route. Let us assume for the sake of discussion there were 50 bus routes, and the system is losing money. They say, well, we have to cut some expenditures here, and so we are going to cut out two routes.

Now, assume it had 50 routes and 100,000 people getting on the bus. If you cut out two routes, you would think that you would have, then, a commensurate reduction in the amount of ridership. But that is not how it works. When you cut out two routes, twice as

many people who rode those routes stopped taking the bus because the choices are diminished, not just the people who rode that one route. What happens is, it has a geometric impact. As you cut a piece in terms of your operation, what you do is you cut a much larger piece in terms of ridership. That is how it works.

So, here we are. In the name of saving Amtrak, we put Amtrak's leadership in a position of having to make significant operational cuts in service. So, when they cut the train that goes through Montana to the State of Washington, what do they do? They cut alternatives, so that means fewer people ride the train in Illinois as well. It means fewer people ride the train in Indiana. It increases in geometrical proportion to the cut that is made.

It also has a very serious political impact. Then the Senators from Montana or the Senators from other States that got cut say, ''What interest do I have in funding this Amtrak thing, it does not service my State anymore?'' And it becomes a self-fulfilling prophesy.

There was one place, one section in the National Passenger Rail Service System that, if we improved it, could make money, money enough to, in turn, through Amtrak, subsidize other Amtrak routes so that you would be able to, without coming back to the Government or the taxpayers, say, OK, we can keep that train going through Montana because Amtrak management says we make a surplus in the trains that run from Boston to Washington. That was part of the whole deal we made here. We said, OK, we will run the risk of having this whole passenger rail service go belly up by the year 2000 by committing not to have any more subsidies. But we need to do some things in the interim to put the system in a position to be able to make it.

So what did we do? In this legislation we went out and we slashed, by a significant amount, the amount of money that would be available to further modernize the corridor, as they call it, between New York and Boston.

What has happened is that Amtrak is an electrified system. What has happened, once you get above New York City—actually in New Haven, CT—you have to switch the trains you use. The tracks are old and some of the bridges need to be repaired and some of the curves have to be straightened out, et cetera, because it is not electrified. So we made a deal. We said, OK, we are going to electrify the whole system so it is unified all the way along that megalopolis, and we said we are going to bring in modern high-speed trains that allow us to compete, in fact, with air transportation and road transportation between Boston and Washington. We even picked out the trains we were going to purchase. And because the projections were that ridership would be up because we had improved the number and type of trains that were being used, so that we would generate enough capital, and we would generate enough money to operate as well as maintain the system. And we would have money left over to go out and continue the train in Texas which is being cut, continue the train in Louisiana which is being cut, in Montana, et cetera, so we could build the system.

By the way, obviously, I am sure some are sitting there, willing and ready, and I do not blame them, to make the ad hominem argument, which is: Obviously, JOE BIDEN wants this because it affects the Northeast corridor where he lives. It affects his State employment, affects his State's economy, it affects the whole region.

That is true. But look beyond that. Notwithstanding the fact that it positively affects my State and the Northeast corridor, it is the only salvation for the rest of the system. We can duplicate that process over time on the west coast. So we can have the capability of similarly moving people rapidly, with high speed, on the west coast. We do not need quite as much improvement because you do not have to electrify the system, and so on and so forth.

What have we done? We have done what we used to do in the county council days. In order to save money, allegedly, we will, by this legislation, force Amtrak to make further cuts, further reducing Amtrak's capability to meet the goal which we all set and insist that they be able to meet by the year 2002. We are guaranteeing, unless we get a supplemental or defeat this or change the number that is in this, we are guaranteeing that Amtrak cannot meet the goal.

It is a little bit like saying to someone you are coaching on the track team who has great potential:

Look, I will tell you what we are going to do. You do not have much money. You have to pay me my salary, and I know you don't have enough money to have me train you, and you have 9-second capability in the hundred meter, which is world class. But I will tell you, in order to save money, you have to wear old Keds sneakers. You cannot wear shoes that, in fact, are the kind that are light, lightweight, modern and functional. By the way, we cannot afford starting blocks. So I am going to continue to coach you if you can break the record. But, in order for you to get me as a coach, what you have to do is we have to cut out these frills—the frills meaning your shoes and the starting blocks—guaranteeing you will never get out of the blocks in order to keep me as your coach, because you never get to the number, you can never get to the speed, you can never get to the time I am going to be satisfied with in order to be able to continue to coach you.

So why start the process in the first place? That is kind of where we are now. I mean, the idea that the rail connection between Boston, Washington, and New York, will basically have to be put on hold—by the way, we need to up the authorization in this bill for the Northeast corridor to be able to keep Amtrak on track, which is about $17 million in outlays, I believe that is the number, to be spent next year to continue to complete the project.

I know my colleagues understand all this Senate jargon, congressional jargon, but the bottom line is, unless the number is higher, we do not have $17 million to do what needs to be done to keep the Northeast corridor project on time and be able to get us in a position where we can buy those train sets and where we can in fact begin to generate the revenue you need in order to meet the objective of being free of subsidies by the year 2002.

Let me point out one other thing that has been pointed out repeatedly by Senator LAUTENBERG. If you deal with this fairly and you measure ''the Government subsidies,'' both in direct expenditures and in tax expenditures that go for highways, that go for the airlines and go for mass transit, Amtrak gets subsidized less.

For example, all you may not realize, when you pay for your plane ticket, the Government subsidizes an air traffic controller that makes sure you can land or not land, it subsidizes the building of that airport and runway, it subsidizes that control tower. The airline does not pay for that. They pay part of it, but they do not pay anywhere near the cost of it. It is a significant subsidy.

So all the airlines are out there touting that this is a subsidy to—I should not say that—touting this is a subsidy to Amtrak, ''Why should we pay to subsidize a person's ticket, a woman who wants to get on a train in Gainesville, FL, and go to Raleigh, NC? Why should we do that?''

I ask the reciprocal question: Why should we do that for someone getting on an airplane? The subsidy is greater for the airline industry than it is for the passenger rail service, and the same way with highways. We have a highway trust fund that pays for the laying of the concrete and the putting up of the barriers, et cetera, but it does not pay for all those cops that are out there, it does not pay for all those maintenance crews, it does not pay for the accidents when they occur, it does not pay for a lot of things. So we subsidize beyond—beyond—what we, in fact, collect in the gasoline tax for the highway system.

Why is it we apply a different standard when we are talking about the ''subsidies for passenger rail service?'' I will tell you why. Because there are a lot of people who make a lot of money and have a lot of influence down here who, in fact—and they are good people—who, in fact, make the concrete that gets poured on the highways. If you are going to spend money on a railroad, you are not pouring concrete on a highway. That is how they view it.

A lot of people out there make an awful lot of money in the trucking industry. I suggest to you all that you

walk down the corridor connecting the House and the Senate Chambers, and there are political cartoons that are on display, historical cartoons on display—I believe it is on the first floor—that show cartoons from the days of the turn of the century. Some of them you will remember from your grade school and high school civic books where they have the pictures of the bloated Senators, like blimps, representing the big mega interests, the oil cartels and the railroad interests and the rest.

This is an ongoing fight. This is money; this is power. This is a big deal to a lot of different people. They do not think of the national interest. What they are thinking of—and it is human nature—is their own particular selfish interests.

Look, how many railroads at the turn of the century were happy to see automobiles come into existence, and then trucks? They did everything in the world to keep trucks and highways from being built, because they knew if you were able to put this stuff on the back of a truck and cart it down the highway, then they did not have the cargo going on top of a rail car where they were charging a fee to send it to folks. The folks who owned the railroads did not want that, and here we have come full circle. The folks who pour the concrete, the folks who make the blacktop, the folks who put up the reflectors on the highways do not want rail passenger service. They don't want it, because they view it as somehow that will affect how many more highways they build.

In a sense, it will. If we, in fact, have Amtrak go belly up in the Northeast corridor, we are going to have to build other lanes of I–95—not figuratively, literally—we are going to have to build more lanes, unless you want to get on 95 and go bumper to bumper from Washington to New York, or maybe you do not want to go to New York anymore, but that is what it is going to take. You will have to do that.

You will have a few people make a whole lot of money, but you sure won't help the environment. You are going to pollute the environment more. You sure won't help in terms of safety, and you sure won't help in terms of public policy, and I do not know why we cannot get that through to people, why that doesn't resonate.

I realize we have a love affair with the automobile. I have a love affair with my automobile. I have a 1967 Corvette I had restored. Next to my kids—maybe my dog comes next—I love it. So I have a love affair with my car, too, but that does not mean I also cannot be rational in how I am going to approach what are the environmental and transportation needs for this country.

So what happens here? What happens here is that we are in a circumstance where—and I have not even mentioned yet the cuts to the 28 States that are small States in highway trust fund moneys. You have tens of millions of people going through my little old State of Delaware on I–95, and you just got our transportation money, highway money, too. You give us a nice double whammy here. I mean ''you'' in an editorial sense. The appropriations bill makes sure that we diminish the prospects of Amtrak, which is critically important to my region, and I think to the Nation. By the way, you are going to force us to have to build more highways, and then you turn around and say, ''By the way, we're not going to give you as much in highways.'' We are going to get less money this year with a $400 million increase in expenditures than we did last year with a highway bill that was $400 million less. Talk about sharing in the wealth. There is a lot of wealth to be shared, but the small States, 28 States, are not sharing this.

Without belaboring the point about the highways, it is not long ago the Senate passed its version of the Transportation appropriations bill. Under the leadership of Senators LAUTENBERG and HATFIELD, that bill provided funding for Amtrak's capital function and important Northeast corridor improvement projects at appropriated levels. Some of my colleagues may recall, and I know that I do, that my good friend, Senator MCCAIN from Arizona, offered an amendment to return to the completely inadequate funding levels that Amtrak had in the House version of the bill, which is what we are closer to now in this version. Specifically, his amendment would have cut the Northeast corridor funding to zero from $200 million in the Senate bill and would have cut overall capital spending in half from $250 million in the Senate bill down to $120 million.

Mr. President, we had what I would like to think was a pretty good exchange of views on the role of passenger rail in our Nation's transportation system and how our Federal system of Government allocates the many benefits and burdens shared by the citizens of all 50 States.

Senator MCCAIN's proposal in the end was defeated by 82 to 17—82 to 17—and that was an overwhelming endorsement of the funding levels provided for Amtrak by the Senate in its version of the bill. But despite the best efforts of Senator LAUTENBERG, this conference report was a giant step backward toward the wholly inadequate numbers of the House bill, which is what Senator MCCAIN was pushing.

The bill before us today is not just a step backward, it is a step on a very slippery slope toward the demise of our country's passenger rail system. Under the mistaken assumption that a penny cut from Amtrak's investment functions somehow is a penny saved, this bill actually offers us the formula for failure, as I referenced earlier, by cutting important investment functions.

Mr. President, the legislation actually reduces the efficiency of the remaining dollars spent on Amtrak. Good business practice that Congress has demanded of Amtrak requires investment in equipment and services that will increase ridership, increase revenues and increase Amtrak's ability to become self-sufficient when it comes to its operating expenditures.

Amtrak has undertaken just such an investment program, and the Northeast corridor improvement project is a major portion of it. By straightening out the right-of-ways, by strengthening bridges and overpasses, by extending electrification along the route between Boston and Washington, this project is going to make possible the inauguration of the most modern, high-speed rail connections along one of the country's most populous transportation corridors—and be able to be transferred, I might add, as well to the west coast.

All over the globe other advanced economies and some not so advanced are also providing such services to their citizens. This country is finally approaching the standard set elsewhere for clean air, fuel efficiency, and convenient passenger rail service that can take some of the load off the rest of our overburdened transportation system.

Mr. President, I wonder if anyone really thinks that the answers to our transportation problems lie in more asphalt, lie in more concrete, increasing our dependency on an already overloaded highway system in significant sectors of the country? If the improvements to Amtrak's Northeast corridor were fully funded and completed, it would remove 325,000 drivers from the crowded I–95 corridor—325,000. That does not even raise the issue of, if it goes under, how many people will it add to that corridor.

Herein lies the problem. Highway guys do not like that, to pull a third of a million people off I–95. Your maintenance is down, you do not have to pour as much concrete, you do not have to expand as much, though the air would be cleaner, there will be fewer accidents, there will be less overall cost to the economy, and there will be greater comfort and efficiency. That is what it is about.

Are we prepared to undertake the construction of more expensive airports? My friend from New Jersey and I are bordering States. One of the things they are trying to figure out in South Jersey and Northern Delaware is, as the Philadelphia airport continues to get overcrowded, what relief airports are we going to build? Where are we going to build other airports? How congested can the air get in a Delaware valley that is 10 million people? Think of what it is for my colleague from New Jersey in the northern part of his State where there is probably closer to 15 million. I do not know what the number is, but it is bigger than the Delaware valley.

Where do you go? How many airplanes can you circle? Come with me on a Friday night, sit out in my yard,

which is just 22 miles from the Philadelphia airport. It looks like fireflies lined up as far as the eye can see, wasting fuel, wasting time, increasing dangers, because there is not enough space to be able to land all those planes at one time.

So what are we going to do? Are we going to build more airports? Let me tell you, that will cost you more than building more Amtrak capability. What it also does—concrete guys are happy. There is an awful lot of concrete in those airports, an awful lot of concrete.

So I just do not understand where people think this is going to go. I do not know where they think our traffic and control systems—how many more flights can they take, especially now? If you live in the middle of Montana or the middle of Nebraska or the middle of other parts of other big States, yeah, there is all kinds of room for this; there are not many people, but all kinds of room for more airports. But they do not need the airports there. They need the airports where we are.

So what you are saying to us on the west coast and the east coast and the congested areas is, you are saying, ''OK. Pick your poison, BIDEN.'' We either are going to congest the airways or we are going to congest the highways. We are going to increase the safety risk. Which do you want? I say, you are giving me a Hobson's choice. It is a false choice.

Have those systems in place, improve them—they will probably have to be expanded anyway—but give us also another alternative, a clean alternative, an economical alternative, in relative terms. Allow us to have rail transportation which will benefit the whole country.

As the distinguished ranking member of the Transportation Appropriations Subcommittee understands, and as Senator LAUTENBERG likes to remind us, annual ridership on Amtrak's Northeast corridor alone is equivalent to 7,500 fully loaded 757 jets. I did not know that number until he raised it. But think of that. Just the passengers in the Northeast corridor. Understand, the passengers in the Northeast corridor are going, in the Northeast, to either Washington, Baltimore, Wilmington, Philadelphia, Trenton, Camden, et cetera.

Mr. LAUTENBERG. If the Senator would yield.

Mr. BIDEN. I will be glad to.

Mr. LAUTENBERG. I was going to remind him as we discuss this and ask if he was aware of the fact we would be loading the skies with some 1,500 more flights a week—that is typically in a 5-day week—where the delays now are unbearable, even when the sun shines bright.

Mr. BIDEN. That is right.

Mr. LAUTENBERG. Plus the fact that I want to know whether the Senator was aware that if we had to relocate or substantially expand the Logan Airport, which would be required in the Boston area absent substantial Amtrak improvements, the cost to the taxpayer would be several billion dollars.

Mr. BIDEN. With a ''B,'' billion.

Mr. LAUTENBERG. Hardly compares with a few hundred million dollars spent to get Amtrak's Northeast corridor up to shape where we could produce a surplus revenue cash flow that would not have us here with the beggar cup waiting every year to try to get a few dollars.

I want to say to the Senator that the case you make is so clear. I hope that some of our colleagues who come from distant places are able to see the connection. It is just like the Army Corps of Engineers. If they are not financed to take care of the problems out West, then they are not available nor would they be available in the East. This is a national thing, even though its presence is principally in the heaviest populated area of our country.

When it comes to services that are headquartered here, like the FAA—one does not say, ''Well, wait a second. Don't put more money in the FAA safety research office in Washington, because we are out in Colorado or New Mexico or someplace''? They say, ''No. Keep on investing because we all benefit from such investments.'' Would the Senator agree?

Mr. BIDEN. I would agree fully. The Senator from New Jersey, since he has been here—I am not being solicitous here—has been a leader on a number of issues, but two in particular, on environmental issues, and on this issue of transportation.

That image, of which is literally true, of 7,500 fully loaded 757's is something I hope everybody kind of keeps in their minds. But put it another way. I ask my colleagues from other States that do not have the same congestion problems, OK, Amtrak goes belly up. Who do you think is going to come after your highway money? Who do you think is coming after your highway money then? Do you think we are going to sit around and say, OK, we are just going to go to gridlock in the East? We are just not going to do anything? We are going to have a new battle. So the money you think you are benefiting from by not spending on Amtrak and putting more money in the highways in States that do not have Amtrak because we are not competing for as many of those dollars with you, we will have to if it changes.

What formula will you be able to draft that in fact will not justify our getting the significantly larger amount of the highway trust fund moneys? We are talking about a third of the Nation's population. This is a big deal. We are not asking for anything that we are not entitled to, that does not make good public policy, that is not in the national interest, and that is not anything any other mode of transportation is not already getting.

But, again, keep that image in mind. I just see it now, folks, those 7,500 fully loaded 757's bouncing around annually beyond what we have now. Try to get home from National Airport when you are going home for the weekend to whatever State you are from.

Mr. LAUTENBERG. Will the Senator yield?

Mr. BIDEN. I am delighted to yield.

Mr. LAUTENBERG. What do you think would happen if there was a bad weather day along the way? The economy of the country would grind to a halt because we are inextricably linked with our other sections of the country in our business, the stock market, you name it. What might happen when those 7,500 airplane trips try to deal with a snowstorm in the East, or tornadoes or hurricanes, whatever else is the latest in the mode of weather disasters?

Mr. BIDEN. The Senator makes a good point. He and I ride Amtrak a lot. When I leave my house in the morning, I commute every day. I have clean hands here; I have a naked self-interest. I ride Amtrak every day, OK, and have been doing it for 24 years. As my mother says, ''When you are hung by your thumbs long enough, you get used to it.'' I have been riding a long time.

Literally one of my rituals, I say to my friend from New Jersey, as I shave, I turn on the weather channel, because if airports are socked in, I will not get a seat on Amtrak. I better get to the station early. The converse of that is true. What happens if there is no place to go? Right now Amtrak ridership increases exponentially when there is bad weather because the airports are not flying, the airlines are not flying, or they are so delayed the business people and others cannot count on them.

The funding levels in this bill that delay the upgrade are adding to the cost of air pollution, wasted time in traffic, airport delays, highway and airport maintenance costs, and safety problems. Even more foolishly, Mr. President, by indefinitely delaying the completion of the Northeast corridor improvements, this bill will indefinitely delay the day when new high-speed transit—already ordered, already funded in the same legislation—will be able to go into full operation. Not only is this a pointless waste of the new equipment, but a false economy.

By postponing the day when full high-speed rail service becomes available between Boston and Washington, this bill means Amtrak will lose indefinitely the ability to generate profits, precisely the goals we have been told and we have told Amtrak they must, in fact, meet.

Once lost, these profits will never be made up. Every year without profits is another year Amtrak routes suffer and go further in the red ink, another year in which Amtrak will need operating subsidies from the Congress. Instead of committing to the investment now that will start generating this income, that could support other less profitable routes, this legislation guarantees that Amtrak will remain hobbled. So the consequence and impact will be that

train that our friends from Texas—and I compliment them on their effort—are trying to maintain going into Texas will be lost, that train that the Governor of Montana wants to get back in Montana will not be able to be routed because it cannot sustain itself.

It is like the business of setting up electric and telephone service. It is not as profitable to run a line 8 miles down a road to a farm to light a farmhouse and a barn as it is to run a line a mile and a half into a neighborhood that has 450 homes. So what happens? The people who live in the 450-home neighborhood end up subsidizing the person who lives out there on the farm. That is what we are about as a Nation. That is why, for example, we subsidize water in the West. My mother pays her taxes and I pay my taxes in the East so that somebody else's mother can have a glass of water in Arizona or in southern California or in many of the Rocky Mountain area States that are fed by the Colorado River, and the billions of dollars we have spent on dams.

I do not complain about that. That is not a complaint. It is an observation. That is what we are supposed to do. We are one Nation. We are one Nation and different areas of the Nation have different needs. If the taxpayer of the United States stops subsidizing, or never subsidized in the first place, what was done to the Colorado River, there would not be 32 million people in California.

Mr. BENNETT. Will the Senator yield?

Mr. BIDEN. I am happy to yield to the Senator.

Mr. BENNETT. I am about to do something I have been warned is unwise, and that is to enter into debate and ask questions without knowing in advance what my position will be. I do this in the hope I might learn something, but I realize I might get caught. It is with some trepidation I do this.

I say to the Senator from Delaware, first, in the spirit of full disclosure, I am sure he does not know this. I would plead guilty. I am the lobbyist in the Nixon administration who was responsible for convincing the Congress to create Amtrak in the first place. I worked as a head lobbyist for John Volpe of the Department of Transportation. My final assignment in the Nixon administration was to convince the Congress to create Amtrak. In the process of convincing the Congress, I remember saying to the appropriate chairmen of the appropriate committees that Congress only has to subsidize Amtrak for a few years, that within 3 and certainly no more than 4, Amtrak would become a profitmaking corporation, stand alone, based on the projections that were then being made for the use of train service.

Then political reality set in after the bill was passed. The blessed Harley Staggers, late chairman of the House Commerce Committee, made it very clear that nothing would proceed unless a train servicing all of the junior colleges in West Virginia was kept on. Indeed, the senior Senator from Montana, who was then the majority leader, made it clear that nothing would pass the Senate unless a train to Yellowstone in Montana was kept on.

Now, my question is this, Mr. President. I recognize fully that passenger transportation in the Eastern corridor—we abbreviate and say Boston to Washington—is a very intelligent use of the rails. I question, however, from personal experience, all of the rest of Amtrak's route structure. I ask the Senator from Delaware if he has any sense of whether or not trains are being kept on for those parts of the country where they have nostalgic value but not the kind of practical value that he has described in his own commute, daily, from Delaware.

Mr. BIDEN. Mr. President, I am happy to answer my colleague's question. Let me first say to him that one of the reasons why he is so well-respected in this institution, and he is on both sides of the aisle, is because he has such intellectual integrity and he is so straightforward. I assure you, my answers to this or other questions will not attempt to nor could they in any way cause you trepidation.

I must admit I did not know that the Senator was with Secretary Volpe at the time. It is just one more reason I admire you.

You did the right thing. Maybe the projections were not what they should have been. The Senator is correct. What happened was a number of Senators on both sides of the aisle—and Members of the House—who had some significant power said, we want you to run a train into a section of the country or a section of my State where we could not justify the cost that it would entail to run the train relative to the number of people it serviced. That actually happened.

What also happened was, we came along over the years and we finally told Amtrak that they, in fact, had to make some significant cuts, particularly the last 3 years. So they went out and they went after all those nonprofitable routes. I will not say with certainty because I cannot say, I do not know, to the best of my knowledge, but all of the most egregiously costly routes that were maintained are gone now—gone, in the last 3 years. I cannot say to him I know that every route that continues to exist is fully justified if you use a cost-benefit ratio in terms of the number of people riding it versus the cost of maintaining the service.

Let me add one other point. I think the problem is not merely that one person gets on the train when you need 15 people to meet the cost of running the train. What we should do, and what we did in part with the landmark highway bill that we passed several years ago, the so-called ISTEA, we did what should have been done but did not quite take it far enough. We should have said to the State of West Virginia, or the State of Delaware, Montana or Utah, we should have said what ISTEA started. That is, we should say we have the transportation moneys, most of which are generated by the highway trust fund. Now, you in your State should be able to, after you meet the minimum-plus of your highway needs, you should be able to take some of your highway trust fund moneys if you choose, Governor, and State legislator, and you should be able to take that and say to Amtrak in West Virginia, ''Look, it may be nostalgic, but it is important to us, and we are willing to put up our money to you, Amtrak, so that you, Amtrak, nationally, don't have to swallow the loss of maintaining a train that goes to every junior college,'' or whatever the example you gave was.

That should be a decision that the State should be able to make. Now, that State may say, ''Look, we want to be able to connect those junior colleges. It is cheaper for us to add a lane of blacktop connecting those,'' or, ''We want to put on a bus that is maintained by the West Virginia Department of Transportation,'' or whatever. And so the one piece that I don't think my colleague from Utah could have envisioned back in 1970, or thereabouts, was that you had to look at the whole transportation component. I think you did the right thing back then. But what we did not do about this and a lot of other things, like we just did on welfare—we have to give States more flexibility to be able to use their funds. What we do now is straitjacket them.

Senator ROTH and I have been pushing three things. In your State, Senator, you have, in addition to your State highway—I know you know this much better than I do, and I am not being solicitous. But for the purpose of people understanding our dialog here—your State, your Governor, your legislature gets, figuratively and literally speaking, a check for highways. Now, you get it in two or three different ways, sometimes, under the new highway bill. You get one that comes for interstate, you get one that comes—and then you get one for rural transportation. There is a section of the highway trust fund, the highway bill, the so-called ISTEA bill, that says if you don't want to build a highway to connect Provo to some small little town, then you can take some—only a small portion—of your highway trust fund money going to your State and you can buy buses—and this goes from the ridiculous to the sublime—or you can build bicycle paths or walking paths, but you can take some of those highway moneys.

But you are not allowed to take any of that money for inner-city rail transportation. It may be that you want to connect to Las Vegas, NV, to Salt Lake City because a lot of people go that route. That is a long way, by eastern standards, but not so long by western standards. You may say, instead of us building a highway to have the economic benefit that we anticipate—although I suspect that many in Salt

Lake would not want to be connected to Las Vegas, but I don't know.

Assuming that was the decision. Then it seems to me that you should be able to say, and the Governor of the State of Nevada should be able to say, ''We want to take these highway trust funds and build a rail, and we want to have a train run this way. It is better for us, less damage to our environment,'' or whatever. You may say, ''No, we want to build a highway.''

So what the missing link here is, and what we are fighting so hard for is to get basically three things that will put Amtrak in the circumstance where they can be as you asserted in 1970 they would be in 3 years. Let me tick them off and I will stop and I will be happy to hear what my friend has to say.

One is to say, look, there are certain basic capital improvements that are needed in areas where we know there is a need, where we know there is a ridership, where we know there is the market to get this thing up to the point where it is running a surplus. No. 1. That relates to the Northeast corridor expansion—that is, electrifying and straightening out the old routes, et cetera, and buying these train sets. By the way, these train sets are also available for the west coast because there is a growing need, and the Governors in the States of Washington, Oregon, and California say they see how it would be profitable for them to have it available. So that is one thing we do.

The second thing we have to do, it seems to me, is say that in order to deal with this transportation component in the areas where we know the need exists, we should take one-half cent of a highway trust fund, which is now about 18 or 19 cents for a gasoline tax—take one-half cent and dedicate it to a trust fund for intercity rail service. That would generate $600 million a year, one-half cent. Then we would be out of the business of us having to depend on direct appropriations. And by every estimate, that would maintain the entirety of Amtrak's national capital needs per year.

The third thing we should do, in my humble opinion, is we should not keep unprofitable routes on, making Amtrak have to swallow the cost of that. We know why it works that way—in order to get votes. You have to get 51 votes here for anything to happen. So we should say to the States, if you want Amtrak, where it is not profitable for them to send a train, pay them, just like you pay to build a highway, like you pay to build an airport, or for anything else. Here is how you can do that. We are going to allow you—you, the State—to have the flexibility of the funds that are available, one small portion of the funds you get, instead of building another highway. I am oversimplifying it—it costs $200,000 a year to run this train through Montana to the ski resorts, which you say generates—I think $30 million, the Governor said, a year. Now, Amtrak can make on its own $100,000 of the $200,000. You have to come up with the rest.

Make a choice, Montana legislature, make a choice. Do you want to build an extra route or highway into Sun Valley, or do you want a train to continue to run? If you don't want to do it, fine, you don't have to do it. Amtrak shuts down that train. But it's flexibility, and it seems to me it is consistent with a rational national transportation policy. We are then not telling the people of Utah that they have to spend money to build rail systems out there that they don't want, where, environmentally, practically, politically, substantively, it makes more sense to build a highway. Conversely, we are saying to Amtrak, you no longer have to carry the burden of training the system to maintain systems that don't meet the economic imperative of breaking even. And so that is what this whole game plan was supposed to be.

My complaint about this bill is, I say to my friend from Utah, before I yield to him, is that they have taken one of the legs out of that three-legged stool—the only way Amtrak is going to make it. It is a catch-22 situation. I think the Senator may have gone with some of us over to the Library of Congress the other night where Joseph Heller, the author of ''Catch-22,'' was one of the readers. And TRENT LOTT, the majority leader, read a passage from a great book series that they are doing. It was quite an interesting event. I hadn't read ''Catch-22'' since college. Hearing Heller get up there and read a passage of ''Catch-22,'' and watching him laugh at his own passages, was kind of infectious. But this is kind of a catch-22 for Amtrak. We need your vote. We need the vote from the Senators from Texas and the Senators from Montana and the Senators from Arkansas. But if you don't have a train going into your State, then you say—and I am not being critical—you say, well, why should I vote for this? Why should I vote for this? So what Amtrak has done up until now is they have been caught in that catch-22. They know if they don't keep the train going—I will pick somebody deceased, Harley Staggers—if we don't keep the train going for Harley Staggers into his district in West Virginia, they ain't going to get the money. They are not going to get enough votes to get it passed.

So we blame Amtrak for continuing to run on unprofitable routes. But Amtrak management sits there and says, ''I know if I don't run that train, we don't get to run them anywhere.'' And so the bottom line, for me, is that this particular bill takes out one of the three pieces of the equation that are needed to make the assertion of the Senator from Utah in 1970, in fact, true. I think the three things that need to be done—and I will not repeat them—are things that meet the test of equity, fairness, national interest, and parochial needs, without the Federal Government demanding any State do anything they do not want to do.

I would be happy—I see my friend—to yield to him.

(Mr. THOMAS assumed the chair.)

Mr. BENNETT. I thank my friend from Delaware.

Mr. President, I would like to comment with the understanding that my friend retains the floor.

First, let me share a bit of history that I am sure my friend from Delaware will find instructive in this. What the Senator from Delaware has described was, in fact, in the original legislation where we had the opportunity to say to the Governor, ''If you want this to continue in your State, you have to pay *x* amount.'' And that is how we got rid of a lot of the trackage.

I remember one New England Governor, whose State will remain nameless, who complained bitterly that certain trains had to stay. We realized that quickly it was a matter of State pride. And we ran the numbers. We sat down with him, and said, ''Governor, for the amount of money you have to pay you could afford to pick up every one of the passengers that get on this train at his or her home in a limousine and drive them to any location in the United States cheaper than you could keep this train.'' When he looked at it, he said, ''You mean the average boarding of that train is 3 per day?'' We said, ''Yes. You are trying to hang onto this train as a matter of State pride. That is what it is.''

That is how we got rid of a very large chunk of the original passenger network. And that is what led us to believe in 1970 that we could, in fact, rationalize this network to the point where it would perhaps become profitable. But a number of things happened in the meantime. I have had people say to me that the airplane has destroyed passenger services in the United States—rail passenger service—as people prefer to take the airplane. That is not true. It was the Interstate Highway System that destroyed the rail passenger service in this country. Something like 98 percent of intercity trips in this country are still done on the Interstate Highway System. When we built the Interstate Highway System we sounded the death knell for rail passenger service except in congested corridors like Washington to Boston where it is just as fast to take the train as it would be to fly.

I had an office in New York as well as an office in Washington when I was in private business. I found that I could get to downtown New York just as fast on a metroliner as I could by taking the plane to LaGuardia and then fighting the traffic with a taxicab.

So I assure the Senator from Delaware that I am in favor of doing what I can to see to it that intelligent rail passenger service continues in the heavily congested corridors, primarily the Northeast corridor.

So all I would say to my friend is that I was unaware of the details of this bill until I heard him speaking. I will now examine it. I assure him that

my vote will not be based on whether or not there is a train running through Utah but on what makes good national policy sense. That does not mean that I will vote with the Senator. That just means that I will look at the issue in the way I would not have had I not heard him speak on it.

I will make one comment on the discussion he has had with respect to the National Highway Trust Fund. Again, during my years in the Department of Transportation, I was getting intimately acquainted with the National Highway Trust Fund. And one of the other programs that I was responsible for convincing the Congress to pass in that same period was the airport and airways trust fund. We naively believed when we got that bill through both Houses of Congress and down to President Nixon's desk that we had solved the funding crisis for the FAA for perpetuity. Now there is a trust fund set up to be funded by ticket revenues and takeoff and landing charges at the various airports that would see to it that the FAA never need compete with any other agency for Federal funds. It had its own trust fund and its own source of funding.

Well, Mr. President, then came along the unified budget. I do not know which President it was that did it. I am afraid if I checked it that I would discover that it was probably a Republican. But the fact is that the highway trust fund always runs a surplus. The funds are subjected to appropriations, and the money to build our highway infrastructure is always constrained by political decisions made on this floor and at the other end of the Capitol. And the people who run the Federal Highway Administration can no longer, as it was envisioned that they would when President Eisenhower worked to create it, depend on a steady source of income for their fund. Neither can the people who run the FAA depend on a steady source of funds because their fund is always overfunded and Presidents always dip into that fund. Now they say they do not dip into the fund. They use the mechanisms of the unified budget to underappropriate from the fund so the money in paper is still there but in fact it is never spent.

I say to the Senator that, if he created a trust fund for rail, he would discover that subsequent Presidents would do the same thing to that trust fund that they have done to the highway trust fund and the airport and airways trust fund, and every other fund. They would render it, frankly, a dead letter.

If we were to spend the amount of money—to conclude this on the airport and airways trust fund—on the airport and airways trust fund actually on airports and airways right up to the full amount that comes into the trust fund every year, we wouldn't have the current problems that we have.

Not to delay the debate, but my friend enjoys a good anecdote. So I will leave him with this as I leave the floor.

In a discussion about computer systems and their vulnerability to hackers getting into computer systems and having access to information that they do not have, the expert who was running that discussion said, ''All parts of the Government are vulnerable. The hackers can get into anything—the Pentagon, the Social Security files, anything—with one exception; and, that is the FAA computer system running our air traffic control system. The reason it is not vulnerable to a hacker is that it is so obsolete and so ancient that no amount of modern computer activity can get into that.''

So I share that with my friend and indicate to him that a trust fund might not be the answer to his problem. I assure the Senator that I will now look at this bill in a new light.

Mr. BIDEN. Mr. President, I realize I still have the floor. A number of people want to speak. Before my colleague leaves the floor, let me say that one of the things that I know he has knowledge about is how so much has changed in the last 30 years. And that is that we had plenty of room to expand with airports in certain areas. We do not have that same flexibility now. We had the ability to expand the highways in certain areas. We do not have that now. He may be right that this trust fund might in fact meet the same fate that he suggested the others had. But the bottom line is that I am a lot better off with this than I am with any other alternative that I can think of. I think that is fair. I thank him. I know he sincerely means it when he says he will listen. And I thank him very much for that. I thank my friend from Oregon. He indicated that he might have a question. I yield for a question.

Mr. WYDEN. Mr. President, I thank the Senator from Delaware for yielding.

I want to discuss briefly the Amtrak issue with him, and in effect pose the question that I am having to wrestle with at home, and your sense of how you handle it. I have been both as a Member of the House and in the Senate a member of the Commerce Committee a very strong supporter of Amtrak. I think that it is important to have a national rail program. It is important policy for our country. I have been in support of the Senator from Delaware. In fact, I remember, as the Senator from Delaware does, your Governor, our former colleague. He called me a bit ago in terms of the funding formula that we all wanted. And I was in strong support of it at that time because I think it is important that the east coast of the United States have good rail service. But I tell my friend that because of what I have seen with Amtrak in the last few months in terms of their handling of the Pioneer, which is a run that serves rural Oregon—it also serves Idaho and Wyoming, and the rural west—that it leaves me very troubled.

I want to just take a quick minute and tell the Senator my concern.

My concern is that the new philosophy in terms of Amtrak is essentially to tell people I represent in rural eastern Oregon you are supposed to put up your hard-earned tax dollars today to support the development of all these runs on the east coast of the United States, in densely populated areas, and then maybe if those runs are exceptionally profitable we will come back and one day have rural Oregon get served with Amtrak service. My constituents are very exasperated by this.

I had a community forum in Hermiston, OR, on this, and Amtrak officials came. Now, this is not the Senator from Oregon. These are Amtrak officials. And they told the community: We have given you lousy service. In fact, people don't even know when the train is going to show up. That is kind of the joke. There has been absolutely no promotion, and there has been absolutely no investment in infrastructure.

Now, what our communities have said—and I think this is a reasonable proposition—is that what they would like to have is 1 year to get the State governments out in the West and local governments and the Federal Government together to try to come up with a new cost-effective strategy to keep that Pioneer serving rural Oregon open. They did not say the Federal Government is supposed to write out a check today for everything. They said give us a year in order to try to have a new partnership that acknowledges what the Senator from Delaware has correctly said, which is that times really have changed. We understand that. And so, give our communities and our staffs 1 year to try to come up with a new plan, and the Amtrak officials, who very much like this Senator to vote for their budget covering east coast lines, will not give our part of the country, rural Oregon, a 1-year deferral to try to work it out.

I would just close this by asking my friend from Delaware, if the Senator were in front of a community meeting in rural Oregon where those folks are being asked to support the lines in the East and they are being told after Amtrak admits that there has not been any service, there has not been any promotion, there has not been any investment, that they still cannot have a year for self-help to come back. What would the Senator tell those folks in that community? I say this out of friendship to the Senator and as one who voted for the Senator's request.

Mr. BIDEN. I understand. Mr. President, let me respond by saying that that is an incredibly difficult position for the Senator from Oregon to be placed in.

What I would try to do is explain to my constituency in eastern Oregon what the facts are. I would point out to them that the Amtrak officials who went back from that meeting and met with the Amtrak board said, you know, we should keep this going for another year to give them a chance to work

this out, and were met with a response that said, if we do not cut 10 more routes and cut out another $1.5 million or $2.6 million, whatever the number may be, Mr. WOLF, the chairman of the committee over on the House side, is going to cut everything out, because he is going to turn to us and say that Amtrak is doing what the Senator from Utah has said. Amtrak is continuing to put money into a line that costs money. And we have run out of runway. We, the Amtrak management, have run out of runway.

Then I would say to them that Amtrak's inability to give you another year is not related to what they really want to do. The truth of the matter is, Amtrak knows that their ultimate future lies in a national rail system—not a Northeast rail system, but a national rail system—and the reason it does is that we are going to, over the next 30 years, have increases in population and shifts in population around this country that cannot be accommodated merely by building more airports and highways. So for every day that we grow older as a country, the necessity for extending rail as a mode of transportation increases exponentially.

Then I would say to them that we had a problem back in 1934 and 1935 and 1936 when all those Eastern Senators and their constituency said, why in God's name are we paying to build those dams out there in the West? Why are we doing that? I do not understand that. I am taking my hard-earned tax dollars to build a dam on the Columbia River, or on the whatever river, and I do not know eastern Oregon well enough to cite a specific dam, if it does affect eastern Oregon. And I would say what happened then was somebody stood up and said, look, this is in the national interest.

Now, if we spend the billions of dollars to build those dams out West, if we spend the billions of dollars to do those things, what we will eventually do is our economy will grow in the East as well. We will benefit, but you are not going to see it for a day, a week, a year, 10 years, a decade. It may take several decades for that to be seen. And that is the hardest thing to convince any constituency that understandably is aggrieved and understandably has need for a service and has money being taken out of their pockets for something they do not see develop quickly.

The last thing I would say to them is that those who are pushing the hardest to continue to fund Amtrak are the people who support you the most, who are the people who are saying, we should give you a year and we should give you more than that, we should give you flexibility to be able to work out compacts with the other States in the region in order to be able to use other moneys that are available to you to keep the Pioneer running.

However, I do not in any way suggest that it is an easy sell. We are a nation, whether we are in the East, West, South or North, that is very much accustomed to and seeks an instant answer to a larger problem. My experience has not been in eastern Oregon, although I have been there once at a major political event, but my experience has been that when one explains in honest terms to your constituency the overall benefit that will accrue to them, in fact, sometimes they are willing to forbear them not having movement immediately.

But I certainly appreciate the Senator's problem. Let me tell you something that happened to me recently. I will not mention the Senator. I got a call from the president of Amtrak saying, ''I don't know what to do. One of the States that we need help from is telling us that they want to keep their particular train going in their State. These two Senators have said basically, if you don't continue to keep this train moving, we are not going to be willing to vote for the things that need to be done,'' whether it was the half-cent gas tax, whether it was the use of rural funds, or whether it was the direct funding. And, he says, ''Then I got a call from a major political figure who holds significant office beyond Senator here in this body, saying, if you continue to fund that train which is not making money, I will not be willing to support Amtrak's long-term needs.''

It is really a catch-22 circumstance. That is why I wish we could all basically say time out, time out for a couple of years.

Let us explain two things. Unless you get the Northeast corridor up and running with the new train sets, you have no section of the system that is going to be generating a profit. Unless you provide more flexibility to the States to be able to kick in and work in compacts—you helped me in the compact amendment we had last year.

Mr. WYDEN. Right.

Mr. BIDEN. With no compacts, we are not going to be able to run certain lines. And unless we provide an alternative source of revenue for capital investment, we are not going to be able to maintain the system.

So why don't we look at transportation needs as a whole? That is why this is so debilitating. I will yield the floor——

Mr. WYDEN. Will the Senator yield just one second more? I will be very brief.

Mr. BIDEN. Surely.

Mr. WYDEN. The Senator's case would be logical, in many respects, to my constituents, if my constituents were not acknowledging there does need to be change. The Senator mentioned the dams in Bonneville. We are now reinventing Bonneville. We have all our Governors out, trying to set about to adopt practices that relate to the next century.

The same is true in the Amtrak area. But what would not make sense to my constituents is to say, ''Look, we are going to slam the door on you. We are not going to give you the chance to try to change, to have local communities do more, to have States do more, to be cost effective. We are just going to shut the door on you and, instead, adopt what sounds almost like supply-side transportation policy, which is have the east coast of the United States make lots of money on their runs and presumably some day some of it may trickle down.''

I know the Senator does not intend that, but I want him to understand I intend to work closely with him. I am a supporter of Amtrak and supporter of a national rail system. But it is getting harder and harder to explain to folks in rural Oregon how they are supposed to wait, they are supposed to be cut off, when they are committed to change. The citizens of my region are saying, ''You bet, it is different now than it was 30 years ago, and we are not being given the chance to change.''

Mr. BIDEN. I say to my friend from Oregon, I truly do understand that. At the beginning of my comments, which started some time ago, I started off by saying that the more things change the more they remain the same. I cited my experience as a county councilman dealing with bus service in our most populous county. Some of my friends said it had to be totally self-sufficient. So the bus service was put in the position of having to cut routes that were not, in fact, profitable. As they cut routes that were not profitable, exponentially ridership dropped off. The more they cut one route, twice as many riders dropped off because fewer options were available because of transit changes.

Once you start down that road, you are headed for the demise of the system. What I am saying to the Senator is that this is only one of the three pieces of effort we have to have underway. I am suggesting that I, personally, and I suspect everyone who supports Amtrak, understands and appreciates that it is in everybody's best interests if eastern Oregon has access, if eastern Oregon has the Pioneer. The more you invest, the more ridership you generate. But I think we put an artificial timeframe on Amtrak and a standard, a bar, so high they cannot possibly meet it.

I see my colleagues are standing on the floor here. Before I yield to the chairman of the subcommittee and the ranking member, I would like to acknowledge, because he asked for a couple of minutes and I will let the ranking member conclude when that should occur, but the man who, in fact, wrote the book about the megalopolis, I mean literally, not figuratively, literally, literally the guy who wrote the book is the senior Senator from Rhode Island. I say to my friend from New Jersey—he asked whether or not at some point, shortly, we would be willing to yield him 2 minutes. But I will yield the floor and let the chairman make the decision.

Mr. LAUTENBERG. Mr. President, I ask recognition from the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I will be happy, in a moment, to yield to whomever the Chair recognizes. But we are getting lots of inquiries because I know that there is a request to have a rollcall vote. That has not yet been propounded. In fairness to our colleagues who have work to do, as everyone here on the floor has, we started this debate shortly after 2 o'clock this afternoon, and I think in fairness it would be a good idea if I could ask the Senator from Delaware how long the Senator from Delaware thinks the debate might go? I wonder if the Senator from Delaware would answer that question?

If the Senator from Delaware could answer the question as to how much longer he needs? Obviously, he has as much time as he requires. There is a request for a rollcall vote I know.

Mr. BIDEN. Mr. President, in response to my friend's question, and in response to his counsel, I will seek no more time. I, frankly, was going to attempt a filibuster on this bill but I think—I am not being facetious when I say this—the wisdom of the chairman is correct. I probably would end up no better off, even if I succeed, in terms of what would come out of a continuing resolution.

But I will tell the chairman, although I am not going to pursue any strategy other than voting ''no'' on this legislation and on a continuing resolution, I am hoping to convince some of our colleagues, notwithstanding the fact we will have passed this legislation today, and I expect it will pass, that we get a supplemental to, in fact, give us an opportunity to work out things we are working out with the Senator from Oregon. But I do not seek recognition beyond voting ''yes'' or ''no'' when the time comes.

Mr. LAUTENBERG. I thank the Senator very much. Mr. President, I wonder if I might yield to the distinguished Senator from Rhode Island, and I ask unanimous consent I be able to yield up to 3 minutes or 4 minutes, as the Senator needs, and still retain the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. PELL. Mr. President, my purpose for rising was to congratulate and thank the Senator from Delaware for underlining this point. Those of us living on the east coast in the corridor have it as part of our lives. It has been in my own life. I know what it means to many millions of people.

The book to which he referred, which was written about 30 years ago on this subject, is still pretty well current, because in this 30 years so little progress has truly been made. I look forward to the day, while I may not be here, but I look forward to the day in the not too distant future where we will have high-speed railroads, really high speeds, as our friends in Europe have, speeding around the country to the different cities of our great land.

In this regard, I am struck by the number of States that are traversed by the high-speed railroad. And, from a political viewpoint for both parties, about a fifth of the electoral votes in the United States are traversed by the high-speed railroad. I hope that will help spur on support.

I have some regrets about retiring myself. I look forward to visiting Washington in the years to come on a high-speed railroad.

I thank the Chair.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, by agreement with our colleagues on the Republican side, I now ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate? If there is no further debate, the question is on agreeing to the conference report accompanying H.R. 3675, the Transportation appropriations bill for fiscal year 1997. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire [Mr. GREGG] is necessarily absent.

The PRESIDING OFFICER (Mr. SMITH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 14, as follows:

[Rollcall Vote No. 294 Leg.]

YEAS—85

Abraham	Glenn	McCain
Akaka	Gorton	McConnell
Ashcroft	Graham	Mikulski
Baucus	Gramm	Moseley-Braun
Bennett	Grams	Moynihan
Bond	Grassley	Murkowski
Boxer	Harkin	Murray
Bradley	Hatch	Nickles
Breaux	Hatfield	Nunn
Bumpers	Heflin	Pell
Burns	Helms	Pressler
Campbell	Hollings	Pryor
Chafee	Hutchison	Robb
Coats	Inhofe	Rockefeller
Cochran	Inouye	Santorum
Cohen	Jeffords	Sarbanes
Conrad	Johnston	Shelby
Coverdell	Kassebaum	Simon
Craig	Kempthorne	Simpson
D'Amato	Kennedy	Snowe
Daschle	Kerrey	Stevens
DeWine	Kerry	Thomas
Domenici	Kohl	Thompson
Faircloth	Lautenberg	Thurmond
Feingold	Leahy	Warner
Feinstein	Levin	Wellstone
Ford	Lott	Wyden
Frahm	Lugar	
Frist	Mack	

NAYS—14

Biden	Dodd	Reid
Bingaman	Dorgan	Roth
Brown	Exon	Smith
Bryan	Kyl	Specter
Byrd	Lieberman	

NOT VOTING—1

Gregg

The conference report was agreed to.

Mr. LOTT. Mr. President, I move to reconsider the vote.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, for the information of all Senators, there will be no further votes during today's session.

The Senate will now begin consideration, though, of S. 39, the Magnuson Fisheries Act, under a previous unanimous-consent agreement reached in August. Any votes ordered with respect to that bill will be stacked to occur at 11 a.m. on Thursday.

Also, during the session of the Senate on Thursday, I expect the Senate to consider the Merchant Marine Act, H.R. 1350, possibly the pipeline safety bill, and any other calendar items that may be cleared for action. The Senate may also consider available appropriations bills conference reports, if agreements can be reached with respect to amendments in order on those.

I know a lot of work has been put into this Magnuson fisheries bill. I think it is a very good piece of legislation, and it is very important for fisheries and conservation all over our country—the Northeast, Northwest, the Gulf of Mexico. I see the Senator from Massachusetts here. He has worked on it, and, obviously, the Senators from Washington, and Senator STEVENS, of course, has been very instrumental in this legislation. I commend one and all that have been involved in it.

It would have been a real travesty if we would have left this very important piece of fisheries legislation on the table. I hope you can get it done tonight. I assume there could be as many as three votes tomorrow. I assume most of the amendments have been worked out, and I know you will continue to work on that.

I yield the floor.

SUSTAINABLE FISHERIES ACT

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 39) to amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Sustainable Fisheries Act''.

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

Sec. 1. Short title; table of contents.

TITLE I—CONSERVATION AND MANAGEMENT

SEC. 101. AMENDMENT OF MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 102. FINDINGS; PURPOSES; POLICY.

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

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

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

(2) by inserting ''to facilitate long-term protection of essential fish habitats,'' in subsection (a)(6) after ''conservation,'';

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

''(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. 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.'';

(4) by striking ''and'' after the semicolon at the end of subsection (b)(5);

(5) by striking ''development.'' in subsection (b)(6) and inserting ''development in a non-wasteful manner; and'';

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

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

(7) by inserting ''minimize bycatch and'' after ''practical measures that'' in subsection (c)(3);

(8) striking ''and'' at the end of paragraph (c)(5);

(9) striking the period at the end of paragraph (c)(6) and inserting ''; and''; and

(10) adding at the end a new paragraph as follows:

''(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. 103. DEFINITIONS.

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

(1) by redesignating paragraphs (2) through (32) as paragraphs (4) through (34), respectively, and inserting after paragraph (1) the following:

''(2) The term 'bycatch' means fish which are harvested by a fishing vessel, but which are not sold or kept for personal use, and includes economic discards and regulatory discards but does not include fish caught and released alive that are the target species of recreational fishing under catch and release programs.

''(3) The term 'commercial fishing' means fishing in which the fish harvested, either in whole or in part, enter commerce through sale, barter or trade.'';

(2) in paragraph (6) (as redesignated)—

(A) by striking ''COELENTERATA'' from the heading of the list of corals and inserting ''CNIDARIA''; and

(B) in the list appearing under the heading ''CRUSTACEA'', by striking ''Deep-sea Red Crab—Geryon quinquedens'' and inserting ''Deep-sea Red Crab—Chaceon quinquedens'';

(3) by redesignating paragraphs (8) through (34) (as redesignated) as paragraphs (10) through (36), respectively, and inserting after paragraph (7) (as redesignated) the following:

''(8) The term 'economic discards' means fish which are the target of a fishery, but which are not retained by a fishing vessel because they are of an undesirable size, sex, or quality, or for other economic reasons.''

''(9) The term 'essential fish habitat' means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.'';

(4) by redesignating paragraphs (15) through (36) (as redesignated) as paragraphs (16) through (37), respectively, and inserting after paragraph (14) (as redesignated) the following:

''(15) The term 'fishing community' means a community which is substantially dependent on the harvest 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.'';

(5) by redesignating paragraphs (20) through (37) (as redesignated) as paragraphs (21) through (38), respectively, and inserting after paragraph (19) (as redesignated) the following:

''(20) The term 'individual fishing quota' means a revocable Federal permit under a limited access system to harvest a quantity of fish that is 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.'';

(6) by striking ''of one and one-half miles'' in paragraph (22) (as redesignated) and inserting ''of two and one-half kilometers'';

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

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

''(A) will provide the greatest overall 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.'';

(8) by redesignating paragraphs (28) through (38) (as redesignated) as paragraphs (30) through (40), respectively, and inserting after paragraph (27) (as redesignated) the following:

''(28) 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.'';

''(29) 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.

(9) by redesignating paragraphs (31) through (40) (as redesignated) as paragraphs (33) through (42), respectively, and inserting after paragraph (30) (as redesignated) the following:

''(31) The term 'recreational fishing' means fishing for sport or pleasure.

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

(10) by redesignating paragraphs (34) through (42) (as redesignated) as paragraphs (35) through (43), respectively, and inserting after paragraph (33) (as redesignated) the following:

''(34) 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.'';

(11) by striking ''for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented'' in paragraph (42) (as redesignated) and inserting ''regulated under this Act'';

(12) by redesignating paragraph (43), as redesignated, as paragraph (44), and inserting after paragraph (42) the following:

''(43) 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)).''; and

(13) by redesignating paragraph (33) as paragraph (45).

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

The Act is amended by inserting after section 3 (16 U.S.C. 1802) the following:

''SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act, not to exceed the following sums (of which not less than 10 percent in each fiscal year shall be used for enforcement activities):

''(1) $147,000,000 for fiscal year 1996;

''(2) $151,000,000 for fiscal year 1997;

''(3) $155,000,000 for fiscal year 1998;

''(4) $159,000,000 for fiscal year 1999; and

''(5) $163,000,000 for fiscal year 2000.''.

SEC. 105. HIGHLY MIGRATORY SPECIES.

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

SEC. 106. FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS.

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

''(1) is authorized under subsections (b) or (c) or section 204(e), under a permit issued under section 204(d);''.

(b) INTERNATIONAL FISHERY AGREEMENTS.—Section 202 (16 U.S.C. 1822) is amended—

(1) by adding at the end of subsection (c) ''or section 204(e)'';

(2) by adding at the end the following:

''(h) BYCATCH REDUCTION AGREEMENTS.—(1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this Act for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

''(2) An international agreement negotiated under this subsection shall be—

''(A) consistent with the policies and purposes of this Act; and

''(B) approved by Congress in the manner established in section 203 for approval of a governing international fishery agreement.

''(3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, 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 describing actions taken under this subsection and section 205(a)(5).''.

(c) PERIOD FOR CONGRESSIONAL REVIEW OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—Section 203 (16 U.S.C. 1823) is amended—

(1) in subsection (a) by striking ''60 calendar days of continuous session of the Congress'' and inserting ''120 days (excluding any days in a period for which the Congress is adjourned sine die)'';

(2) by striking subsection (c); and

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

(d) TRANSSHIPMENT PERMITS AND PACIFIC INSULAR AREA FISHING.—Section 204 (16 U.S.C. 1824) is amended by adding at the end the following:

''(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 products at sea from a point within the boundaries of any State or the exclusive economic zone to a point outside the United States to any person who—

''(A) submits an application which is 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 the department in which the Coast Guard is operating, any appropriate Council, and any interested State.

''(3) APPROVAL OF APPLICATION.—The Secretary may approve, with the concurrence of the appropriate Council, an application for a permit under this section if the Secretary determines that—

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

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

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

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

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

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

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

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

''(e) PACIFIC INSULAR AREAS.—

''(1) At the request of and with the concurrence of the Governor of the applicable Pacific Insular Area, the Secretary of State in concurrence with the Secretary of Commerce, and the Western Pacific Council, may negotiate and enter into a Pacific Insular Area Fishery Agreement (hereinafter in this subsection referred to as a 'Pacific Fishery Agreement') to authorize foreign fishing within the exclusive economic zone adjacent to such Pacific Insular Area.

''(2) In the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, the Secretary of State, with the concurrence of the Secretary of Commerce and the Western Pacific Council, may negotiate and enter into a Pacific Fishery Agreement to authorize foreign fishing within the exclusive economic zone adjacent to such an area.

''(3) In the case of American Samoa, Guam, or the Northern Mariana Islands, the Secretary of State shall not negotiate a Pacific Fishery Agreement to authorize foreign fishing within the exclusive economic zone adjacent to such a Pacific Insular Area without consultation with and the concurrence of the Governor of the applicable Pacific Insular Area.

''(4) A Pacific Fishery Agreement 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.

''(5) A Pacific Fishery Agreement shall not be entered into if it is determined by the Governor of the appropriate Pacific Insular Area, the Secretary, or the Western Pacific Council that such an agreement will adversely affect the fishing activities of the indigenous peoples of such Pacific Insular Area.

''(6) Foreign fishing authorized under a Pacific Fishery Agreement shall conform to the terms of such agreement establishing the conditions under which a permit is issued and held valid. These terms, at a minimum, shall require that a Pacific Fishery Agreement include provisions for a Western Pacific based observer program, annual determination of the quantity of fish that may be harvested, annual determination of fees, data collection and reporting systems, research plans, and monitoring and enforcement tools such as the Vessel Monitoring System (VMS) to ensure effective compliance with the provisions of the Pacific Fishery Agreement and any other terms and conditions deemed appropriate by the Secretary of State, in consultation with the Secretary, the Governor of the appropriate Pacific Insular Area, and the Western Pacific Council.

''(7) The Secretary of State may not negotiate a Pacific Fishery Agreement with a country that is in violation of a governing international fishery agreement in effect under this Act.

''(8) A Pacific Fishery Agreement shall be valid for a period not to exceed three years and shall become effective according to the procedure of section 203 of this Act.

''(9) Foreign Fishing under a Pacific Fishery Agreement shall not be subject to sections 201(d) through (f) and section 201(i) of this Act.

''(10) Prior to entering into a Pacific Fishery Agreement, the Western Pacific Council or the appropriate Governor shall develop a three-year plan detailing uses for funds to be collected by the Secretary pursuant to such agreement. Such plan shall include conservation goals and guidelines and prioritize planned conservation and management projects. In the case of American Samoa, Guam, and the Northern Mariana Islands, the appropriate Governor shall develop such a plan in consultation with the Western Pacific Council. In the case of other Pacific Insular Areas, the Western Pacific Council shall develop such a plan in consultation with the Secretary. If a Governor or the Western Pacific Council intends to renew a Pacific Fishery Agreement, a subsequent three-year plan shall be developed at the end of the second year of the existing three-year plan.

''(11) Fees established pursuant to a Pacific Fishery Agreement 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 prescription of such fees is not subject to 31 U.S.C. 9701. The amount of fees may exceed administrative costs and shall be reasonable, fair, and equitable to all participants in the fisheries.

''(12) Amounts collected by the Secretary from a Pacific 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. After the transfer of such funds, the Governor of each appropriate Pacific Insular Area shall compensate:

''(A) the Western Pacific Council for mutually agreed upon administrative costs incurred relating to any Pacific Fishery Agreement of the respective Pacific Insular Area; and

''(B) the Secretary of State for mutually agreed upon travel expenses for no more than two federal representatives incurred as a direct result of complying with section 204(e)(1).

''(13) There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which amounts collected by the

Secretary from a Pacific Fisheries Agreement in any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Fund shall be made available, without appropriation or fiscal year limitation, by the Secretary to the Western Pacific Council, for the purpose of carrying out the provisions of this section.

''(14) Amounts used from this Fund to carry out the provisions of this section shall not diminish other funding received by the Western Pacific Council for the purpose of carrying out activities within the Western Pacific Council's mandate other than Pacific Fisheries Agreements.

''(15) Amounts generated by Pacific Fishery Agreements in American Samoa, Guam, or the Northern Mariana Islands shall be used for purposes, as described in a three year conservation and management plan developed under paragraph (10), that have been determined by the Governors of the respective Pacific Insular Areas in consultation with the Western Pacific Council to contribute to fishery conservation and management in the respective Pacific Insular Area.

''(16) The Western Pacific Sustainable Fisheries Fund, shall be made available by the Secretary to the Western Pacific Council for purposes, as described in the three year conservation and management plan, that have been determined by the Western Pacific Council in consultation with the Secretary to contribute to fishery conservation and management in the Western Pacific Region. Travel costs of no more than two federal representatives, incurred by the Secretary of State as a direct result of complying with paragraph (2) shall be reimbursed from the Western Pacific Sustainable Fisheries Fund.

''(17) 'Fishery conservation and management' as used in paragraphs (15) and (16) includes but is not limited to:

''(A) An approved Western Pacific based observer program to be operated by the Secretary, subject to the approval of the Western Pacific Council, and in consultation with the Governor of the relevant Pacific Insular Area;

''(B) Marine and fisheries research, including but not limited to: data collection, analysis, evaluation, and reporting;

''(C) Conservation, education, and enforcement, including but not limited to: living marine resource, habitat monitoring and coastal studies;

''(D) Grants to the University of Hawaii for technical assistance projects in the United States Pacific Insular Areas and the Freely Associated States including but not limited to: Education and training in the development and implementation of sustainable marine resources development projects, scientific research, data collection and analysis, and conservation strategies;

''(E) Western Pacific Community-Based Demonstration Projects to foster and promote the management, conservation, and economic enhancement of the indigenous, traditional fishery practices of Western Pacific Communities.

''(18) Monies collected by the Secretary from a Pacific Fishery Agreement for a Pacific Insular Area may be allocated for other marine and coastal related uses by the government of each Pacific Insular Area or in the case of Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands by the Western Pacific Council only after the costs of uses specified in paragraphs (6) and (17)(A) through (17)(E) under this title and the administrative costs of Pacific Fisheries Agreements have been met. The determination of when conservation and management and administrative costs have been met shall be made, in the case of American Samoa, Guam, and the Northern Mariana Islands by the Governor of the respective Pacific Insular Area with the concurrence of the Western Pacific Council, and in the case of any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands by the Western Pacific Council.

''(19) The Western Pacific Sustainable Fisheries Fund of the United States Treasury, shall be made available by the Secretary for the purpose of fisheries conservation and management in the State of Hawaii and the Western Pacific Region only after fisheries conservation and management needs in such Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands have been met as determined by the Western Pacific Council in accordance with its operational standards, policies, procedures, and program milestones.

''(20) In the case of 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, will be covered over to the Treasury of the Pacific Island Area adjacent to the exclusive economic zone in which the violation occurred, after payment of direct costs of the enforcement action to other entities involved in such enforcement action. The Governor of the respective Pacific Insular Area may use such monies available under this paragraph for purposes other than fisheries conservation and management. In the case of violations occurring in the exclusive economic zone adjacent to a Pacific Insular Area other than American Samoa, Guam, and 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, will be covered over to the Western Pacific Sustainable Fisheries Fund of the United States Treasury to be used for conservation and management as described in paragraphs (6) and (17)(A) through (17)(E) or other related marine and coastal projects.''.

(e) IMPORT PROHIBITIONS.—Section 205(a) (16 U.S.C. 1825(a)) is amended—

(1) by striking ''or'' at the end of paragraph (3);

(2) by inserting ''or'' after the semicolon at the end of paragraph (4); and

(3) by adding at the end the following:

''(5) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international agreement to establish standards and measures for bycatch reduction under section 202(g),''.

(f) LARGE SCALE DRIFTNET FISHING.—Section 206 (16 U.S.C. 1826) is amended—

(1) in subsection (e), by striking paragraphs (3) and (4), and redesignating paragraphs (5) and (6) as (3) and (4), respectively; and

(2) in subsection (f), by striking ''(e)(6),'' and inserting ''(e)(4),''.

SEC. 107. NATIONAL STANDARDS.

(a) Section 301(a)(5) (16 U.S.C. 1851(a)(5)) is amended by striking ''promote'' and inserting ''consider''.

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

''(8) Conservation and management measures shall take into account the importance of the harvest of fishery resources to minimize, to the extent practicable, adverse economic impacts on, and provide for the sustained participation of, fishing communities; except that no such measure shall have economic allocation as its sole purpose.

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

''(10) Conservation and management measures shall promote the safety of human life at sea.''.

SEC. 108. REGIONAL FISHERY MANAGEMENT COUNCILS.

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

(1) by inserting ''(1)'' after the subsection heading;

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

(3) by striking ''section 304(f)(3)'' wherever it appears and inserting ''paragraph (3)'';

(4) in paragraph (1)(B), as amended—

(A) by striking ''and Virginia'' and inserting ''Virginia, and North Carolina'';

(B) by inserting ''North Carolina, and'' after ''except'';

(C) by striking ''19'' and inserting ''21''; and

(D) by striking ''12'' and inserting ''13''; and

(5) by striking paragraph (1)(F), as redesignated, and inserting the following:

''(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).'';

(6) by indenting the sentence at the end thereof and inserting ''(2)'' in front of ''Each Council''; and

(7) by adding at the end the following:

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

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

(1) by striking ''subsection (b)(2)'' in paragraph (1)(C) and inserting ''paragraphs (2) and (5) of this subsection'';

(2) by inserting ''full'' before ''consecutive'' in the second sentence of paragraph (3); and

(3) by striking paragraph (5) and inserting after paragraph (4) the following:

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

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

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

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

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

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

''(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) 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) Section 302(d) (16 U.S.C. 1852(d)) is amended in the first sentence—

(1) by striking ''each Council,'' and inserting ''each Council who are required to be appointed by the Secretary and''; and

(2) by striking ''shall, until January 1, 1992,'' and all that follows through ''GS–16'' and inserting ''shall receive compensation at the daily rate for GS–15, step 7''.

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

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

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

''(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 under section 304(g). 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.''.

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

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

(2) by striking ''section 204(b)(4)(C),'' in paragraph (2) and inserting ''section 204(b)(4)(C) or section 204(d),''.

(g) Section 302 is amended further by striking subsection (i), and by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(h) Section 302(i), as redesignated, is amended—

(1) by striking ''of the Councils'' in paragraph (1) and inserting ''established under subsection (g)'';

(2) by striking ''of a Council:'' in paragraph (2) and inserting ''established under subsection (g):'';

(3) in paragraph (2)(C)—

(A) by striking ''Council's'';

(B) by adding the following at the end: ''The published agenda of the meeting may not be modified without public notice or within 14 days prior to the meeting date.'';

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

(5) by striking paragraph (2)(E) and inserting:

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

(6) in paragraph (2)(F)—

(A) by striking ''by the Council'' the first place it appears;

(B) by inserting ''or the Secretary, as appropriate'' after ''of the Council''; and

(C) by striking ''303(d)'' each place it appears and inserting ''402(b)''.

(i) Section 302(j), as redesignated, is amended—

(1) by inserting ''AND RECUSAL'' after ''INTEREST'' in the subsection heading;

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

''(1) For the purposes of this subsection—

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

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

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

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

(3) by striking ''(1)(A)'' in paragraph (3)(A) and inserting ''(1)(A)(i)'';

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

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

(6)(A) by striking ''and'' at the end of paragraph (5)(A);

(B) by striking the period at the end of paragraph (5)(B) and inserting a semicolon and the word ''and''; and

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

''(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.'';

(7) by striking ''(1) (B) or (C)'' in paragraph (6) and inserting ''(1)(A)(ii)'';

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

''(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 disproportionate benefit, shared only by a minority of persons within the same fishery and gear type, to the financial interest. 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 shall state for the record how he or she would have voted on such decision if he or she had voted.

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

''(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of this 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).''; and

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

SEC. 109. FISHERY MANAGEMENT PLANS.

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

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

''(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 where practicable adverse effects on such habitat caused by fishing, and identify other actions which should be considered to encourage the conservation and enhancement of such habitat.''

(2) by striking ''and'' at the end of paragraph (8);

(3) by inserting ''and fishing communities'' after ''fisheries'' in paragraph (9)(A);

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

(5) by adding at the end the following:

''(10) specify objective and measurable criteria for 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 Secretary has determined is overfished, or is approaching an overfished condition, contain conservation and management measures to rebuild the fishery;

''(11) assess the amount and type of bycatch occurring in the fishery, and, to the extent practicable and in the following priority, include conservation and management measures to—

''(A) minimize bycatch; and

''(B) minimize the mortality of bycatch which cannot be avoided;

''(12) assess the amount and type of fish caught during recreational fishing, and to the extent practicable, include conservation and management measures to minimize the mortality of fish caught and released that are the target species of recreational fishing, under catch and release programs;

''(13) take into account the safety of human life at sea.''.

(b) IMPLEMENTATION.—Not later than 18 months after the date of enactment of this Act, each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this Act.

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

(1) in paragraph (6)—

(A) by striking ''system for limiting access to'' and inserting ''limited access system for''; and

(B) by striking ''fishery'' in subparagraph (E) and inserting ''fishery and fishing community'';

(2) by inserting ''one or more'' in paragraph (8) after ''require'';

(3) by striking ''and'' at the end of paragraph (9);

(4) by redesignating paragraph (10) as paragraph (11); and

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

''(10) include, consistent with the other provisions of this Act, conservation and management measures that provide a harvest preference or other incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch; and''.

(d) REGULATIONS.—Section 303 (16 U.S.C. 1853) is amended by striking subsection (c) and inserting the following:

''(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of implementing a fishery management plan or plan amendment may be submitted to the Secretary for action under section 304—

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

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

(e) INDIVIDUAL FISHING QUOTAS.—Subsection 303 (16 U.S.C. 1853) is amended further by striking subsections (d), (e), and (f), and inserting the following:

''(d) INDIVIDUAL FISHING QUOTAS.—

''(1)(A) A Council may not recommend and the Secretary may not approve or implement any fishery management plan, plan amendment or regulation under this Act which creates a new individual fishing quota program during the fiscal years for which funds are authorized under section 4.

''(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 resubmitted by the Secretary to the appropriate Council and shall not be recommended, approved or implemented during the moratorium set forth in paragraph (1).

''(2)(A) No provision of law shall be construed to limit the authority of a Council to recommend 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 system.

''(B) This subsection shall not be construed to prohibit a Council from recommending and the Secretary from approving amendments to a fishery management plan, plan amendment, or regulation which implement an individual fishing quota program, if such program was approved prior to January 4, 1995.

''(3) Individual fishing quotas shall be considered permits for the purposes of sections 307, 308 and 309.

''(4)(A) A Council may recommend, and the Secretary may approve and administer, a program which allows up to 25 percent of any fees collected 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 guarantee or make a commitment to guarantee, payment of principal of and interest on an obligation which aids in financing the—

''(i) purchase of individual fishing quotas by fishermen who fish from small vessels; and

''(ii) first-time purchase of individual fishing quotas by entry level fishermen.

''(B) A Council making a recommendation 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.''.

(f) INDIVIDUAL FISHING QUOTA REPORT.—(1) Not later than June 1, 1999, the Secretary, in consultation with the Councils and National Academy of Sciences, shall submit to the Congress a comprehensive report on individual fishing quotas, which shall propose amendments to the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to implement a national policy with respect to individual fishing quotas. The report shall address all aspects of such quotas, including an assessment of the impacts and advisability of—

(A) limiting or prohibiting the transferability of such quotas;

(B) mechanisms to prevent foreign control of United States fisheries under individual fishing quota programs, including mechanisms to prohibit persons who are not eligible to be deemed a citizen of the United States for the purpose of operating a vessel in the coastwise trade under section 2(a) and section 2(c) of the Shipping Act, 1916 (46 U.S.C. 802) from holding individual fishing quotas;

(C) limiting the duration of individual fishing quota programs;

(D) providing revocable Federal permits to process a quantity of fish that correspond to individual fishing quotas;

(E) mechanisms to provide for diversity and to minimize adverse social and economic impacts on fishing communities, other fisheries affected by the displacement of vessels, and any impacts associated with the shifting of capital value from fishing vessels to individual fishing quotas, as well as the advisability of allowing capital construction funds to be used to purchase individual fishing quotas;

(F) mechanisms to provide for effective monitoring and enforcement, including incentives to reduce economic discards and allow for the inspection of fish harvested;

(G) establishing threshold criteria for determining whether a fishery may be considered for individual fishing quota management, including criteria related to geographical range, population dynamics and condition of a fish stock, characteristics of a fishery, and participation by commercial and recreational fishermen in the fishery;

(H) mechanisms to ensure that vessel owners, vessel masters, crew members, and United States fish processors are treated fairly and equitably in initial allocations, to require persons holding individual fishing quotas to be on board a vessel, and to facilitate new entry under individual fishing quota programs;

(I) allowing individual fishing quotas to be sold by the Federal government through auctions; and

(J) such other matters as the Secretary deems appropriate.

(2) The report shall include a detailed analysis of individual fishing quota programs already implemented in the United States, including the impacts of transferability, the impacts on past and present participants, on fishing communities, on the rate and total amount of bycatch (including economic and regulatory discards) in the fishery, on the safety of life and vessels in the fishery, on any excess harvesting or processing capacity in the fishery, on any gear conflicts in the fishery, on product quality from the fishery, on the effectiveness of enforcement in the fishery, and on the size and composition of fishing vessel fleets. The report shall also include any information about individual fishing quota programs in other countries that may be useful.

(3) The report shall identify alternative conservation and management measures, including other limited access systems, that could accomplish the same objectives as individual fishing quota programs, as well as characteristics that are unique to individual fishing quotas.

(4) The Secretary shall, in consultation with the Councils, the fishing industry, affected States, conservation organizations and other interested persons, establish two individual fishing quota review groups to assist in the preparation of the report, which shall represent: (A) Alaska, Hawaii, and Pacific Coast States; and (B) Atlantic Coast and Gulf of Mexico States. The Secretary shall, to the maximum extent practicable, attempt to achieve a balanced representation of viewpoints among the individuals on each review group. The review groups shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(5) The Secretary shall conduct public hearings in each Council region to obtain comments on individual fishing quotas in preparing the report, and shall publish in the Federal Register a notice and opportunity for public comment on the draft of the report, or any revision thereof. The dissenting views of any Council or affected State shall be included in the final report.

(6) In the event that the authorization of appropriations under section 4 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) expires prior to enactment of amendments to such Act implementing a national policy with respect to individual fishing quotas, a Council may recommend and the Secretary may approve new individual fishing quota programs only with the approval of a two-thirds majority of voting members of the Council. In such event, the Councils and Secretary shall take into account changes that may be required upon enactment of such amendments.

(g) NORTH PACIFIC LOAN PROGRAM.—(1) By not later than January 1, 1997, the North Pacific Fishery Management Council shall recommend to the Secretary a program which uses the full amount of fees authorized to be used under section 303(d)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)) in the halibut and sablefish fisheries off Alaska to guarantee obligations in accordance with such section.

(2)(A) For the purposes of this subsection, the phrase ''fishermen who fish from small vessels'' in section 303(d)(4)(A)(i) of such Act shall mean fishermen wishing to purchase individual fishing quotas for use from Category B, Category C, or Category D vessels, as defined in 50 CFR 676.20(a)(2) (iii) and (iv), whose aggregate ownership of individual fishing quotas will not exceed the equivalent of a total of 50,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made if the guarantee is approved, who will participate aboard the vessel in the harvest of fish caught under such quotas, who have at least 150 days' experience working as part of the harvesting crew in any U.S. commercial fishery, and who do not own in whole or in part any Category A or Category B vessel.

(B) For the purposes of this subsection, the phrase ''entry level fishermen'' in section 303(d)(4)(A)(ii) of such Act shall mean fishermen who do not own any individual fishing quotas, who wish to obtain the equivalent of not more than a total of 8,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made, and who will participate aboard a vessel in the harvest of fish caught under such quotas.

(h) Nothing in the Sustainable Fisheries Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program.

SEC. 110. ACTION BY THE SECRETARY.

(a) SECRETARIAL REVIEW OF PLANS AND REGULATIONS.—Section 304 (16 U.S.C. 1854) is amended by striking subsections (a) and (b) and inserting the following:

''(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 plan 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 plan amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

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

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

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

''(C) consult with the Secretary of the department in which the Coast Guard is operating

with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

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

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

''(B) the nature of such inconsistencies; and

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

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

''(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 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, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

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

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

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

(b) PREPARATION BY THE SECRETARY.—Section 304(c) (16 U.S.C. 1854(c)) is amended—

(1) by striking ''fishery,'' in paragraph (1) and inserting ''fishery (other than a fishery to which section 302(a)(3) applies),''

(2) by striking all that follows ''as the case may be.'' in paragraph (1);

(3) by striking paragraph (2) and inserting :

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

(4) by inserting ''under this subsection'' after ''him'' in paragraph (3); and

(5) by striking ''system described in section 303(b)(6)'' in paragraph (3) and inserting ''system, including any individual fishing quota system''.

(c) INDIVIDUAL FISHING QUOTA FEES.—Section 304(d) (16 U.S.C. 1854(d)) is amended—

(1) by inserting ''(1)'' immediately before the first sentence; and

(2) by inserting the at the end the following:

''(2) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee of up to 3 percent of the annual ex-vessel value of fish harvested under any individual fishing quota program or community development quota program to recover the costs directly related to the management and enforcement of such program. Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be an offsetting collection available only to the Secretary for the purposes of administering and implementing this Act in the fishery in which the fees were collected.''.

(d) DELAY OF FEES.—Notwithstanding any other law, the Secretary shall not begin the collection of fees under section 304(d)(2) from persons holding individual fishing quotas in the surf clam and ocean quahog fishery or in the wreckfish fishery until January 1, 2000.

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

''(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) In addition, if the Secretary determines at any time that a fishery is overfished, the Secretary immediately shall 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 or notification under this subsection, the Council (or the Secretary, consistent with section 304(g) and where practicable for fisheries under section 302(a)(3)) shall prepare a fishery management plan, a plan amendment, or proposed regulations for fisheries under the authority of such Council or the Secretary—

''(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 under this section 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 and other economic interests, 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 or other environmental conditions 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 the traditional participation by fishermen of the United States in the fishery relative to other nations.

''(5) If, within the one-year period beginning on the date of identification or notification, the Council does not submit to the Secretary a fishery management plan, plan amendment or proposed regulations under paragraph (3)(A), the Secretary shall within nine months prepare under subsection (c) a fishery management plan or plan amendment to stop overfishing and rebuild affected stocks of fish.

''(6) During the development of a fishery management plan, a plan amendment, or proposed regulations under this subsection, the Council may request the Secretary to implement interim measures, to be replaced by such plan, amendment or regulations, to reduce overfishing. 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 implemented under 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 under paragraph (2).''.

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—Section 304(f) is amended by striking paragraph (3).

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—Section 304 (16 U.S.C. 1854) is amended further by striking subsection (g) and inserting the following:

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

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

''(2)(A) 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; and

''(B) consult with and consider the comments and views of affected Councils, as well as commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species and the advisory panel established under section 302(g);

''(3) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

''(4) 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;

''(5) 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 fishing mortality level;

''(6) 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;

''(7) 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

''(8) ensure that conservation and management measures adopted under this paragraph—

''(A) promote international conservation of the affected fishery;

''(B) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

''(C) are fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose;

''(D) minimize the discarding of Atlantic highly migratory species which cannot be returned to the sea alive; and

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

(h) REVIEW OF SECRETARIAL PLAN.—Section 304, as amended, is amended further by adding at the end the following:

''(h) REVIEW OF SECRETARIAL PLAN.—

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

''(i) for a plan or amendment prepared under subsection (c), submit such plan or amendment to the appropriate Council for consideration and comment; and

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

''(B) Whenever a plan or amendment is submitted under paragraph (1)(A)(i), 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 subparagraph (A)(ii). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, data, or comments submitted under subparagraph (A)(ii), may adopt such plan or amendment.

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

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

SEC. 111. OTHER REQUIREMENTS AND AUTHORITY.

(a) Section 305 (18 U.S.C. 1855) is amended—

(1) by striking the title and subsection (a);

(2) by redesignating subsection (b) as subsection (f); and

(3) by inserting the following before subsection (f), as redesignated:

''SEC. 305. OTHER REQUIREMENTS AND AUTHORITY.

''(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 shall 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.

''(b) FISH HABITAT.—

''(1)(A) The Secretary shall, within six months of the date of enactment of the Sustainable Fisheries Act, establish 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 the actions which should be considered to ensure the conservation and enhancement of such habitat, and set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat.

''(B) The Secretary 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 undertaken, or proposed to be 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 undertaken, or proposed to be 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 undertaken, or proposed to be 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 paragraph (4)(A), a Federal agency shall provide a detailed response, in writing, to the commenting Council and the Secretary regarding the matter. The response shall include a description of measures being considered by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.''.

(b) Section 305(c) (16 U.S.C. 1855(c) is amended by striking paragraph (3) and by inserting the following after paragraph (2):

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

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

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

''(C) that responds to a public health emergency may remain in effect until the circumstances that created the emergency no longer exist, provided that the Secretary of Health and Human Services concurs with the Secretary's action and the public has an opportunity to comment after the regulation is published; 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 promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.''.

(c) Section 305(e) is amended by striking ''12291, dated February 17, 1981'' and inserting ''12866, dated September 30, 1993''.

(d) Section 305, as amended, is further amended by adding at the end the following:

''(g) NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES.—(1)(A) A Council or the Secretary may, in accordance with regulations promulgated by the Secretary pursuant to this paragraph, establish a fishery negotiation panel to assist in the development of specific conservation and management measures for a fishery under authority of such Council or the Secretary.

''(B) No later than 180 days after the enactment of this section, 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) Upon receipt of a report containing proposed conservation and management measures from a negotiation panel convened under this subsection, the report shall be published 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 include all or any portion of a report from a negotiation panel established under this subsection in a

fishery management plan or plan amendment 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 Fishery Act, the Secretary shall establish an exclusive central registry system (which may be administered on a regional basis) for any limited access system permits established under section 303(b)(6) or other Federal law, including individual fishing quotas, 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 nonjudicial 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 section 6323 of the Internal Revenue Code of 1986 (26 U.S.C. 6323).

''(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) Notwithstanding section 304(d)(1), the Secretary may collect a reasonable fee of not more than one-half of one percent of the value of limited access system permits upon registration and transfer to recover the costs of administering the central registry system.''.

(e) REGISTRY TRANSITION.—Security interests on permits described under section 305(h)(1) that are effective and perfected by otherwise applicable law on the date of the final regulations implementing section 305(h) shall remain effective and perfected if, within 120 days after such date, the secured party submits evidence satisfactory to the Secretary and in compliance with such regulations of the perfection of such security.

SEC. 112. PACIFIC COMMUNITY FISHERIES.

(a) HAROLD SPARCK MEMORIAL COMMUNITY DEVELOPMENT PROGRAM.—Section 305, as amended, is amended further by adding at the end:

''(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 be eligible to participate in the western Alaska community development quota program under paragraph (1), 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 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; and

''(iv) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act 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 and Aleutian Islands management area; 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) During the fiscal years for which funds are authorized under section 4, the North Pacific Council may not recommend 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 recommended that a percentage of the total allowable catch be allocated to western Alaska community development quota programs.

''(ii) During the fiscal years for which funds are authorized under section 4, 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 recommended by the North Pacific Council to the Secretary prior to October 1, 1995, the Secretary shall, notwithstanding any expiration date in such plan, plan amendment, or regulation, allocate to the program a percentage of the total allowable catch that is no greater than the percentage described in such plan or plan amendment.

''(D) The Secretary shall deduct from any fees collected under section 304(d)(2) for fish harvested under the western Alaska community development quota program costs incurred by fishing vessels in the program for observer or reporting requirements which are in addition to observer or reporting requirements of other fishing vessels in the fishery in which the allocation to such program has been made.

''(2)(A) The Western Pacific Council and the Secretary may establish a western Pacific community development program which may include an allocation of a percentage of the total catch of any fishery, limited entry permits, or other quotas related to vessel size and fishing zones to 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, and based on historical fishing practices in and dependence on the fishery, the cultural and social framework relevant to the fishery, and economic barriers to access to the fishery;

''(iii) consist of community residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters within the Western Pacific Regional Management Area;

''(iv) not have previously developed harvesting or processing capability sufficient to support substantial participation in the western Pacific Regional Fishery Management Area; and

''(v) develop and submit a Community Development Plan to the Western Pacific Council and Secretary.

''(C) For the purposes of this subsection—

''(i) 'Western Pacific Regional Management Area' means the area under the jurisdiction of the Western Pacific Council, or an island within such area; and

''(ii) 'western Pacific community' means any community located in the Western Pacific Regional Management Area where a majority of the inhabitants are descended from the aboriginal peoples indigenous to the area and in which traditional fishing practices are or have been historically used for subsistence or commercial purposes.

''(D) 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.

''(E) After the date of enactment of the Sustainable Fisheries Act, no Council may recommend a community development quota program except as provided in this subsection.''.

(b) WESTERN PACIFIC DEMONSTRATION PROJECTS.—(1) The Secretary and Secretary of Interior are 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, which shall not exceed a total of $500,000 in each fiscal year.

(2) Demonstration project 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 any such demonstration project.

(3)(A) The Western Pacific Fishery Management Council, in consultation with the Secretary shall establish an advisory panel under section 302(g)(2) of the Sustainable Fisheries Act to evaluate, determine the relative merits of, and annually rank applications for such grants, which shall consist of not more than eight 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 or Secretary of 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 for the reasons thereof.

(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 have the same meaning as such term has in section 305(i)(2)(C)(ii) of the Magnuson Fishery Conservation and Management Act.

SEC. 113. STATE JURISDICTION.

(a) Paragraph (3) of section 306(a) (16 U.S.C. 1856(a)) is amended to read as follows:

''(3)(A) A State may regulate a fishing vessel outside the boundaries of the State if the fishing vessel is registered under the law of that State, and—

''(i) there is no fishery management plan in place for that fishery; or

''(ii) if there is a fishery management plan or plan amendment in place for that fishery, the State's laws and regulations are consistent with the purposes of that fishery management plan or plan amendment.

''(B) For the purposes of this paragraph, the term 'registered under the law of that State' means that—

''(i) the owner, captain, or vessel holds a fishing license, or other document that is a prerequisite to participating in the fishery, issued by the State;

''(ii) the vessel is numbered by the State in accordance with chapter 123 of title 46, United States Code; or

''(iii) the documentation of the vessel under chapter 121 of title 46, United States Code, identifies the vessel's homeport as located in the State.''.

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

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

''(4) For any fishery occurring off Alaska for which there is no fishery management plan approved and implemented under this Act, or pursuant to a fishery management plan under this Act, the State of Alaska may enforce its fishing laws and regulations in the exclusive economic zone off Alaska, provided there is a legitimate State interest in the conservation and management of the fishery, until a Federal fishery management plan is implemented for any such fishery which does not allow for such enforcement. Fisheries in the exclusive economic zone off Alaska currently managed pursuant to a Federal fishery management plan shall not be removed from Federal management and placed under State authority without the unanimous consent (except for the Regional Director of the National Marine Fisheries Service) of the North Pacific Council. The preceding sentence shall not be construed to require the North Pacific Council to unanimously vote to continue a fishery management plan under which the State of Alaska is already principally involved in the management or enforcement of a fishery.''.

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

(1) by striking ''and'' in subparagraph (A);

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

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

''(C) the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.''.

SEC. 114. PROHIBITED ACTS.

(a) Section 307(1)(J)(i) (16 U.S.C. 1857(1)(J)(i)) is amended—

(1) by striking ''plan,'' and inserting ''plan''; and

(2) by inserting before the semicolon the following: '', or in the absence of any such plan is smaller than the minimum possession size in effect at the time under the Atlantic States Marine Fisheries Commission's American Lobster Fishery Management Plan (and, for purposes of this clause, if the Secretary withdraws the Federal plan or any successor to that plan, and the Atlantic States Marine Fisheries Commission has not implemented a plan to manage the American Lobster Fishery, the minimum possession size in effect at the time the American Lobster Fishery Management Plan was withdrawn shall remain in effect until the Atlantic States Marine Fisheries Commission implements a plan that contains a minimum possession size)''.

(b) Section 307(1)(K) (16 U.S.C. 1857(1)(K)) is amended by striking ''knowingly steal or without authorization, to'' and inserting ''to steal or to negligently and without authorization''.

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

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

(d) Section 307(1) (16 U.S.C. 1857(1)) is amended—

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

(2) by striking ''pollock.'' in subparagraph (N) and inserting ''pollock; or'', and

(3) by adding at the end the following:

''(O) to knowingly and willfully fail to disclose or falsely disclose any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A).''.

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

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

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

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

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

(f) Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is amended by striking ''204 (b) or (c)'' and inserting ''204 (b), (c), or (d)''.

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

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

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

SEC. 115. CIVIL PENALTIES AND PERMIT SANCTIONS; REBUTTABLE PRESUMPTIONS.

(a) Section 308(a) (16 U.S.C. 1858(a)) is amended by striking ''ability to pay,''.

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

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

(d) Section 310(e) (16 U.S.C. 1860(e)) is amended by adding at the end the following new paragraph:

''(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. 116. ENFORCEMENT.

(a) The second sentence of section 311(d) (16 U.S.C. 1861(d)) is amended—

(1) by striking ''Guam, any Commonwealth, territory, or'' and inserting ''Guam or any''; and

(2) by inserting a comma before the period and the following: ''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''.

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

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

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

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

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

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

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

(d) Section 311 (16 U.S.C. 1861) is amended by redesignating subsection (g) as subsection (i), and by inserting the following after subsection (f):

''(g) ENFORCEMENT IN THE PACIFIC INSULAR AREAS.—The Secretary, in consultation with the Governors of the Pacific Insular Areas and the Western Pacific Regional Fishery Management Council, shall to the extent practicable support cooperative enforcement agreements between Federal and Pacific Insular Area authorities.

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

''(1) an analysis of the adequacy of Federal personnel and funding resources related to the enforcement of fishery management plans and regulations to implement such plans; and

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

(e) Section 311 (16 U.S.C. 1861), as amended by subsection (d), is amended by striking ''201 (b), (c),'' in subsection (i)(1), as redesignated, and inserting ''201 (b) or (c), or section 204(d),''.

SEC. 117. NORTH PACIFIC AND NORTHWEST ATLANTIC OCEAN FISHERIES.

(a) NORTH PACIFIC FISHERIES CONSERVATION.—Section 313 (16 U.S.C. 1862) is amended—

(1) by striking ''RESEARCH PLAN'' in the section heading and inserting ''CONSERVATION''; and

(2) by adding at the end the following:

''(f) BYCATCH REDUCTION.—In implementing section 303(a)(11) and this section, the North Pacific Council shall recommend conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

''(g) BYCATCH REDUCTION INCENTIVES.—(1) Notwithstanding section 304(d), the North Pacific Council may recommend, and the Secretary may approve, consistent with the provisions of this Act, a system of fees in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fees shall not exceed one percent of the estimated annual ex-vessel value of the target species in the fishery. Any fees collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fees were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such fees were derived and in which the State is directly involved in management or enforcement.

''(2)(A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may recommend, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, provided that—

''(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

''(ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.

''(B) The North Pacific Council may recommend restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

''(h) CATCH MEASUREMENT.—(1) By June 1, 1997, the North Pacific Council shall recommend, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under its jurisdiction. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.

''(2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

''(i) FULL RETENTION AND UTILIZATION.—(1) The North Pacific Council shall submit to the Secretary by June 1, 1999, a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery.

''(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, 'processing waste' means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.''.

(b) NORTHEAST ATLANTIC OCEAN FISHERIES.—Section 314 (16 U.S.C. 1863) is amended by striking ''1997'' in subsection (a)(4) and inserting ''2000''.

SEC. 118. TRANSITION TO SUSTAINABLE FISHERIES.

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

''SEC. 315. FISHING CAPACITY REDUCTION PROGRAMS.

''(a) IN GENERAL.—(1) The Secretary, with the approval of the appropriate Council, may conduct a fishing capacity reduction program (referred to in this section as the 'program') in a fishery if the Secretary determines that—

''(A) the program is necessary to prevent or end overfishing, rebuild stocks of fish, or adequate to achieve measurable and significant improvements in the conservation and management of the fishery;

''(B) the fishery management plan implemented for the fishery—

''(i) is consistent with the program objective;

''(ii) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures and accounting for the full potential capacity of the fleet; and

''(iii) establishes a specified or target total allowable catch that triggers closure of the fishery or proportional adjustments to reduce catch; and

''(C) the program is cost-effective and capable of repaying any debt obligation incurred under section 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271 et seq.).

''(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 the owners of—

''(A) permits authorizing participation in the fishery, Provided that such permits are surrendered for permanent revocation; or

''(B) fishing vessels, Provided that any 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.

''(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

''(4) The Secretary shall consult with the appropriate Council, other Federal agencies, appropriate regional authorities, affected States and fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program.

''(b) 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.A. 713c–3(b)(1)(A); Saltonstall-Kennedy Act);

''(B) appropriated for fisheries disaster relief under section 316 of this Act or section 308 of the Interjurisdictional Fisheries Act (16 U.S.C. 4107);

''(C) provided by an industry fee system under this section and in accordance with section 1112 of title XI of the Merchant Marine Act, 1936; and

''(D) provided from any State or other public sources and private or nonprofit organizations.

''(2) All funds for the program, including any fees established under subsection (c), shall be paid into the fishing capacity reduction fund established under section 1112 of title XI of the Merchant Marine Act, 1936.

''(c) INDUSTRY FEE SYSTEM.—(1)(A) If an industry fee system is necessary to fund the program, the Secretary, with the approval of the appropriate Council, may conduct a referendum on such system. Prior to the referendum, the Secretary, in consultation with the Council, shall—

''(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program and who meet eligibility requirements for participation in the referendum; and

''(ii) make available to such owners information about the industry fee system describing the schedule and procedures for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the 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.

''(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 1112 of title XI of the Merchant Marine Act, 1936. The fees for a program under this section shall—

''(A) be established by the Secretary and adjusted from time to time as the Secretary determines necessary to ensure the availability of sufficient funds to repay such debt obligations;

''(B) not exceed 5 percent of the gross sale proceeds of all fish landed from the fishery for which the program is established;

''(C) be deducted by the first ex-vessel fish purchaser from the gross fish sales 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; and

''(D) be in effect only until such time as the debt obligation has been fully paid.

''(d) IMPLEMENTATION PLAN.—(1) The Secretary, in consultation with the appropriate Council and other interested parties, shall prepare and publish in the Federal Register for a 60-day public comment period, an implementation plan 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, any strategy developed under section 316, 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 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, 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.''.

(b) The Secretary of Commerce shall establish a task force comprised of interested parties to study and report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives within two years of the date of enactment of this Act on the role of the Federal government in—

(1) subsidizing the expansion and contraction of fishing capacity in fishing fleets managed under the Magnuson Fishery Conservation and Management Act; and

(2) otherwise influencing the aggregate capital investments in fisheries.

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

''SEC. 316. TRANSITION TO SUSTAINABLE FISHERIES.

''(a) SUSTAINABLE DEVELOPMENT STRATEGY.—(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary, in consultation with the Councils and Federal agencies, as appropriate, may work with regional authorities, affected States, fishing communities, the fishing industry, conservation organizations, and other interested parties, to develop a sustainable development strategy for any fishery identified as overfished under section 304(d) or determined to be a commercial fishery failure under this section or any other Federal fishery for which a fishery management plan is being developed or amended under section 303.

''(2) Such sustainable development strategy shall—

''(A) develop a balanced and comprehensive long-term plan to guide the transition to a sustainable fishery and the development of fishery management plan under section 303 or a fishery rebuilding effort under section 304(d) which—

''(i) takes into consideration the economic, social, and environmental factors affecting the fishery;

''(ii) identifies alternative economic opportunities; and

''(iii) establishes long-term objectives for the fishery including vessel types and sizes, harvesting and processing capacity, and optimal fleet size;

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

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

''(3) The Secretary shall complete and submit to the Congress a report on any sustainable development strategy developed under this section within 6 months after it is developed and annually thereafter.

''(b) FISHERIES DISASTER RELIEF.—(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishery 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; 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 into other fisheries or other geographic regions.

''(3) The Federal share of the cost of any activity carried out under the authority of this section shall not exceed 75 percent of the cost of that activity.

''(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 1995, 1996, 1997, 1998, 1999, and 2000.''.

(d) Section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c3(b)(1)(A)) is amended—

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

(2) by striking the period at the end of clause (iii) and inserting a semicolon and the word ''and''; and

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

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

TITLE II—FISHERY MONITORING AND RESEARCH

SEC. 201. CHANGE OF TITLE.

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

''TITLE IV—FISHERY MONITORING AND RESEARCH''.

SEC. 202. REGISTRATION AND DATA MANAGEMENT.

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

''SEC. 401. REGISTRATION AND DATA MANAGEMENT.

''(a) STANDARDIZED FISHING VESSEL REGISTRATION AND DATA MANAGEMENT SYSTEM.—The Secretary shall, in cooperation with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, develop recommendations for implementation of a standardized fishing vessel registration and data management system on a regional basis. The proposed system shall be developed after consultation with interested governmental and nongovernmental parties and shall—

''(1) be designed to standardize the requirements of vessel registration and data 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 programs under existing fishery management plans into a nonduplicative data collection and management system;

''(3) avoid duplication of existing state, tribal, or federal systems (other than a federal system under paragraph (1)) and utilize, to the maximum extent practicable, information collected from existing systems;

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

''(5) provide for authorization of 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 vessels carrying a passenger for hire engaged in recreational fishing, except for private recreational fishing vessels used exclusively for pleasure;

''(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 data (other than economic data) which may be necessary to meet the goals of the proposed system; and

''(10) prescribe 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 complete and accurate information collected under this section.

''(b) FISHING VESSEL REGISTRATION.—The 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 data management system should, at a minimum, provide basic fisheries performance data for each fishery, including—

''(1) the number of vessels participating in the fishery including vessels carrying a passenger for hire engaged in recreational fishing;

''(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 fishery effort; and

''(5) other such data as required under subsection 303(a)(5).

''(d) DEFINITION.—For the purposes of this section, the term 'passenger for hire' shall have the same meaning as the definition for such term in section 2102(21a) of title 46, United States Code.

''(e) USE OF REGISTRATION.—Any registration under this section shall not be considered a permit for the purposes of this Act, and the Secretary may not revoke, suspend, deny, or impose any other conditions or restrictions on any such registration or the use of such registration under this Act.

''(f) PUBLIC COMMENT.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register for a 60-day public comment period, a proposal that would provide for implementation of a standardized fishing vessel registration and data collection system that meets the requirements of subsections (a) through (c). The proposal shall include—

''(1) a description of the arrangements for consultation and cooperation with the department in which the Coast Guard is operating, the States, the Councils, Marine Fisheries Commissions, the fishing industry and other interested parties; and

''(2) any proposed regulations or legislation necessary to implement the proposal.

''(g) CONGRESSIONAL TRANSMITTAL.—Within 60 days after the end of the comment period and after consideration of comments received under subsection (d), 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 proposal for implementation of a national fishing vessel registration system that includes—

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

''(2) a proposed implementation schedule; and

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

''(h) REPORT TO CONGRESS.—Within 15 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall report to Congress on the need to include private recreational fishing vessels used exclusively for pleasure into a national fishing vessel registration and data 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.''.

SEC. 203. DATA COLLECTION.

Section 402 is amended to read as follows:

''SEC. 402. DATA COLLECTION.

''(a) COUNCIL REQUESTS.—If a Council determines that additional information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement a data collection program for the fishery which would provide the types of information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall approve such a data collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for a data collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after receipt of that request.

''(b) CONFIDENTIALITY OF INFORMATION.—(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 system;

''(E) unless the Secretary has obtained written authorization from the person submitting such information to release such information and such release does not violate other requirements of this subsection; or

''(F) that observer data collected under the North Pacific Research Plan may be released as specified for weekly summary bycatch data identified by vessel, and haul-specific bycatch data without vessel identification.

Nothing in this paragraph prevents the use by the Secretary, or (with the approval of the Secretary) the Council, for conservation and management purposes information submitted in compliance with regulations promulgated under this Act, or the use, release, or publication of bycatch data pursuant to paragraph (1)(F).

''(2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or 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 regulations promulgated under this Act or the use, release, or publication of bycatch data pursuant to paragraph (1)(F).

''(c) RESTRICTION ON USE OF CERTAIN DATA.—(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), or the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management 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 Federal fishing permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

''(d) CONTRACTING AUTHORITY.—In case of a program for which—

''(1) the recipient of a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, a State, Council, or a Marine Fisheries Commission; or

''(2) the Secretary has entered into a cooperative agreement with a State, Council, or Marine Fisheries Commission,

such financial assistance may be provided by the Secretary to that recipient on a sole-source basis, notwithstanding any other provision of law.

''(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; and

''(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.

''(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.''.

SEC. 204. OBSERVERS.

Section 403 is amended to read as follows:

''SEC. 403. OBSERVERS.

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

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

''(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

''(b) TRAINING.—The Secretary, in cooperation with the appropriate States and the National Sea Grant College Program, shall—

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

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

''(3) ensure that an observer has received adequate training in basic vessel safety; and

''(4) make use of university training facilities and resources, where possible, in carrying out this subsection.

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

''(d) OBSERVER STATUS.—(1) An observer on a vessel and under contract to carry out responsibilities under this Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall be deemed to be a Federal employee for the purpose of compensation for work injuries under the Federal Employee Compensation Act (5 U.S.C. 8101 et seq.)

''(2) Paragraph (1) does not apply if the observer is engaged by the owner, master, or individual in charge of the vessel to perform any duties in service to the vessel.''.

SEC. 205. FISHERIES RESEARCH.

Section 404 is amended to read as follows:

''SEC. 404. FISHERIES RESEARCH.

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

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

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

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

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

''(4) provide for collection and dissemination, in a timely manner, of complete and accurate data concerning fishing activities, catch, effort, stock assessments, and other research conducted under this section.

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

''(1) Research to support fishery conservation and management, including but not limited to, research on the economics of fisheries and biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish, the identification of essential fish habitat, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, 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) Information management research, including the development of a fishery information base and an information management system that will permit the full use of data in the support of effective fishery conservation and management.

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

SEC. 206. INCIDENTAL HARVEST RESEARCH.

Section 405 is amended to read as follows:

''SEC. 405. INCIDENTAL HARVEST RESEARCH.

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

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

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

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

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

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

''(d) BYCATCH REDUCTION PROGRAM.—Not later than twelve months after the enactment of the Sustainable Fisheries Act, the Secretary shall, in cooperation with affected interests, and based upon the best scientific information available, complete a program to—

''(1) develop technological devices and other changes in fishing operations necessary and appropriate to minimize the incidental mortality of bycatch in the course of shrimp trawl activity to the extent practicable, taking into account the level of bycatch mortality in the fishery on November 28, 1990;

''(2) evaluate the ecological impacts and the benefits and costs of such devices and changes in fishing operations; and

''(3) assess whether it is practicable to utilize bycatch which is not avoidable.

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

''(f) IMPLEMENTATION CRITERIA.— Any conservation and management measure implemented under this Act to reduce the incidental mortality of bycatch in the course of shrimp trawl fishing must be consistent with—

''(1) measures applicable to fishing throughout the range of the bycatch species concerned; and

''(2) the need to avoid any serious adverse environmental impacts on such bycatch species or the ecology of the affected area.''.

SEC. 207. MISCELLANEOUS RESEARCH.

(a) FISHERIES ECOSYSTEM MANAGEMENT RESEARCH.—Section 406 (16 U.S.C. 1882) is amended to read as follows:

''SEC. 406. FISHERIES ECOSYSTEM MANAGEMENT RESEARCH.

''(a) ESTABLISHMENT OF PANEL.—Not later than 180 days after the enactment of the Sustainable Fisheries Act, the Secretary shall establish a fisheries ecosystem management 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) ECOSYSTEM REPORT.—Within two years of the date of enactment of this Act, the Secretary shall submit to the Congress a completed report of the fisheries ecosystem management advisory panel, 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 procedural matters under section 302(j) with respect to advisory panels shall apply to the Fisheries Ecosystem Management advisory panel''.

(b) GULF OF MEXICO RED SNAPPER RESEARCH.—Title IV of the Act (16 U.S.C. 1882) is amended by adding the following new section.

''SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.

''(a) THE SECRETARY OF COMMERCE SHALL ENSURE THAT—

''(1) no later than one year after the effective date of the Sustainable Fisheries Act, an independent peer review is completed of whether—

''(A) the fishery statistics of the Secretary concerning the red snapper fishery in the Gulf of Mexico accurately and completely account for all commercial and recreational harvests and fishing effort on the stock;

''(B) the scientific methods, data and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock are appropriate under this Act;

''(C) the scientific information upon which the fishery management plan for red snapper in the Gulf of Mexico is based is appropriate under this Act;

''(D) the management measures in the fishery management plan for red snapper in the Gulf of Mexico are appropriate for conserving and managing the red snapper fishery under this Act; and

''(E) the benefits and costs of establishing an individual fishing quota program for the red snapper fishery in the Gulf of Mexico and reasonable alternatives thereto have been properly evaluated under this Act; and

''(2) commercial and recreational fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—

''(A) participate in the peer review under paragraph (1); and

''(B) provide information to the Secretary of Commerce in connection with the review of fishery statistics under paragraph (a)(1) 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 of Commerce.

''(b) The Secretary of Commerce shall submit a detailed written report on the findings of the peer review conducted under subsection (a)(1) to the Gulf of Mexico Fishery Management Council no later than one year after the effective date of the Sustainable Fisheries Act.''.

SEC. 208. STUDY OF CONTRIBUTION OF BYCATCH TO CHARITABLE ORGANIZATIONS.

(a) STUDY.—The Secretary of Commerce shall conduct a study of the contribution of bycatch to charitable organizations by commercial fishermen. The study shall include determination of—

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

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

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

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

(c) BYCATCH DEFINED.—In this section the term ''bycatch'' has the meaning given that term in section 3(2) of the Magnuson Fishery Conservation and Management Act, as amended by section 103 of this Act.

SEC. 209. STUDY OF IDENTIFICATION METHODS FOR HARVEST STOCKS.

(a) IN GENERAL.—The Secretary of Commerce shall conduct a study to determine the best possible method of identifying various Atlantic and Pacific salmon and steelhead stocks in the ocean at time of harvest. The study shall include an assessment of—

(1) coded wire tags;

(2) fin clipping; and

(3) other identification methods.

(b) REPORT.—The Secretary shall report the results of the study, together with any recommendations for legislation deemed necessary based on the study, within 6 months after the date of enactment of this Act to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 210. CLERICAL AMENDMENTS.

The table of contents is amended by striking the matter relating to title IV and inserting the following:

''Sec. 315. Fishing Capacity Reduction Programs.
''Sec. 316. Transition to sustainable fisheries.
''TITLE IV—FISHERY MONITORING AND RESEARCH
''Sec. 401. Registration and data management.
''Sec. 402. Data collection.
''Sec. 403. Observers.
''Sec. 404. Fisheries research.
''Sec. 405. Incidental harvest research.
''Sec. 406. Fisheries ecosystem management research.
''Sec. 407. Gulf of Mexico red snapper research.

TITLE III—FISHERIES FINANCING

SEC. 301. SHORT TITLE.

This title may be cited as the ''Fisheries Financing Act''.

SEC. 302. FISHERIES FINANCING AND CAPACITY REDUCTION.

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

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

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

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

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

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

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

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

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

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

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

''(1) the Secretary has first approved the fishery rebuilding effort for the fishery in which vessels eligible for the guarantee of obligations under this section are participants and has determined that such guarantees will have no adverse impacts on other fisheries in the region;

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

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

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

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

''(D) the projected effect of the fishery rebuilding effort;

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

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

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

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

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

''(h) For the purposes of this section, the term 'fishery rebuilding effort' means a fishery management plan, amendment, or regulations required under section 304(e) of the Magnuson Fishery Conservation and Management Act to rebuild a fishery which the Secretary has determined to be a commercial fishery failure under section 316 of such Act.

''SEC. 1112. (a) The Secretary is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to such conditions as the Secretary deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

''(b) Any debt obligation guaranteed under this section shall—

''(1) be treated in the same manner and to the same extent as other obligations guaranteed under this title, except with respect to provisions of this title that by their nature cannot be applied to obligations guaranteed under this section;

''(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

''(3) not exceed $100,000,000 in an unpaid principal amount outstanding at any one time for a program;

''(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

''(5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2)) and as the exclusive payment security, the fishing fees established under the program; and

''(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

''(c)(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the 'fund'). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

''(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section, Provided that funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

''(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

''(d) The Secretary is authorized and directed to issue such regulations as the Secretary deems necessary to carry out this section.

''(e) For the purposes of this section, the term 'program' means a fishing capacity reduction program established under section 315 of the Magnuson Fishery Conservation and Management Act.''.

SEC. 303. FISHERIES LOAN GUARANTEE REFORM.

(a) AMENDMENT OF MERCHANT MARINE ACT, 1936.—Section 1104A of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274) is amended—

(1) in paragraph (a)—

(A) by striking ''or'' and the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting ''; or'';

(C) by inserting the following new paragraph:

''(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 Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).''; and

(D) in the last sentence, by striking ''paragraph (6)'' and inserting ''paragraphs (6) and (7)''; and

(2) in paragraph (b)(2)—

(A) by striking ''equal to'' in the third proviso and inserting ''not to exceed''; and

(B) by striking ''except that no debt may be placed under this proviso through the Federal Financing Bank:'' in the third proviso and inserting ''and obligations related to fishing vessels and fishery facilities under this title shall be placed through the Federal Financing Bank unless placement through the Federal Financing Bank is not reasonably available or placement elsewhere is available at a lower annual yield than placement through the Federal Financing Bank:''.

(b) LIMIT ON GUARANTEES.—Fishing Vessel Obligation loan guarantees may not exceed $40,000,000 annually for the purposes of section 504(b) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c(b)).

(c) ADJUSTMENT OF FEES.—The Secretary of Commerce may take such actions as necessary to adjust fees imposed on new loan guarantee applicants to capture any savings from placement of loan guarantee obligations through the Federal Financing Bank if the total fees charged to applicants do not exceed the percentage amounts paid before the date of enactment of this Act.

(d) ADMINISTRATIVE COSTS.—(1) Fees generated from the adjustment in subsection (c) shall be deposited in the appropriate account of the Federal Ship Financing Fund. The Secretary of Commerce may transfer annually up to $1,700,000 from such account to pay for the administrative costs associated with the Fisheries

Obligation Guarantee Program if that program has resulted in job cost, as defined in section 502(5) of the Federal Credit Reform Act (2 U.S.C. 661a(5)).

(2) Fees allocated to an individual fishing quota obligation guarantee program pursuant to section 303(d)(4)(A) (16 U.S.C. 1853(d)(4)(A)) shall be placed in a separate account for each such program in the Federal Ship Financing Fund for the purpose of providing budget authority for each such program. Amounts in any such accounts shall be identified in future fiscal year budget submissions of the Executive Branch.

(e) PROHIBITION.—Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased harvesting capacity within the United States exclusive economic zone.

TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS

SEC. 401. MARINE FISH PROGRAM AUTHORIZATION OF APPROPRIATIONS.

(a) FISHERIES INFORMATION COLLECTION AND ANALYSIS.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out fisheries information and analysis activities under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, $49,340,000 for fiscal year 1996, $50,820,000 for fiscal year 1997, and $52,345,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, the collection, analysis and dissemination of scientific data necessary for the management of living marine resources and associated marine habitat.

(b) FISHERIES CONSERVATION AND MANAGEMENT OPERATIONS.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out activities relating to fisheries conservation and management operations under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, $28,183,000 for fiscal year 1996, $29,028,000 for fiscal year 1997, $29,899,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, development, implementation, and enforcement of conservation and management measures to achieve continued optimum use of living marine resources, hatchery operations, habitat conservation, and protected species management.

(c) FISHERIES STATE AND INDUSTRY COOPERATIVE PROGRAMS.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out State and industry cooperative programs under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, $22,405,000 for fiscal year 1996, $23,077,000 for fiscal year 1997, and $23,769,000 for each of the fiscal years 1998, 1999, and 2000. These activities include, but are not limited to ensuring the quality and safety of seafood products and providing grants to States for improving the management of interstate fisheries.

(d) AUTHORIZATION OF APPROPRIATIONS FOR CHESAPEAKE BAY OFFICE.—Section 2(e) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98–210; 97 Stat. 1409) is amended—

(1) by striking ''1992 and 1993'' and inserting ''1996 and 1997'';

(2) by striking ''establish'' and inserting ''operate'';

(3) by striking ''306'' and inserting ''307''; and

(4) by striking ''1991'' and inserting ''1992''.

(e) RELATION TO OTHER LAWS.—Authorizations under this section shall be in addition to monies authorized under the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 3301 et seq.), the Anadromous Fish Conservation Act (16 U.S.C. 757 et seq.), and the Interjurisdictional Fisheries Act (16 U.S.C. 4107 et seq.).

SEC. 402. INTERJURISDICTIONAL FISHERIES ACT AMENDMENTS.

(a) REAUTHORIZATION.—Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) by amending subsection (a) to read as follows:

''(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

''(1) $3,400,000 for fiscal year 1996;

''(2) $3,900,000 for fiscal year 1997;

''(3) $4,400,000 for each of the fiscal years 1998, 1999, and 2000.'';

(2) by striking ''1994 and 1995,'' in subsection (b) and inserting ''1994, 1995, 1996, 1997, 1998, 1999, and 2000''; and

(3) by striking ''$350,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, and $600,000 for each of the fiscal years 1994 and 1995,'' in subsection (c) and inserting ''$650,000 for fiscal year 1996, $700,000 for fiscal year 1997, $750,000 for each of the fiscal years 1998, 1999, and 2000,''.

(b) AMENDMENT TO IMPLEMENT THE NORTHEAST, NORTHWEST, AND GULF OF MEXICO DISASTER RELIEF PROGRAMS.—Section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)) is amended—

(1) by striking ''award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered'' in paragraph (1) and inserting ''assist persons engaged in commercial fisheries, either directly through assistance to persons or indirectly through assistance to State and local government agencies and non-profit organizations, for projects or other measures designed to alleviate impacts determined by the Secretary to have been incurred'';

(2) by striking ''a grant'' in paragraph (3) and inserting ''assistance'';

(3) by inserting '', if provided directly to a person,'' in paragraph (3) after ''subsection'';

(4) by striking out ''gross revenues annually,'' in paragraph (3) and inserting ''net annual revenue from commercial fisheries,'';

(5) by striking paragraph (4) and inserting the following:

''(4) Assistance may not be provided under this subsection as part of a fishing capacity reduction program in a fishery unless the Secretary determines that—

''(A) adequate conservation and management measures are in place in that fishery; and

''(B) adequate measures are in place to prevent the replacement of fishing capacity eliminated by the program in that fishery.''; and

(6) by striking ''awarding'' and all that follows in paragraph (5) and inserting ''assistance provided under this subsection.''.

SEC. 403. ANADROMOUS FISHERIES AMENDMENTS.

Section 4(a)(2) of the Anadromous Fish Conservation Act (16 U.S.C. 757d(a)(2)) is amended by striking ''and 1995.'' and inserting ''1995, 1996, 1997, 1998, 1999, and 2000.''.

SEC. 404. ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT AMENDMENTS.

(a) DEFINITION.—Paragraph (1) of section 803 of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5102) is amended—

(1) by inserting ''and'' after the semicolon in subparagraph (A);

(2) by striking ''States; and'' in subparagraph (B) and inserting ''States.''; and

(3) by striking subparagraph (C).

(b) IMPLEMENTATION STANDARD FOR FEDERAL REGULATION.—Subparagraph (A) of section 804(b)(1) of such Act (16 U.S.C. 5103(b)(1)) is amended by striking ''necessary to support'' and inserting ''compatible with''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 809 of such Act (16 U.S.C. 5108) is amended—

(1) by striking ''and'' after ''1995,''; and

(2) striking ''1996.'' and inserting ''1996, and $7,000,000 for each of the fiscal years 1997, 1998, 1999, and 2000.''.

SEC. 405. TECHNICAL AMENDMENTS TO MARITIME BOUNDARY AGREEMENT.

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

(b) CONFORMING AMENDMENTS.—

(1) Section 301(h)(2)(A) of the FGB Act is repealed.

(2) Section 304 of the FGB Act is repealed.

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

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

''(A) the territorial sea of the United States;

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

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

Mr. STEVENS. Mr. President, I thank the leader for his courtesy and for his support in moving forward on this bill. The statement made by the leader is correct. As I understand it, there could be, possibly, three votes tomorrow. We are going to try to work that out tonight and see what happens. It is my intention this evening to offer the managers' amendment to S. 39, which is a bill to reauthorize and strengthen the Magnuson Fisheries Conservation Management Act.

This managers' amendment will replace the substitute that was approved and reported by the Commerce Committee and will be adopted as original text when it is adopted by the Senate. This is bipartisan legislation that has been in the works now for over 3 years. We called it the ''Sustainable Fisheries Act.'' It is the most significant revision of the Magnuson Act since that bill was enacted in 1976.

I first introduced that 200-mile limit concept in the Senate, Mr. President, in 1971. We never envisioned the problems that exist today. I was very grateful to my friend from the State of

Washington—I used to call him my ''southern neighbor''—Senator Magnuson, for having worked on that bill for a period of time. It was my motion, made after the bill was passed, that named the bill after the former Senator from Washington, who had been chairman of the Commerce Committee and of the Appropriations Committee.

At that time, in the 1970's, we had two primary goals—to Americanize the fisheries off our shores within a 200-mile limit and to protect the U.S. fishery resources, or to protect the capability of the fisheries to sustain themselves.

We thought Americanization would go a long way toward conserving the fishery resources of this Nation. Foreign vessels have now given way to U.S. vessels that are capitalized now far beyond what we ever envisioned in the seventies, and the fisheries waste continues to get worse in many areas.

This bill, S. 39, revitalizes the conservation measures of the Magnuson Act. Senators KERRY, PRESSLER, HOLLINGS, MURKOWSKI, INOUYE, LOTT, SIMPSON, and PELL have cosponsored this bill that I have introduced.

I ask unanimous consent that these and others who may wish to be added as cosponsors to this bill be added for the RECORD if their request is made before the close of business today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. S. 39, for the first time, would require: First, the reduction of bycatch in fisheries; require the fishery management councils and the Secretary of Commerce to prevent overfishing; authorize a vessel and permit reduction program to help eliminate overcapacity in our fisheries capability; require council members to recuse themselves from voting on matters they would personally benefit from; require fishing communities to be considered in fishery management decisions; create a lien registry to keep track of encumbrances on limited access permits; and create a new registration system to keep track of fishing vessels themselves.

This bill, S. 39, will strengthen existing sections of the Magnuson Act to protect essential fish habitat; streamline the approval process for fishery management plans and regulations; strengthen emergency regulatory authority, and expand research activities.

The waste reduction provisions of S. 39 are particularly needed now, Mr. President. Under S. 39, the regional councils will be required to include measures in every fisheries management plan to prevent overfishing. If a council allows a fishery to become overfished, the Secretary of Commerce will be required to step in and stop it.

We continue to support having management decisions made in the regions themselves. But if the fisheries management councils have allowed a fishery to become overfished, we want it to be stopped immediately. And this bill will authorize the Secretary of Commerce to step in at that point.

But I remind the Senate that the management decisions may be made and should be made by the councils themselves, and this bill preserves that authority.

Under S. 39, the councils will also be required to reduce the amount of bycatch in every fishery around our country. This bill will give the councils new tools, including harvest incentives and penalty fees, to stop wasteful practices.

The bycatch problem is of great concern in my State of Alaska, where over half of the Nation's fish are harvested each year off our shores.

In 1995, 60 factory trawlers discarded nearly as much fish in the Bering Sea as was kept in the New England lobster fishery, the Atlantic mackerel fishery, the Gulf of Mexico shrimp fishery, the Pacific sablefish fishery, and the North Pacific halibut fishery combined.

The waste in that area was as great as the total catch of all the major fisheries off our shores. These 60 factory trawlers threw overboard—dead and unused—about one out of every four fish they caught.

I have a chart here to call to the attention of the Senate. Last year, the Bering Sea trawl vessels—this is all the trawl vessels and not just factory trawlers that are committing waste—threw 17 percent of their catch overboard, dead and not used. That total catch, as you can see by the chart, exceeds by almost 500 million pounds the total catch of all five of the major fisheries of the United States.

That is the way we are trying to find to reduce their bycatch. Bycatch is the harvest of fisheries that are not in the targeted fishery area; not the fish that a vessel is trying to catch, but the fish that is caught incidentally.

I hope that this bill will bring a stop to this inexcusable amount of waste.

This bill also addresses the divisive issue of individual fisheries quotas, the so-called IFQ's, or CTQ's.

The ''individual fishing quota'' as defined in S. 39 means both the transferable and nontransferable quotas that are known as IFQ's. We place a moratorium on new IFQ programs until September 30 in the year 2000.

In the meantime, the National Academy of Sciences will study IFQ's with the Secretary of Commerce, the councils, the regional councils, and two regional working groups to address many unresolved issues.

There are only three IFQ plans in our Nation today. Two of them are on the east coast: the wreckfish IFQ program and the surf clam IFQ program.

The largest IFQ program went into effect last year in the halibut/black cod fisheries off my State of Alaska. The Alaska program involves almost 100 times as much fishing vessels as the two east coast programs.

IFQ's are a new tool that we did not even consider in 1990, the last time we reauthorized the Magnuson Act. They were not even dreamed of when we first passed the Magnuson Act.

Unlike other limited access systems, IFQ's allow the potential consolidation of fishing efforts in a fishery. This characteristic may provide a useful tool to allow the market to drive a reduction in fishing capacity when needed, Mr. President. However, it has potential negative and other unknown effects.

We are worried about the new level of capital requirements of IFQ's. We are worried that fisheries will become investor owned totally under IFQ's and not the family traditional fishing that has been the hallmark of America's fisheries. We are worried about the impact of IFQ's on the fishing communities themselves. And we are worried about foreign control of IFQ's, once they are established, and the fisheries themselves if a rigid U.S. ownership standard is not set for them.

In other words, we Americanized the system. And, now, if we really let IFQ's go unrestrained, we could really end up with more ownership of the IFQ's and destroy the whole purpose of the Magnuson Act to create an Americanized zone within which we would protect our fisheries and have a conservation ethic to be the major goal of the Magnuson Act.

The Magnuson Act, this bill, would permanently ban transferable IFQ's in the House version that we received. That was H.R. 39.

Our Senate bill puts a 4-year moratorium on both transferable and nontransferable IFQ's. We just do not have enough information yet, Mr. President, to decide what limitations ought to be put on the IFQ's, if any. We need facts, and we need a study.

I believe the House will agree with this approach, Mr. President.

The academy's IFQ report will be due in the year 1998, one year before the next reauthorization of the Magnuson Act.

S. 39 includes measures important to predominantly Native and aboriginal communities in both Alaska and Hawaii. For Alaska, this bill will codify the community development quota programs already adopted by the North Pacific Council. For Hawaii, it will provide CDQ authority based on the concepts that have already been developed in Alaska.

As I mentioned, this bill has been a bipartisan effort. It has not been an easy job, Mr. President, to bring together all of the diverse views in this body on this issue. But it is the best of what this body should be doing—responding together to the devastating, wasteful practices that we know of, and making every vessel follow sound conservation practices.

I want to take the time to specifically thank my good friend from Massachusetts, Senator KERRY, who has worked with me for some time on this issue. Through the change of political control, we find ourselves working together with very slight difference. This time I was chairman. The last time he

was. But in purpose we have had a singular purpose, and that is to stop the wasteful practices.

Senator PRESSLER and Senator HOLLINGS, the chairman and ranking member of our committee, and Senators LOTT, SNOWE, INOUYE, MURKOWSKI, GORTON, HUTCHISON, BREAUX, and MURRAY, and all their staffs, have been very cooperative in this effort.

As I said, it has been contentious. Anyone that has ever dealt with fisheries and fishermen know the issues will get contentious. It takes a long time to work out these disputes.

I thank the staff involved: Trevor McCabe and Earl Comstock, who have worked with me; Tom Melius, who worked with Senator PRESSLER; Penny Dalton, who worked with Senator KERRY and Senator HOLLINGS; and Glenn Merrill and Alex Elkan, Sea Grant fellows in the Commerce Committee who worked with us this year.

Mr. President, this bill is the product of hearings we have held throughout this country.

We went to Maine; we went to Massachusetts, North Carolina, South Carolina, Louisiana; we went into Seattle; several places in my State, and we have held several hearings right here in Washington. This is the way I think the Senate should work. We should go out to the people, get their views and come back and try to find a way to meet the major contentions that have been pressed on us from out in our country.

It is not an easy bill for us to handle in the way we are now compelled to handle it because of the timeframe as we close the session. It has taken the cooperation of the majority and minority leader—and I do congratulate Senator DASCHLE for his role in this also—to make certain that we have had the time to proceed.

Where we are now is we have a time agreement and we have a specific allocation of opportunities for Members to offer their amendments. I believe most of those amendments have been cared for in our revisions of the managers' amendment which is a bipartisan effort by myself and Senator KERRY and our staffs, working with all the staffs of the Senate that were interested in this issue.

It is my intention now to yield to my good friend, and I know he has a statement to make. But we are hopeful that Senators who may have some interest in making comments realize what the leader has said. We will debate this tonight. We will debate the amendments that are offered pursuant to the agreement tonight but tomorrow there will be no debate. We have not asked for debate tomorrow. We just want to vote on the amendments that might be presented to us tonight and then final passage of this bill.

To me this is the most significant piece of legislation to be presented to this Congress. It will be the hallmark of conservation of fisheries throughout the world. I hope the Senate does not miss that. The world is looking to us to see what we are going to do with regard to protecting the fisheries within our 200-mile limit. These are strong measures, Mr. President. The authorizations going to these councils are very strong. The regional fisheries councils were a creature of this Congress, as a matter of fact of this Senate. They amount to delegation of authority from the Federal Government to a new body created by Federal legislation and requests the States to delegate similar authority to those bodies. That has been carried out, and nowhere has the council been more involved in the daily lives of people than in my State through the activities of the North Pacific Fisheries Council. It is a unique council. It is totally off the waters of one State but it has members from the States of Washington and Oregon and a national representative also.

So it is something I hope the Senate realizes means a very great deal to me personally and to my State. Half of the coastline of the United States is off our shores. More than half of the fisheries are off our shores. More than half of the fish that our people consume come from the waters off the shores of Alaska. We want to preserve the reproductive capability of those fisheries. We do not want to see a continuation of the numbers on this chart.

When we see the possibility of hundreds of millions of pounds of fish being wasted because of fishing practices that could be avoided, we believe it is time for the Congress to act. I am glad that we have reached the point now where I believe the Congress will act, and I am hopeful that the House of Representatives will be willing to accept our changes and modifications to this bill.

Again, I commend my good friend who has traveled with me throughout the country for hearings on this measure, and I yield to the Senator from Massachusetts.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I thank the Senator from Alaska not just for his comments but I particularly thank him for the great personal friendship that we have built over the course of these years working together on this and also for the great bipartisan approach to this.

This is tough legislation. There are enormous competing interests all across this country—sport fishermen, commercial fishermen, 15 different kinds of commercial fishermen in one particular area, all of them tugging at each other, a huge amount of vendors and others with interests to each of those fishermen, processors, foreign export involvement. The competing interests are as broad and as complicated as almost any that I have confronted in the course of my time in the Senate, perhaps with the exception of the Clean Air Act or something that similarly brings every part of the country against another.

I think the distinguished Senator from Alaska has done a terrific job of helping to build that bipartisan effort here. We started out 4 years ago when I was chairman of the subcommittee, and at that time we held hearings in various parts of the country. At the time that the Senate switched control this bill basically stayed the same. The names switched, Senator STEVENS took over the subcommittee, but we continued to work in the same bipartisan way, and I think it is a tribute to his efforts and to Senator HOLLINGS' efforts as the ranking member of the full committee that we are now able to be here and able to proceed.

It is with great satisfaction that I am able to commend to my colleagues this piece of legislation which is appropriately called the Sustainable Fisheries Act of 1996. It is without question the most important rewrite of our fishing laws, the Federal fishing laws since 1976 when the Magnuson Fisheries and Conservation Management Act was enacted, and at that time as many remember we Americanized the fisheries within 200 miles of our shore. We reached out and said we are going to try to manage that 200-mile coastline better.

It has been a long time in coming, but this bill is going to result in a significantly improved regime for the management of the Nation's marine fishery resources. These amendments improve and strengthen the standards upon which the current management regime is based, and it enables us to further enhance our capacity to be able to restore and maintain healthy and sustainable fisheries.

The amendments that are offered in this bill were developed in conjunction with and for the most part supported by a diverse representation of groups, all of them with an interest in the marine fisheries including the commercial and recreational fishermen, the environmental community, coastal communities, and States.

In recent months we have all read many editorials that have been building up support around the country for the passage of this bill. I will share a quick piece from my hometown newspaper, the Boston Globe which wrote that ''Before U.S. Senators go home . . . they have an obligation to complete legislation extending the Magnuson Fishery Conservation and Management Act, the foundation for rescuing America's troubled fishing industry.''

Enactment of S. 39 is critical if we are going to put our fisheries back onto a sustainable path and literally avert an environmental catastrophe on a national level.

Of the 157 fishery resources for which the National Marine Fisheries Service manages, 36 percent—51 different stocks—are overfished; 44 percent or 69 stocks are fully harvested, and 20 percent are underutilized. The main point illustrated by these figures is that

many of the fishery resources that have provided the greatest economic benefit to fishermen and to this Nation are just simply overfished or approaching the overfished level. This situation is being exacerbated by the demands of a population with an increasing appetite for eating fish. The net effect has been that we have too many fishermen chasing too few fish.

We are precariously close to fisheries failures in many of our most commercially important fish stocks, and it is imperative that we take immediate action if we are to avert disasters such as the one that we are currently experiencing, literally living in, off the waters of New England. S. 39 provides guidance and the tools necessary to help ensure that fishery failures will be avoided and the fish stocks can be rebuilt to provide the greatest possible economic benefit to our Nation.

As I mentioned earlier, this bill came neither easily nor quickly. It is the result of 4 years of work, the subject of 15 hearings and countless staff hours and meetings among Senators and interested parties. I commend all of those parties for the fact that we are now on the floor, able to pass this legislation, as I am confident we will in a matter of hours. I would like to point out that, from the start, it has been the willingness to be bipartisan that has brought all of us to this point, and I think that is a tribute to the way in which the Senate can work when people set their minds to it.

It has been my sense that Senator STEVENS' own commitment to this obviously came out of the fact, which many may not realize, that he was one of the original crafters of the Magnuson bill when it was first passed in 1976. He has had a long-time commitment to achieving this. Obviously, because he represents the State of Alaska, he has enormous interests in what we are doing here today.

I also would like to express my gratitude to Senators GORTON and MURRAY for their recognition of the importance of this bill and the benefit that it holds out to our Nation as a whole. Fishery issues rarely lend themselves to unanimous agreement, as both Senator STEVENS and I have described, and the scope and breadth of the changes that are offered in this bill are such that the competing interest groups have had to fight fiercely to try to reach accommodation and compromise. The Senators from Washington have, quite rightly, represented the interests of their State. That is what they are supposed to do and that is how we are supposed to work through this process. I commend both of them for having done that diligently and tenaciously in this effort.

But in the end, it is our final responsibility to balance all of the parochial interests with the interests of the Nation as a whole. I believe that, while there may be parts of this bill which may not provide the full level of benefits that one particular group or another may want, in the end this bill provides an overall benefit and balance to the Nation that greatly exceeds the sum of its parts.

Fishing has been and continues to be an extraordinarily important part of this Nation's heritage. We know that very, very well in Massachusetts, in New Hampshire—the Chair's State—in Maine, and all down our coastline. Since the first settlers came to this country, we have been dependent on the sea. We have, however, found that as Federal data on the overutilization of fish stocks has increased, we now understand there is a growing problem in the management of these resources. That growing problem threatens the sustainability of these recreationally and commercially valuable resources. So, before I elaborate on the benefits of S. 39, I would just like to highlight for a moment the economic asset that the fishing industry carries to this country.

Directly or indirectly, the seafood industry contributes nearly $50 billion annually to the U.S. economy. According to data for 1994, U.S. commercial fishermen landed 10.5 billion pounds of fish and seafood products, producing a record $3.8 billion in dockside revenues. By weight of catch, we are now the world's fifth leading fishing nation, and the United States is also the world's top seafood exporter, with exports valued at $7.4 billion. Millions of salt water anglers have turned marine recreational fisheries into a multimillion dollar industry that caught an estimated 361.9 million fish—that includes those caught and released alive—and an estimated 66.1 million fishing trips; an extraordinary amount of activity. As an economic asset, recreational fisheries and related industries generate over $7 billion annually to our economy.

In New England, we have, tragically, become all too familiar with the downside of all of this. We have seen the collapse of the cod and the haddock fisheries. It has come about principally because of overfishing and, as a result of that overfishing, our fishermen have fallen on hard times. In 1992, overfishing was estimated to cost Massachusetts alone about 88 million pounds of groundfish harvests worth at least $193 million annually. For all of New England, annual losses total at least $350 million and 14,000 jobs. While we do not have specific numbers for New England, at the national level the Department of Commerce estimates that rebuilding our fisheries to a more productive level could create 300,000 new jobs and billions of dollars in additional revenues.

So, I want to emphasize what we are doing here today is not the signal of the end of the fishing era, it is not the signal of a continuing decline in fisheries; it is our effort to guarantee that there is a growth industry, that there is an industry for the future. I repeat, the national estimates are, if we do this properly, we can create 300,000 new jobs, billions of dollars of additional revenue, and we can have sustainable fisheries for generations to come.

The testimony of Nantucket fisherman Capt. Mark Simonitsch at a hearing I held in New Bedford summarizes the cost of overfishing very, very well. Let me just share his words. He said:

> You sit there and you think over the years that, if you can finally pay your mortgage off, that the money is all going to go into your pocket. This year, I've yet to catch 50,000 pounds of fish. I have lost thousands of dollars. And my crew has made so little, a crew that has been with me, believe it or not, for 17 years, they may not come back next year. So I have chosen today to talk about solving the hard problem, Senator, and that's getting fish back.

That statement was from a Massachusetts fishing captain who called this crisis to the attention of all of us.

The Sustainable Fisheries Act goes a long way toward solving the problem of getting the fish back. In addition, the bill calls for monitoring the health of fisheries and limits on harvests to prevent overfishing from recurring. To quote Captain Simonitsch again, he said it's time to stop ''all this wheelhouse thinking and tire kicking'' and get the bill enacted.

The bill also continues my fight for assistance to New England fishermen, extending Federal authority for fisheries disaster relief and authorizing vessel and permit buyout programs to reduce excess fishing capacity and pressure on the fishing industry itself.

In addition to preventing overfishing, the Sustainable Fisheries Act calls for action to address two other important environmental concerns—reducing bycatch and waste, and protecting fish habitat.

As the director of the New England Aquarium pointed out in a recent letter:

> At least 20 percent of our total fishery catch is thrown overboard dead or dying. In 1994, the U.S. fishing fleet off Alaska dumped a staggering 750 million pounds of bycatch, more fish [was dumped overboard and thrown away] than was caught by the entire New England fleet last year.

The letter goes on to say:

> The greatest long-term threat to the viability of our nation's marine resources could be the continuing loss and degradation of coastal marine habitat. Louisiana alone has lost half a million acres of wetland since the mid-1950's. The National Marine Fisheries Service estimates that $200 million is lost annually in reduced catches due to ongoing habitat loss.

As all of us know, if you destroy the habitat, you destroy the nurseries and you destroy the ecosystem on which those nurseries are dependent, which then diminishes the ability to have a sustainable fishery. We need to understand the linkage of those wetlands and the role they play in the spawning of fish and of the ecosystem to the total catch that will ultimately be available.

I might add that a couple of years ago, the Senator from Alaska and I took steps through the United Nations to end driftnet fishing. Driftnets, 30,000

miles of monofilament nets were being laid out at night in the northwest Pacific. These nets would break off and fish on their own. They would be what are called phantom nets or ghost fisheries where they would float to the surface as plastic and trap fish, mostly salmon coming out of the Columbia River, and they would sink to the bottom where the scavengers would eat the carcasses until it was light enough and drift some more.

There are still some individuals in certain nations who are continuing this outlawed practice of driftnet fishing. That is the kind of example of protection we need to be involved with to deal with the concerns of habitat and of bycatch and waste. This bill would require the fishery management plans to assess bycatch levels in each fishery and take steps to minimize the bycatch and the mortality of bycatch which cannot be avoided.

In addition, fishery managers are required under this bill to identify essential fish habitat and to minimize the adverse effects on habitat due to fishing.

In summary, Mr. President, the bill before us addresses many of the problems affecting the management of our fisheries and provides essential tools to reversing the damaging trends that I have outlined. Our Nation's fisheries are literally at a crossroads, and significant action is required to remedy our marine resource management problems and preserve the way of life of our coastal communities.

I believe that this bill goes a long way toward solving the hard problems and providing help for fishermen and coastal communities during the difficult rebuilding period. The opportunity to fish and to have fish on the dinner table is something that many Americans have simply taken for granted in the past. But unless we take the steps that are set forth in this bill to ensure that these vital resources are conserved, they will not be there for future generations.

This is a vital bill. It is a good bill for the environment, as Senator STEVENS said, and I share the view it is the most important environmental legislation that we will pass in this session. It is good for fishermen, it is good for economic welfare of this Nation, and I remain committed to the goal that fishing will continue to be a part, an essential part, of the culture of our coastal communities of the United States and of Massachusetts and of our economies. It is that important, and it means that much

Finally, Mr. President, I would just like to say that there has been an extraordinary effort by both the majority staff and the minority staff who have labored literally for years, but particularly in the last few months, and an extraordinary amount of time has been put into developing this bill.

I would like to thank, on the Democratic side, Penny Dalton, Lila Helms, and Kate English, who each have done just a tremendous job. On the Republican side, I would like to thank Trevor McCabe, Earl Comstock, and Tom Melius. And during the past 2 years there have been a number of people on my staff who have served as legislative fellows on my staff or on the Commerce Committee and who have put in an enormous amount of time and energy to make this bill possible. Particularly I would like to thank Steve Metruck, Alex Elkan, Peter Hill, and Tom Richey for their contribution to this legislation.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. Mr. President, are we under controlled time?

The PRESIDING OFFICER. Yes.

Mr. KERRY. Are we divided equally?

The PRESIDING OFFICER. Yes, 60 minutes equally divided. The Senator from Massachusetts has 11 minutes remaining. The Senator from Alaska has 14 minutes 15 seconds remaining.

Mr. GORTON. Mr. President, there being relatively few people here, I ask unanimous consent that that time be extended at least for those Members who are willing to speak on this issue tonight.

Mr. KERRY. Mr. President, in order to keep an agreement here so we can know the time, I ask how much time the Senator from Washington needs.

Mr. GORTON. Somewhere in the neighborhood of 20 minutes.

Mr. KERRY. How much time does Senator MURRAY need?

Mrs. MURRAY. Approximately 10 minutes or less.

Mr. KERRY. Mr. President, I ask unanimous consent, in addition to the time allotted to both sides, the Senators from Washington be allowed to speak: Senator GORTON for 15 minutes and Senator MURRAY for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington is recognized.

Mr. GORTON. Mr. President, our journey to this point on this bill has been long and tortured. And at the end of the road I find a product that, from the Washington State perspective, is greatly improved from the measure that passed out of committee and immeasurably better than H.R. 39, which was rejected by every Member of the Washington delegation, Republican and Democrat alike, and which has my support. Let me make absolutely clear, however, that even though I will vote for S. 39, as amended by the manager's amendment, any unilateral changes made by the House will be the death knell to the Sustainable Fisheries Act in this Congress.

The Sustainable Fisheries Act has been sold, and bought hook, line, and sinker, by the national press and the majority of my colleagues, as the strongest environmental bill of this Congress. That is, I am afraid, an overly simplistic characterization.

I do not, and have not, taken issue with the true conservation measures in S. 39. But the act is as much a social and economic manifesto as an environmental one. The bill is as much about the allocation of fishery resources—the allocation between commercial and recreational fishers, between processors and harvesters, between onshore and offshore processors, and yes, between Washington and Alaska, as it is about the conservation of fish.

Before I comment on what I think is wrong with this measure, I would like to recognize those aspects that are sound. I generally endorse the measure's conservation provisions; its treatment of individual fishing quotas; and its efforts to mitigate the effects of the Federal court's allocation of shellfish resources to Indian tribes in Washington State.

CONSERVATION OF FISHERY RESOURCES

The conservation provisions in S. 39 are the only aspect of the bill that most of the public knows or cares about. Contrary to reports, I join my colleagues in lauding those provisions that aim to reduce waste and bycatch in the fisheries, to prevent overfishing, and to restore overfished fisheries to health. But I take a more cautious view of the extent to which these worthy goals will be achieved than do most of my colleagues and members of the national press.

This bill pushes the regional fishery management councils, some of which have proven unwilling to practice sound management, in the direction of responsible conduct. In fact, I don't believe that the Sustainable Fisheries Act empowers the fishery management councils, or the Secretary of Commerce, to do much more than these entities already are empowered to do. Rather, the Sustainable Fisheries Act is a statement by Congress that conservation of the resource must be a priority, and the bill highlights the tools that councils and the Secretary can use to achieve this goal.

I approve of inviting fishery managers to act more responsibly, but I urge vigilance. Regional politics and short-term interests have conspired in the past to undermine responsible resource management to certain fisheries. It is naive to think that this bill alone can correct this condition. It cannot. So while I support the conservation provisions in S. 39, I caution that the work of ensuring responsible conservation and management of fishery resources does not end with the passage of the Sustainable Fisheries Act—it only begins.

Ironically, the fishery that has been singled out in S. 39 for particularly stringent waste and bycatch reduction measures is the North Pacific groundfish fishery. I do not now object, and have never objected to the bill's prescriptions for this Washington State-dominated trawl fishery, but it is important to note that the singling out of this fishery is a function of politics and not sound science.

Despite its Alaska-heavy composition, the North Pacific Council, to

which many of the bill's waste and bycatch reduction provisions are addressed, has been praised for its resource conservation measures. Despite its recent dramatic public demonstrations, even GreenPeace acknowledged in 1992 that ''The North Pacific * * * provide[s] a model for the way other [regional fishery management] Councils should be managing the fisheries in this nation and probably in the world.'' Again, I do not oppose strong and sensible bycatch and waste reduction measures in the North Pacific groundfish fishery, but only so long as the singling out of any sector of a fishery is supported by scientific evidence. I note that recently, GreenPeace launched a public relations attack on the Seattle-based factory trawlers in the Bering Sea pollock fishery. Certainly GreenPeace is within its rights to do so. I sincerely hope, however, that as we continue to strive toward responsible management of our fisheries, that we do not allow policy to be set by meretricious activists whose often uninformed rantings drown out the voices of scientists, fishery managers, and environmentalists who properly place conservation ahead of a radical social agenda.

IFQ'S

My opposition to this bill has often mistakenly been reduced only to a disagreement over the treatment of individual fishing quotas. Ironically, I believe that Senator STEVENS and I were, from the beginning, more in agreement on this issue than on a number of others that affect the allocation of resources in the North Pacific.

Although I am not an unqualified supporter of IFQ's, it is hard to ignore the success of the North Pacific halibut-sablefish IFQ program that was implemented last year. The program has not been flawless, but its initial effectiveness in improving safety, providing fresh fish year round to consumers, and reducing overcapitalization in a fishery—without a regional epidemic of bankruptcies or a hemorrhage of the Federal budget in the form of Federal buy-out assistance—is promising. Throughout this process, I have tried to ensure that this infant program will continue without interruption. I sincerely appreciate Senator STEVENS' support on this issue.

I believe that Senator STEVENS and I agree that IFQ's are a powerful tool, and that it is reasonable to adopt a moratorium to suspend, for a time, the implementation of new IFQ programs until we have had the chance further to study and better to understand the social and economic effects of IFQ's on the conservation and management of resources, on participants in all sectors of the industry—harvesters and processor alike, and on the American public.

Senator STEVENS and I have disagreed, however, on the duration of this moratorium. We also had a critical disagreement over whether or not IFQ's should be barred indefinitely in the North Pacific by requiring a supermajority vote of a council to adopt new IFQ's in the absence of further congressional action on this subject.

Despite these disagreements, the Senate has reached a reasonable compromise. The moratorium on the implementation of new IFQ's is longer than I would have liked—it is 4 years—but it is finite, and requires no supermajority vote of councils after the moratorium expires. The compromise provisions also permit councils to study and develop IFQ's during the moratorium. Moreover, the moratorium on IFQ's will not preclude the implementation of a new bycatch accountability system that should help to reduce bycatch by holding every vessel accountable for what it catches.

Significantly, the Sustainable Fisheries Act provides for a comprehensive study of IFQ's by the National Academy of Sciences, which study which will be available to educate Congress when we next consider this issue. Education is critical: despite my reservations about implementing new IFQ's in the North Pacific at this time, I consider it pure folly to adopt the House approach of crippling all prospective quota programs before we have had the chance to assess them adequately.

MITIGATING THE EFFECTS OF U.S. VERSUS WASHINGTON

I fully support the provisions of the bill that attempt to mitigate the loss to Washington's commercial crabbers caused by the adjudication of tribal claims to shellfish in a subproceeding of U.S. versus Washington. Last year, a decision by a district court, a decision that is now on appeal, allocated a large portion of the catch to Indian tribes and threatens to deprive nontribal fishermen, who have been fishing for generations, of their livelihoods.

We have amended S. 39 in two ways to try to mitigate the loss to nontribal commercial crabbers in Washington. First, the manager's amendment now authorizes State-managed fisheries, such as the 250-vessel inner Puget Sound dungeness crab fishery, to obtain Federal funds for a license buy-out program.

Second, for the coastal dungeness fishery, the manager's amendment gives Washington, for a limited time until a Fishery Management Plan is in place, tools to regulate all crabbers equally in the exclusive economic zone adjacent to the State. This new regulatory authority will help to ensure that the cost of the tribal allocation will be borne more fairly by all commercial crabbers who fish in the EEZ adjacent to Washington, not just crabbers whose vessels are registered in the State.

The managers amendment permits the Washington Department of Fish and Wildlife, among other things, to set pot limits to slow the pace of fishing by all nontribal commercial crabbers to help facilitate management or settlement with the tribes.

Although this provision gives Washington, Oregon, and California new powers to regulate vessels not registered in these respective States, and restates these States' ability to regulate landings, the provision is intentionally silent on whether the limited access program in each State can be enforced in the EEZ. I anticipate, however, that when it prepares a Fishery Management Plan for dungeness crab, the Pacific Council will be guided by the limited access programs already in place on the west coast.

Having just described those aspects of the bill that I support heartily, I would like to speak for a moment to those that I believe are subject to serious reservations.

There are three provisions in this bill that I think are misguided. They are: The provision regarding fishing communities; the demotion of the role of efficiency in fishery management; and the creation of a permanent entitlement program for Native Alaskans in the form of community development quotas.

FISHING COMMUNITIES

The managers' amendment corrects a fundamental inequity in the original S. 39, that would have further skewed the allocation of North Pacific fishery resources in Alaska's favor by giving economic protections and preferences to fishing communities, and by defining these communities so as apparently to exclude any in the State of Washington.

While my parochial concerns have been fully addressed in the manager's amendment by redefining ''fishing communities'' to include the communities of tens of thousands of Washingtonians employed in the fishing industry, I continue to believe that establishing a national standard to protect fishing communities is bad policy. It authorizes nothing certain except for bad policy and litigation.

Moreover, it seems to me to be contrary to the purported conservation goals of this bill to attempt to insulate fishing communities from the economic effects of instituting sound management and restoring healthy stocks. Correcting years of irresponsible management and concern for short-term profit cannot be accomplished painlessly, though we should strive to minimize that pain. Continuing to delay the inevitable, however, by giving councils another excuse for ineffective conservation measures will only make more likely the total demise of our fisheries.

EFFICIENCY

The Sustainable Fisheries Act demotes the role of efficiency in fishery management and conservation by changing national standard five from one of promoting efficiency in the use of fishery resources, where practicable, to merely considering efficiency. Again, this change was made on the pretext of improving conservation, but the provision's authors have never been able to explain how the current standard undermines conservation efforts, and why this change is needed.

Under the guise of promoting conservation, this provision promotes a foolish social agenda—one that fails to reorganize a sensible balance between the legitimate interests of traditional small-vessel fishers, the interests of consumers, and the need to improve productivity to remain competitive in a global economy.

There is, I believe, a perception that an attack on efficiency is a triumph for small vessels and a blow to what are perceived to be the larger, more cost-effective vessels such as those in Washington's factory trawlers fleet. This perception reveals a disturbing trend toward unfairly demonizing more productive, more efficient fleets. I repeat my earlier adomination—we need to recognize that good management, not small vessels or large vessels, leads to sound conservation and healthy fisheries, and that there is room in a healthy and efficient fishery for both.

CDQ'S

Without a doubt, the allocation-related provision in this bill that I find most objectionable is the provision mandating a permanent entitlement program for Native Alaskans through community development quotas—an entitlement program that will be paid for largely by the Washington fishing industry. Codifying this assistance program is not only inappropriate in a bill that purports to deal with resources, not social management, but is inappropriate in this Congress, which just recently succeeded in reforming another entitlement program called welfare.

CDQ's are set-aside programs that reserve a sizable percentage of various fisheries for Native Alaskan communities. Currently, CDQ's are not authorized by the Magnuson Act. Nevertheless, the Alaska-dominated North Pacific Council has reserved 7½ percent of the largely Washington-fished Bering Sea pollock stock for Native Alaskan communities, and even larger percentages in the halibut and sablefish fisheries. Recently, the council recommended CDQ's for crab and groundfish, but this recommendation has not yet been approved by the Secretary of Commerce. Not surprisingly, the council has not imposed CDQ's on fisheries dominated by Alaskans.

The fundamental unfairness of CDQ's was certainly appreciated by other Members of this body, for the Sustainable Fisheries Act, while going after fishermen from Washington State, protects other fishermen from this particular poison by specifically prohibiting CDQ programs in almost every other part of the country.

But since CDQ's would be a reality even in the absence of a Magnuson Act reauthorization, our ability to limit this unfair practice was slight indeed.

In exchange for allowing this bill to proceed, I have exacted concessions on the issues of CDQ's. But these concessions are small. First, to provide relief for the Bering Sea crabbers who, even before the implementation of CDQ's are struggling to survive amid record low stocks, the managers' amendment provides for a graduated phase-in of development quotas. In addition, the manager's amendment provides for a study of CDQ's to determine if these development quotas are meeting their stated purpose of facilitating participating communities' entry into commercial fisheries, and to recommend how long this social assistance program should last.

Having commented on some of the substantive provisions in this bill, I would like to speak for a moment on the process that brought us to this point. As I stated in my opening remarks, getting here has not been easy. And I have come as far as I intend to go.

The committee mark of S. 39 was sprinkled with sweeteners for most interested parties—except Washington harvesters. Washington's sizable fishing fleet was presented with a poison pill more palatable only than the outrage our House delegation was forced to swallow last October.

Despite this strategic isolation, I had two invaluable assets—time, and the unwavering support of Senator MURRAY. As much as I would like to avoid having to repeat this process, I have truly appreciated the opportunity to work so closely with my colleague form Washington State.

When it became clear that Senator MURRAY and I had no intention of succumbing to the attack on our State's fishing industry, a sincere effort was made to address our concerns. Much of the credit for this final compromise is due to the tireless and creative efforts of Senator KERRY and his staff, Senator PRESSLER and his staff, and the majority leader and his assistants. Credit is due, too, to Senator STEVENS and his staff. Because of the different composition of our industries and our constituencies, the Senators from Washington and Alaska may rarely agree on the substance of fishery bills. But although we may lack agreement, I have never lacked trust and respect—I sincerely appreciate the constructive manner with which Senator STEVENS and his staff have worked with me and my office even as he resolutely protected the interests of his constituents.

The PRESIDING OFFICER. Under the previous order, the Senator from Washington is recognized for 10 minutes.

Mrs. MURRAY. Mr. President, the bill before the Senate this afternoon is the Sustainable Fishery Act, the Magnuson Act, and is the outcome of a very long and very difficult process. Only great willingness to compromise on everyone's part has enabled this bill to reach the Senate floor this evening.

This bill has been almost 4 years in the making, and it has gone through many changes, and improvements have been made along the way. I want to take this opportunity to thank the chairman and the ranking member of the subcommittee for their willingness to work through the difficult allocation issues in this bill so that the strong conservation provisions of this bill can move forward.

Mr. President, I also want to take this opportunity to thank my senior Senator, Senator GORTON, for his tremendous work on this bill and the opportunity to work with him on an issue of natural resources. His tenacity and perseverance throughout this debate has been very instructive and very much appreciated. I also want to take this opportunity to thank both his staff and my staff, Justin Le Blanc and Jeanne Bumpus, for their tireless work on this bill, as well.

Mr. President, we have reached a fair and reasonable compromise on this bill. As we send this bill to the House, I urge them not to undermine this bill by altering it to reflect parochial interests.

This bill serves two purposes: to conserve fishery resources and to preserve the fishing industry. It contains new provisions to address overfishing, bycatch, and impacts on fish habitat.

These provisions will strengthen our ability to conserve fish resources, and they will allow us to develop long-term, sustainable fisheries. This bill will enable us to turn around depleted fisheries and ensure we have fish for the future.

The help of the fishing industry is directly related to the health of the resource. The conservation provisions will, therefore, benefit the fisheries as well. By protecting the fish, the bill also protects jobs.

The bill sustains the fishing industry in other ways, as well. Natural standards promoting efficient use of fishing resources and promoting the safety of life at sea will help our fishers continue fishing. New consideration for fishing communities recognizes all fishers, no matter where they live, depend upon the fish.

Detailed studies of controversial fishery quota programs will be conducted by the National Academy of Sciences. A study of individual fishing quota programs will allow us to evaluate the potential benefits of such programs. A short moratorium on IFQs will allow us to review this study and to evaluate the success of existing programs. We should not prejudge the appropriateness of IFQ's at this time. Let's allow the study to provide us guidance on this important issue.

The Academy will also study community development quotas. The impacts of the new mandate for CDQ's on the fishing industry in the North Pacific need to be evaluated.

These programs will transfer considerable sums of money from Washington's distant water fleet to Alaskan coastal communities. The study will allow us to discern the effectiveness and appropriateness of this social assistance program.

The bill provides authority for fishery disaster relief programs, particularly buy-back programs which will

help stabilize fishing fleets. Many fishing fleets are suffering from tremendous harvest reductions as a result of natural disasters or man-made situations.

The recent Federal court decision in Washington State awarding native American tribes 50 percent of the shellfish has severely impacted the non-Indian shellfish harvesters. These provisions will provide an opportunity to help these fishers.

The temporary extension of Washington State jurisdiction into Federal waters will also allow the State to implement the reduction in non-Indian shellfish harvests fairly and equitably. I thank the junior Senator from Oregon for his willingness to reach an agreement on this issue.

In its original form, this bill could well have undermined the fishing industry of Washington State. But thanks to compromise and concession on all sides we have reached an agreement. We are now debating a bill that, in many ways, will benefit the Washington State fishing industry.

It keeps options open for Washington State fishers, and it ensures that we will have a strong, vital, sustainable industry long into the future. I support passage of this legislation and look forward to its timely submission to the President for his signature.

This bill will reauthorize the Magnuson Fishery Conservation and Management Act. The Magnuson Act was first passed in 1976 to Americanize the fisheries off the coasts of the United States and to ensure that the bountiful harvests being extracted from these seas were benefiting U.S. citizens and our economy. Over the last 20 years, this goal has by and large been achieved. In 1996, a new challenge faces us: The development of sustainable fishing practices that will guarantee a continued abundance of fish and continued opportunities for U.S. fishers.

The Sustainable Fisheries Act will improve the conservation and management of our fishery resources by re-emphasizing both. While the original intent of the Magnuson Act was to Americanize the fisheries and invest the management of the resources in those who know them best, the fishers; the outcome has not always been sound management or longterm conservation. This bill will help improve this situation. With provisions to prevent overfishing, to ensure the rebuilding of overfished stocks, to minimize bycatch, and to consider fish habitat, this bill places a greater degree of focus on the long-term sustainability of both the resource and the fishers harvesting the resource.

Strong new measures to reduce bycatch, the catching of unwanted or prohibited fish, and new considerations of essential fish habitat will help to maintain healthy fish stocks. The distant water fleet of the North Pacific, based in my State, is often accused of wasting an incredible amount of fish. Estimates suggest that up to 580 million pounds a year of fish are dumped overboard dead or dying.

Federal fishery scientists have determined that the total population of Bering Sea groundfish alone is 44 billion pounds. Of that 44 billion pounds, scientists have determined that the acceptable biological catch, that is, the sustainable harvest level, is nearly 6.6 billion pounds. As an extra precaution, the North Pacific Fishery Management Council has established an annual groundfish harvest cap of 4.4 billion pounds, leaving one-third of the allowable biological catch unharvested.

With a total groundfish harvest of 4.4 billion pounds, 580 million pounds of discards suggests a bycatch rate of approximately 13 percent. The largest fishery in the United States, the North Pacific pollack fishery, is one of the cleanest fisheries in the world, with a bycatch rate of only 2 percent according to the United Nations Food and Agriculture Organization [FAO]. Compare these numbers with the average discard rate in world fisheries of 30 percent.

It is also important to note that the discarded fish in the North Pacific are quantified by Federal Fishery Observers and are counted against to the total allowable catch levels of the various species. To reduce bycatch is to make more efficient and responsible use of fishery resources. That is why this bill seeks to reduce bycatch in our Nation's fisheries. And that is why participants in the North Pacific groundfish fisheries have proposed requiring all fishers to retain all pollack and cod caught, regardless of what species the fishers are targeting. This step alone should reduce the amount of fish discarded in the North Pacific by one-half.

The amount of bycatch in the North Pacific is still very high. While the participants in those fisheries are beginning to address the problem, this bill will create new and stronger incentives to fish more cleanly. I strongly support the conservation provisions of this bill. I look forward to the improvement management of our fishery resources they will allow.

This bill also recognizes that the health and sustainability of fish stocks are more than just conservation issues, they are also economic and social issues. The people who take part in U.S. fisheries, the fishers, processors, and supporting industries, are all vitally dependent upon the fishery resources, their abundance and sustainability. This bill recognizes that dependence by requiring new considerations of the impacts of fishery management decisions on fishing communities.

The definition of fishing communities in this bill will work well. Fishing communities are those communities ''substantially dependent upon or substantially engaged in the harvest of fishery resources.'' This definition recognizes that fishers are fishers no matter where they live. An individual fisher and his or her family, whether they work on a big boat and or a small boat, are equally dependent upon the fish for their livelihoods no matter where they live. The fisher from a small New England port, an Alaska coastal town, or a metropolitan area like Seattle all make their living from the sea, their lives are all tied to the health and abundance of the fish they catch. They all deserve to be considered when difficult and painful fishery management practices need to be implemented. Under this bill, they will be.

In addition, this bill preserves the National Standard to promote efficiency in fishery management plans. According to the National Marine Fisheries Service [NMFS], an efficient fishery harvests fish with a minimal use of labor capital, interest, and fuel. Management regimes that allow a fishery to operate at the lowest possible cost are considered efficient. In encouraging efficient use of fishery resources, this National Standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society. To weaken the efficiency standard would be to suggest that overcapitalization, too many boats fishing for too few fish, is acceptable when we all know it is not. It is in the Nation's best interest to promote efficient and sustainable use of our natural resources. Methods of efficiently harvesting fish within acceptable conservation limits should be the norm if the United States wants to continue to be competitive in the growing global market for fish products.

This bill places a 4-year moratorium on a somewhat controversial fishery management tool, individual fishing quotas or IFQ's. IFQ's allocate percentages of the total allowable catch of a fishery to individual participants. If they are transferable, they can be bought and sold either among participants or in a larger market. While opponents of IFQ's feel they are a privatization of a public resource and will result in large corporations owning the bulk of U.S. fisheries, proponents view IFQ's as an important fishery management tool that can address a number of the problems plaguing U.S. fisheries today.

Under current open access systems, there is a race for fish. Those who fish fast and furious win. This management style leads participants to fish inefficiently, catching as much fish as they can as quickly as they can without consideration for high bycatch rates or the harvest of lower value target fish. It creates incentives to invest in excess harvesting and processing capacity—bigger and better boats, bigger nets, more gear, and larger plants—than are needed to efficiently and sustainably harvest and process the allowable catch. This overcapitalization, while not creating huge conservation issues, weakens the economic viability of the fleet, threatening participants with bankruptcy and ruin. While it hasn't been much of an issue in the North Pacific, overcapitalization can create

enormous pressure to increase harvest levels beyond acceptable limits.

In addition, this race for fish creates serious safety considerations in many fisheries. Under this race, fishers feel compelled to keep fishing even when the weather or the conditions of the vessel or the health of the captain or crew would suggest otherwise. Unless fishery management plans provide opportunities and incentives for fishers to sit out storms and return to port for repairs or medical attention, lives will continue to be lost. The crab fishery in the North Pacific is the most dangerous occupation in the Nation. According to the U.S. Coast Guard, the 1990–94 average annual fatality rate in the crab fishery is 350 deaths per 100,000 workers, with a 1990–94 annual average of 7 deaths among 2,000 crabbers. The fatality rate for all U.S. fisheries over the same time is only 71 deaths per 100,000 workers. The all occupations rate is only 7 deaths per 100,000 workers.

For this very reason we included the promotion of safety of life at sea in the National Standards of the Magnuson Act. This provision remains in the bill. Fishery management plans will now be required to promote safe fishery practices. The Fishery Management Councils will not only have to consider safety, they will have to promote it to extent practicable. There are many ways to promote safety, and IFQ's may be one way.

When the halibut fishery in the North Pacific was conducted under open access, the fatality rate was almost as bad as crab, with 250 deaths per 100,000 workers. Under the IFQ plan of the last two seasons, the halibut fishery fatality rate dropped to zero. While two seasons of data is certainly not proof, it does suggest that IFQ's can address the safety issue by eliminating the race for fish.

Because of their potential to address issues such as waste, overcapitalization, and safety, IFQ's are considered by fishery managers in academia and State and Federal Government agencies, as well as environmental groups such as the Center for Marine Conservation, Environmental Defense Fund, and the World Wildlife Fund, as a promising fishery management tool that should be available to the Fishery Management Councils for their consideration. I agree. I believe that IFQ's should remain in the Councils' toolbox. Many of the concerns raised by opponents of IFQ's can be addressed within the design of any given IFQ system, much as they have been in the halibut/sablefish IFQ program. Issues such as entry-level quota share opportunities, ownership requirements, and caps on consolidation of shares can and have been incorporated into IFQ plans at the Council level.

Despite all this, I understand a fair degree of controversy remains over IFQ's. Because of that, I have agreed to a short moratorium on the implementation of IFQ's while the Councils consider, discuss, and develop potential IFQ plans. However, I objected to provisions that prejudged the appropriateness of IFQ's as a management tool and created undue hurdles for IFQ's plans to overcome. This bill includes a comprehensive study of IFQ's by the National Academy of Sciences [NAS]. The assessment of IFQ's by the NAS will allow us, if it is determined necessary, to develop a broadly supported national policy on IFQ's during the next reauthorization of the Magnuson Act in 1999. This study should provide us the guidance we need in our assessment of IFQ's as a fishery management tool. We should withhold from determining their fate now, before we have the insights of the NAS study.

However, there are a number of issues regarding IFQ's on which there is currently agreement and these have been included in the bill. IFQ's may be revoked or limited at any time in accordance with procedures under the Magnuson Act. They shall not confer the right of compensation to the holder if revoked or limited. They shall not create a private property right to the fish before the fish are harvested. IFQ allocations should be fair and equitable and opportunities should be provided for small vessel owners and entry-level fishers. These are broadly-supported provisions on IFQ's and have appropriately been included in the bill

Unresolved issues regarding IFQ's will be assessed by the NAS. Issues such as transferability, duration, corresponding processor quotas, conservation impacts, fishery characteristics, and potential social and economic costs and benefits to the Nation and to participants in the fishery all will be analyzed by the NAS. The NAS will also study mechanisms to prevent foreign control of our Nations fishery resources and should investigate foreign ownership in both the harvesting and processing sectors. In addition, the NAS is required to study the appropriate level of U.S. ownership of fishery vessels with particular reference to a relatively high U.S. ownership threshold. The NAS should consider this threshold in light of existing requirements for participation in U.S. fisheries.

I look forward to the outcome of this study of IFQ's by the NAS and to the discussion with my colleagues that will undoubtedly ensue upon the report's release.

While this bill imposes a moratorium on IFQ's, it mandates the development of another quota program: Community Development Quotas or CDQ's. CDQ's are guaranteed allocations of Bering Sea fishery resources to Native Alaskan coastal communities. It is argued that these communities have had a historical and traditional participation in these fisheries and were excluded from the Americanization of the fisheries during the late 1970's and the 1980's. While these communities certainly engaged in the harvest of near-shore fish species, it is less clear that they participated in the Deep Ocean fisheries of the North Pacific. The existing CDQ program in pollock has transferred approximately $25 million from the participants in the fishery, predominantly the distant water fleet from Washington state, to the CDQ communities. The mandated expansion of CDQ's will increase this cash transfer almost 5 times to $117 million.

CDQ's were originally proposed as a temporary program to provide these communities with the capital and expertise to venture into the fisheries on their own. Under this bill, the CDQ program has been turned into a permanent entitlement. I want to make myself clear on this issue. I think it is laudable to empower these impoverished communities to develop independent business ventures and sustainable economies. The question arises as to whom should bear the burden of such efforts. Unfortunately, under the CDQ programs mandated under this bill, the participants in the Bering Sea fisheries, Washington State fishers fishing in Federal waters, bear the entire burden alone. A burden that should be borne by society at large, and particularly by the neighbors of those communities, other Alaskans.

However, this bill contains a study of CDQ's, again by the NAS, to investigate the implications of these programs for the Native Alaskan communities and fishery participants. The study will evaluate the effectiveness of the program in meeting the stated objectives of developing self-sustaining commercial fishing activities in the communities and employing community residents in commercial fishing operations. The study shall evaluate the social and economic conditions in the communities. I think it is important for this evaluation to include an assessment of what other types of assistance programs are or could be made available to these communities. This study will provide valuable insights into the effectiveness and appropriateness of the CDQ program.

In addition, this bill recognizes that not all of the Bering Sea fisheries can bear the full burden of the proposed CDQ programs at this time. The Bering Sea crab fishery is in a serious state of decline at this time and the crabbers are suffering under the strain of reduced catches. This bill recognizes the state of affairs in the crab fishery by phasing in the CDQ percentage allocation over the next several years, to ease the crab fishery into the larger CDQ allocations.

This bill contains important provisions that will enable Washington State to mitigate the impacts on shellfish harvesters of the recent Federal court decision allocating 50 percent of shellfish to the treaty tribes of Washington State in their usual and accustomed areas. These provisions include a limited extension of State management authority into the Federal Exclusive Economic Zone [EEZ] for Dungeness crab. This extension, although

rather limited in scope and time, provides the State of Washington the authority it must have to effectively implement the court order to comanage the shellfish resources such that the tribes may harvest 50 percent of the resource.

In addition, this bill contains authority to implement fishing capacity reduction programs, or buy-back programs. These programs will allow fishing fleets severely impacted by a natural disaster or some man-made decision beyond the control of fishery managers, such as the recent Federal court order regarding tribal shellfish harvests, to mitigate the impacts of such situations by buying people out of the fishery in order to restore viability to the fleet. It is anticipated that the state of Washington could use such authority to develop a buy-back program for the Inner Sound Dungeness crab fleet so severely impacted by the recent shellfish decision.

We have all come a long way on this bill. I reiterate my support for passage of this legislation.

The PRESIDING OFFICER. The Chair announces that, by leadership agreement, previous time restraints have been removed.

The Senator from Louisiana is recognized.

Mr. BREAUX. Mr. President, I take a few minutes to make comments about a bill that I have been fooling around with for almost as many years as I have served in the Congress. I remember quite well when I was in the other body and served as chairman of the Fisheries Committee back in 1972, I hate to say how long it has been that we started working on the concept, over 20 years ago, to say that the fishing areas around the United States belong to the people of the United States.

At that time, we were being literally inundated by foreign fishing fleets from Japan and other nations which saw the areas around the coastal waters of the entire United States off of our 30 coastal States as very valuable areas. They were coming in and really displacing our own American fishing men and women, and doing it at a rate that would have soon, I think, destroyed the areas of the United States as far as fisheries is concerned.

We came up with the Fisheries Management Conservation Act. It was a very long and drawn-out process that we entered into to come up with this legislation that said that these waters are going to be reserved for the U.S. industry first, and that you could only fish if you are a foreigner if you had a fishing agreement with our country that gave you an allocation of how much you could fish for.

It was an interesting effort to try and get the foreign fishermen out. We came up with an acronym, one that I was proud of coming up with. The whole premise of the bill was to ''phase out foreign fishermen.'' We called it POFF. Puff—they were gone. Today, the foreign fishermen have been essentially removed from our U.S. waters. It is mainly now being fished by American fishing men and women, and the industry is really an American industry. So now the great challenge is not to keep the foreigners out, but rather to manage the stocks in a way that preserves them for the U.S. industry. This is what this legislation is about.

All of the councils that we have around the country are composed of experts in the fishing area, men and women who represent recreational fishermen, commercial fishermen, scientists, who serve on the fishing council, and their job is to come up with management programs for the various species. It took a long time to reach the point where we are today. Today, the challenge is sound management. You can only have good management if you have good science. You cannot come up with a fishery plan that makes sense if you do not know how many fish you have in the waters off of our coasts.

Therefore, the science is incredibly important, to have the best available scientific information about the conditions of the stock. This legislation moves in that direction to allow for even better science to be obtained, to make these decisions. I applaud the Members who have been involved in insisting this be what our standard is.

In addition, the question of bycatch, something that every fisherman is affected by: If you are fishing for shrimp and catching a lot of other fish that you are not targeting, you have a bycatch, an extra catch that you are not trying to do. We need a lot more studies on bycatch, on how to prevent bycatch without destroying the fishermen who are going after a targeted species. In this legislation, there is more work in that area as well.

By and large, we have to resist the temptation for us to try and manage fisheries from here in Washington. I don't think we have a fish biologist as a Member of the Senate. We are not biologists. I don't think anybody has that background. We should make sure that the councils do the management plans, working with the National Marine Fishery Service. We have to be very careful if we try and say that the councils cannot do this or that because we in Washington know better. The councils have the first obligation of coming up with management plans based on science. Now and then, we get inundated by one particular group of fishermen, maybe recreational fishermen, that say, ''You have to ban all catches of red snapper,'' and then the commercial boys say, ''No, you need to catch more red snapper because there are a lot more out there.''

We are tempted to enact amendments to legislation here in Washington that would do fishery management from the floor of the Senate or from the Commerce Committee. I suggest that that is the wrong way to do it. We ought to strengthen the councils and not weaken them, and let them come up with the proper management plans. This is an issue that never has been Democratic or Republican; it's where you are from, the different areas of the northeast, the southeast, the gulf coast, and the Northwest. We have intermural battles here between Alaska and Oregon and Washington, between Texas and Louisiana and the gulf and Florida. But we have come together with this piece of legislation.

I commend JOHN KERRY and TED STEVENS for their ability to bring this product to the floor. Is it perfect? Of course not. Nothing here ever will be. But it is a good bill and one that makes sense. I congratulate the ranking member and the chairman of the subcommittee for their work. I support this legislation. We will monitor how it is implemented very carefully to see if further improvements can be made in the future. It has been a long time since 1976 and all those years since we tried to put this together. It is working. We can take a lot of credit and be proud of the work we have done. There is a lot more that needs to be done, and this legislation moves us in that direction. I support the legislation.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. How much time is remaining?

Mr. SMITH. The Senator from Massachusetts has 11 minutes remaining. The Senator from Alaska has 14 minutes.

Mr. KERRY. The Senator from Oregon requests how much time?

Mr. WYDEN. Does the Senator have 5 or 6 minutes?

Mr. KERRY. I yield 6 minutes to the Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I rise in support of S. 39, the Sustainable Fisheries Management Act. This bill is a good step forward in the management of our Nations' fisheries, addressing important areas of concern such as rebuilding over-fished stocks and collecting better data so we can manage our fisheries more effectively. I guess I'm the only Member of Congress in the position of voting for this legislation in both Houses of the Congress.

I want to thank Senators STEVENS and KERRY, and their staffs especially, for their help and guidance to me, the newest member on the Commerce Committee, on issues of great importance to the fishermen, fishing communities, and the fishing industry in Oregon. I commend them for their hard work on this legislation and hope that we will be signing this bill into law in the very near future.

I would also like to thank Senators MURRAY and GORTON for their willingness to address an issue critical to the Oregon crab fishery. I am satisfied that the compromise we have reached will go a long way to helping the State of Washington address its crab management concerns, and assure Oregon crab fishermen continued access to crab fishing areas off of the Washington coast.

The State of Washington is currently struggling to address management issues arising from a recent Federal court decision that requires the State of Washington to provide Washington's Indian tribes with 50 percent of the Washington crab fishery. Historically, Oregon crabbers have also fished off of Washington's coast and it is easy to see how this new situation could create conflict.

Historically as well, Oregon, Washington, and California have enjoyed an excellent working relationship with regard to the crab fishery. So, it was with concern that I reviewed the original proposal to extend state jurisdiction into the Exclusive Economic Zone [EEZ] for all fisheries without a Federal management plan. In my view, this original proposal had the potential to restrict many Oregon fishermen from fishing in their traditional areas.

With respect to the crab fishery alone, the potential effects were ominous for all segments of the crab fishery in Oregon, crab fishermen, the coastal communities of Astoria and Warrenton and the crab processors in those communities who provide employment to hundreds of workers.

The Oregon crabbers fishing off the Washington coast represent a significant percentage of the crab landings to Astoria and Warrenton: these boats land almost 85 percent of the crab processed in these two ports. To say that this fishery is significant to these communities barely coveys the vital importance of this fishery to the economy of Oregon's north coast. Fishermen, equipment suppliers, crab processors, and their employees are all intimately tied to this natural resource.

The compromise Senators MURRAY, GORTON, and I have reached restricts the extension of State jurisdiction to conservation measures within the crab fishery only. These restrictions would apply equally to all boats fishing in the same waters. Each State's limited entry programs and landing laws are respected. To address the harvest requirements of Federal Court Order, *U.S.* v. *Washington* 89–3, the State of Washington may close areas or restrict the number of crab pots laid by crabbers. Our intent is to give the State of Washington flexibility in meeting requirements of the Federal court order while minimizing the restrictions on Oregon's crabbers.

Perhaps the most important part of the State jurisdiction provisions is a clause stating that the Pacific Fisheries Management Council should develop and submit a fishery management plan for Dungeness crab and other shellfish. The timely development of a Federal fishery management plan for Dungeness crab is essential if we are to avoid inter-State conflicts in the future. To this end, the bill also requires the Pacific Fisheries Management Council to report to the relevant Senate and House Committees within a year regarding their progress on a plan.

Again, I appreciate the willingness of the Senators from Washington to address this issue. I look forward to working with them on these issues in the future.

As I mentioned above, I have voted on both the House and Senate versions of this bill. Not only did I support the House bill, I voted for key conservation amendments that were adopted as floor amendments, including those on overfishing and habitat protection. The conservation provisions of S. 39 are also significant, several of which are of particular importance to Oregon. Reauthorization of the Magnuson Act is a high priority for Oregon fishermen and conservation groups alike.

The new mandatory provisions requiring fishery management councils to develop criteria for determining when a fishery is over-fished, and for rebuilding those fisheries, will help us set a solid target for rebuilding overfished stocks both in the Pacific Northwest.

Likewise the measure adding a new national standard to the Magnuson Act requiring that conservation and management measures minimize by-catch—the incidental harvest of nontarget fish—makes a good effort at reducing one of the most distressing aspects of our fisheries.

The bill also defines essential fish habitat and requires the councils to minimize adverse effects on habitat due to fishing.

I shall note at this time some disappointment with regard to the communities provisions. While in the House I supported Congressman MILLER's proposal on communities. The Oregon fishery is in large measure family owned and shore-based, and I would have preferred to have communities language in the bill that recognized and protected our fishing communities more fully.

During our discussions on passage of the bill, it was made clear to me that a protracted fight over the communities language would jeopardize the entire Magnuson reauthorization. In my view this would have hurt Oregon more than it would have helped. Reluctantly, I have for now agreed not to insist on stronger communities language and get this reauthorization done.

Mr. President, although S. 39 is not perfect, it is one of the strongest pieces of conservation legislation to pass the Senate this year. I urge passage of this legislation.

Mr. HOLLINGS. Mr. President, this year marks the 20th anniversary of the Magnuson Fishery Conservation and Management Act, our Nation's primary law to protect and develop the wealth of fishery resources found off American coasts. Those resources are a valuable national heritage. In 1995, U.S. commercial fishermen landed a record 9.9 billion pounds of fish, producing over $3.7 billion in dockside revenues. By weight of catch, the United States is the fifth largest fishing nation. We are also the world's top seafood exporter, with exports valued at $3.3 billion in 1995.

Over the past two decades, the Magnuson Act has guided the development of the U.S. fishing industry, as we successfully Americanized our fisheries. However, in some regions we unfortunately were more successful in promoting fishing than in preserving fish. As the competition among U.S. fishermen grew, the unique and participatory process established by the Magnuson Act began to show a few signs of aging. Three years ago the Commerce Committee began a systematic review of Federal programs and regulations that affect marine fisheries management. Since then we have held over a dozen hearings here in Washington and in fishing communities around the Nation. We have heard from almost 200 witnesses from South Carolina to Maine and from Hawaii to Alaska. The final result of that review is the bill before the Senate today. S. 39, the Sustainable Fisheries Act, represents the efforts of Senators STEVENS and KERRY, myself and other Members to address the issues identified. This reauthorization of the Magnuson Act builds upon our past experience to stop overfishing and waste, protect essential marine habitat, and streamline the management process.

Turning to the Southeast, where commercial fishermen landed over 275 million pounds of seafood—valued at $238 million—in 1995, fishing plays a vital role in the economies of many coastal communities like Murrells Inlet, Charleston, McClellanville, and Beaufort. In addition, the sportfishing industry is an important part of the regional and local economies. In 1995, an estimated 2.3 million anglers participated in marine recreational fisheries in the south Atlantic region. These fishermen made over 18 million fishing trips, catching more than 65 million fish, including seatrout, catfish, and red drum.

The south Atlantic Spanish mackerel fishery, in particular, has been cited as a Magnuson Act success story. Prior to the 1980's, mackerel catches essentially were unregulated, leading to over-harvesting by both commercial fishermen and sport anglers. The South Atlantic Council then stepped in to implement quotas, bag limits, and trip limits and this once-depleted population now seems well on its way to rebuilding. Unfortunately, for every success story like Spanish mackerel or striped bass, we still hear all too many tragedies.

In addition, we have seen growing interest in reducing waste and unnecessary bycatch in our fisheries. The United Nations estimates that about 27 million tons of fish each year—about a third of world harvests—are caught and thrown back because they are too small, there is no market, or a quota has been exceeded. South Carolina shrimpers are far too familiar with this issue and have struggled for years to prevent endangered sea turtles from drowning in their nets. The spirit of cooperation and innovation that they have shown in working with State and

Federal managers to successfully tackle the sea turtle problem demonstrates an approach which should be effective in dealing with other bycatch problems.

Habitat protection also has become a greater concern in recent years as coastal development and marine pollution threaten the environment and subsequently the health of many fish stocks. Half of the world's population now lives within 40 miles of the coastline, and scientists estimate that by the turn of the century, more than three-quarters of Americans will live within 50 miles of the U.S. coastline. Essential fish habitat must be identified and conserved if we are going to maintain healthy fish stocks in the future.

Finally, while the growing frustration with large government bureaucracies and overregulation is not confined to marine fisheries, we certainly need to take steps to streamline the process and eliminate unnecessary redtape. The goal of the council process established under the Magnuson Act was to ensure the participation of all those affected by fishery regulations. However, we cannot allow that process to become so cumbersome that it fails to effectively conserve our fisheries resources, and we must have in place reasonable safeguards against conflicts of interest.

Those of us who are interested in the protection and responsible use of our marine resources have learned a lot about managing marine fisheries over the past two decades. We recognize that the days of superabundant fish stocks are gone forever, and we are confronting a basic fact of life—there aren't enough fish to go around. We also have seen that rebuilding efforts, like the plan for Spanish mackerel, can be successful. And we now understand the importance of ecological considerations like habitat and bycatch in managing our fisheries.

Building on that increased understanding, S. 39, the Sustainable Fisheries Act, extends the authorization of appropriations for the Magnuson Act through fiscal year 1999. The bill also: First, caps fishery harvests at the maximum sustainable levels and requires action to prevent overfishing and rebuild depleted fisheries; second, broadens existing Federal authority to identify and protect essential fish habitat; third, minimizes waste and discards of unusable fish; fourth, streamlines the approval process for fishery management plans and regulations; fifth, tightens financial disclosure and conflict-of-interest requirements for council members; sixth, establishes a moratorium on management plans that allow private ownership of harvest quotas and fees to cover the administrative costs of such a plan; and seventh, reauthorizes other fishery programs and statutes, including the Interjurisdictional Fisheries Act, the Anadromous Fish Conservation Act, and the Atlantic Coastal Fisheries Cooperative Management Act.

Mr. President, S. 39 is the result of extensive bipartisan efforts by Senator KERRY and Senator STEVENS. As a result of their hard work, we have before us a good bill that furthers the goals and policies of the Magnuson Act. I encourage my colleagues to vote for this vital legislation today.

Mr. MURKOWSKI. Mr. President, I very strongly support the passage of S. 39, a bill to reauthorize and revitalize the Fishery Conservation and Management Act, also known as the Magnuson Act. This is without a doubt the single most important conservation bill that has come before this Congress.

The text before us today has changed greatly since the bill I had the honor to cosponsor, along with Senator STEVENS and Senator KERRY, in the final days of the 103d Congress. In the almost 2 years since that day, Senator STEVENS and Senator KERRY have led a remarkable bipartisan effort to resolve other Members' problems with the bill as originally introduced.

I cannot say, Mr. President, that I am completely happy with all of the changes that have been necessary to accommodate the interests of various Members. However, Mr. President, I can say that I have watched the evolution of this legislation with very close attention, and am confident that the managers have made every possible effort to make those accommodations without violating the integrity of the bill.

I also want to recognize the tremendous effort that has been made by by fishing industry groups, the environmental community and others, all of whom participated in bringing this bill to this point, just steps from completion.

My own efforts in connection with this bill have largely focused on certain issues that have recently exploded into international prominence—fishery bycatch and discard.

Worldwide, the Food and Agriculture Organization of the United Nations reports that with total fishery landings of 83 million metric tons, plus discards of up to 27 million metric tons, we may be taking as much as 10 million tons per year more than the oceans can sustain.

I introduced the first bill to address bycatch and discard back in 1993. Today, almost 3 years later, I am very pleased to say we are finally on the verge of taking action. The bill before us follows the lead of my early bill by establishing a new national standard calling for bycatch to be avoided where possible, and where it cannot be avoided, for steps to minimize the resulting fishery mortalities. This will put us on the road to stopping the shameful waste that is currently occurring in many fisheries.

Following this principle, Senator STEVENS has authored a separate section of the bill for Alaska only, which calls for annual bycatch reductions for the Gulf of Alaska and Bering Sea off Alaska.

Among other provisions, this bill will improve fisheries conservation and utilization, on which so many individuals in our coastal communities depend. It will for the first time address the problem of overfishing by requiring corrective action to be taken when a fishery is or is in danger of becoming overfished. It will also strengthen the fisheries management process by improving the way that regional fishery councils function, improve the way fisheries research is conducted and make many other changes of great importance and urgent need.

Mr. President, two issues which have been most contentious during this reauthorization process are the prospects for a new type of fishery limitation called an individual fishing quota program, and for a community development quota program intended to pass through some of the benefits from fisheries in the Bering Sea to disadvantaged, largely Native communities in that area.

In Alaska, and elsewhere, there has been considerable debate on redesigning fishery management using an individual fishing quota system. I won't attempt to get into the level of detail necessary to explain how this would differ from the existing system of management. Suffice it to say that supporters believe this would solve most of today's problems of overcapitalized fisheries with the least government interference, and opponents claim it would not only be costly to the government but hugely unfair to those who are excluded and to communities dependent on fishing.

The bill before us represents a compromise between these two positions. It contains a moratorium on new individual fishing quota systems, and a comprehensive study of their potential—both good and bad—and of their actual impacts in those cases where they have already been used. I believe this is a compromise worthy of the Senate's support.

In the case of the community development program proposal, we also see the results of sensible, needed compromise. The bill before us today provides a mechanism to assign some of the volume of fish coming from Bering Sea fisheries to the task of helping provide a stable, permanent economic base for some of the poorest, most disadvantaged communities in the country. This is a very worthy goal, and it is also one that I believe deserves the support of my colleagues.

There are far too many other specifics in this bill to recount them all, or to provide my views on each and every issue the bill addresses. Instead, let me close with this: if there is anything on which we can agree, it is the need for productive, healthy oceans. That is the goal of this bill, and this bill is Congress' farthest ever reach toward reaching it. Let's not waste it.

Mr. INOUYE. Mr. President, I rise to join my colleague, the senior Senator from Alaska, in support of the manager's substitute for the Committee on

Commerce, Science and Transportation's amendment to S. 39. I wish to thank my colleagues Senator STEVENS and Senator KERRY for their leadership in accommodating a multitude of diverse concerns and requests and bringing this monumental legislation to the Senate floor. S. 39 represents a truly bipartisan approach to fisheries issues that are of vital importance to our nation's economy and environment.

There are many commendable features to the manager's amendment including a section which provides authority for the western Alaska and western Pacific community development quota (CDQ) programs.

Mr. President, for 190 years the United States limited its authority to regulate fishing in the waters surrounding its coast to the three-mile territorial sea. Exploiting that forbearance, by the mid-1930s, foreign fishing vessels routinely fished for salmon, crab, and other fish stocks within sight of the Alaska coast.

In 1976, in order to end foreign fishing within 200 miles of the coast of the United States, the Congress enacted the Magnuson Fishery Conservation and Management Act (MFCMA). Section 302 of the Act divides the 200-mile zone—which today is known as the exclusive economic zone (EEZ)—into eight subzones and establishes a fishery management council for each subzone. The Act authorizes each council to prepare a fishery management plan and authorizes the Secretary of Commerce to approve and by regulation implement each fishery management plan (FMP) for each fish stock located within its subzone that the council determines ''requires conservation and management.''

In addition to preventing overfishing, the Congress intended the Secretary's implementation of fishery management plans to advance an equally important policy objective—the transfer of the economic benefits derived from fishing inside the EEZ from foreign fishermen to United States fishermen. When the Magnuson Act was enacted, with little exception, American fishermen were not participating in fisheries beyond the territorial sea.

In the EEZ Alaska subzone, for example, in 1975 Japanese and Soviet fishermen harvested 1,310,000 metric tons of pollock, while United States fishermen harvested less than 3,000 metric tons. And Japanese fishermen harvested 30,000 metric tons of sablefish, while United States fishermen harvested 1,000 metric tons. By 1987, United States fishermen had replaced foreign fishermen in the Alaska subzone. And by 1991, United States processors had replaced foreign processors. As a consequence, in 1992, U.S. fishermen harvested pollock and other groundfish in the Alaska subzone that had an ex-vessel value of $675 million.

Between 1984 and 1992, the catch of pollock by U.S. fishermen increased from 8,400 metric tons to 1,402,300 metric tons, and the catch of sablefish by U.S. fishermen increased from 9,900 metric tons to 23,700 metric tons.

The revenues realized by U.S. fishermen who replaced foreign fishermen in the pollock fishery conducted in the Alaska subzone increased from $1.4 million in 1984 to $388.8 million in 1992. And the earnings of U.S. fishermen who replaced foreign fishermen in the sablefish fishery increased from $7 million to $53.5 million.

However, there was one group of U.S. fishermen—the Eskimo and Aleut fishermen residing in 55 Native villages scattered along the windswept coast of the Bering Sea—who, through no fault of their own, were precluded from participating in the fisheries which the Secretary's implementation of fishery management plans in the Alaska subzone had forced open.

For generations, life in the Native villages had revolved around subsistence fishing, hunting, and gathering. Isolated by their distant locations and indigenous cultures, between the entry of Alaska into the Union in 1959 and the enactment of the Magnuson Act in 1976, residents of the 55 villages were left out of Alaska's poststatehood rush to economic and social modernity. In 1990, the median population of the 55 villages was 278 persons.

In 1968, the Federal Field Committee for Development Planning in Alaska described the situation in the region in which most of the villages are located as follows:

> Bluntly put, the region has no apparent base for economic growth. It has a rapidly growing population without local employment prospects and generally without the cultural, educational, and skill prerequisites for successful out-migration. In the foreseeable future, outside of the conversion of the present subsistence [salmon] fishery in the Yukon and Kuskokwim Rivers to a more efficient commercial operation, any growth of opportunity either for employment or for enterprise in the region, will result directly from government action. The only prospect for expansion of the public sector, in turn, can be anticipated as a result of efforts to overcome the cultural and economic handicaps of the region's population.

The Field Committee's assessment accurately described the underlying cause of a growing social crisis in Bering Sea coastal villages that, over the succeeding 20 years, intensified. In 1970–71, for example, the village of Nome experienced 9 suicides and 22 suicide attempts in 24 months, committed primarily by Eskimo adolescents. A knowledgeable local physician described the epidemic of self-destruction as ''the end result of a long series of problems'' caused by ''the traditional village life dying out and the [subsistence] culture becoming nonexistent;'' a social upheaval that young Natives returning home ''from outside schools to find their skills unneeded in the village'' exacerbated.

Seventeen years later, the situation both in Bering Sea coastal villages and in other Native villages had deteriorated to the point that as the Anchorage Daily News, which won a Pulitzer Prize for its coverage, explained in 1988:

> Across the state, the Eskimos, Indians and Aleuts of Bush Alaska are dying in astonishing numbers. By suicide, accident and other untimely, violent means, death is stealing the heart of a generation and painting the survivors with despair . . . An epidemic of suicide, murder and self-destruction threatens to overwhelm cultures that have for centuries survived and prospered in the harshest environments on earth . . . The village of Alakanuk [one of the 55 Bering Sea coastal villages referred to above] lived on the razor's edge: a town of 550 with eight suicides, dozens of attempts, two murders and four drownings in 16 months. This was Eskimo Armageddon. But while Alakanuk's experience has been the worst, it is by no means an isolated example. The pace of suicide, self-destruction and abuse is accelerating all over Alaska.

The Daily News series, which was entitled ''People in Peril,'' drew public attention to a social crisis of which Native leaders long had been aware. Seizing the opportunity, the Alaska Federation of Natives [AFN], a statewide organization representing Native interests, prepared a report documenting the conditions and challenges confronting the Native people, entitled ''A Call for Action,'' that was submitted to the Congress. In pertinent part, ''A Call to Action'' concluded that:

> [L]arge numbers of Natives who want to work in their home villages or region have no possibility of doing so. In most Native villages, the prospects for private sector economic development are limited, and due to declining oil revenues, state spending is projected to steadily decline throughout the 1990s. The projected decline in economic activity in rural Alaska coincides with the steadily increasing number of young Native adults who will be seeking to enter the work force. Every effort to take advantage of limited opportunities for private economic development should be encouraged.

For Eskimo and Aleut residents of Bering Sea coastal villages, AFN's admonition was particularly ironic because, due in large part to the Magnuson Act, the ocean lapping at their doorsteps was roiling with private economic activity that for 16 years had been regulated by the North Pacific Fishery Management Council [Council] and the Secretary in a manner that had for the most part excluded their participation, even though section 301(a)(4)(A) of the act required the Council and the Secretary to regulate the opportunity to participate in Bering Sea fisheries in a manner that was ''fair and equitable'' to all fishermen, including Eskimo and Aleut fishermen who reside in Bering Sea coastal villages.

The Council and the Secretary's failure to regulate Bering Sea fisheries in a manner that provided fishermen in Bering Sea coastal villages a ''fair and equitable'' opportunity to participate was particularly troubling given the fact that the Council and the Secretary both have a fiduciary obligation to exercise their regulatory authority in a manner that advances the well-being of Alaska Natives.

Two months after the Alaska Federation of Natives presented A Call for Action to Congress, in May of 1989, the Council planning committee recommended that the Council amend its relevant fishery management plans to establish a western Alaska community development quota program. The objective of the program was to facilitate access to Bering Sea fisheries by Eskimo and Aleut residents of Bering Sea coastal villages by providing the villages in which they reside an opportunity to harvest a small portion of the total allowable catch of certain fish stocks.

After careful review and numerous opportunities for public comment, in June of 1991, the Council approved an amendment to the Bering Sea and Aleutian Islands groundfish fisheries management plan that established a western Alaska community development quota program for Bering Sea pollock and allocated 7.5 percent of the Bering Sea pollock total allowable catch to ''communities of the Bering Sea coast'' that participate in the program. In May of 1992, the Secretary approved the amendment and in November of that year promulgated a rule adopting regulations which established a procedure for village participation in the program.

The regulations identified 55 eligible Bering Sea coastal villages. To be eligible, a village was required to be located within fifty miles of the Bering Sea coast and to have been determined by the Secretary of the Interior, pursuant to the Alaska Native Claims Settlement Act, to be a ''Native village.'' In addition, the residents of an eligible village must have conducted more than half of their commercial or subsistence fishing effort in the waters of the Bering Sea. Finally, an eligible village ''must not have previously developed harvesting or processing capability sufficient to support substantial'' participation in the Bering Sea groundfish fishery.

To participate in the western Alaska pollock community development quota program, the 55 villages formed six organizations: the Yukon Delta Fisheries Development Association, the Bristol Bay Economic Development Corporation, the Norton Sound Economic Development Corporation, the Coastal Villages Fishing Cooperative, the Aleutian Pribilof Island Development Association, and the Central Bering Sea Fishermen's Association. Each organization then submitted a community development plan to the Governor of Alaska. When the Governor approved the plans, in December of 1992, the Secretary issued each organization the share of the 7.5 percent of the pollock total allowable catch that the Governor had determined was needed by the organization to implement its community development plan.

Each community development quota organization has entered into a joint venture with an experienced fishing company to assist in the harvesting of its share of the pollock community development quota allocation. These joint venture efforts have provided employment for village residents on joint venture fishing vessels, in the processing of the pollock catch, and in the management of the joint ventures. Of coequal importance, the sale of the catch has provided working capital that each organization has used to finance village fishery-related economic development activities that otherwise would not be occurring.

To what extent has the western Alaska pollock community development quota program contributed to alleviating the social problems described in ''A Call for Action''?

Alarmed by ''A Call for Action's'' documentation of the accelerating social disintegration taking place in Native villages, in 1990, the Congress established a Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives to conduct ''a comprehensive study'' of ''the social and economic status of Alaska Natives,'' and to recommend actions that the Congress and the State of Alaska should take to better address the needs of Alaska Natives for ''economic self-sufficiency * * * and reduced incidence of social problems.''

In 1994, the Commission published a three-volume report that summarized the results of its investigation. Among the recommendations listed in its report, the Commission urged the Council ''to expand the community development quota [program] to other fisheries in the future.''

In fact, while the Commission was studying the community development quota program, the Council had already acted upon the Commission's report by recommending to the Secretary that he establish a western Alaska community development quota program for Bering Sea halibut and sablefish, in which the six community development quota organizations are presently participating. And in June of 1995, the Council recommended to the Secretary that he establish a third western Alaska community development quota program for Bering Sea crab species and other groundfish species.

To facilitate the efficient implementation of the programs, the substitute amendment to the Sustainable Fisheries Act amends the Magnuson Act to require the North Pacific Fishery Management Council and the Secretary to establish a single western Alaska community development quota program and to annually allocate a percentage of the total allowable catch and guideline harvest levels of each Bering Sea fishery to the program. The eligibility standards for participating in the program are the same standards that the Secretary previously established by regulation.

Mr. President, I am pleased to note that the substitute amendment also authorizes the Western Pacific Regional Fishery Management Council and the Secretary to establish a western Pacific community development program.

Much like their brothers and sisters in Alaska, those indigenous people who for centuries had traditionally fished in the waters of the Western Pacific, have been increasingly foreclosed from access to the fishery, largely due to the fleets of foreign fishing vessels whose number, vessel size, and methods of harvesting have dominated the Western Pacific fishery.

The Western Pacific community development quota program would be applied in the Western Pacific Region but would not, in all likelihood, employ a percentage of the total allowable catch of any particular species. Accordingly, while there is a section of the substitute bill that addresses fees associated with the allocation of a percentage of total allowable catch, it is not anticipated that the requirements of the section addressing fees would apply. Rather, it is anticipated that the Western Pacific program would place a priority on enabling access to the fishery for those that have been economically-fore closed from such access. Measures to enhance access might include regulation of limited entry permits, area closures, fishing zones, and vessel size. Joint venture agreements for the harvesting and processing of fish might also be employed as they are in the north Pacific region.

In addition, under the western Pacific program authority, the Western Pacific Regional Fishery Management Council would be authorized to take into account traditional indigenous fishing practices in preparing any fishery management plan.

The substitute also establishes authority for the Secretary of Commerce and the Secretary of the Interior to make direct grants to eligible western Pacific communities, as recommended by the Western Pacific Fishery Management Council, for the purpose of establishing fishery demonstration projects to foster and promote traditional indigenous fishing practices. The demonstration projects are intended to foster and promote the involvement of western Pacific communities in the conservation and management of fisheries through the application of traditional fishing practices as a means for developing or enhancing western Pacific community-based fishing opportunities, the preservation of the island-based cultural values that shape their historical conservation ethic, and the development and implementation of community-based research and education programs.

I am also pleased that the manager's substitute includes a provision authorizing Pacific Insular Area Fisheries Agreements for the purpose of enhancing fisheries conservation and management in the Pacific. This program will be funded under terms similar to those imposed on U.S. fishermen who seek access to fish resources in foreign waters. This program will greatly benefit

our Nation and fisheries resources throughout the Pacific Ocean.

I congratulate Senator STEVENS, Senator KERRY and their staff, particularly Penny Dalton, Alex Elkan, Trevor McCabe, Earl Comstock, GLENN Merrill and Tom Melius for this great accomplishment.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. STEVENS. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Alaska has 14 minutes under his control.

Mr. STEVENS. I ask unanimous consent that we be permitted to maintain the control of the time we have on the bill and that the Senator from Maine now be able to present her amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Maine.

There will be 30 minutes, equally divided, on this amendment.

AMENDMENT NO. 5381

(Purpose: To limit lobstering other than by pots or traps if no regulations to implement a coastal fishery management plan for American lobster have been issued by December 31, 1997)

Ms. SNOWE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. SNOWE] proposes an amendment numbered 5381.

Ms. SNOWE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 161, line 21, strike ''810 and 811,'' and insert ''811 and 812,''.

On page 163, line 4, strike the closing quotation marks and the second period.

On page 163, between lines 4 and 5, insert the following:

''SEC. 810. TRANSITION TO MANAGEMENT OF AMERICAN LOBSTER FISHERY BY COMMISSION.

''(a) TEMPORARY LIMITS.—Notwithstanding any other provision of this Act or of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), if no regulations have been issued under section 804(b) of this Act by December 31, 1997, to implement a coastal fishery management plan for American lobster, then the Secretary shall issue interim regulations before March 1, 1998, that will prohibit any vessel that takes lobsters in the exclusive economic zone by a method other than pots or traps from landing lobsters (or any parts thereof) at any location within the United States in excess of—

''(1) 100 lobsters (or parts thereof) for each fishing trip of 24 hours or less duration (up to a maximum of 500 lobsters, or parts thereof, during any 5-day period); or

''(2) 500 lobsters (or parts thereof) for a fishing trip of 5 days or longer.

''(b) SECRETARY TO MONITOR LANDINGS.—Before January 1, 1998, the Secretary shall monitor, on a timely basis, landings of American lobster, and, if the Secretary determines that catches from vessels that take lobsters in the exclusive economic zone by a method other than pots or traps have increased significantly, then the Secretary may, consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801), and after opportunity for public comment and consultation with the Atlantic States Marine Fisheries Commission, implement regulations under section 804(b) of this Act that are necessary for the conservation of American lobster.

''(c) REGULATIONS TO REMAIN IN EFFECT UNTIL PLAN IMPLEMENTED.—Regulations issued under subsection (a) or (b) shall remain in effect until the Secretary implements regulations under section 804(b) of this Act to implement a coastal fishery management plan for American lobster.''.

Ms. SNOWE. Mr. President, first of all, I want to thank Senator STEVENS for giving me the opportunity to offer this amendment. Before discussing some of the provisions of this amendment, I want to commend Senator STEVENS for his achievement in bringing this bill before the Senate and for ultimate passage.

As those of us from coastal States know, fisheries management issues can be extremely complex in both technical and political senses. These complexities are greatly heightened at the present time when so many of our fisheries are either fully or overexploited.

That is why the reauthorization of the Magnuson Act has been a long and arduous process. But Senator STEVENS and Senator KERRY have been able to work through the complexities and conundrums and resolve seemingly intractable disputes in an effort to fashion compromise legislation that we are considering today. It is truly a monumental achievement. Senator STEVENS in particular has been a leader in fisheries issues for a decade and, as a framer of the original Magnuson Act, deserves our appreciation.

Mr. President, if you ask any American what they think of when they think of Maine, they will tell you lobsters. Maine is indelibly linked with its lobster industry, and with good reason. Lobstering is a proud and historic tradition in our State. It exemplifies some of the best qualities of Maine, and indeed, the American character—rugged independence, a willingness to work hard, and a profound respect for mother nature.

Of course, lobstering is also an essential element of the Maine and New England economies. If you drive along the coast of Maine and see the lobster boats moored in the harbors of our 144 fishing villages, and the lobster traps spread out in the yards of the homes nearby, it won't take you long to understand how many people depend on the lobster industry for a living.

My amendment is designed to protect the lobstering tradition in Maine and New England. It is a very important amendment, Mr. President, because the lobster resource now faces a serious threat. And if this threat remains unaddressed, our lobstering tradition could be jeopardized.

My amendment deals with a wasteful and destructive form of lobster harvesting known as dragging. The original amendment I was prepared to offer would have imposed tough new restrictions on dragging within 60 days. But after listening to concerns expressed by other Senators, I have agreed to substantially revise the amendment. This is a true compromise, and it is very deserving of the Senate's support.

Most people know that lobstering is general conducted with traps that are baited and rest on the ocean bottom. This is the time honored and sustainable method of catching lobsters. The trap method permits the lobstermen to bring lobsters to the surface alive and unharmed, and then to safely discard those lobsters that should not be retained, such as juveniles, egg-bearing females, and older brood stock lobsters—lobsters that are essential to replenishing the resource.

There are other ways to catch lobsters, however. Some fishermen drag nets, like those used to catch finfish such as cod, along the ocean bottom to scoop up the lobsters. But these nets are indiscriminate. Undersized and oversized lobsters, along with egg-bearing females, get swept into the nets. When the nets are dragged across the bottom, and they hauled up to the surface, many lobsters are broken and crushed, including those that should be protected and returned to the water safely to reproduce.

This method of harvest is very damaging to the resource. That's why Canada, the world's largest lobster producer, and Maine, the United States' largest producer, prohibit any of their vessels from dragging for lobsters. That's why Massachusetts, America's second largest lobster producer, just enacted a new law to sharply restrict dragging by any of its vessels. And it's why Massachusetts and New Hampshire prohibit dragging for lobsters in State waters.

Inexplicably, however, dragging for lobsters is permitted under the status quo in Federal waters. And because Federal lobster management is currently in a state of limbo, we do not have comprehensive and active lobster management in the Federal zone at this time. The Commerce Department has turned Federal lobster management over to the Atlantic States Marine Fisheries Commission [ASMFC], a State-based organization. But the commission is not expected to complete a plan until sometime late in 1997.

Obviously, lobsters don't recognize the State-Federal line. They cross it at will. So anything that happens on one side of the line affects the lobster resource on the other side. It's the same stock. Thus, lobstermen in State waters can abide by the strictest regulations possible, but their conservation efforts will be undermined as long as dragging occurs right across the State line—and there is no doubt that it is occurring.

Reports in New England indicate that there are increasing numbers of

dragging vessels engaged in directed fishing for lobsters in the Federal zone just outside State waters. The Maine Marine Patrol has seen an increase in directed dragging in the Federal zone. And lobster industry officials from Maine, Massachusetts, and New Hampshire are reporting it.

And these officials expect dragging activity to increase further over the next couple of years as new groundfishing restrictions take effect and prompt more displaced groundfishermen to seek alternative fishing opportunities.

My original amendment sought to control the unwise practice of directed, or intentional, dragging for lobsters. A dragger would have been prohibited from landing more than 100 lobsters per 24-hour fishing day, with a maximum limit of 500 lobsters for a fishing trip of 5 days or longer. These landings limits were taken straight from the law enacted this summer by Massachusetts and signed by the Governor. States could have set the tighter limits, but landings would have been capped at the levels in the amendment.

These landings limits were intended to make it economically infeasible for dragger vessels to intentionally target lobsters, while permitting draggers that unintentionally catch lobsters when they are fishing for other species, like cod, to sell their incidental bycatch. It would have prevented draggers from easily circumventing the conservation laws of Maine and Massachusetts.

While I thought the amendment was a very reasonable one, other States expressed concern about the abrupt imposition of new Federal regulations on them, so I agreed to a substantial compromise. Instead of imposing the landings limits immediately, the amendment I am offering today permits the Atlantic States Marine Fisheries Commission and the Secretary of Commerce to develop and issue regulations for a Federal management plan for American lobster by December 31, 1997.

If a plan is not completed by the end of 1997, then the amendment would require the Secretary to implement the landings limits that were contained in the earlier amendment. To prevent an explosion in new dragging effort before the deadline, the amendment directs the Secretary to monitor lobster landings, and if he determines that a substantial increase in dragging is occurring, he is given discretionary—and I repeat, discretionary—authority to issue interim regulations to control the increase.

Mr. President, the deadline in my amendment is obviously more than a year away and it gives the ASMFC and the Secretary ample time to get a handle on Federal lobster management. In fact, the commission has said that it can complete a plan by the fall of 1997, so the deadline is realistic. My amendment will simply help to ensure that the commission meets its own schedule for a plan, which will, hopefully, address the dragging issue. If the commission fails to meet this deadline, then and only then will the dragging restrictions go into effect. Once the commission completes its plan, the restrictions would be voided.

This is a very fair amendment, Mr. President, and, frankly, it represents a substantial compromise on the part of the American lobster industry. It provides plenty of time for the management process to work, while sending a message to the appropriate authorities that the issue of dragging for lobsters must be addressed. But if that process bogs down, and we're faced with the prospect of more and more dragging for lobsters, then responsible lobstermen will receive some interim protection until the commission completes its plan.

Lobster dragging is not only inconsistent with the conservation of this fully exploited resource, it discourages conservation efforts aimed at trap lobstermen. Trap lobstermen in Maine are facing stringent new State regulations. All lobstermen who fish in the Federal zone will have to reduce fishing effort by at least 20 percent in order for the ASMFC to meet its goals. How can we expect these responsible lobstermen to sacrifice and accept burdensome new regulations when wasteful and destructive dragging is allowed to continue unabated just across the State line?

The answer is that we can't. What we can expect is that these lobstermen will resist new regulations imposed on them, and the conservation program for the entire resource will be undermined.

Mr. President, this amendment is about responsible fishing practices. And it is about equity for responsible fishermen. With the substantial concessions that I have agreed to, this amendment gives the appropriate authorities plenty of time to work out a comprehensive plan. But if the process fails, then we have to act.

The amendment is pro-conservation, and it is pro-lobsterman. It is strongly supported by the State of Maine, the State of Massachusetts, and the entire lobster industry throughout New England and the Northeast.

Mr. President, my amendment presents an opportunity for Senators to cast a vote for equity for the great majority of America's lobstermen who fish the right way, and for a healthy lobster resource. It would be the height of irony if the Senate passed this Magnuson reauthorization bill, whose hallmark is the protection of America's fisheries, without approving this modest amendment. We can't let that happen, Mr. President. I urge my colleagues to support my amendment.

Mr. KERRY. Mr. President, I thank the Senator from Maine for her efforts. As she knows, we had a number of issues for a number of different Senators. But I think she has gone a long way in helping to get resolved any of those issues, and we are delighted to accept the amendment.

Mr. STEVENS. Mr. President, we are prepared to accept the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 5381) was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senator's amendment be made a part of the managers' amendment when I present it later this evening.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I could extend comments at length because of some of the comments made by the Senators from Washington. I do not intend to prolong the debate.

I want to state, however, that the provisions for the community development quotas are based in part on the authority of Congress to regulate the commerce of the Indian tribes. The communities of the west coast of Alaska are predominantly Alaska Native people. They were there and fishing a long time before anyone else came on the fishing scene. As a matter of fact, there were no factory trawlers off Alaska from the State of Washington until about 9 years ago. During the period of time since then the amount of fish taken by those trawlers has come up from zero to at one time as high as 65 percent. As a result of negotiations, there is now allocated 65 percent to the fisheries offshore and 35 for the onshore fisheries.

We are allocating a portion of the fisheries to the communities involved that are historic native communities along our coast. I am sad that the Members from Washington do not agree with that concept. We have watched, I might say, with awe the development of the Indian law in the State of Washington that leads to a substantial claim by the Indians of Washington on the fish of the rivers, particularly the Columbia.

This is not the place to get into the argument about it, but we have worked out in Alaska a basis of allocation to protect the species. The Magnuson Act was designed to protect the fish, not fishermen. The amendments for CDQ allocation are to protect communities, not fishermen. They are to protect the traditional fishing communities along the west coast, and as I said half the coastline of the United States is involved and very few communities are protected under the provisions of the CDQ concept.

I do appreciate the comments they made and the attitude that has been demonstrated here by all Senators to try to get this bill resolved in the Senate and get it to the House and hopefully to the President before this Congress adjourns. I do want the Senate to know, however, that this is not a subject that will go away. We will be involved in fisheries legislation, I am sure, as long as the Senate and the Congress are in being and as long as there are fisheries because it is a matter of Federal jurisdiction. Whether we

like it or not, we have to exercise our responsibility and we have to find a way to accommodate the claims of persons who are entitled to fish in the waters off our shores.

We have tried our best to do that while at the same time protecting those people who have traditionally relied upon the sole source for their income, and that is the fish resources off the State of Alaska. That is the case for those Native communities. They are devastated now, Mr. President, and we are trying to find a way to protect their future.

I do believe we have the right as the Congress of the United States to pass a law which commits a portion of the fish resources to those communities under the constitutional powers of the United States Congress to deal with the rights of Indian people, and that is why I am pleased to have the provisions in this bill which I think confirm the action of our regional council. The fisheries development quotas were first put into being by action of the council itself. We are now confirming that that is legitimate action under the concept of the Magnuson Act.

Mr. President, it is my intention now to offer the managers' amendment. I would like to ask at the same time that the clerk under the direction of the staffs of myself and Senator KERRY be authorized to make the technical amendments necessary to incorporate the amendments that have already been adopted. The amendments that were covered by the time agreement are to be put into the managers' amendment, and we are doing that at the present time. And the amendment of Senator SNOWE will also be put in the managers' amendment.

So I suggest the absence of a quorum, if I might just do it for a moment. I will yield to my friend from Massachusetts if he wishes to make some comment.

I suggest the absence of a quorum, Mr. President,

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 5382

(Purpose: To amend the Magnuson Fishery Conservation and Management Act to authorize appropriations to provide for sustainable fisheries, and for other purposes)

Mr. STEVENS. Mr. President, I send to the desk the managers' amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself and Mr. KERRY, proposes an amendment numbered 5382.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. STEVENS. Mr. President, I ask unanimous consent this amendment be adopted now as original text, and if the Senator from Texas wishes to offer an amendment, that that be in order when she arrives——

Mr. KERRY. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Objection is heard.

Mr. STEVENS. And the amendment offered by the Senator from Texas be subject to a time agreement we have already entered into, 30 minutes in the usual form, subject to the restrictions contained in the time agreement that has already been entered into on S. 39.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

Mr. KERRY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts reserves the right to object.

Mr. KERRY. Mr. President, I have no objection.

The PRESIDING OFFICER. Without objection, the unanimous-consent request is agreed to.

The amendment (No. 5382) was agreed to.

Mr. KERRY. Mr. President, but I do want to request a time agreement with respect to——

Mr. STEVENS. We did. Subject to the consideration—30 minutes was allowed on any amendment in the first degree. It will not be subject to second-degree amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I do now ask that we have the agreement I sought previously; the clerk, working with the staffs of the two managers, myself and Senator KERRY, be permitted to make technical changes necessary to conform this amendment. I have sent to the desk the managers' amendment with the Snowe amendment. We will now have another amendment offered, which I intend to oppose, by the way, but it will be offered. Should it be adopted tomorrow, then it would be inserted into this amendment. So it would be an amendment to this managers' amendment we offered.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I now ask no further amendments be in order, other than the one amendment of the Senator from Texas.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. SNOWE. Mr. President, I rise in support of the committee substitute and of S. 39, the Sustainable Fisheries Act, as amended.

Before discussing some of the provisions of the bill, I wanted to commend Senator STEVENS for his achievement in bringing this bill to the verge of Senate passage. As those of us from coastal States know, fisheries management issues can be extremely complex, in both the technical and political senses. And these complexities are greatly heightened at the present time when so many of our fisheries are either fully exploited or overexploited.

That is why the reauthorization of the Magnuson Act has been a long and arduous process. But Senator STEVENS, working with Senator KERRY, have been able to plow through the complexities and the conundrums, and to resolve seemingly intractable disputes, in an effort to fashion the compromise legislation that we are considering today. It's truly a monumental achievement. And Senator STEVENS, in particular, who has been a leader on fisheries issues for decades, and a framer of the original Magnuson Act, deserves our appreciation.

Mr. President, as other Senators have mentioned, this bill strengthens the conservation provisions of the Magnuson Act, and it will lead to the elimination of overfishing and fisheries rebuilding in all our our marine fisheries. Consistent with the title, letter, and spirit of the bill, I firmly believe that our fisheries must be sustainably managed. And sustainable management will require regulation.

Given the state of many of our fisheries, we cannot avoid conservation measures. But in the course of developing these measures, it is also equally important that the Federal Government consider the economic costs of fisheries conservation. In some cases, those costs can be severe, as in the case of the New England groundfish industry, which is now facing a mandatory 80 percent fishing effort reduction in 2 years. Yet despite the importance of economic considerations, there is no requirement in the Magnuson Act to require fishery management councils to try to minimize the adverse economic impacts of fisheries regulations on fishing communities.

During markup in the Commerce Committee, I offered an amendment which establishes a new national standard requiring all fishery management plans to minimize adverse economic impacts on fishing communities. The amendment was adopted by voice vote. This provision is retained in the bill on the floor today, although we have modified it to make clear that these economic considerations are not designed to trump conservation considerations in the process of developing fishery management plans.

In addition to the economic impacts language, the bill before us contains other provisions that I had offered as amendments during the committee process. One directs the Secretary of Commerce to establish an advisory panel consisting of scientists, State officials, fishermen, and conservationists to study and explore ways that the National Marine Fisheries Service can expand the application of ecosystems

principles in its fisheries research and management programs.

Currently, the service takes a narrow approach that focuses primarily on individual fish populations. I, along with many scientists, believe that the Government should take a more holistic approach that looks at fisheries in the context of the ecosystems in which they live. The report required by my amendment would be completed within 2 years.

Another of my provisions from the committee bill would preserve the existing ban on the sale of undersized lobsters in the United States. This language insures that the ban will remain in place even after the Atlantic States Marine Fisheries Commission assumes responsibility for lobster management in the Federal zone. Obviously, this ban protects juvenile lobsters that must, if we are going to conserve this resource, be given an opportunity to reach sexual maturity.

Negotiated rulemaking was the subject of another of my amendments in committee, and the bill retains those provisions. Negotiated rulemaking is a form of alternative dispute resolution in which representatives of all of the stakeholders in a dispute hold a series of negotiations with a professional facilitator to achieve consensus. Negotiated rulemaking provides an opportunity to overcome some of the divisiveness that we have seen in some fisheries controversies. My amendment would authorize the Councils, as well as the Secretary, to use negotiated rulemaking when they develop fishery management plans.

Mr. President, I would also like to mention three amendments that I offered prior to floor consideration, and that have been included in the manager's amendment.

The first directs the National Academy of Sciences to conduct an independent scientific peer review of the scientific information which forms a basis of the northeast multispecies fishery management plan. This is the plan that covers the New England groundfish industry.

As I noted earlier, due to serious concerns about the health of the groundfish resource, the New England Council has implemented a management plan that will reduce fishing effort by 80 percent within 2 years. This science has been controversial within the industry in the New England region, and before moving forward with such draconian regulations, I think we owe it to those most affected by the plan to get a second opinion on this science before it's too late. This peer review amendment will give us that second opinion.

My other amendments allow the State of Maine to permit Maine-licensed lobstermen to continue to fish in four pockets of Federal water that are surrounded on three sides by State waters, and make transshipment permits available to certain Canadian transport vessels involved in the sardine trade between Maine and Canada.

Mr. President, the bill is a fair product which resolves many competing concerns. I urge its adoption.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BROWN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 5383

Mrs. HUTCHISON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] proposes an amendment numbered 5383.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 142, line 7, ''insert ''To the maximum extent practicable'', before ''Any''.

On page 142, line 10, ''strike ''must'' and insert in lieu thereof ''should''.

On page 148, strike lines 1 through 17.

Mrs. HUTCHISON. Mr. President, we are going to try to work to see if we can get these amendments in a form that is acceptable to the others that are interested in this bill. It is very important to many of the recreational fishermen in my State that we try to have a level playing field for the recreational fishing people. I would like to try to work this out, and hopefully put off the vote until tomorrow.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Just to inquire of the Chair, under the existing agreement of the managers, is there time to discuss the amendment before the vote would occur tomorrow?

Mr. STEVENS. No.

The PRESIDING OFFICER. Currently there are 49 seconds left. Under the current guidelines we are operating under, there is no time set aside for debate tomorrow, the Chair is advised.

Mr. BREAUX. I will suggest at least a couple minutes on each side, for the author of the amendment and those who oppose the amendment, to make comments before we vote tomorrow.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I notified the Senator from Texas it is my intention, and I believe it is the intention of the Senator from Massachusetts, to join together to oppose this amendment in its present form. Should it be modified in a way that is acceptable, it would, of course, be acceptable to the Senator from Louisiana. At the present time it is my understanding there is not the opportunity to debate the amendment, but it is my understanding the Senator has offered the amendment with the hopes that through the night that this can be negotiated out to be acceptable to all concerned, including the Senator from Louisiana.

I state, it would be my intention, if there is to be any discussion of this tomorrow, it would be by whatever agreement we make now. And if the Senator wishes some time tomorrow, I do not think that is impossible.

How much time would the Senator like tomorrow?

Mr. KERRY. Two minutes on each side.

Mr. BREAUX. I think we have more than one amendment at the desk in its current form.

Mr. STEVENS. One amendment that hits the bill in two spots. The Senator is correct. Again, we intend to oppose this amendment, and ask the Senate to oppose it in its present form. If it is modified, it will be modified to meet the Senator's acceptance. It would have to take unanimous consent.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, obviously, the purpose of the agreement which we entered into previously was to set aside time tonight for the purposes of debate. And it is my understanding, the majority leader said there would be no debate tomorrow, there would only be votes.

I think it is fair to allow both sides 2 minutes, but I would be adverse to opening it up to a whole process of debate tomorrow. I mean, if they reach agreement, then there is no need for debate. If they do not reach agreement, then it is going to take a very quick explanation of the two sides because both managers are going to be opposing this. I do not think we ought to open it up for a lengthy period.

Mr. BREAUX. Two minutes.

Mr. KERRY. Mr. President, I ask unanimous consent that there be 2 minutes for each side tomorrow prior to a vote, if there is to be a vote, in order to explain both positions.

The PRESIDING OFFICER. Is there objection to 4 minutes equally divided?

Mr. STEVENS. Mr. President, I shall not object, but I want to make it clear in the RECORD, if we can, that the Senator from Texas has the right to modify her amendment tomorrow in any form she wishes to do so. We will oppose it in its present form, and we will oppose it unless it meets an agreement of the managers of the bill.

The PRESIDING OFFICER. The unanimous consent before the Senate is a request for 4 minutes equally divided between the two sides, with the Senator from Texas retaining the right to modify her amendment. Is there objection? Without objection, it is so ordered.

Who seeks recognition.

Mr. STEVENS. Mr. President, I know of no further business to come before the Senate on this bill. As I understand it, all of the amendments that were to be considered by the time agreement have now been brought before the Senate, and there is no more time left—I yield back whatever time I have.

Mr. President, I ask unanimous consent that Senator COHEN be added as a cosponsor of the amendment of Senator SNOWE, which was previously adopted.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Mr. President, I yield back whatever time I have.

The PRESIDING OFFICER. The Senator from Massachusetts yields back his time. The Senator from Alaska yields back his time. All time has been yielded back.

Mr. STEVENS. If all time is yielded back, Mr. President, I would like to move on now to the matter of closing. I suggest the absence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ESCALANTE NATIONAL MONUMENT PROPOSAL

Mr. HATCH. Mr. President, for my colleagues who may have missed it, today President Clinton used executive power under the 1906 Antiquities Act to designate nearly 2 million acres in southern Utah as a national monument.

A national monument, as my colleagues know, effectively locks up land within its boundaries preventing any kind of responsible development and limiting existing rights, including water rights, in the second driest State in this Union.

Utah is already home to five national parks, two national monuments, two national recreation areas, seven national forests, one national wildlife refuge, and 800,000 acres of wilderness.

We prize our land in Utah. We believe we ought to preserve as much of it as we can, and we would like to continue working on legislation to designate more wilderness in Utah.

But the process the President is using is flawed and inherently unfair. I just say, the unilateral action taken by the President today is out of bounds. Members from Utah's congressional delegation and our State Governor had to read about this proposal in the Washington Post. That is the first time we heard about it. There has been no consultation whatsoever in the development of the proposal. We have seen no maps; no boundaries; there have been no phone conversations; no TV or radio discussion shows; no public hearings; absolutely nothing from this President.

None of the procedures for review and comment that are built into our environmental laws, such as the National Environmental Policy Act or FLPMA have been followed. These procedures are a part of our law precisely to guard against the Federal Government from usurping State or local prerogatives without public knowledge or comment.

While the 1906 Antiquities Act may, indeed, give the President the literal authority to take this action, it is quite clear to me that in using this authority, President Clinton is violating the spirit of U.S. environmental laws and, indeed, of American democracy itself.

It was no doubt inconceivable before today that any President of the United States would take such dramatic action—action that so dramatically affects any State—without due diligence. And it is plain to this Senator that the White House either flunks the test of due diligence or takes this action deliberately without regard to its negative impact on our State.

What should be especially relevant, and alarming, to every Senator is that this disregard for established public law requiring public input, let alone the disregard of established traditions of democracy, can be applied elsewhere other than Utah. Today, Utah; tomorrow, your State.

I hope my colleagues will not brush off the precedent this Executive action creates. There are numerous negative consequences to this President's action today. Among the most serious is the effect on education in Utah.

Many States in the West depend on school trust lands to help finance their educational systems. In fact, 22 States, most of the States west of the Mississippi River, have trust lands.

Utah relies heavily on the income produced by these trust lands to help finance our schools. The national monument proclaimed by President Clinton will capture approximately 200,000 acres of Utah school trust lands and render them useless to Utah schoolchildren. I say to my colleagues, and to President Clinton if he is listening, this is a potential loss of $1 billion to Utah schools, and these environmental extremists are already talking that it is only $36,000 a year. That is how ridiculous they are.

There is not a single State in America that can afford to lose that kind of money for education—that is $1 billion worth —let alone Utah, which, because we have so much public nontaxable land, is always straining to fund education.

What is even more appalling is the fact that the resources President Clinton is taking away from Utah kids, in effect, is their own land. These school trust lands were deeded to Utah to be held in trust for our children's education, and with one stroke of the pen, these 200,000 acres will be gone.

The Utah Public Education Coalition, which includes professional educators, State and local administrators, the PTA and school employees, have come out strongly against this arbitrary action by the President.

I ask unanimous consent that their letter to President Clinton, position statement and resolution, be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HATCH. Mr. President, another adverse ramification of the President's action today is inability to responsibly extract the high-quality, clean-burning, low-sulfur coal that lies in the Kaiparowits coal basin. Please note, the coal is in the basin, not on the Kaiparowits Plateau. This is not a strip mine. This is a mine right in the side that will not even show.

The basin has been called the ''Saudi Arabia of coal.'' There are about 62 billion tons of coal here, about 16 billion tons of which can be mined with existing technologies. That is enough coal to fulfill Utah's energy needs for the next 1,000 years, and, I might add, the energy needs of this country. That is environmentally sound coal that could be blended with the dirty coal from the East, and it would be in the best interest of the environment of this country.

I find it a little ironic that the President wants to prevent the mining of this clean, environmentally beneficial coal while we are still paying billions of dollars to clean our dirty air from burning high-sulfur, dirty coal.

These coal reserves, in addition to being a financial asset to our State, are a critical energy resource for our entire country. We are being extremely shortsighted if we forget this fact.

How can we justify sending U.S. troops to keep the Middle East stable and to keep the oil flowing when President Clinton refuses to develop energy resources right here in our own country? We have to do both. We have to act in the best interest of the energy needs of this country. What the President did today is not in the best interest.

Mr. President, we should not forget the impact the restrictions on water rights will have, not only on Utah, but also on Colorado, New Mexico, Nevada, Arizona, and California.

Utah is the second driest state in the union. This action by President Clinton would deny our state the right to develop its water in southern Utah.

Finally, Mr. President, I wonder how the Administration plans to pay for the operations and maintenance of what would be the largest national monument in the United States.

Already, the National Park Service is stretched to the limit. Adding nearly 2

million acres to their inventory—almost the size of Yellowstone—raises real questions about our stewardship of this land. We want to preserve land in southern Utah.

There is no question that Utahns want to protect as much land as we can. We would support a well thought out proposal for additional national park or wilderness areas in southern Utah.

We also recognize that there are differences of opinion concerning the number of acres and management prerogatives. We believe those are matters for negotiation and compromise, not for making political hay with important special interest groups.

We would like to work with President Clinton to develop a sound preservation plan. And, the offer is still open to work together on this.

But, frankly, I say to my colleagues, real damage has been done here—both to Utah and to the tradition of open debate. The failure even to consult prior to making this decision should be considered devastating to representative democracy.

Our Utah newspapers have thus far been unanimous in their criticism of the President's action. But, they also represent the people of Utah. They may be sympathetic to environmental concerns—just as Utahns are—and they may support more protected land in southern Utah—just as many Utahns do—but they draw the line on a Federal Government exercising what they construe as abusive power—just as Utahns do.

So permit me to quote from an editorial this morning from the San Francisco Chronicle: ''The question is whether a decision of such magnitude should be carried out by executive order. We think not.''

While acknowledging their differences with me and my colleagues on the specifics of the wilderness bill proposed earlier, the Chronicle goes on to suggest that:

''In this case, Clinton is taking the wrong route—an election-year shortcut—to the right goal.''

The bottom line here, Mr. President, is that any proposal that is going to have such an incredible impact on the people of Utah—or of any other State—ought to be vetted by our political process.

People ought to be able to debate it in the press, on talk radio, in civic clubs, and across back fences. They ought to be able to write their Congressman. They ought to be able to support it or protest it.

Utahns have had little opportunity to do either. There is something fundamentally wrong with a Presidential action that deprives a State of $6.5 billion in revenue, $1 billion for education, surrounding States with water resources, and the entire Nation of important energy resources without even a hearing or a vote.

One last thing: I want to put the Senate, the House, and the President on notice that this issue is not over. William Jefferson Clinton's signature on this order isn't the end of it.

We cannot suffer this kind of an assault on Utah without a fight. So, today it begins.

Mr. President, I will just conclude with these comments. There is no question that Utahans want to protect as much lands as we can. We would support a well-thought-out proposal for additional national park or wilderness areas in southern Utah and even a national monument, which is not as good as wilderness areas or national parks.

We also recognize that there are differences of opinion concerning the number of acres in management prerogatives. We believe those are matters for negotiation and compromise, not for making political hay with important special interest groups.

We would like to work with President Clinton, if he would, to develop a sound preservation plan. And the offer is still open for us to still work together on this. But, frankly, I say to my colleagues, real damage has been done here, both to Utah and to the tradition of open debate. The failure to even consult prior to making this decision is to be considered devastating to representative democracy.

I ask unanimous consent that a number of documents be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Standard-Examiner, Sept. 10, 1996]

BILL CLINTON SHOULD WAIT FOR UTAH'S INPUT

In the battle between environmentalists, the federal government and Utah's congressional delegation, the battle for wilderness has taken a creative turn.

President Clinton and his Secretary of the Interior, Bruce Babbitt, have floated an unusual trial balloon: The administration may invoke a 1906 statute to create a 1.8 million-acre national monument encompassing Utah's Kaiparowits Plateau.

It would be called Canyons of the Escalante National Monument, and the thing that's driving Gov. Mike Leavitt and Utah's congressional delegation crazy is that Clinton can accomplish the task with a stroke of his pen—Congress and the state be damned.

It's the kind of bold move Clinton might enjoy taking in an election year, cuddling up to and solidifying his support among environmentalists across the nation, who have been pushing for designation of 5.7 million acres of wilderness in Utah.

Such a move would surely anger the less environmentally inclined of Southern Utah, though, since they've been counting on the mining of Kaiparowits Plateau coal by the Dutch firm Andalex Resources Inc., which plans to start a 50-year coal mining operation within the next year, bringing in paved roads and about 1,000 jobs.

The Kaiparowits is pretty much ground zero in the battleground between those lobbying for 5.7 million acres of wilderness and those who prefer 2 million acres. In the 5.7 million-acre plan, virtually all of the Kaiparowits Plateau is set aside as wilderness, whereas in the 2 million-acre alternative only about 12 percent would be preserved.

Debate is a good thing, but this latest move by the White House ought to be alarming to all sides. It means the president, if he has a mind to, can bypass public comment and unilaterally create de facto wilderness. As the administration has said, the 1906 law permitting Clinton this discretion can be used to protect objects of historical, biological or archaeological importance.

If, indeed, that is the case with the Kaiparowits Plateau—and it may well be—Clinton should use the standard means for coming to that conclusion: study, debate and action. To do otherwise in an election year can be seen as nothing but what it is: pandering to a specific constituency.

[From the San Francisco Chronicle, Sept. 18, 1996]

CANYONS OF THE ESCALANTE

Our concern with President Clinton's intention to establish the Canyons of the Escalante National Monument has nothing to do with its paleontological or archeological value.

Indeed, there are compelling reasons to preserve a 1.8 million-acre, red-rocked patch of southern Utah, with its stunning buttes, steep canyons and array of artifacts from tribes that once inhabited the foreboding terrain.

The question is whether a decision of such magnitude should be carried out by executive order.

We think not.

This may well be a worthy idea, but it deserves a fair hearing. It deserves to go through public deliberations—as slow and messy as democracy may be—to fully air the concerns about sealing off access to a potentially rich coal field.

There is no dispute that President Clinton has the legal authority under the Antiquities Act of 1906 to declare the national monument. President Teddy Roosevelt invoked the same statute in 1908 to protect the Grand Canyon.

Utah's congressional delegation is understandably irate at the prospect of a Clinton-decreed monument. In their view, the president is rolling over their concerns—and scoffing at the five electoral votes he had no chance of getting anyway—to score points with the broader electorate. Polls show that voters are concerned about environmental protection, and the deficiency of such a sensibility in Congress.

We certainly would not want to defer to Utah politicians on this issue. After all, their pro-development bent was clearly evident in a Utah Wilderness Bill that has been languishing in the U.S. Senate.

Still, they deserve to be heard. Some of the canyon land in the new monument would have been designated as wilderness in the Utah bill. Which approach would provide the proper level of protection? That and other land-management issues were worth exploring—in a public process.

By drawing a circle around a chunk of southern Utah, Clinton will have headed off the exploitation of a precious area.

In doing it by executive order, however, Clinton and the environmental community are likely to encounter intensified hostility in future skirmishes over development and preservation. Utah may not matter on the electoral map, but small Western states pack disproportionate clout on Capitol Hill, particularly in the U.S. Senate, and they often band together on land issues.

In this case, Clinton is taking the wrong route—an election-year shortcut-to the right goal.

[From the Salt Lake Tribune, Sept. 13, 1996]

A MONUMENT TO RASHNESS

The Clinton administration would be denying its own land-management process if it

were to create unilaterally a huge Canyons of the Escalante National Monument on federal land in southern Utah. It should forgo such rash action and await results from processes already in motion.

The concept of a Canyons of the Escalante National Monument blindsided most everybody last weekend, when a Washington Post story revealed that President Clinton was considering such protection for 1.8 million acres in Kane and Garfield counties. Under the 1906 Antiquities Act, he has the right to establish national monuments, just as other presidents have on Utah's public lands. But a designation of this magnitude, at this time, would not be well-advised.

There are two intertwined developments here, and the administration ought to let them run their course rather than pre-empt them with a national monument designation. One is the ongoing preparation of an environmental impact statement (EIS) for Andalex Resources' request to develop its coal-mining claims on the Kaiparowits Plateau. The other is the ongoing fight over wilderness designation on Utah's Bureau of Land Management lands.

The Interior Department is involved in both, developing an EIS on Andalex that is now projected to be ready sometime next year and, at the recent behest of Secretary Bruce Babbitt, conducting a new inventory of BLM lands in Utah for wilderness designation. Wilderness advocates, who oppose the Andalex mine, have been critical of the EIS process, yet they endorse the re-inventory. It is a bit disingenuous to applaud the agency on one project and distrust it on a related one.

Of course, the Utah Wilderness Coalition, which wants 5.7 million acres of wilderness designation on Utah's BLM lands and hopes Babbitt's re-inventory will facilitate that, is primarily looking for results—and, concurrently, for the blocking of the Andalex mine. And Clinton's designation of a national monument would give it more than it ever envisioned.

The proposed national monument would involve three potential wilderness areas—the Kaiparowits Plateau, the Grand Staircase and the Escalante Canyons. The UWC recommended 1.27 million acres of wilderness in those three areas. So, President Clinton's designation of a 1.8-million-acre national monument would give environmentalists a half-million more acres of protection than even they suggested. Obviously, that's a stretch.

By the same token, little sympathy should be reserved for the members of the Utah congressional delegation, who whined about learning of the national monument idea through the press. They already know about an unbalanced process, since they were accused of conducting one last year prior to unveiling their original 1.8-million-acre wilderness bill.

The delegation bill was inadequate on acreage and was particularly short in the Escalante-Kaiparowits areas, where it recommended only about 360,000 acres of wilderness. The wilderness study areas that the BLM had established a decade earlier covered 2 times that much in this precious region. So, while a national monument providing 1.8 million acres of protection may be off the scale, so too was the delegation's meager 360,000 acres.

Other considerations that should cause the president to look before he leaps include Utah's school trust lands and the future of the Kaiparowits coal reserves. If a national monument were designated, some sort of compensation for school trust lands within the area would be necessary. But the educators protest too much; their windfall from the development of these lands is not a primary consideration on which to base land-management decisions.

As for the estimated 62 billion tons of coal under the Kaiparowits Plateau, that is a natural resource as well as the unusual land above it. The president ought to think twice before considering a designation that would inhibit the use of that resource, which, if not developed now by Andalex, may be needed decades from now.

Obviously, the process for determining how much of southern Utah's public lands to protect—whether by wilderness designation, national monument, conservation area, eco-region or some other brand name—has not been productive so far. But if the president's own Interior Department is assessing the impact of the proposed Andalex mine and re-assessing wilderness acreage, it makes little sense for him to obviate the agency's work now by cavalierly dubbing the whole area a national monument.

U.S. SENATE,
Washington, September 17, 1996.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: Last Saturday, we met with Secretary of Interior Babbitt and Council on Environmental Quality (CEQ) Director McGinty to discuss the possible designation to the Canyons of the Escalante National Monument. We are writing to strenuously voice our opposition to this action.

Since the proposal surfaced in a Washington Post article in September 7, we have been unable to ascertain any information on the specifics of this proposal now under review by the White House. Repeated requests for information from both CEQ and the Department of Interior have resulted in no further clarification of the story. Even our meeting last Saturday yielded nothing new on this subject. It has been very frustrating to know that senior officials in the Administration have been considering creating a new national monument in Utah, and yet we are unable to learn any of the details—i.e., the exact location, the specific boundaries, the impact on existing rights-of-way and permits, which federal agency will manage the proposed monument, the impact to state school trust lands, etc. In our opinion, this is not the way to go about the establishment of a new national monument, let alone carrying out the public's business.

We have expressed our specific concerns to Secretary Babbitt and Director McGinty, and we trust they will bring these items to your attention prior to your making any decision to proceed further on this project this week or, for that matter, anytime in the coming months. However, we would like to reiterate these concerns to you so there can be no misunderstanding.

As we indicated on Saturday, we believe this proposal, as indicated in the Post article, should be rejected for several critical reasons:

The total acreage of the Monument proposal will be approximately 1.8 million acres. If this acreage figure is correct, this proposal would create the largest national monument in the continental United States, 1½ times the size of the Grand Canyon National Park. This land will be withdrawn from multiple use without any public comment and review, including congressional hearings and meetings, and without consulting the land managers on the ground who must deal with any conflicts that will occur.

The State of Utah is bound by this fiduciary responsibility to show complete and undivided loyalty to the school children of Utah—the sole beneficiaries of the trust created at statehood—and properly manage these lands to enhance our schools. That is the reason for their existence. Placing these lands within the proposed Monument's boundaries will create state inholdings within a national monument, which severely limits the proper management of these lands by the trustee, the Utah State Schools and Institutional Trust Lands Board.

Understandably, the Board is very concerned about the future of the billions of tons of clean, low sulfur coal that is located on these school trust lands. The Utah Geological Survey has estimated the net present value of the coal in this area at over $1 billion. This revenue flow is vital to Utah, as the Utah Public Education Coalition has stated. If this much land is taken from the school children of Utah, the state and board of education would have no choice but to file a lawsuit as trustees for the beneficiaries for taking over a billion dollars of school resources without fair and timely compensation.

Those who support the Monument proposal have spoken of the need to protect the land for generations to come; we would argue for support of a better and more responsible proposal that protects the beauty of our land while enhancing the educational component of our society for these future generations. As we understand the proposal, it would not achieve both results.

Acceptance of the Monument proposal would send the message to every public lands state in the nation that at anytime the Executive Branch could withdraw millions of acres of lands within that state from multiple use purposes without the benefit of a single comment from the affected state. In fact, it may occur without any notification.

The Monument proposal will basically withdraw from future development the largest untapped energy reserve in the United States, valued by the State of Utah to be more than $1 trillion. The energy in the Kaiparowits Coal Basin is comparable to 20 to 30 billion barrels of OPEC oil, and would satisfy the energy needs of Utah for many generations to come. The inclusion of this resource within the Monument proposal will have an enormous fiscal impact on all taxpayers of approximately $6 to $9 billion in lost federal royalties. Under the Monument proposal, this resource will never be available for future generations. We question whether these economic and national security issues have been thoroughly discussed by the administration prior to the formulation of this proposal.

Mr. President, for these and many other compelling reasons, we have very serious reservations about the Monument proposal. We have been provided with no details on this proposal. That is why we strongly encourage you to resist any temptation or campaign advice to issue a proclamation designating a new national monument in Utah this week or in the coming weeks, until a complete analysis conducted through a public process can be undertaken with us and the citizens of our state. It is only through such an open process that these and the many other issues related to the establishment of a national monument can be properly addressed.

We would appreciate your serious consideration of these issues.

Sincerely,

MICHAEL O. LEAVITT,
Governor.
ROBERT F. BENNETT,
U.S. Senator.
ORRIN G. HATCH,
U.S. Senator.
JAMES V. HANSEN,
Member of Congress.
ENID GREENE,
Member of Congress.

EXHIBIT 1

THE UTAH PUBLIC EDUCATION COALITION,
September 11, 1996.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The Utah Public Education Coalition is adamantly opposed to the proposed designation of the Kaiparowits Coal Basin and other lands in Utah as the Escalante National Monument. We oppose this designation as currently proposed for a variety of reasons.

First of all, there has been so little discussion and review of the proposal that it is not clear what the boundaries are. Potentially 200,000 acres of school trust lands granted to support our schools are within the boundaries of the proposed designation. If this much land is taken from the school children of Utah, the state and board of education would have no choice but to file a lawsuit as trustees for the beneficiaries for taking over a billion dollars of school resources without fair and timely compensation.

One of our major concerns is over the designation of the Kaiparowits Coal Basin as part of this national monument. This land is separate from the Kaiparowits Plateau which is known for its scenic beauty and unique land formations. The Kaiparowits Coal Basin is composed of considerably less scenic terrain and is interlaced with many miles of country roads, an airstrip, an old coal mine, drill sites, and abandoned mine sites.

The designation would frustrate environmentally sound recovery of an important national resource. The coal resources in the Kaiparowits Coal Basin represent the largest untapped energy reserve in the United States, and this coal is among the least polluting in the world Development of this underground coal will be important to our nation and will return $6 to $9 billion to the national treasury in royalties plus additional funds through the multiplier effect.

We further believe that there is no reason to declare this a national monument to protect the canyons of the Escalante as they are already protected. At this time, 90 percent of the canyons of the Escalante are already in the Glen Canyon National Recreation Area. The remaining 10 percent are near the town of Escalante and are in current wilderness study areas.

On behalf of the children and our schools, we ask that you not designate any further lands in Utah as a national monument without full consideration of the impacts on education in Utah and full compensation for any restrictions placed Utah's school trust lands.

Sincerely,

Linda M. Sarkinson, Utah PTA, Brent Thure, Utah School Superintendents Association; Mossi W. White, Utah School Boards Association; W. Lee Glad, Utah Association of Elementary School Principals; Janet A. Cannon, Utah State Board of Education; Phil Oyler, Utah Association of Secondary School Principals; Scott W. Bean, Utah State Office of Education; Kelly Atkinson, Utah School Employees Association; Phyllis Sorensen, Utah Education Association.

POSITION STATEMENT IN OPPOSITION TO THE PROPOSED DECLARATION OF THE CANYONS OF THE ESCALANTE NATIONAL MONUMENT

(By the Utah Public Education Coalition)

The position of the Utah Public Education Coalition is in support of careful consideration of the environment. Additionally, our position is in defense of educational opportunities for our children, a strong adherence to issues of integrity, and a position that the best decisions are made in an environment of information, communication, balance, and knowledge.

The following educational issues are important:

Within the boundaries of the proposed 1.8 million acres under consideration are approximately 200,000 acres of SCHOOL TRUST LANDS that do not belong to the federal government.

At statehood, the federal government entered into a compact with the state of Utah in which it was agreed not to tax the federal lands in exchange for 5.8 million acres being granted to support education. Utah is bound by the fiduciary duty to show undivided loyalty to the schools of Utah, who are the beneficiaries of the trust created by the Enabling Act. The federal government is also bound, as grantor, by the terms of the grant. We expect our President to show integrity in abiding by its compacts with its own people.

Any attempt to deny the schools of Utah full fair market value for the lands so granted would initiate a takings procedure by the education family and the state as trustee for the full value plus interest. Governor Mike Leavitt's office and the Utah Geological Survey has estimated that the net present value of the coal underlying the Kaiparowits Coal Basin on the school lands alone is between $640 million and $1.1 billion.

The National Education Association Legislative Platform has a plank to protect land set aside to support schools. There are 22 states that have trust lands (Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming).

The energy in the Kaiparowits Coal Basin represents the largest untapped energy reserve in the continental United States. This is not just a Utah issue; this issue is a national issue, especially with the recent power outages on the west coast.

Inclusion of the Kaiparowits Coal Basin in the proposal has an enormous fiscal impact on the taxpayers of approximately $6 billion to $9 billion in lost royalty.

Designation of 1.8 million acres is not necessarily a pro-environmental position as the coal from the Kaiparowits is among the cleanest coal with the lowest sulfur content. At this time, 90% of the canyons of the Escalante are already in the Glen Canyon National Recreation Area. The remaining 10% are near the town of Escalante and are in current wilderness study areas.

The coal resources are NOT located on the Kaiparowits Plateau. The coal resources are located in the Kaiparowits Coal Basin to the west of the plateau.

The Kaiparowits Coal Basin is not pristine. Within 2 miles radius there are 36 miles of publicly maintained roads, an air strip, drill holes, a previously mined coal site, numerous other mining sites, fences and cattle watering holes.

The Kaiparowits Plateau is composed of towering cliffs and spectacular, stark scenery. On the other hand, the Kaiparowits Coal Basin has been described an undulating grey terrain. Parts of ''Planet of the Apes'' were filmed there.

There is a middle ground. Development of the coal resources can occur under the ground with the mine portal occupying only 40 acres of the surface, about .004% of the Kaiparowits Coal Basin. Citizens can continue to enjoy the Canyons of the Escalante and the Kaiparowits Plateau under the protection of a National Recreation Area and wilderness study areas. Improvement of the existing road would eliminate the need for additional road construction.

RESOLUTION IN SUPPORT OF AN EXCHANGE OF UTAH SCHOOL TRUST LANDS FOR FEDERAL LANDS IN THE SMOKY HOLLOW AREA OF KANE COUNTY, UTAH

(By The Utah Public Education Coalition)

Whereas, Under the Utah Enabling Act the federal government granted to the state certain sections of the public domain, now known as School Trust lands, to be used exclusively for generating revenue to support Utah's public education system; and

Whereas, These School Trust lands are scattered and isolated parcels which are now totally surrounded within a larger matrix of federal lands, and management of the surrounding federal lands by the federal government for non-economic purposes is in direct conflict with the state's fiduciary responsibility to create revenue from these trust lands for the state's public education system, and that such federal land management conflicts are in direct violation of the grant made by the United States government to the State of Utah; and

Whereas, Utah School Trust lands located within the Kaiparowits and Alton coalfields of southern Utah contain hundreds of millions of recoverable tons of high-grade bituminous coal, enough to supply all the electrical power requirements for the entire state of Utah for the next 100 years at present rates of consumption; and

Whereas, This coal reserve constitutes one of the most important sources of future revenue for Utah's School Trust and shall be protected by the State now and forever in the future; and

Whereas, Most of these School Trust coal reserves are scattered throughout federally designated wilderness study areas in the interior of the Kaiparowits coalfield or in areas of the Alton coalfield designated by the federal government as ''unsuitable for mining'' because of proximity to the viewshed from Bryce Canyon National Park; and

Whereas, These federal non-use designations prevent the development of the inheld School Trust resources for the support of the schools within these areas; and

Whereas, The development of underground coal deposits by modern underground mining methods requires large blocks of contiguous acreage; and

Whereas, It is the responsibility of the State of Utah to assure the beneficiaries of the Utah school trust that in the future the federal government will be required to provide just and adequate compensation for any defacto takings of any and all School Trust assets within the Kaiparowits/Alton coalfields resulting from any federal action or land designation which effectively renders inheld trust lands incapable of providing revenue to Utah's education system as mandated by the Utah Enabling Act; and

Whereas, Present and future management conflicts between the Utah School Trust and the federal government could be quickly, easily and permanently resolved to the mutual benefit of all parties by simply trading School Trust coal resources within federal wilderness study areas/unsuitability areas for federal coal resources of equal value located outside of these designated areas; and

Whereas, Such an exchange would allow the Utah School Trust to provide long term economic benefits to the state's education system as required by law while allowing the federal government the ability to manage its land in accordance with non-economic objectives (wilderness values, national park viewsheds, etc.) and thereby avoid serious, and inevitable, future land use conflicts between the federal government and the Utah School Trust involving the Kaiparowits/Alton areas; and

Whereas, Andalex Resources is now proposing an underground coal mine on existing federal and school trust leases located in the Smoky Hollow area at the southern tip of the Kaiparowits coalfield, and the federal government has formally and officially determined that this area clearly and obviously does not qualify for wilderness designation; and

Whereas, The state of Utah Division of Oil, Gas and Mining has approved the Smoky Hollow Mine Permit Application Package and has determined that the mine can be constructed, operated and reclaimed in accordance with all necessary state and federal environmental protection laws and regulations; and

Whereas, The Utah Public Education Coalition, the Utah School Trust Administration, the Utah Association of Counties, and the Utah State Legislature have gone on record in support of responsible development of the Smoky Hollow coal reserves as is now being proposed by Andalex; therefore be it

Resolved, That the Utah Public Education Coalition hereby reaffirms its strong support for responsible development of the Smoky Hollow coal resources as proposed by Andalex; and be it further

Resolved, That the Utah Public Education Coalition supports and advocated an exchange of scattered School Trust coal lands located within the Kaiparowits wilderness study areas and the Alton unsuitability area for a block of land located in the Smoky Hollow area which could be developed as part of the Smoky Hollow underground coal mining operation; and be it further

Resolved, That the Utah Public Education Coalition urges the Board of Trustees of the School and Institutional Trust Lands Administration, the Utah Governor's office, and Utah's congressional delegation to jointly petition the US Department of Interior to expedite this exchange on an equal-value basis, subject to valid existing rights, as being in the best and highest interest of Utah's public education system and the people of the state of Utah and the United States.

Linda M. Sarkinson, Utah PTA; Brent Thurie, Utah School Superintendents Association; Mossi W. White, Utah School Boards Association; W. Lee Glad, Utah Association of Elementary School Principals; Janet A. Cannon, Utah State Board of Education; Phil Oyler, Utah Association of Secondary School Principals; Scott W. Bean, Utah State Office of Education; Kelly Atkinson, Utah School Employees Association; Phyllis Sorensen, Utah Education Association.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, September 17, 1996 the Federal debt stood at $5,190,807,990,011.88.

Five years ago, September 17, 1991, the Federal debt stood at $3,625,799,000,000.

Ten years ago, September 17, 1986, the Federal debt stood at $2,106,475,000,000.

Fifteen years ago, September 17, 1981, the Federal debt stood at $976,369,000,000.

Twenty-five years ago, September 17, 1971, the Federal debt stood at $415,338,000,000. This reflects an increase of more than $4 trillion ($4,775,469,990,011.88) during the 25 years from 1971 to 1996.

AIR BAG SAFETY AND EFFECTIVENESS

Mr. PRESSLER. Mr. President, I rise to make a few remarks concerning child passenger vehicle occupant protection.

Earlier this year, the Senate Committee on Commerce, Science, and Transportation held an oversight hearing on the safety and effectiveness of driver side and passenger side air bags. At the hearing, we learned that generally air bags are safe. They are credited with saving approximately 900 lives since 1987 and with reducing the severity of injury in many more instances. So it is abundantly clear that air bags are an important automotive safety device.

Unfortunately, there is a downside to air bag use. While usually minor in nature, in some cases they cause injuries. In the worst cases, they have caused death. This is especially true in the case of children with some data showing two children die because of a passenger side air bag deployment for every one saved by the deployment.

The Committee's oversight hearing highlighted issues like this and also explored actions underway at the National Highway Traffic Safety Administration (NHTSA) to improve child passenger safety. At the hearing, I stressed the need to publicize the importance of putting child safety seats in the back seat and not in a passenger seat equipped with an air bag.

Subsequent to our hearing, I was pleased that a coalition was formed to alert the public of passenger side air bag dangers to infants and children. I also have followed closely the initiatives at NHTSA to change federal air bag requirements, encourage the introduction of new air bag technology, and improve child restraint system performance.

These steps are needed and they hold promise for child passenger safety improvements. However, more comprehensive action is needed.

Yesterday, the National Transportation Safety Board (NTSB) released the findings of its 2-year child occupant safety study. Pointing to the dangers and risks to children posed by passenger-side air bags and improperly used child restraint systems, the NTSB called on NHTSA, State Governors, and automobile manufacturers to take steps to address continuing safety problems.

For instance, the NTSB study found inadequacies in NHTSA's proposed rulemaking on smart air bags and air bag warning labels. On August 1, 1996, NHTSA proposed changes to federal air bag requirements to encourage the introduction of new air bag technology. If automobile manufacturers do not provide the so-called smart air bags, the NHTSA proposal would require manufacturers to post new and more prominent air bag warning labels inside the vehicle.

The safety study, however, concluded that the NHTSA proposal will not accelerate the development of more intelligent systems. As a result of its review of the proposed rulemaking, the NTSB called on NHTSA to do more to encourage automobile manufacturers to install intelligent air bag systems and specifically recommended that NHTSA establish an implementation timetable.

In another area, the NTSB safety study investigated air bag deployment rates and recommended that NHTSA's technical air bag deployment threshold standards be reevaluated. The recommendation urges the consideration of technical standards for less aggressive air bag deployment, particularly for those on the passenger side of motor vehicles.

Its my recollection that NHTSA has said the technology for less aggressive air bag deployment currently is not available. However, technically it can be done. Canada, as I understand it, is on the verge of requiring less aggressive deployment standards for air bags in any car sold in Canada. Until ''smart'' air bags are available, this may be the best interim solution and NHTSA should carefully investigate this possibility. The NTSB recommendations make clear the lack of testing that was done prior to putting passenger side air bags into the automotive fleet.

The NTSB also asked NHTSA to revise several motor vehicle safety standards governing air bags and passenger restraint systems. As revisions are made, testing and performance standards that reflect an actual accident environment must be developed.

Quick action on these recommendations is required because there are nearly 22 million vehicles currently on the road with passenger-side air bags. NHTSA's proposed rulemaking will not affect these vehicles. Also, an estimated 13 million additional vehicles will be sold yearly before the new standards take effect.

Something must be done to protect children in vehicles like these. Changes in air bag deployment rates and the installation of on-off deployment switches are two of the options that could be evaluated.

The NTSB's safety study also explores in detail the difficulties parents and care givers have in securing a child restraint system properly in vehicles. Inadequacies in the design of child restraint systems themselves and the need to improve seatbelt fit for children were singled out by the NTSB as an area in which safety improvements can be made.

These problems warrant action and I encourage NHTSA to act swiftly on the NTSB recommendations. I will continue to follow this safety issue closely and plan on holding a hearing early in the next Congress to examine the NTSB's safety study.

Mr. President, finally we need to get a simple message to parents. We must tell parents that until less aggressive passenger side air bags or ''smart'' air

bags are available there is something they can do to protect their children. Specifically, they should consider placing all children under 12 in the back seat of their vehicles whenever the vehicle is in motion. Studies have shown the back seat to be the safest place for children in passenger vehicles. In fact, Germany already requires this by law.

I want to applaud the NTSB's call for educational campaigns emphasizing the importance of transporting children in the back seat of passenger vehicles. I know of one car manufacturer that recently developed an advertising campaign urging this safety measure as part of its efforts to raise public awareness on the dangers of passenger side air bags to children. We must improve vehicle occupant protection and initiatives like these offer significant safety benefits.

TRIBUTE TO SENATOR MICHAEL ANTHONY FIGURES

Mr. HEFLIN. Mr. President, Alabama State Senator Michael Anthony Figures, of Mobile, passed away on Friday, September 13, 1996. He was President Pro Tem of the State Senate, making him the highest-ranking African-American in the State legislature.

This is the second highest-ranking position in the Alabama Senate and one of the most powerful and visible posts in State government. Senator Figures was the first black to ever hold the job and was exceptionally effective and politically astute. He could dissect an issue and get to its essence very quickly and directly. He was very close to Lieutenant Governor Don Siegelman, President of the Senate, and was instrumental in carrying out his legislative agenda.

Senator Figures, who was only 48 years of age, was almost universally admired by the people who knew and worked with him. Both friends and political adversaries admired and appreciated his honesty, integrity, and work ethic.

Senator Figures was born on October 13, 1947, the youngest of three sons of Reverend Coleman and Mrs. Augusta Mitchell Figures. He attended Stillman College and the University of Alabama Law School. He was first elected to the State Senate in 1978 as a Democrat, at that time only the third black person to serve in the Senate. He represented District 33, which includes part of Mobile and Prichard.

Over the years, he built a solid legislative record on local and statewide issues. He worked long and hard to ensure minority representation while helping to create a ''strong'' mayoral position in Mobile's city government. Many view his finest legislative accomplishment the 1994 Senate passage of former Governor Jim Folsom's ''Alabama First'' education reform plan. Although it did not pass the House, it received 32 out of 35 votes in the Senate, due largely to Senator Figures' tenacious leadership and persuasion.

Senator Figures was a founder of the Alabama New South Coalition, started in the 1980's to promote progressive causes and candidates. This influential political caucus has been instrumental in bringing blacks and whites in Alabama together. Senator Figures's wife, Vivian Davis Figures, is a member of the Mobile City Council. They had four sons together, Jelani Anthony, Shomari Coleman, Akil Michael, and Derrick.

Senator Figures was a visionary and progressive leader who will be sorely missed by the people of Alabama. He had considerable ability, intellect, and drive. As one of the most influential politicians in Alabama's government, he had an unyielding desire to correct what he perceived as wrongs in society. He was an outstanding orator and had a quick mind and will be impossible to replace. He had an uncommon ability to smooth over disagreements and build bridges. Other members of the Senate really listened to him and responded to his arguments.

Much of his success was rooted in his high degree of integrity. He was a stickler for following the Senate's procedural rules, even if bending those rules might have helped his side prevail. He never compromised his honesty or credibility as he quickly ascended to the heights of power and influence.

The sad and untimely death of State Senator Michael Figures is an immeasurable loss for my State. He was an uncommon force for justice and progress who accomplished a great deal in a relatively short time. I extend my sincerest condolences to Vivian and their entire family in the wake of this loss. I hope they find some solace in the fact that he truly made Alabama a better state and better place to live. His many lasting contributions will stand as his personal legacy and as a testament to his ideals and leadership.

WHY TAMPER WITH AN ENVIRONMENTAL SUCCESS STORY

Mr. LOTT. Mr. President, I am pleased to note that, once again, American business has succeeded in significantly reducing the amount of chemicals released into the environment. According to the most recent report from the Toxic Release Inventory (TRI) Data Release of 1994, releases of chemicals declined nearly nine, percent between 1993 and 1994. Since the TRI began in 1988, overall chemical releases have dropped more than 44 percent. This decline is particularly impressive because it has occurred in tandem with economic growth. This is an environmental success story.

This successful reduction affirms that an approach to environmental protection which encourages the participation of states and businesses can and does work. It argues for a continuation of approaches to environmental protection that use voluntary solutions, technological innovations and increased flexibility. As the report shows, we should have confidence in this successful public policy strategy.

Unfortunately, though, these promising statistics have been ignored. The TRI facts have not deterred the Clinton Administration from considering further burdens on America's society.

The Environmental Protection Agency (EPA) has announced that it plans to require businesses to file new extensive reports about how chemicals are used in the manufacturing process. This proposal is called ''Materials Accounting,'' and it is flawed for several reasons.

First, the proposal to track materials would place a new and very costly hardship on the business community. Initial estimates indicate that the additional cost to our Nation's businesses in direct reporting paperwork costs alone could be as much as $800 million. In addition to being extremely costly, this proposal is completely at odds with the President's pledge in March 1995 to simplify and ease paperwork burdens on American businesses.

I'm even reminded of the President's recent speech in Kalamazoo, MI, where he reaffirmed this goal to reduce administrative burdens. Well, for me, nearly $1 billion is real money. It is a real cost for America's business community. It is a real paperwork burden that cannot be ignored.

Already TRI generates 80,000 reports per year. And, it takes EPA nearly 2 years to provide this existing information to the communities nearest to the facilities producing these reports. It seems very basic—before EPA unilaterally increases the size of its two-inches thick report and further delays its publication, specific statutory authority should be provided. The EPA's actions to expand it reporting requirements are not authorized in law. How can EPA be responsive and concerned about the risks faced by communities living near the reporting facilities, when it requires a 2-year detour of the data with its Washington bureaucrats?

Apart from the billion-dollar administrative cost, Materials Accounting will jeopardize America's global competitiveness by putting our most innovative technologies at risk. Our country's position in the world's economy is dependent upon the development of superior technology and the ability to protect that technology from competitors, both international and domestic. Information about the amounts of chemicals used in and created during a production process will provide competitors with access to trade secrets. This does not make good business sense. In fact this seriously endangers the confidentiality of proprietary business information which is essential in the marketplace.

Third, this approach would make sense only if substantial, tangible and quantified environmental benefits clearly exceeded the costs. However, I have seen no analysis which supports this premise. On the contrary, I believe

the implementation of a Materials Accounting program will dilute the focus of TRI by forcing businesses to commit finite resources to trivial or even nonexistent risks, rather than more pressing, real risks. It will also unnecessarily confuse citizens. This does not make good policy sense. Chemical use is not directly related to information a community must receive about the real risks faced from actual releases from neighborhood facilities.

In my view, TRI should focus on telling the American public about the risks directly associated with exposure to chemical releases. This was the view of Congress back in 1988 when TRI was enacted. If EPA is looking for a new mission, it should expand its public outreach efforts by the communication of risk information that is both meaningful and understandable.

EPA should undertake practical and timely risk communications which are locally based. Risk communication is the heart and soul of a community's right-to-know. Reporting to citizens the number of pounds per year release of a certain chemical is neither valuable nor worthwhile information. It says nothing about potential risks to human health or the environment. Real risk depends on three factors: First, inherent toxicity of the material; second, its concentration; and third, its location relative to humans. Unfortunately, this simple scientific formula has been ignored by EPA.

EPA also should stop trying to increase the number of chemicals on the list without first ensuring that sound science-based criteria are in place. More listings without scientific criteria will not automatically make a community safer. EPA must first have a clear understanding of the real exposure risk to avoid public confusion. EPA should use the accepted basic risk formula.

Last, EPA does not have the statutory authority to collect and then disseminate information about chemical use. The Emergency Planning and Community Right-to-Know Act explicitly states the types of information that may be collected by EPA. While all this information bears an indirect relationship to potential releases and emissions, the Act does not allow EPA to disperse sensitive chemical use information. This proposal, therefore, is well beyond the scope of the basic statute which established the TRI Program.

Let me remind my colleagues that Congress considered the use aspect when the original program was created. And, chemical use was explicitly and consciously rejected.

''Materials Accounting'' raises more questions than it answers.

Regulations are powerful, but they shift America's resources poorly. Because regulations cause consumers and businesses to spend a good deal of their money in ways they do not freely choose, Congress must first consider the consequences of this coerced spending before it becomes our public policy. A rule that has a $1 billion consequence is a rule that deserves the attention of Congress.

With claims, counterclaims and even the withdrawal-of-claims that there are growing risks from everything around us, it is even more imperative for every citizen to know where the true risks are coming from. I believe the American people want their elected officials to look carefully into all aspects of environmental protection. The following questions need to have a response in the public record:

(a) What benefit does the public derive from the publication of incomprehensible data on chemical use which has no correlation to risk from exposure?

(b) Would the public benefit more from a prioritization of ''worst case'' emission risks to human health then use reporting?

(c) How will EPA protect the proprietary formulations that are a valuable intellectual property?

Mr. President, it is clear that the administration's materials accounting approach has no statutory basis. It is also clear that it will place an enormous burden on America's industrial communities. As a result, American jobs will be sacrificed for questionable, even limited, community environmental benefit.

It is clear to me that congressional action must precede any administration action.

Mr. President, I stand here today, along with many of my Senate colleagues who are committed to protecting and informing communities in our home States. We want to work on refining the policies which will update the TRI program. We want to make it truly responsive to the communities living nearest the facilities while preserving the right of businesses to remain competitive in the global marketplace.

I would like to pause and take a philosophical view for just a moment. Let's step back from TRI and consider all regulations in general. In the aggregate, regulatory compliance costs Americans around $670 billion every year—nearly 10 percent of our economy's GDP. This is substantial both in terms of dollars and percentage. This is why our public policy must meet this challenge in a systematic, responsive and balanced manner.

Basic fairness must be an integral part of the solution as Congress reviews and updates any regulation. Basic fairness should also be part of the equation used by the administration as it approaches new initiatives. Basic fairness is the American way.

The focus of the issue must not be whether we need environmental protection enforcement—of course we do. Rather we must look at how to achieve effective and appropriate environmental protection. Congress must ensure that both the enforcement agencies and the regulated community have incentives to encourage compliance. There must also be a mechanism for the agencies to prioritize environmental initiatives. And, of course, this process must respect our Bill of Rights.

I started today by reporting on TRI's success story, and the agency's response of adding more reports and more costs. This could undermine the existing voluntary efforts of industry. I think everyone would agree that cooperative problem solving approaches work better than adversarial methods. The latter could even produce disdain and lawlessness.

I also started by saying that states deserve part of the credit for the TRI success story. State governments have come a long way in terms of developing their own core levels of expertise. As regulations are updated, Congress must recognize states as a genuine partner in protecting our environment.

The wisdom of this is demonstrated in a separate but vital illustration of state ingenuity. Seventeen states, including my own state of Mississippi, have developed a voluntary environmental audit process, and early indications are that the process is working. It is an alternative to the one-size-fits-all, Washington-expert, command-and-control methods mandated in the past. It is common sense, and it actually produces positive results for our environment at less cost. It represents basic fairness. This is what Congress ought to be advocating.

Mr. President, I want to conclude by saying that Congress needs to turn the spotlight back to TRI's original intent. This can be achieved by having both Congress and the EPA answer one fundamental question: What chemical release information will be useful to people living near an industrial facility?

TRIBUTE TO RALPH GABBARD

Mr. FORD. Mr. President, Kentucky and the Nation suffered a great loss last week with the passing of Mr. Ralph Gabbard. Ralph was a nationally known broadcast executive, serving as president of Gray Communications. He was a leader in the television broadcast industry in my State, and ultimately was a national leader as well. Ralph was at the forefront of the industry's development in Kentucky for the better part of the last 30 years, including successful efforts to bring a television station to the mountains of eastern Kentucky.

Among other things, he served as chairman of the CBS Affiliates Advisory Board and the National Association of Broadcasters television board. Most recently, Ralph played a significant role in industry discussions with the Clinton administration which led to the announcement of steps to improve the quality of children's programming.

But beyond the long list of personal accomplishments, Ralph was probably best known for his integrity, his honesty, and his common courtesy in dealing with others. I was privileged to

deal with Ralph on more than one occasion, and had great respect and trust in his abilities. He was a true asset for my State, and his presence will be missed.

Mr. President, I ask that two articles which recently appeared in the Lexington Herald-Leader describing the life and accomplishments of Ralph Gabbard be inserted into the RECORD at this point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

NATIONALLY KNOWN BROADCAST EXECUTIVE ROSE FROM KENTUCKY TEEN DISC JOCKEY

(By Jennifer Hewlett)

Ralph Gabbard, who rose from teen-age disc jockey to a TV station executive in Lexington to a nationally known figure in the broadcast industry, died while in Boston on a business trip. He was 50.

Security workers at the Four Seasons Hotel found Mr. Gabbard, president and board member of Gray Communications Systems Inc., dead about 7 a.m. yesterday, apparently of a heart attack, after he failed to answer a wake-up call, said Bill Fielder, chief financial officer of Gray, who had dinner with Mr. Gabbard Monday night.

Gray Communications, based in Georgia, owns several TV stations, including WKYT (Channel 27) in Lexington and WYMT (Channel 57) in Hazard.

Mr. Gabbard was perhaps best known for his affiliation with the two Kentucky CBS-affiliated stations, where he spent much of his career before moving up the industry ladder.

He was thought to have been the first person to do on-air television editorials in the Lexington market. He also was credited with bringing the people of the mountains of Eastern Kentucky closer together through WYMT.

''No one will disagree with this statement; no one can. Ralph Gabbard defined and dominated this television market for a quarter century. All you had to do with Ralph was convince him something was necessary to be the best, to be No. 1, and it was done,'' said Barry Peel, who covers state government for WKYT's Frankfort bureau.

Peel said that Mr. Gabbard was instrumental in WKYT's decision to outbid WLEX–TV (Channel 18) for the University of Kentucky coaches' shows and the right to broadcast replays of UK games. Some thought he was ''nuts'' because the high bid initially lost money for the station. In the end, Channel 27's identity with UK sports has been a key to its dominance, Peel said.

''To be identified with UK sports is a major component of image, and, let's face it, we're in the image business. He knew that and time has proven him right,'' Peel said.

Mr. Gabbard recently stepped down as chairman of the National Association of Broadcasters television board. He had served as chairman of the CBS Affiliates Advisory Board, which represents more than 200 CBS stations nationwide, and was a member of the Network Affiliated Stations Alliance Steering Committee, which represents more than 650 CBS, ABC and NBC affiliates in congressional issues affecting telecommunications.

He met with President Clinton in March to discuss children's television.

''Ralph was an exceptional person in so many ways. He was an honest man with a real commitment to the business of broadcasting and the audiences we serve,'' said Peter Lund, president and chief executive officer of CBS Inc.

Mr. Gabbard also led the drive several years ago to revitalize Renfro Valley in Rockcastle County, where many country music stars had performed.

''He had the vision of what Renfro Valley is today. It had a special place in his heart,'' said Connie Hunt, vice president of entertainment for the Renfro Valley Entertainment Center.

Mr. Gabbard had grown up listening to country music and even dabbled in writing songs, mostly lyrics. Two songs he wrote or cowrote—''Lone Star Cafe'' and ''Please Play More Kenny Rogers''—got on the country charts. The Rogers song edged into the Top 40. He also wrote a song called ''I've Always Wanted to Sing in Renfro Valley.''

J.P. Pennington of the musical group Exile, who had known Mr. Gabbard since they were children, said that he and Mr. Gabbard recently collaborated on two songs, ''Lovin' Machine'' and ''Two-Heart Harmony.'' The first song they wrote together at Pennington's house. Mr. Gabbard supplied the title for the second song.

Mr. Gabbard was ''too shy'' to sing before an audience himself, but ''he had definitely a keen musical sense about him,'' Pennington said.

BROADCAST EXECUTIVE

Mr. Gabbard had been president and general manager of Kentucky Central Television Inc., which sold its holdings, including the Kentucky stations, to Gray a couple of years ago. Mr. Gabbard had tried to put together a group of people to buy WKYT and WYMT, but they were outbid. He was named president and chief executive officer of Gray Communications Broadcast Group in September 1994, and president and board member of Gray Communications Systems Inc. last December.

He was in Boston to meet with potential investors in an effort to raise $150 million for Gray Communications to buy John H. Phipps Inc. of Tallahassee, Fla., whose holdings include TV stations in Tallahassee and Knoxville.

''We've lost a very special friend, and most of us will tell you that we lost a very special mentor,'' said Wayne Martin, WKYT president and general manager. ''The loss is significant to others beyond WKYT—he was nationally recognized.''

Jim Jordan, a longtime friend and business associate, said: ''It's a very sad day . . . he was the best broadcaster I ever met, period.''

Jordan said that Mr. Gabbard had a great eye for spotting on-air and management talent.

Cawood Ledford, former broadcast voice of the University of Kentucky Wildcats, said: ''His word was as good as a contract to me. I'll miss him tremendously as a personal friend.''

Ledford also said he always ''borrowed generously'' from Mr. Gabbard when he was invited to give speeches. Mr. Gabbard, he said, had a knack for remembering jokes, and when Ledford was scheduled to give a speech, he often called Mr. Gabbard to refresh his memory on jokes that Mr. Gabbard had told him, then used them in his speeches.

SPINNING DISCS

Mr. Gabbard, a Berea native, was just a teenager when he had his first disc jockey job. He was a disc jockey, announcer and advertising salesman for WEKY–1340 AM in Richmond and a disc jockey and sales manager at WRVK–AM in Renfro Valley in the early to mid-1960s. He went on to become an advertising salesman and announcer for Lexington's WVLK radio and station manager of WEKY.

''I loved being a disc jockey more than anything I ever did, I guess. I got a charge out of talking to people and having them respond,'' he said several years ago.

He said he got into broadcasting in 1963 by accident. A high school teacher assigned students topics for speeches, and Gabbard—who was a ''very average student''—got the topic that was left over: radio.

He drove from Berea to a Richmond radio station to ask for Associated press copy so he could practice reading.

The station had a young disc jockey named Ralph Hacker, who told Mr. Gabbard the station was looking for an announcer. He asked Mr. Gabbard to apply for the job.

Mr. Gabbard made an audition tape, and the station's manager told him he was pretty bad, but the manager was desperate for announcers and hired him anyway, he said in a 1987 interview.

He found his niche selling advertising.

After high school, he enrolled at Eastern Kentucky University with the idea of becoming a pharmacist. But by the end of his freshman year, he was making so much money selling ads that he quit school.

After the series of radio jobs, Mr. Gabbard became general sales manager of WKYT about 1970.

WKYT was struggling, Mr. Gabbard had said. His reaction was to develop creative sales packages and market them aggressively.

Later in the mid-1970s, he was promoted to vice president and general manager of WKYT. The move made him the youngest vice president and general manager of a top 100-market, network-affiliated television station in the country.

The TV business was simple then, with just the three commercial networks and Kentucky Educational Television. Lexington didn't have an independent station.

As vice president and general manager, Mr. Gabbard hired executives from outside the television industry because he wanted people who would ''come in unprejudiced.'' He also put more emphasis on news.

When Mr. Gabbard got WKYT on more solid ground, he turned his attention to the mountains.

He was largely responsible for the opening of WYMT in Hazard, a satellite station of WKYT. The purpose of the Hazard station was to capture Eastern Kentucky audiences previously reached by television stations in West Virginia and other states, he said.

''It stands for 'We're your mountain television,''' he said in 1991.

After the first five years, the station still hadn't shown a net profit but Mr. Gabbard maintained it was still a wise investment.

''It's good to be able to say, 'There's a little crown jewel sitting there that we're proud of,''' he said.

He liked to say that WYMT had united Kentucky's mountain communities.

''Without Ralph Gabbard, there would be no 'YMT,'' said Tony Turner, WYMT news director. ''It was his dream, his idea. He mapped it out, and there were a lot of obstacles.''

Mr. Gabbard also went to Washington to urge Kentucky congressmen and senators to promote legislation that would discourage Eastern Kentucky cable systems from dropping KET.

He was a past president of the Kentucky Broadcasters Association and received its most prestigious honor, the Al Temple Award, in 1993.

He also had served on many boards, including local and regional hospital boards, and the boards of the Chamber of Commerce, Big Brothers, United Way and Boy Scouts. He was a member of the Georgetown College board of trustees at his death. He also was a member of the board of Host Communications Inc. in Lexington.

Mr. Gabbard is survived by his wife, Jackie Upton Gabbard; four sons, Joseph Marlon

Gabbard, Jason Ralph Gabbard, James Matthew Gabbard and Jesse Eden Gabbard; his mother, Maggie Eden Gabbard; and a sister, Charlotte Moore, all of Lexington.

Services will be at 11 a.m. Friday at Calvary Baptist Church in Lexington. Visitation will be from 1 to 4 p.m. and from 6 to 9 p.m. Thursday at W.R. Milward Mortuary—Broadway. Burial will be in Lexington Cemetery.

RALPH GABBARD SHAPED AND EXPANDED TV'S INFLUENCE

Lexington broadcasting executive Ralph Gabbard was a bona fide success story, rising from his Berea boyhood to a position of national leadership in the television industry.

His untimely death this week at 50 leaves his many friends and colleagues in shock, but the end of a life lived so fully and energetically leaves an example worth heeding.

As the driving force behind WKYT-TV (Channel 27) in the Lexington market, Mr. Gabbard realized early on that the advent of cable TV was a threat—or perhaps an opportunity. His response was typically savvy and creative.

Mr. Gabbard believed that his station would thrive the more it stressed its local identity. Thus he built a strong news team, became the TV flagship for University of Kentucky sports and made sure that WKYT played a role in every possible civic activity.

He extended this philosophy when WKYT bought and beefed up its sister station in the mountains, WYMT-TV. The stations enhanced each other naturally, giving each a toehold exactly where needed, and extending their company's influence throughout Kentucky.

By serving his community and region the best way he knew, Mr. Gabbard also bolstered a thriving business. He had been the station's president and general manager when it was part of the old Garvice Kincaid empire, and when WKYT was sold to Gray Communications Inc. in 1994, he was named president of the new parent company.

By then, Mr. Gabbard was a respected national figure in the TV industry, a true accomplishment for someone outside the big-city markets. He served as chairman of the CBS-TV affiliates and was a director of the National Association of Broadcasters.

Mr. Gabbard played a key role in the recent compromise between the TV industry and the Clinton administration to improve children's programming.

Throughout his career, Mr. Gabbard forged ahead with boldness, tenacity and innovation. He treated the Lexington TV market as if it were in the big leagues, and that's where he ultimately put himself.

That's a notable legacy and the reason that Ralph Gabbard will be sorely missed.

HONORING THE SCHEPKER'S ON THEIR 50TH WEDDING ANNIVERSARY

Mr. ASHCROFT. Madam President, families are the cornerstone of America. The data are undeniable: Individuals from strong families contribute to the society. In an era when nearly half of all couples married today will see their union dissolve into divorce, I believe it is both instructive and important to honor those who have taken the commitment of till death us do part seriously, demonstrating successfully the timeless principles of love, honor, and fidelity. These characteristics make our country strong. For these important reasons, I rise today to honor Jacob and Sophie Schepker of St. Louis, MO, who on August 10, 1996, celebrated their 50th wedding anniversary. My wife, Janet, and I look forward to the day we can celebrate a similar milestone. Jacob and Sophie's commitment to the principles and values of their marriage deserves to be saluted and recognized.

INTELLIGENCE REAUTHORIZATION BILL

Mr. HATCH. Mr. President, I rise in support of S. 1718, the intelligence reauthorization bill, with the understanding that one inequity contained in the bill will be corrected in conference.

The bill in its current form contains what I believe is an inappropriate encroachment on the authority of the Federal Bureau of Investigation to staff its position of Assistant Director, National Security Division.

The current bill requires that the FBI consult with the DCI prior to this appointment. The FBI, like any other agency, should be vested with the sound discretion to fill its ranks in a manner that is not burdened by outside Agency influence. I perceive this proposed requirement as an infringement by the foreign intelligence community upon domestic law enforcement.

I recognize that, with respect to the FBI's National Security Division, there is some overlap between intelligence and law enforcement, but that alone does not justify the necessity of this measure. Let's not place an unnecessary check upon the FBI by imposing this additional requirement.

Remember, it was the National Security Division which, notwithstanding bureaucratic hostility within the CIA, vigorously pursued the Aldrich Ames case. How zealous will future NSD higher ups be if they feel their career may turn on CIA approval?

I urge each of you to support language which we have negotiated with the Intelligence Committee and the administration, which deletes the requirement that the FBI Director consult with the DCI prior to the appointment of its Assistant Director, National Security Division.

Replacing this requirement is a provision whereby the FBI Director notifies the DCI of its selection to this vital position. The DCI may then, but is not required, to consult with the FBI Director concerning the selection.

It is my belief that this provision more clearly recognizes the separate and distinct missions, as well as the differing standards by which the intelligence and law enforcement communities must operate. I urge each of my colleagues to endorse this proposed change.

HAPPY BIRTHDAY TO MARY SINGLETARY TAYLOR

Mr. HEFLIN. Mr. President, I rise today to extend my birthday wishes to Mrs. Mary Singletary Taylor, a native of Henry County, AL. She was born 98 years ago today—September 18, 1898. I understand that with the exception of some hearing loss, Mrs. Taylor is in good shape and still reads the Dothan Eagle newspaper each morning before working on her tatting. She calls her tatting, which is a handmade lace and somewhat of a lost art, her therapy.

Mary's parents were W.B. and LaNora Singletary and her husband was Jasper Taylor, a farmer. Her niece is our own LaRose Taylor Shirley, who most of us know as a 16-year member of the U.S. Capitol Police Force. LaRose also hails from Henry County, which is located in the southeastern corner of Alabama.

Mary S. Taylor was a lifelong resident of Newville, AL, in Henry County, and now resides in the Henry County Nursing Home in Abbeville. She attended a one-room school in Caps, AL, until she finished the fifth grade and then transferred to the Abbeville Normal School, where she completed her education. She was an active and dedicated member of the Tolbert Baptist Church for approximately 70 wonderful years.

Mary was a homemaker and was known far and wide as an excellent and talented seamstress. She was especially known for her handmade baby clothes and her tatting.

I am pleased to congratulate Mrs. Taylor for reaching this milestone in her life and wish her many, many more happy birthdays.

MESSAGES FROM THE HOUSE

At 11:57 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 533. An act to clarify the rules governing removal of cases to Federal court, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 1507. An act to provide for the extension of the Parole Commission to oversee cases of prisoners sentenced under prior law, to reduce the size of the Parole Commission, and for other purposes.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1684. An act to require the Secretary of the Treasury to mint coins in commemoration of the 150th anniversary of the death of Dolly Madison.

H.R. 1776. An act to require the Secretary of the Treasury to mint coins in commemoration of Black Revolutionary War patriots and the 275th anniversary of the 1st Black Revolutionary War patriot, Crispus Attucks.

H.R. 1886. An act for the relief of John Wesley Davis.

H.R. 2026. An act to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the death of George Washington.

H.R. 2941. An act to improve the quantity and quality of the quarters of land management agency field employees, and for other purposes.

H.R. 3676. An act to amend title 18, United States Code, to clarify the intent of Congress with respect to the Federal carjacking prohibition.

H.R. 3723. An act to amend title 18, United States Code, to protect proprietary economic information, and for other purposes.

H.R. 3802. An act to amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide for public access to information in an electronic format, and for other purposes.

H.R. 3803. An act to authorize funds for the George Bush School of Government and Public Service.

H.R. 3936. An act to encourage the development of a commercial space industry in the United States, and for other purposes.

H.R. 3968. An act to make improvements in the operation and administration of the Federal courts, and for other purposes.

H.R. 4039. An act to make technical and clarifying amendments to recently enacted provisions relating to titles II and XVI of the Social Security Act and to provide for a temporary extension of demonstration project authority in the Social Security Administration.

H.J. Res. 191. An act to confer honorary citizenship of the United States on Agnes Gonxha Bojaxhiu, also known as Mother Teresa.

At 12:51 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4040. An act to amend title 49, United States Code, relating to intermodal safe container transportation.

The message also announced that the House insists upon its amendment to the bill (S. 640) to provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes, disagreed to by the Senate, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. SHUSTER, Mr. YOUNG of Alaska, Mr. BOEHLERT, Mr. OBERSTAR, and Mr. BORSKI as the managers of the conference on the part of the House.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3259) to authorize appropriations for fiscal year 1997 for intelligence and intelligence-related activities of the U.S. Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as the managers of the conference on the part of the House:

From the Permanent Select Committee on Intelligence, for consideration of the House bill and the Senate amendment, and modifications committed to conference: Mr. COMBEST, Mr. DORNAN, Mr. YOUNG of Florida, Mr. HANSEN, Mr. LEWIS of California, Mr. GOSS, Mr. SHUSTER, Mr. MCCOLLUM, Mr. CASTLE, Mr. DICKS, Mr. RICHARDSON, Mr. DIXON, Mr. TORRICELLI, Mr. COLEMAN, Mr. SKAGGS, and Ms. PELOSI.

From the Committee on National Security, for consideration of defense tactical intelligence and related agencies: Mr. STUMP, Mr. SPENCE, and Mr. DELLUMS.

At 2:35 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 1636. An act to designate the United States Courthouse under construction at 1030 Southwest 3rd Avenue, Portland, Oregon, as the ''Mark O. Hatfield United States Courthouse,'' and for other purposes.

S. 1995. An act to authorize construction of the Smithsonian Institution National Air and Space Museum Dulles Center at Washington Dulles International Airport, and for other purposes.

The message also announced that the House agrees to the report of the committee on conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3675) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1997, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–4102. A communication from the Director of the Office of Congressional Affairs, transmitting, pursuant to law, a rule entitled ''Topical Guidelines for the Licensing Support System,'' received on September 17, 1996; to the Committee on Environment and Public Works.

EC–4103. A communication from the Assistant Secretary of the Interior for Fish and Wildlife and Parks, transmitting, pursuant to law, a rule entitled ''Migratory Bird Hunting,'' (RIN1018-AD69) received on September 16, 1996; to the Committee on Environment and Public Works.

EC–4104. A communication from the Inspector General of the U.S. Environmental Protection Agency, transmitting, pursuant to law, the annual report relative to the Superfund program for fiscal year 1995; to the Committee on Environment and Public Works.

EC–4105. A communication from the Director of the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, a rule entitled ''Approval and Promulgation of Implementation Plans State,'' (FRL5606-3) received on September 16, 1996; to the Committee on Environment and Public Works.

EC–4106. A communication from the Director of the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, two rules including a rule entitled ''Pesticide Tolerances for Emergency Exemptions,'' (FRL5395-8, 5612-2) received on September 17, 1996; to the Committee on Environment and Public Works.

EC–4107. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the Poplar Island, Maryland environmental restoration project; to the Committee on Environment and Public Works.

EC–4108. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, a draft of proposed legislation to modify the project for deep-draft navigation at Wilmington Harbor, Northeast Cape Fear River, North Carolina; to the Committee on Environment and Public Works.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–670. A resolution adopted by the Board of Commissioners of Broward County, Florida, relative to East Coast Buffer/Water Preserve Areas; to the Committee on Appropriations.

POM–671. A resolution adopted by the the Council of the Borough of Stone Harbor, New Jersey, relative to funding for Energy and Water Development; to the Committee on Appropriations.

POM–672. A resolution adopted by the the Council of the Borough of Stone Harbor, New Jersey, relative to funding for Energy and Water Development; to the Committee on Environment and Public Works.

POM–673. A joint resolution adopted by the the General Assembly of the State of Colorado; to the Committee on Foreign Relations.

''HOUSE JOINT RESOLUTION 96–1022

''Whereas, on April 26, 1986, an accident at the Soviet-designed nuclear reactor at Chernobyl caused the worst nuclear disaster in history; and

''Whereas, the response of the Soviet government to this disaster included a temporary one-hundred-fold increase in the levels of permissible iodine contamination; and

''Whereas, this disaster caused the death of untold numbers of people, the evacuation of many thousands from their homes, and the radioactive contamination of more than 38,000 square miles of Ukraine and Belarus; and

''Whereas, three nuclear reactors still operate at the site under precarious conditions; and

''Whereas, the long term environmental and public health effects of this disaster are still unknown; and

''Whereas, the concrete shell built to contain the radiation remaining at the site is deteriorating and estimates for the construction of a proper containment shell run into the billions of dollars; and

''Whereas, the people of Ukraine are still struggling to cope with the effects of the Chernobyl disaster, including the threat of the structural failure of the containment shell, which could release up to ten tons of highly radioactive material into the environment: Now, therefore, be it

''*Resolved by the House of Representatives of the Sixtieth General Assembly of the State of Colorado, the Senate concurring herein:* (1) That the General Assembly expresses sympathy with and extends condolences to the people of Ukraine on the tenth anniversary of the Chernobyl disaster;

''(2) That the General Assembly urges that if the United States government provides assistance to mitigate the effects of the

Chernobyl disaster, this aid should be targeted to the affected areas of Ukraine, be it further

''*Resolved,* That a copy of this resolution be sent to the President of the United States, the Secretary of State of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the Ukrainian Ambassador to the United States.''

POM–674. A resolution adopted by the Association of Hawaiian Civic Clubs relative to funding for current Hawaiian programs; to the Committee on Indian Affairs.

POM–675. A joint resolution adopted by the General Assembly of the State of Colorado; to the Committee on Rules and Administration.

''HOUSE JOINT RESOLUTION 96–1006

''Whereas, John L. ''Jack'' Swigert, Jr., was born in Denver, Colorado, on August 30, 1931, to Virginia and John Leonard Swigert, both noted citizens of the community; and

''Whereas, Jack Swigert excelled in academics and athletics while attending Regis and East high schools in Denver and the University of Colorado in Boulder, where he earned a degree in mechanical engineering and also played guard on the varsity football team; and

''Whereas, Jack Swigert early in life manifested what was to become a lifelong passion for flying, earning a pilot's license at sixteen years of age, participating in the Air Force Officer Training Corps at the University of Colorado, and joining the United States Air Force after his graduation; and

''Whereas, Jack Swigert served and flew missions in Korea and Japan from 1953 to 1956 in support of the United States and Allied Forces; and

''Whereas, from 1957 to 1965, Jack Swigert was a test pilot for North American Aviation, Inc., and Pratt and Whitney Aircraft, making significant contributions to aviation science and receiving the AIAA Octave Chanute Award for demonstrating the feasibility of the Rogallo Wing as a landing system for returning space vehicles; and

''Whereas, Jack Swigert logged over 2,900 hours of flight time with the United States Air Force, the National Aeronautics and Space Administration, and the Air National Guard; and

''Whereas, in 1966, after earning a master's degree in aerospace science from Rensselaer Polytechnic Institute in Troy, New York, Jack Swigert was selected by NASA to be one of the few civilians to participate in the Apollo moon missions; and

''Whereas, in 1970, while Jack Swigert served as Command Module Pilot of the Apollo 13 Mission, an oxygen tank explosion damaged the service module and threatened to maroon the spacecraft in outer space. Along with fellow astronauts James Lovell, Jr., and Fred Haise, Jr., and with the assistance of the Houston ground controllers, Jack Swigert executed a daring ''slingshot'' maneuver around the moon that whirled the space craft onto a new flight path and safety piloted the damaged spacecraft back to earth; and

''Whereas, from 1973 to 1979, Jack Swigert served as executive director of the Committee on Science and Technology of the United States House of Representatives, where he advocated advanced scientific development and exploration; and

''Whereas, upon his return to Colorado, Jack Swigert entered politics and, in 1982, ran a successful campaign for the newly created Sixth Congressional District seat, campaigning vigorously despite increasingly serious diagnoses of cancer; and

''Whereas, Jack Swigert as he had throughout his life, maintained his courage, discipline, and sense of humor in his final battle; and

''Whereas, Jack Swigert was a pioneer in space industries, and his efforts assisted Colorado's rapidly growing involvement in space and space-related activities in the 1970s; and

''Whereas, Colorado has since acquired and developed the necessary attributes to become in internationally recognized center for excellence in space operations and planetary environmental technology; and

''Whereas, in the spirit of Jack Swigert, Colorado's universities and colleges have made significant contributions to the advancement of space research and development; Now, therefore, be it

Resolved by the House of Representatives of the Sixtieth General Assembly of the State of Colorado, the Senate concurring herein: That John L. ''Jack'' Swigert, Jr., pilot, scientist, administrator, pioneer, and explorer, who demonstrated heroism, political faith, and passionate devotion to his country and who represents an ideal to all citizens of this state and nation, is hereby designated by the General Assembly of the State of Colorado to be honored and memorialized by a statue in the United States Capitol in Washington, D.C., be it further

''*Resolved:* 1. That the Jack Swigert Memorial Commission is hereby established and shall consist of seven citizens of Colorado, with members appointed as follows:

''(a) One member to be appointed by the Speaker of the Colorado House of Representatives;

''(b) One member to be appointed by the Majority Leader of the Colorado House of Representatives;

''(c) One member to be appointed by the Minority Leader of the Colorado House of Representatives;

''(d) One member to be appointed by the President of the Colorado State Senate;

''(e) One member to be appointed by the Majority Leader of the Colorado State Senate;

''(f) One member to be appointed by the Minority Leader of the Colorado State Senate; and

''(g) One member to be appointed by the Governor of the State of Colorado.

''2. That the Jack Swigert Memorial Commission is hereby authorized and is hereby required to raise sufficient donations through public subscription from private sources to cover all costs of the entire project, including sculpture, transportation, and erection in the United States Capitol.

''3. That the Jack Swigert Memorial Commission shall direct such donations to the state treasurer to be accepted pursuant to section 24–22–105, Colorado Revised Statutes.

''4. That the Jack Swigert Memorial Commission shall give account of income and expenditures to the Joint Budget Committee of the Colorado General Assembly.

''5. That no public moneys shall be expended by the Jack Swigert Memorial Commission and the members thereof shall not be paid any salary or per diem for serving on the commission. The Jack Swigert Memorial Commission may use public facilities to hold public meetings.

''6. That ownership of the completed sculpture shall vest in the State of Colorado; be it further

''*Resolved,* That copies of this Memorial be transmitted to the President of the Senate and the Speaker of the House of Representatives of the United States Congress and to each member of the Congressional delegation from Colorado.''

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

H.R. 2504. A bill to designate the Federal Building located at the corner of Patton Avenue and Otis Street, and the United States Courthouse located on Otis Street, in Asheville, North Carolina, as the ''Veach-Baley Federal Complex.''

H.R. 3186. A bill to designate the Federal building located at 1655 Woodson Road in Overland, Missouri, as the ''Sammy L. Davis Federal Building.''

H.R. 3400. A bill to designate the United States courthouse to be constructed at a site on 18th Street between Dodge and Douglas Streets in Omaha, Nebraska, as the ''Roman L. Hruska United States Courthouse.''

H.R. 3572. A bill to designate the bridge on United States Route 231 which crosses the Ohio River between Maceo, Kentucky, and Rockport, Indiana, as the ''William H. Natcher Bridge.''

S. 1875. A bill to designate the United States Courthouse in Medford, Oregon, as the ''James A. Redden Federal Courthouse.''

S. 1977. A bill to designate a United States courthouse located in Tampa, Florida, as the ''Sam M. Gibbons United States Courthouse,'' and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. KOHL:

S. 2088. A bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide child care assistance for dependents of their employees, and for other purposes; to the Committee on Finance.

By Mr. THOMAS:

S. 2089. A bill to transfer land administered by the Bureau of Land Management to the States in which the land is located; to the Committee on Energy and Natural Resources.

By Mrs. BOXER:

S. 2090. A bill to provide for the conveyance of certain land in the State of California to the Hoopa Valley Tribe; to the Committee on Energy and Natural Resources.

By Mr. PRESSLER (for himself and Mr. HARKIN):

S. 2091. A bill to provide for small business and agriculture regulatory relief; to the Committee on Commerce, Science, and Transportation.

By Mr. STEVENS (for Mr. THURMOND (for himself and Mr. HEFLIN)):

S.J. Res. 61. A joint resolution granting the consent of Congress to the Emergency Management Assistance Compact; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BIDEN (for himself, Mr. ABRAHAM, Mr. AKAKA, Mr. BAUCUS, Mr. BINGAMAN, Mrs. BOXER, Mr. BRADLEY, Mr. BRYAN, Mr. BURNS, Mr. CHAFEE, Mr. COHEN, Mr. COVERDELL, Mr. D'AMATO, Mr. DOMENICI, Mr. DORGAN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FORD, Mr. FRIST, Mr. GLENN, Mr. GRASSLEY, Mr. GREGG, Mr. HATCH, Mrs. HUTCHISON, Mr. INOUYE, Mr.

JOHNSTON, Mrs. KASSEBAUM, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. LOTT, Mr. MACK, Mr. MCCAIN, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mr. MURKOWSKI, Mrs. MURRAY, Mr. PELL, Mr. REID, Mr. ROBB, Mr. ROCKEFELLER, Mr. ROTH, Mr. SARBANES, Mr. SIMON, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Mr. STEVENS, Mr. THOMAS, Mr. THURMOND, and Mr. WELLSTONE):

S. Res. 295. A resolution to designate October 18, 1996, as ''National Mammography Day''; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KOHL:

S. 2088. A bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide childcare assistance for dependents of their employees, and for other purposes; to the Committee on Finance.

THE CHILD CARE INFRASTRUCTURE ACT

● Mr. KOHL. Mr. President, as we reach the end of the 104th Congress, we can be proud of the business we have finished, and we should look forward to finishing the business we have just begun. In that spirit, I introduce the Child Care Infrastructure Act of 1996—a tax credit designed to encourage employers to increase the supply of quality child care by providing it to their employees.

My bill responds to the challenges presented by the landmark welfare legislation recently enacted. And it responds to the fundamental changes in the American economy that have led to parents entering the workforce in record numbers.

Already in my State of Wisconsin, 67 percent of the women with children under 6 are in the workforce, yet there is only 1 accredited child care center for every 2,800 of these kids. Wisconsin has 6,500 children from 4,000 families on waiting lists for child care. What is most amazing is that Wisconsin, even with this sort of supply bottleneck, is considered by many to be one of the best States in which to find quality child care.

With the advent of welfare reform, and the movement of more mothers of young children into the workforce, the shortage of good child care will only get worse. Conservative estimates show that at least 8,000 new, full-time child care slots will be needed in Milwaukee County alone to provide for the children of welfare mothers moving into work.

Quality child care is the answer on many levels to the challenges of an economy fueled more and more by working parents. Safe child care is the link that makes it possible for welfare mothers to move from dependency to a decent job. Stimulating child care gives our youngest children a leg up on a lifetime of learning. Employer-provided child care gives working parents the peace of mind to perform their jobs well.

The Child Care Infrastructure Act of 1996 creates a tax credit for employers who get involved in increasing the supply of quality child care. The credit goes to employers who engage in activities like: building and subsidizing an entire child care center, reserving slots in a child care center for employees, or contracting with a resource and referral agency to provide services such as placement or the design of a family day care network to employees. The credit is designed so that any company—small or large—has an incentive to get involved in the provision of quality child care to its employees.

The credit is limited to 50 percent of $150,000 per year. The credit will sunset after 3 years. With this legislation, I want to encourage companies to consider providing child care as an employee benefit. However, I believe, and study after study has shown, that once a company offers this benefit, they will want to continue it even without a tax write-off. That is because companies that provide child care find their workers stay in their jobs longer (cutting training costs), have higher morale, work harder, and take less sick leave.

I had the opportunity during the August recess to visit Quad Graphics, a large printing firm in Wisconsin that is known for its provision of quality child care to its employees through on-site child care centers. Quad Graphics is one of Working Mothers magazine's ''100 Best Companies''—primarily because of the quality of its on-site child care centers. Talking to the parents of children at one of those centers—seeing the happy and healthy children greeting their parents on their breaks and at lunch—was all the evidence I needed to convince me that we ought to be encouraging this sort of corporate involvement nationwide. Their 24 hour facility improves the company's bottom line—Quad Graphics is able to attract and retain dedicated employees who want a job that allows them to be near their children. And that day care center improves the participating families' bottom line as well—many parents I spoke with told me they would not be able to work, or to work well, if they had to worry each day about whether their children were cared for, safe, and happy.

The 21st century economy will be one in which more of us are working, and more of us are trying to balance work and family. How well we adjust to that balance will determine how strong we are as an economy and as a nation of families. My legislation is an attempt to encourage businesses to play an active role in this deeply important transition.

In the 1950's, Federal, State, local governments, communities and businesses banded together to build a highway system that is the most impressive in the world. Those roads allowed our economy to flourish and our people to move safely and quickly to work. In the 1990's, we need the same sort of national, comprehensive effort to build safe and affordable child care for our children. As more and more parents—of all income levels—move into the work force, they need access to quality child care just as much as their parents needed quality highways to drive to work. And if we are successful—and I plan to be successful—in the 21st century excellent child care—like the care these kids are getting—will be as common as interstate highways.

Child care is an investment that is good for children, good for business, good for our States, and good for the Nation. We need to involve every level of government—and private communities and private businesses—in building a child care infrastructure that is the best in the world. My legislation is a first, essential step toward this end.

Mr. President, I ask unanimous consent that the text of my legislation and a section-by-section summary be placed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2088

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Care Infrastructure Act of 1996''.

SEC. 2. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CHILD CARE ASSISTANCE.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

''SEC. 45D. EMPLOYER-PROVIDED CHILD CARE CREDIT.

''(a) IN GENERAL.—For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified child care expenditures of the taxpayer for such taxable year.

''(b) DOLLAR LIMITATION.—The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CHILD CARE EXPENDITURE.—The term 'qualified child care expenditure' means any amount paid or incurred—

''(A) to acquire, construct, rehabilitate, or expand property—

''(i) which is to be used as part of a qualified child care facility of the taxpayer,

''(ii) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

''(iii) which does not constitute part of the principal residence (within the meaning of section 1034) of the taxpayer or any employee of the taxpayer,

''(B) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training,

''(C) under a contract with a qualified child care facility to provide dependent care services to employees of the taxpayer, or

''(D) under a contract to provide dependent care resource and referral services to employees of the taxpayer.

''(2) QUALIFIED CHILD CARE FACILITY.—

''(A) IN GENERAL.—The term 'qualified child care facility' means a facility—

''(i) the principal use of which is to provide dependent care assistance, and

''(ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a child care facility.

Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 1034) of the operator of the facility.

''(B) SPECIAL RULES WITH RESPECT TO A TAXPAYER.—A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless—

''(i) enrollment in the facility is open to employees of the taxpayer during the taxable year,

''(ii) the facility is not the principal trade or business of the taxpayer unless at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and

''(iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

''(d) RECAPTURE OF ACQUISITION AND CONSTRUCTION CREDIT.—

''(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

''(A) the applicable recapture percentage, and

''(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer described in subsection (c)(1)(A) with respect to such facility had been zero.

''(2) APPLICABLE RECAPTURE PERCENTAGE.—

''(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

''If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

''(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

''(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

''(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified child care facility.

''(B) CHANGE IN OWNERSHIP.—

''(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

''(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

''(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) AGGREGATION RULES.—All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

''(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

''(f) NO DOUBLE BENEFIT.—

''(1) REDUCTION IN BASIS.—For purposes of this subtitle—

''(A) IN GENERAL.—If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

''(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

''(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

''(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1999.''

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out ''plus'' at the end of paragraph (11),

(B) by striking out the period at the end of paragraph (12), and inserting a comma and ''plus'', and

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

''(13) the employer-provided child care credit determined under section 45D.''

SECTION-BY-SECTION

SECTION 1. SHORT TITLE

The bill's short title is the ''Child Care Infrastructure Act of 1996''.

SECTION 2. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CHILD CARE ASSISTANCE

This section adds a new business related credit called the ''employer-provided child care credit.'' The credit is set at 50 percent of eligible expenditures up to a limit of $150,000 per taxpayer per tax year. Qualified expenditures mean amounts spent to: build, rehabilitate or expand a qualified child care facility for the taxpayer's employees; to subsidize the operating costs of such a facility; to contract with a child care facility to provide services for the taxpayer's employees; and to contract with a resource and referral service for the taxpayers' employees. The tax credit will not be available to build, rehabilitate, or expand a child care facility if that facility is also the home of the taxpayer or one of the taxpayer's employees.

A child care facility is considered ''qualified'' if its principle use is to provide dependent care assistance, and if the facility meets all applicable state licensing requirements and other regulations. If the facility is a family day care center located in a home, i.e., if the facility is the primary residence of the operator of the facility, then the requirement that the facility's principle use be as a dependent care center is waived.

A facility also will not be treated as ''qualified'' unless enrollment is open to employees of the taxpayer, and unless the facility does not discriminate in favor of highly compensated employees. A taxpayer whose primary business is the provision of dependent care assistance will not be eligible for the credit unless the taxpayer's investment is in a facility in which 30 percent of the enrollees are dependents of employees of the taxpayer. The provision was added to ensure that for-profit day care centers would not be eligible for a tax credit simply for engaging in their primary business by building a center. They will, however, be eligible if they build a center chiefly for the children of their employees.

Under a set of recapture rules, a taxpayer who invests in a facility that ceases activity or changes ownership in less than ten years will have some of his or her credit clawed back. The applicable recapture percentage ranges from 100 percent in years 1 through 3 of the center's operation to 10 percent in years 9 and 10.

The credit will be in effect beginning after December 21, 1996 and sunset on December 31, 1999.●

By Mr. THOMAS:

S. 2089. A bill to transfer land administered by the Bureau of Land Management to the States in which the land is located; to the Committee on Energy and Natural Resources.

BUREAU OF LAND MANAGEMENT LEGISLATION

● Mr. THOMAS. Mr. President, today, I introduce legislation that would transfer the lands controlled by the Bureau of Land Management [BLM] to the States. This bill is similar to legislation I introduced in the Senate last year, but has a number of very important changes designed to improve the measure and ensure these public lands remain in public hands. In addition, the measure also protects access to these lands after they are transferred

to ensure that multiple use activities will continue on them when they become State property.

After I introduced S. 1031 last year, some folks misleadingly claimed my legislation would allow the States to selloff the lands that were transferred to them and give them to the highest bidder. False claims were also made that access to these lands for hunting, fishing, and recreation would be limited. These attacks may have played well with the environmental community, unfortunately they have nothing to do with the truth about this effort.

Currently, the BLM controls nearly 270 million acres of land in the United States. The agency administers over 18 million acres of land in Wyoming and much more in other Western States. This landownership pattern puts a heavy burden on the people of Wyoming and throughout the West and affects our economy and communities across the West. The bill I am introducing today would ensure that these lands remain public—only administered by the States rather than the Federal Government. It is also important to note that this bill only deals with lands administered by the BLM. This legislation would do nothing to alter the management of our national parks, national forests, or wilderness areas.

Let me be clear, I believe strongly that the State governments can do a much better job of managing the BLM lands in their States. Transferring these lands to the States is a commonsense approach to bring public management of these areas closer to local people. However, I also feel strongly that these lands should remain public and available to folks for a variety of uses. The key is to allow local people to make decisions regarding management of these public resources rather than bureaucrats in Washington, DC.

The principle behind my efforts to transfer the BLM lands is to give local people the opportunity to have real input into how these areas are managed. It has never been the intent of any supporters of this legislation to privatize or restrict access to these public lands. Although the opponents of this bill use every scare tactic imaginable, the real issue regarding my legislation is whether you believe land management decisions can be made better by folks in Washington or Cheyenne? This is not a question about making public lands private, this is a question about fairness and who can do a better job of listening to the concerns of local people.

I trust the people of Wyoming and the other States to make the proper decisions for themselves. Hopefully, the legislation I introduce today will allow us to begin focusing on the real questions in this matter, rather than the attacks and half-truths used by the opponents of my bill.●

By Mrs. BOXER:

S. 2090. A bill to provide for the conveyance of certain land in the State of California to the Hoopa Valley Tribe; to the Committee on Energy and Natural Resources.

THE HOOPA VALLEY RESERVATION SOUTH BOUNDARY ADJUSTMENT ACT

● Mrs. BOXER. Mr. President, I am pleased to introduce legislation that would allow the Hoopa Valley Tribe to obtain lands of deep cultural and historical significance.

The Hoopa Valley Tribe has resided in Hoopa Valley, beginning at the mouth of the Trinity River Canyon in Humbolt County for 10,000 years. In the 1950s, a settlement agreement between the Hoopa Valley Tribe and the United States Government designated a 12-by-12 mile area for the Hoopa Valley Reservation. When this land was surveyed and demarcated, a ''dog-leg'' was created along the southern boundary which omitted certain lands the Tribe has deemed culturally and religiously significant.

My legislation will remedy this situation by transferring 2,641 acres of the Six Rivers National Forest to the Hoopa Valley Tribe. I join the United States Forest Service in commending the Hoopa Valley Tribe for its history of natural resource management and expertise. This legislation enjoys broad bipartisan support in California and in the House, where it was sponsored by Congressman FRANK RIGGS.

I urge my colleagues to support this bill, so that we can quickly provide the Hoopa Valley Tribe with lands necessary to maintain their cultural and religious heritage.●

By Mr. PRESSLER (for himself and Mr. HARKIN):

S. 2091. A bill to provide for small business and agriculture regulatory relief; to the Committee on Commerce, Science, and Transportation.

THE SMALL BUSINESS AND FARM TRANSPORTATION REGULATORY RELIEF ACT OF 1996

Mr. PRESSLER. Mr. President, today I am introducing the Small Business and Farm Transportation Regulatory Relief Act of 1996. I am pleased to be joined in this effort by Senator HARKIN. This legislation is designed to address transportation and economic concerns raised recently by the agriculture community and small business owners and operators. These concerns stem from a U.S. Department of Transportation [DOT] proposal to apply Federal hazardous materials regulations to intrastate commerce. Let me explain.

Since 1987, a rulemaking has been underway at DOT to fully impose Federal hazardous materials regulations on intrastate commerce. The intent is to achieve compatibility between Federal and State hazardous materials transportation regulations. If implemented as currently planned, however, farmers and agriculture retailers could face new costs and regulatory burdens.

Mr. President, I understand the rationale behind DOT's push for uniformity in hazardous materials regulations. Indeed, the Congress has a lengthy record promoting Federal and State compatibility of motor carrier and hazardous materials transportation regulations. However, the legitimate need for exceptions to these regulations should not be ignored.

States have already achieved general compatibility with Federal hazardous materials regulations. In doing so, some agricultural States have also provided limited regulatory exemptions in this area to farmers and retailers. These exceptions are due to the seasonal nature of the planting and harvesting seasons associated with a farmer's work and the minimal risk associated with the transport of agricultural production materials.

For example, the very nature of a farmer's work requires the use of fuel, fertilizers, and pesticides. These products are transported from retail sites to farm and from farm to field, primarily on sparsely traveled roads. Have these exceptions from stringent hazardous materials regulations jeopardized safety? No. The record is clear. Public safety has not been adversely affected by farmers doing their jobs free of regulatory burdens.

Mr. President, the agriculture industry has worked to explain its position to DOT throughout the public comment periods. Unfortunately, we cannot be sure to what extent DOT will address these concerns until the rule is final. Waiting until then could be too late. Congressional action is necessary to prevent unnecessary regulations and economic burdens on our farmers.

The legislation we are introducing today would ensure States are allowed to maintain existing exceptions for farmers and agribusinesses. It also ensures States can continue to grant targeted exceptions for farmers in the future, as long as such exceptions will not adversely impact public safety.

In addition to addressing farm-related transportation concerns, this legislation would also streamline regulatory requirements for small business operators. It is based on a DOT supplemental notice of proposed rulemaking, Docket No. HM 200, issued March 20, 1996.

The DOT proposal would, in part, exempt certain quantities and types of hazardous materials from regulations concerning their transport. These so-called materials of trade are often the types of products used by small businesses across our country. Because transporting these small quantities of materials pose minimal risks to public safety and property, DOT is correctly proposing to lift the stringent hazardous materials transportation regulations currently imposed on operators. In my view, and the view of many others, DOT is on the right track. However, Congress should ensure DOT stays on that track.

According to DOT officials, the rulemaking is expected to be completed by the end of this year. But there is no firm deadline. Given this issue has been part of the rulemaking under consideration for the past 10 years, many small

business owners are skeptical about DOT meeting its target date. Indeed, there is no legal assurance that DOT will finish what it has started. After all, Federal agencies are known to miss target dates for completing rulemakings or implementing regulations. DOT is no exception.

Small business owners have no way of knowing when or if the proposed materials of trade regulatory exceptions will be a reality. Therefore, we are introducing legislation today to address this uncertainty and impose a needed congressional directive. This bill would establish a deadline for DOT and help ensure unnecessary regulatory burdens on small business owners are lifted in a timely manner. The deadline for DOT to complete the small business exception final rule would be December 31, 1996. That is the same date DOT announced as its target.

Mr. President, I want to acknowledge the efforts going on in the other body to address the concerns I have just outlined. Representatives DELAY, EWING, BUYER, and POSHARD have been working on legislative measures very similar to the proposal Senator HARKIN and I are introducing. We share a common goal. Sound transportation and policy cannot be achieved by a one-size-fits-all approach.

I urge my colleagues to join in sponsoring this very important and necessary legislation and urge its swift passage.

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. STEVENS, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 39, a bill to amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

S. 55

At the request of Mr. INOUYE, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 55, a bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs.

S. 607

At the request of Mr. WARNER, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 880

At the request of Mrs. HUTCHISON, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 880, a bill to enhance fairness in compensating owners of patents used by the United States.

S. 912

At the request of Mr. KOHL, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 912, a bill to amend the Internal Revenue Code of 1986 with respect to the eligibility of veterans for mortgage revenue bond financing, and for other purposes.

S. 1379

At the request of Mr. SIMPSON, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1379, a bill to make technical amendments to the Fair Debt Collection Practices Act, and for other purposes.

S. 1967

At the request of Mr. BROWN, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 1967, a bill to provide that members of the Armed Forces who performed services for the peacekeeping efforts in Somalia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes.

S. 1987

At the request of Mr. FAIRCLOTH, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 1987, a bill to amend titles II and XVIII of the Social Security Act to prohibit the use of social security and medicare trust funds for certain expenditures relating to union representatives at the Social Security Administration and the Department of Health and Human Services.

S. 2054

At the request of Mr. COCHRAN, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2054, a bill to amend the Higher Education Act of 1965 to exempt certain small lenders from the audit requirements of the guaranteed student loan program.

SENATE RESOLUTION 295—TO DESIGNATE OCTOBER 18, 1996, AS NATIONAL MAMMOGRAPHY DAY

Mr. BIDEN (for himself, Mr. ABRAHAM, Mr. AKAKA, Mr. BAUCUS, Mr. BINGAMAN, Mrs. BOXER, Mr. BRADLEY, Mr. BRYAN, Mr. BURNS, Mr. CHAFEE, Mr. COHEN, Mr. COVERDELL, Mr. D'AMATO, Mr. DOMENICI, Mr. DORGAN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FORD, Mr. FRIST, Mr. GLENN, Mr. GRASSLEY, Mr. GREGG, Mr. HATCH, Mrs. HUTCHISON, Mr. INOUYE, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. LOTT, Mr. MACK, Mr. MCCAIN, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mr. MURKOWSKI, Mrs. MURRAY, Mr. PELL, Mr. REID, Mr. ROBB, Mr. ROCKEFELLER, Mr. ROTH, Mr. SARBANES, Mr. SIMON, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Mr. STEVENS, Mr. THOMAS, Mr. THURMOND, and Mr. WELLSTONE) submitted the following resolution; which was referred to the Committee on the Judiciary:

S.RES. 295

Whereas according to the American Cancer Society, 184,300 women will be diagnosed with breast cancer in 1996, and 44,300 women will die from this disease;

Whereas in the decade of the 1990's, it is estimated that about 2,000,000 women will be diagnosed with breast cancer, resulting in nearly 500,000 deaths;

Whereas the risk of breast cancer increases with age, with a woman at age 70 having twice as much of a chance of developing the disease than a woman at age 50;

Whereas at least 80 percent of the women who get breast cancer have no family history of the disease;

Whereas mammograms, when operated professionally at a certified facility, can provide a safe and quick diagnosis;

Whereas experts agree that mammography is the best method of early detection of breast cancer, and early detection is the key to saving lives; and

Whereas mammograms can reveal the presence of small cancers of up to 2 years or more before regular clinical breast examination or breast self-examination (BSE), savings as many as 30 percent more lives: Now, therefore, be it.

Resolved, That the Senate designates October 18, 1996, as ''National Mammography Day''. The Senate requests that the President issue a proclamation calling upon the people of the United States to observe such day with appropriate programs and activities.

Mr. BIDEN. Mr. President, I submit a resolution designating October 18, 1996 as National Mammography Day.

Over the course of the past 3 years, I have submitted resolutions that designate a special day to encourage women to get mammograms as part of the early detection process in the fight against breast cancer. Historically this day has been designated as October 19, but because it falls on a Saturday this year, October 18 will be National Mammography Day.

In 1992 and 1993 a joint resolution was adopted by the Congress and signed into law by the President. And, last year, even though the House refused to take up commemoratives, this resolution was approved by the Senate. I feel that the Senate should again go on record to continue to educate and raise the consciousness about the importance of early detection and the value of mammography.

Mr. President, according to the American Cancer Society, national figures on breast cancer indicate that, in 1996 alone, 184,300 women will be diagnosed with breast cancer. Forty-four thousand three hundred women will succumb to this disease.

My home State of Delaware still ranks among the worst in breast cancer mortality among the 50 states, with an estimated 660 new breast cancer cases and over 160 breast cancer deaths for 1996.

Although a cure for breast cancer may be some time away, early detection and treatment are crucial to ensure survival. Studies have shown and experts agree, that mammography is

one of the best methods to detect breast cancer in its early stages. Mammograms can reveal the presence of small cancers up to 2 years before regular clinical breast examinations or breast self-examinations [BSE], saving as many as a third more lives of those diagnosed with the disease.

With 50 percent of the breast cancer cases occurring in women over age 65, no women can be considered immune from the disease; in fact, at least 80 percent of the women who get breast cancer have no family history of the disease.

Mr. President, the resolution I am submitting today sets aside 1 day in the midst of National Breast Cancer Awareness Month to encourage women to receive or sign up for a mammogram, as well as to bring about greater awareness and understanding of one of the key components in fighting this disease.

AMENDMENTS SUBMITTED

THE FEDERAL AVIATION REAUTHORIZATION ACT OF 1996

DOMENICI AMENDMENT NO. 5368

Mr. DOMENICI proposed an amendment to the bill (S. 1994) to amend title 49, United States Code, to reauthorize programs of the Federal Aviation Administration, and for other purposes; as follows:

On page 119, line 1, strike all after ''activities'', through ''collections'' on line 2.

BRYAN AMENDMENT NO. 5369

Mr. BRYAN proposed an amendment to the bill, S. 1994, supra; as follows:

At the appropriate place, insert the following:

SEC. . SPECIAL FLIGHT RULES IN THE VICINITY OF GRAND CANYON NATIONAL PARK.

The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall take such action as may be necessary to provide 30 additional days for comment by interested persons on the special flight rules in the vicinity of Grand Canyon National Park described in the notice of proposed rulemaking issued on July 31, 1996, at 61 Fed. Reg. 40120 et seq.

ROTH (AND MOYNIHAN) AMENDMENT NO. 5370

Mr. ROTH (for himself and Mr. MOYNIHAN) proposed an amendment to the bill, S. 1994, supra; as follows:

At the appropriate place, insert the following:

TITLE —EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

SEC. . EXPENDITURES FROM AIRPORT AND AIRWAY TRUST FUND.

Section 9502(d)(1) of the Internal Revenue Code of 1986 (relating to expenditures from Airport and Airway Trust Fund) is amended by—

(1) striking ''1996'' and inserting ''1997''; and

(2) inserting ''or the Federal Aviation Reauthorization Act of 1996'' after ''Administration Authorization Act of 1994''.

EXON (AND OTHERS) AMENDMENT NO. 5371

Mr. EXON (for himself, Mr. DASCHLE, Mr. DORGAN, and Mr. PRESSLER) proposed an amendment to the bill, S. 1994, supra; as follows:

On page 95 at the end of line 11 insert the following new sentence: ''Services for which costs may be recovered included the costs of air traffic control, navigation, weather services, training and emergency services which are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off nor land in the United States.''

DORGAN (AND PRESSLER) AMENDMENT NO. 5372

Mr. DORGAN (for himself and Mr. PRESSLER) proposed an amendment to the bill, S. 1994, supra; as follows:

At the appropriate place, insert the following: ''Notwithstanding any other provision of law, the Surface Transportation Board shall not increase fees for services in connection with rail maximum rate complaints pursuant to 49 CFR Part 1002, STB Ex Parte No. 542,''.

GRAHAM AMENDMENT NO. 5373

Mr. FORD (for Mr. GRAHAM) proposed an amendment to the bill, S. 1994, supra; as follows:

At the appropriate place, insert the following new section:

SEC. ___. ADVANCE ELECTRONIC TRANSMISSION OF CARGO AND PASSENGER INFORMATION.

(a) CARGO INFORMATION.—

(1) IN GENERAL.—Section 431(b) of the Tariff Act of 1930 (19 U.S.C. 1431(b)) is amended—

(A) by striking ''Any manifest'' and inserting ''(1) Any manifest'', and

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

''(2)(A) Every passenger air carrier required to make entry or to obtain clearance under the customs laws of the United States (or the authorized agent of such carrier) shall provide by electronic transmission cargo manifest information described in subparagraph (B) in advance of such entry or clearance in such manner as the Secretary shall prescribe.

''(B) The information described in this subparagraph is as follows:

''(i) The airport of arrival or departure, whichever is appropriate.

''(ii) The airline prefix code.

''(iii) The carrier code.

''(iv) The flight number.

''(v) The date of scheduled arrival or date of departure, whichever is appropriate.

''(vi) The permit to proceed to the destination, if applicable.

''(vii) The master and house air waybill numbers and quantities.

''(viii) The first airport of lading of the cargo.

''(ix) A description and weight of the cargo.

''(x) The shipper's name and address from all air waybills.

''(xi) The consignee name and address from all air waybills.

''(xii) Notice that actual boarded quantities are not equal to air waybill quantities.

''(xiii) Transfer or transit information.

''(xiv) Warehouse or other location of the cargo.

''(xv) Any other data that the Secretary may by regulation prescribe.''.

(2) CONFORMING AMENDMENT.—Subsection (d)(1)(A) of section 431 of such Act is amended by inserting before the semicolon ''or subsection (b)(2)''.

(b) PASSENGER INFORMATION.—The Part II of title IV of the Tariff Act of 1930 is amended by inserting after section 431 the following new section:

''SEC. 432. PASSENGER MANIFEST INFORMATION REQUIRED FOR AIR CARRIERS.

''(a) IN GENERAL.—Every passenger air carrier required to make entry or obtain clearance under the customs laws of the United States (or the authorized agent of such carrier) shall provide by electronic transmission passenger manifest information described in subsection (b) in advance of such entry or clearance in such manner and form as the Secretary shall prescribe.

''(b) INFORMATION DESCRIBED.—The information described in this subsection is as follows:

''(1) Full name of each passenger.

''(2) Date of birth and citizenship of each passenger.

''(3) Passport number and country of issuance of each passenger.

''(4) Passenger name record.

''(5) Any additional data that the Secretary, by regulation, determines is reasonably necessary to ensure aviation safety pursuant to the Customs laws of the United States.''.

(c) DEFINITION.—Section 401 of the Tariff Act of 1930 is amended by adding at the end the following new subsection:

''(t) PASSENGER AIR CARRIER.—The term 'passenger air carrier' means an air carrier (as defined in section 40102(a)(2) of title 49, United States Code) or foreign air carrier (as defined in section 40102(a)(21) of such title 49) that provides transportation of passengers to or from any place in the United States.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 45 days after the date of the enactment of this Act.

MCCAIN AMENDMENT NO. 5374

Mr. MCCAIN proposed an amendment to the bill, S. 1994, supra; as follows:

On page 111, beginning with line 16, strike through line 10 on page 115 and insert the following:

(c) CONSIDERATION IN SENATE.—An implementing bill introduced in the Senate shall be referred to the Committee on Commerce, Science, and Transportation. The Committee on Commerce, Science, and Transportation shall report the bill with its recommendations within 60 days following the date of introduction of that bill. Upon the reporting of the bill by the Committee on Commerce, Science, and Transportation, the reported bill shall be referred sequentially to the Committee on Finance for a period of 60 legislative days.

On page 116, strike lines 3 through 9.

BROWN AMENDMENT NO. 5375

(Ordered to lie on the table.)

Mr. BROWN submitted an amendment intended to be proposed by him to the bill, S. 1994, supra; as follows:

At the appropriate place in title VI, insert the following new section:

SEC. 6 . REQUIREMENTS FOR PROCUREMENT CONTRACTS.

(a) GRANTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, neither the Secretary

nor the Administrator may award a grant for an airport-related project unless the grant agreement specifies that, subject to paragraph (2)—

(A) competitive procedures shall be used for awarding any contract in an amount greater than or equal to $5,000,000 that is funded in whole or in part with funds made available by the grant; and

(B) the reporting requirements under subsection (b) shall apply to any contract funded in whole or in part with such funds that is awarded without using competitive procedures.

(2) EXCEPTIONS.—The exclusion of a particular source by a contractor for reasons described in subsection (b) of section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) and a failure to use competitive procedures for reasons that, under subsection (c) of such section, would justify a failure of the head of an executive agency to use competitive procedures shall not be considered a violation of a clause included in a grant agreement under paragraph (1) and shall not necessitate a report under that paragraph.

(3) APPLICABILITY.—Paragraph (1) shall apply to grants referred to in this paragraph that are awarded on or after the date of enactment of this Act.

(b) CONTENT OF REPORT.—A report submitted under this section shall state—

(1) the number of bids from qualified bidders that were in amounts lower than the amount specified in the bid submitted by the bidder awarded the contract;

(2) for each bid referred to in paragraph (1) (other than the bid submitted by the bidder awarded the contract)—

(A) the amount by which the bid submitted by the bidder awarded the contract exceeded the lower bid;

(B) a description of any qualitative differences between the property or services that were the subject of the lower bid and the property or services that are the subject of the bid submitted by the bidder awarded the contract; and

(C) a justification for rejecting the lower bid, including any exception under applicable law.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Aviation Administration.

(2) COMPETITIVE PROCEDURES.—The term ''competitive procedures''—

(A) with respect to the awarding of a contract by the Secretary or the Administrator, has the meaning provided that term in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5)); and

(B) with respect to the awarding of a contract or subcontract by a contractor, contracting procedures that the Secretary or the Administrator (as the case may be) determines are substantially similar to the competitive procedures used by the Secretary for the acquisition of the same or similar property or services.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

SIMPSON AMENDMENT NO. 5376

(Ordered to lie on the table.)

Mr. SIMPSON submitted an amendment intended to be proposed by him to the bill, S. 1994, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . PILOT AGE RESTRICTION.

The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall—

(1) determine criteria for granting exemptions to the regulations of the Federal Aviation Administration that restrict commercial pilots who have attained the age of 60; and

(2) revise to the regulations of the Federal Aviation Administration to provide for exemptions referred to in paragraph (1).

HELMS AMENDMENT NO. 5377

Mr. MCCAIN (for Mr. HELMS) proposed an amendment to the bill, S. 1994, supra; as follows:

On page 39, line 20, insert the following:

SEC. 41 . TRANSFER OF AIR TRAFFIC CONTROL TOWER; CLOSING OF FLIGHT SERVICE STATIONS.

(a) HICKORY, NORTH CAROLINA TOWER.—

(1) TRANSFER.—The Administrator of the Federal Aviation Administration may transfer any title, right, or interest the United Stats has in the air traffic control tower located at the Hickory Regional Airport to the City of Hickory, North Carolina, for the purpose of enabling the city to provide air traffic control services to operators of aircraft.

BROWN AMENDMENT NO. 5378

Mr. MCCAIN (for Mr. BROWN) proposed an amendment to the bill, S. 1994, supra; as follows:

At the appropriate place insert the following:

SEC. . REPORTING FOR PROCUREMENT CONTRACTS.

Section 47112 is amended by adding at the end the following new subsection:

''(d) REPORTING FOR PROCUREMENT CONTRACTS.—(1) The Secretary of Transportation shall promulgate regulations to require that each grant agreement that includes the awarding of any contract that includes Federal funds in an amount greater than or equal to $5,000,000 under this subchapter provides for a report to the Secretary that states—

''(A) the number of bids from qualified, responsive and reasonable bidders that were in amounts lower than the amount specified in the bid submitted by the bidder awarded the contract;

''(B) for each bid referred to in subparagraph A (other than the bid submitted by the bidder awarded the contract) the amount by which the bid submitted by the bidder awarded the contract exceeded the lower bid.

''(2) APPLICABILITY.—This subsection shall apply to grants referred to in this paragraph that are awarded on or after the date of enactment of this Act.''.

MCCAIN AMENDMENT NO. 5379

Mr. MCCAIN proposed an amendment to the bill, S. 1994, supra; as follows:

On page 2, in the item relating to title III, strike ''AIRPORT'' and insert ''AVIATION''.

On page 14, line 11, strike ''AIRPORT'' and insert ''AVIATION''.

THE DEPARTMENT OF JUSTICE APPROPRIATIONS ACT, 1997

FAIRCLOTH (AND OTHERS) AMENDMENT NO. 5380

(Ordered to lie on the table.)

Mr. FAIRCLOTH (for himself, Mr. SIMON, Ms. MOSELEY-BRAUN, and Mr. ABRAHAM) submitted an amendment intended to be proposed by them to the bill (H.R. 3814) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1997, and for other purposes; as follows:

At the appropriate place, insert the following new section:

EXTENSION OF AUTHORIZED PERIOD OF STAY FOR CERTAIN NURSES

SEC. . (a) ALIENS WHO PREVIOUSLY ENTERED THE UNITED STATES PURSUANT TO AN H–1A VISA.—

(1) Notwithstanding any other provision of law, the authorized period of stay in the United States of any nonimmigrant described in paragraph (2) is hereby extended through September 30, 1997.

(2) A nonimmigrant described in this paragraph is a nonimmigrant—

(A) who entered the United States as a nonimmigrant described in section 101(a)(15)(H)(i)(a);

(B) who was within the United States on or after September 1, 1995, and who is within the United States on the date of the enactment of this Act; and

(C) whose period of authorized stay has expired or would expire before September 30, 1997 but for the provisions of this section.

(3) Nothing in this section may be construed to extend the validity of any visa issued to a nonimmigrant described in section 101(a)(15)(H)(i)(A) of the Immigration and Nationality Act or to authorize the re-entry of any person outside the United States on the date of the enactment of this Act.

(b) CHANGE OF EMPLOYMENT.—A nonimmigrant whose authorized period of stay is extended by operation of this section shall be eligible to change employers in accordance with section 214.2(h)(2)(i)(D) of title 8, Code of Federal Regulations (as in effect on the day before the date of the enactment of this Act).

(c) REGULATIONS.—Not later than 30 days after the date of the enactment of this Act, the Attorney General shall issue regulations to carry out the provisions of this section.

(d) INTERIM TREATMENT.—A nonimmigrant whose authorized period of stay is extended by operation of this section, and the spouse and child of such nonimmigrant, shall be considered as having continued to maintain lawful status as a nonimmigrant through September 30, 1997.

THE SUSTAINABLE FISHERIES ACT FISHERIES STOCK RECOVERY FINANCING ACT

SNOWE (AND COHEN) AMENDMENT NO. 5381

Ms. SNOWE (for herself and Mr. COHEN) proposed an amendment to the bill (S. 39) to amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes; as follows:

On page 161, line 21, strike ''810 and 811,'' and insert ''811 and 812,''.

On page 163, line 4, strike the closing quotation marks and the second period.

On page 163, between lines 4 and 5, insert the following:

''SEC. 810. TRANSITION TO MANAGEMENT OF AMERICAN LOBSTER FISHERY BY COMMISSION.

''(a) TEMPORARY LIMITS.—Notwithstanding any other provision of this Act or of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), if no

regulations have been issued under section 804(b) of this Act by December 31, 1997, to implement a coastal fishery management plan for American lobster, then the Secretary shall issue interim regulations before March 1, 1998, that will prohibit any vessel that takes lobsters in the exclusive economic zone by a method other than pots or traps from landing lobsters (or any parts thereof) at any location within the United States in excess of—

''(1) 100 lobsters (or part thereof) for each fishing trip of 24 hours or less during (up to a maximum of 500 lobsters, or parts thereof, during any 5-day period); or

''(2) 500 lobsters (or parts thereof) for a fishing trip of 5 days or longer.

''(b) SECRETARY TO MONITOR LANDINGS.—Before January 1, 1998, the Secretary shall monitor, on a timely basis, landings of American lobster, and, if the Secretary determines that catches from vessels that take lobsters in the exclusive economic zone by a method other than pots or traps have increased significantly, then the Secretary may, consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801), and after opportunity for public comment and consultation with the Atlantic States Marine Fisheries Commission, implement regulations under section 804(b) of this Act that are necessary for the conservation of American lobster.

''(c) REGULATIONS TO REMAIN IN EFFECT UNTIL PLAN IMPLEMENTED.—Regulations issued under subsection (a) or (b) shall remain in effect until the Secretary implements regulations under section 804(b) of this Act to implement a coastal fishery management plan for American lobster.''.

STEVENS (AND KERRY) AMENDMENT NO 5382

Mr. STEVENS (for himself and Mr. KERRY) proposed an amendment to the bill, S. 39, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Sustainable Fisheries Act''.

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

SEC. 2. AMENDMENT OF MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

TITLE I—CONSERVATION AND MANAGEMENT

SEC. 101. FINDINGS; PURPOSES; POLICY.

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

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

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

(2) by inserting ''to facilitate long-term protection of essential fish habitats,'' in subsection (a)(6) after ''conservation,'';

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

''(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. 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.'';

(4) by striking ''principles;'' in subsection (b)(3) and inserting ''principles, including the promotion of catch and release programs in recreational fishing;'';

(5) by striking ''and'' after the semicolon at the end of subsection (b)(5);

(6) by striking ''development.'' in subsection (b)(6) and inserting ''development in a non-wasteful manner; and'';

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

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

(8) in subsection (c)(3)—

(A) by striking ''promotes'' and inserting ''considers''; and

(B) by inserting ''minimize bycatch and'' after ''practical measures that'';

(9) striking ''and'' at the end of paragraph (c)(5);

(10) striking the period at the end of paragraph (c)(6) and inserting ''; and''; and

(11) adding at the end of subsection (c) a new paragraph as follows:

''(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. 102. DEFINITIONS.

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

(1) by redesignating paragraphs (2) through (32) as paragraphs (5) through (35) respectively, and inserting after paragraph (1) the following:

''(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.'';

(2) in paragraph (7) (as redesignated)—

(A) by striking ''COELENTERATA'' from the heading of the list of corals and inserting ''CNIDARIA''; and

(B) in the list appearing under the heading ''CRUSTACEA'', by striking ''Deep-sea Red

Crab—Geryon quinquedens'' and inserting ''Deep-sea Red Crab—Chaceon quinquedens'';

(3) by redesignating paragraphs (9) through (35) (as redesignated) as paragraphs (11) through (37), respectively, and inserting after paragraph (8) (as redesignated) the following:

''(9) 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) The term 'essential fish habitat' means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.'';

(4) by redesignating paragraphs (16) through (37) (as redesignated) as paragraphs (17) through (38), respectively, and inserting after paragraph (15) (as redesignated) the following:

''(16) 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, operator, and crew and United States fish processors that are based in such community.'';

(5) by redesignating paragraphs (21) through (38) (as redesignated) as paragraphs (22) through (39), respectively, and inserting after paragraph (20) (as redesignated) the following:

''(21) 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).'';

(6) by striking ''of one and one-half miles'' in paragraph (23) (as redesignated) and inserting ''of two and one-half kilometers'';

(7) by striking paragraph (28) (as redesignated), and inserting the following:

''(28) 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.'';

(8) by redesignating paragraphs (29) through (39) (as redesignated) as paragraphs (31) through (41), respectively, and inserting after paragraph (28)(as redesignated) the following:

''(29) 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) 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.'';

(9) by redesignating paragraphs (32) through (41) (as redesignated) as paragraphs (34) through (43), respectively, and inserting after paragraph (31) (as redesignated) the following:

''(32) The term 'recreational fishing' means fishing for sport or pleasure.

''(33) 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.'';

(10) by redesignating paragraphs (36) through (43) (as redesignated) as paragraphs (37) through (44), respectively, and inserting after paragraph (35) (as redesignated) the following:

''(36) 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.'';

(11) by striking ''for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(g) has been implemented'' in paragraph (42) (as redesignated) and inserting ''regulated under this Act''; and

(12) by redesignating paragraph (44) (as redesignated) as paragraph (45), and inserting after paragraph (43) the following:

''(44) 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)).''.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

The Act is amended by inserting after section 3 (16 U.S.C. 1802) the following:

''SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

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

''(1) $147,000,000 for fiscal year 1996;

''(2) $151,000,000 for fiscal year 1997;

''(2) $155,000,000 for fiscal year 1998; and

''(4) $159,000,000 for fiscal year 1999.''.

SEC. 104. HIGHLY MIGRATORY SPECIES.

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

SEC. 105. FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS.

(a) AUTHORITY TO OPERATE UNDER TRANSSHIPMENT PERMITS.—Section 201 (16 U.S.C. 1821) is amended—

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

''(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'';

(2) by striking ''(i)'' in subsection (c)(2)(D) and inserting ''(h)'';

(3) by striking subsection (f);

(4) by redesignating subsections (g) through (j) as subsections (f) through (i), respectively;

(5) in paragraph (2) of subsection (h) (as redesignated), redesignate subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and insert after subparagraph (A) the following:

''(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;''; and

(6) in subsection (i) (as redesignated) by striking ''305'' and inserting ''304''.

(b) INTERNATIONAL FISHERY AGREEMENTS.—Section 202 (16 U.S.C. 1822) is amended—

(1) by adding before the period at the end of subsection (c) ''or section 204(e)'';

(2) by adding at the end the following:

''(h) BYCATCH REDUCTION AGREEMENTS.—

''(1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this Act for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

''(2) An international agreement negotiated under this subsection shall be—

''(A) consistent with the policies and purposes of this Act; and

''(B) subject to approval by Congress under section 203.

''(3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, 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 describing actions taken under this subsection.''.

(c) PERIOD FOR CONGRESSIONAL REVIEW OF INTERNATIONAL FISHERY AGREEMENTS.—Section 203 (16 U.S.C. 1823) is amended—

(1) by striking ''GOVERNING'' in the section heading;

(2) by striking ''agreement'' each place it appears in subsection (a) and inserting ''agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement'';

(3) by striking ''60 calendar days of continuous session of the Congress'' in subsection (a) and inserting ''120 days (excluding any days in a period for which the Congress is adjourned sine die)'';

(4) by striking subsection (c);

(5) by redesignating subsection (d) as subsection (c); and

(6) by striking ''agreement'' in subsection (c)(2)(A), as redesignated, and inserting ''agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement''.

(d) TRANSSHIPMENT PERMITS AND PACIFIC INSULAR AREA FISHING.—Section 204 (16 U.S.C. 1824) is amended—

(1) by inserting ''or subsection (d)'' in the first sentence of subsection (b)(7) after ''under paragraph (6)'';

(2) by striking ''the regulations promulgated to implement any such plan'' in subsection (b)(7)(A) and inserting ''any applicable federal or State fishing regulations'';

(3) by inserting ''or subsection (d)'' in subsection (b)(7)(D) after ''paragraph (6)(B)''; and

(4) by adding at the end the following:

''(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 concurrence 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);

''(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 marine 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 payment 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 for 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 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).''.

(e) ATLANTIC HERRING TRANSSHIPMENT.—Within 30 days of receiving an application, the Secretary shall, under Section 204(d) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, issue permits to up to fourteen Canadian transport vessels that are not equipped for fish harvesting or processing, for the transshipment, within the boundaries of the State of Maine or within the portion of the exclusive economic zone east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State, of Atlantic herring harvested by United States fishermen within the area described and used solely in sardine processing. In issuing a permit pursuant to this subsection, the Secretary shall provide a waiver under section 201(h)(2)(C) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, provided that such vessels comply with Federal or State monitoring and reporting requirements for the Atlantic herring fishery, including the stationing of United States observers aboard such vessels, if necessary.

(f) LARGE SCALE DRIFTNET FISHING.—Section 206 (16 U.S.C. 1826) is amended—

(1) in subsection (e), by striking paragraphs (3) and (4), and redesignating paragraphs (5) and (6) as (3) and (4), respectively; and

(2) in subsection (f), by striking ''(e)(6),'' and inserting ''(e)(4),''.

(g) RUSSIAN FISHING IN THE BERING SEA.—No later than September 30, 1997, the North Pacific Fishery Management Council, in consultation with the North Pacific and Bering Sea Advisory Body, 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 describing the institutional structures in Russia pertaining to stock assessment, management, and enforcement for fishery harvests in the Bering Sea, and recommendations for improving coordination between the United States and Russia for managing and conserving Bering Sea fishery resources of mutual concern.

SEC. 106. NATIONAL STANDARDS.

(a) Section 301(a)(5) (16 U.S.C. 1851(a)(5)) is amended by striking ''promote'' and inserting ''consider''.

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

''(8) Conservation and management measures shall, 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 in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts of 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.''.

SEC. 107. REGIONAL FISHERY MANAGEMENT COUNCILS.

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

(1) by inserting ''(1)'' after the subsection heading;

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

(3) by striking ''section 304(f)(3)'' wherever it appears and inserting ''paragraph (3)'';

(4) in paragraph (1)(B), as amended—

(A) by striking ''and Virginia'' and inserting ''Virginia, and North Carolina'';

(B) by inserting ''North Carolina, and'' after ''except'';

(C) by striking ''19'' and inserting ''21''; and

(D) by striking ''12'' and inserting ''13'';

(5) by striking paragraph (1)(F), as redesignated, and inserting the following:

(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).'';

(6) by indenting the sentence at the end thereof and inserting ''(2)'' before ''Each Council''; and

(7) by adding at the end the following:

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

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

(1) by striking ''subsection (b)(2)'' in paragraphs (1)(C) and (3), and inserting in both places ''paragraphs (2) and (5)'';

(2) by striking the last sentence in paragraph (3) and inserting the following: ''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.''; and

(3) by striking paragraph (5) and inserting after paragraph (4) the following:

''(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.

''(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 3071(1)(O).''.

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

(1) by striking ''each Council,'' and inserting ''each Council who are required to be appointed by the Secretary and''; and

(2) by striking ''shall, until January 1, 1992,'' and all that follows through ''GS–16'' and inserting ''shall receive compensation at the daily rate of GS–15, step 7''.

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

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

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

''(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.''.

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

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

''(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) in paragraph (2)—

(A) by striking ''section 204(b)(4)(C),'' in paragraph (2) and inserting ''section 204(b)(4)(C) or section 204(d),'';

(B) by striking ''304(c)(2)'' and inserting ''304(c)(4)''; and

(3) by striking ''304(f)(3) ''in paragraph (5) and inserting ''subsection (a)(3)''.

(g) Section 302 is amended further by striking subsection (i), and by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(h) Section 302(i), as redesignated, is amended—

(1) by striking ''of the Councils'' in paragraph (1) and inserting ''established under subsection (g)'';

(2) by striking ''of a Council:'' in paragraph (2) and inserting ''established under subsection (g):'';

(3) by striking ''Council's'' in paragraph (2)(C);

(4) by adding the following at the end of paragraph (2)(C): ''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.'';

(5) by adding the following at the end of paragraph (2)(D): ''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.'';

(6) by striking paragraph (2)(E) and inserting:

''(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.'';

(7) by striking ''by the Council'' the first place it appears in paragraph (2)(F);

(8) by inserting ''or the Secretary, as appropriate'' in paragraph (2)(F) after ''of the Council''; and

(9) by striking ''303(d)'' each place it appears in paragraph (2)(F) and inserting ''402(b)''; and

(10) by striking ''303(d)'' in paragraph (4) and inserting ''402(b)''.

(i) Section 302(j), as redesignated, is amended—

(1) by inserting ''and Recusal'' after ''Interest'' in the subsection heading;

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

''(1) For the purposes of this subsection—

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

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

''(ii) is a voting member of a Council appointed—

''(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).'';

(3) by striking ''(1)(A)'' in paragraph (3)(A) and inserting ''(1)(A)(i)'';

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

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

(6)(A) by striking ''and'' at the end of paragraph (5)(A);

(B) by striking the period at the end of paragraph (5)(B) and inserting a semicolon and the word ''and''; and

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

''(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.'';

(7) by striking ''(1)(B) or (C)'' in paragraph (6) and inserting ''(1)(A)(ii)'';

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

''(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).''; and

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

SEC. 108. FISHERY MANAGEMENT PLANS.

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

(1) in paragraph (1)(A) by inserting ''and rebuild overfished stocks'' after ''overfishing'';

(2) by inserting ''commercial, recreational, and charter fishing in'' in paragraph (5) after ''with respect to'';

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

''(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;'';

(4) by striking ''and'' at the end of paragraph (8);

(5) by inserting ''and fishing communities'' after ''fisheries'' in paragraph (9)(A);

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

(7) by adding at the end the following:

''(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 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 any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.''.

(b) IMPLEMENTATION.—Not later than 24 months after the date of enactment of this Act, each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this section.

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

(1) by striking paragraph (3) and inserting the following:

''(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;'';

(2) by striking ''system for limiting access to'' in paragraph (6) and inserting ''limited access system for'';

(3) by striking ''fishery'' in subparagraph (E) of paragraph (6) and inserting ''fishery and any affected fishing communities'';

(4) by inserting ''one or more'' in paragraph (8) after ''require that'';

(5) by striking ''and'' at the end of paragraph (9);

(6) by redesignating paragraph (10) as paragraph (12); and

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

''(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''.

(d) REGULATIONS.—Section 303 (16 U.S.C. 1853) is amended by striking subsection (c) and inserting the following:

''(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or apppropriate 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.''.

(e) INDIVIDUAL FISHING QUOTAS.—Subsection 303 (16 U.S.C. 1853) is amended further by striking subsection (d), (e), and (f), and inserting the following:

''(d) INDIVIDUAL FISH QUOTAS.—

''(1)(A) A Council may not submit and the Secretary may not approve or implement before October 1, 2000, 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 replaced 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 1104(a)(7), to issue obligations that aid is 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, 2000, 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 recommendation 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 reisssuance 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.''.

(f) INDIVIDUAL FISHING QUOTA REPORT.—(1) Not later than October 1, 1998, the National Academy of Sciences, in consultation with the Secretary of Commerce and the Regional Fishery Management Councils, shall submit to the Congress a comprehensive final report on individual fishing quotas, which shall include recommendations to implement a national policy with respect to individual fishing quotas. The report shall address all aspects of such quotas, including an analysis of—

(A) the effects of limiting or prohibiting the transferability of such quotas;

(B) mechanisms to prevent foreign control of the harvest of United States fisheries under individual fishing quota programs, including mechanisms to prohibit persons who are not eligible to be deemed a citizen of the United States for the purpose of operating a vessel in the coastwise trade under section 2(a) and section 2(c) of the Shipping Act, 1916 (46 U.S.C. 802 (a) and (c) from holding individual fishing quotas;

(C) the impact of limiting the duration of individual fishing quota programs;

(D) the impact of authorizing Federal permits to process a quantity of fish that correspond to individual fishing quotas, and of the value created for recipients of any such permits, including a comparison of such value to the value of the corresponding individual fishing quotas;

(E) mechanisms to provide for diversity and to minimize adverse social and economic impacts on fishing communities, other fisheries affected by the displacement of vessels, and any impacts associated with the shifting of capital value from fishing vessels to individual fishing quotas, as well as the use of capital construction funds to purchase individual fishing quotas;

(F) mechanisms to provide for effective monitoring and enforcement, including the inspection of fish harvested and incentives to reduce bycatch, and in particular economic discards;

(G) threshold criteria for determining whether a fishery may be considered for individual fishing quota management, including criteria related to the geographical range, population dynamics and condition of a fish stock, the socioeconomic characteristics of a fishery (including participants' involvement in multiple fisheries in the region), and participation by commercial, charter, and recreational fishing sectors in the fishery;

(H) mechanisms to ensure that vessel owners, vessel masters, crew members, and United States fish processors are treated fairly and equitably in initial allocations, to require persons holding individual fishing quotas to be on board the vessel during such quotas, and to facilitate new entry under individual fishing quota programs;

(I) potential social and economic costs and benefits to the nation, individual fishing quota recipients, and any recipients of Federal permits described in subparagraph (D) under individual fishing quota programs, including from capital gains revenue, the allocation of such quotas or permits through Federal auctions, annual fees and transfer fees at various levels, or other measures;

(J) the value created for recipients of individual fishing quotas, including a comparison of such value to the value of the fish harvested under such quotas and to the value of permits created by other types of limited access systems, and the effects of creating such value on fishery management and conservation; and

(K) such other matters as the National Academy of Sciences deems appropriate.

(2) The report shall include a detailed analysis of individual fishing quota programs already implemented in the United States, including the impacts: of any limits on transferability, on past and present participants, on fishing communities, on the rate and total amount of bycatch (including economic and regulatory discards) in the fishery, on the safety of life and vessels in the fishery, on any excess harvesting or processing capacity in the fishery, on any gear conflicts in the fishery, on product quality from the fishery, on the effectiveness of enforcement in the fishery, on the size and composition of fishing vessel fleets, of the economic value created by individual fishing quotas for initial recipients and non-recipients, on conservation of the fishery resource, on fishermen who rely on participation in several fisheries, on the success in meeting any fishery management plan goals, and the fairness and effectiveness of the methods used for allocating quotas and controlling transferability. The report shall also include any information about individual fishing quota programs in other countries that may be useful.

(3) The report shall identify and analyze alternative conservation and management measures, including other limited access systems such as individual transferable effort systems, that could accomplish the same objectives as individual fishing quota programs, as well as characteristics that are unique to individual fishing quota programs.

(4) The Secretary of Commerce shall, in consultation with the National Academy of Sciences, the Councils, the fishing industry, affected States, conservation organizations and other interested persons, establish two individual fishing quota review groups to assist in the preparation of the report, which

shall represent: (A) Alaska, Hawaii, and the other Pacific coastal States; and (B) Atlantic coastal States and the Gulf of Mexico coastal States. The Secretary shall, to the extent practicable, achieve a balanced representation of viewpoints among the individuals on each review group. The review groups shall be deemed to be advisory panels under section 302(g) of the Magnuson Fishery Conservation and Management Act, as amended by this Act.

(5) The Secretary of Commerce, in consultation with the National Academy of Sciences and the Councils, shall conduct public hearings in each Council region to obtain comments on individual fishing quotas for use by the National Academy of Sciences in preparing the report required by this subsection. The National Academy of Sciences shall submit a draft report to the Secretary of Commerce by January 1, 1998. The Secretary of Commerce shall publish in the Federal Register a notice and opportunity for public comment on the draft of the report, or any revision thereof. A detailed summary of comments received and views presented at the hearings, including any dissenting views, shall be included by the National Academy of Sciences in the final report.

(6) Section 210 of Public Law 104–134 is hereby repealed.

(g) NORTH PACIFIC LOAN PROGRAM.—(1) By not later than October 1, 1997 the North Pacific Fishery Management Council shall recommend to the Secretary of Commerce a program which uses the full amount of fees authorized to be used under section 303(d)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the halibut and sablefish fisheries off Alaska to guarantee obligations in accordance with such section.

(2)(A) For the purposes of this subsection, the phrase ''fishermen who fish from small vessels'' in section 303(d)(4)(A)(i) of such Act shall mean fishermen wishing to purchase individual fishing quotas for use from Category B, Category C, or Category D vessels, as defined in part 676.20(c) of title 50, Code of Federal Regulations (as revised as of October 1, 1995), whose aggregate ownership of individual fishing quotas will not exceed the equivalent of a total of 50,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made if the guarantee is approved, who will participate aboard the fishing vessel in the harvest of fish caught under such quotas, who have at least 150 days of experience working as part of the harvesting crew in any U.S. commercial fishery, and who do not own in whole or in part any Category A or Category B vessel, as defined in such part and title of the Code of Federal Regulations.

(B) For the purposes of this subsection, the phrase ''entry level fishermen'' in section 303(d)(4)(A)(ii) of such Act shall mean fishermen who do not own any individual fishing quotas, who wish to obtain the equivalent of not more than a total of 8,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made, and who will participate aboard the fishing vessel in the harvest of fish caught under such quotas.

(h) COMMUNITY DEVELOPMENT QUOTA REPORT.—Not later than October 1, 1998, the National Academy of Sciences, in consultation with the Secretary, the North Pacific and Western Pacific Councils, communities and organizations participating in the program, participants in affected fisheries, and the affected States, shall submit to the Secretary of Commerce and Congress a comprehensive report on the performance and effectiveness of the community development quota programs under the authority of the North Pacific and Western Pacific Councils. The report shall—

(1) evaluate the extent to which such programs have met the objective of providing communities with the means to develop ongoing commercial fishing activities;

(2) evaluate the manner and extent to which such programs have resulted in the communities and residents—

(A) receiving employment opportunities in commercial fishing and processing; and

(B) obtaining the capital necessary to invest in commercial fishing, fish processing, and commercial fishing support projects (including infrastructure to support commercial fishing);

(3) evaluate the social and economic conditions in the participating communities and the extent to which alternative private sector employment opportunities exist;

(4) evaluate the economic impacts on participants in the affected fisheries, taking into account the condition of the fishery resource, the market, and other relevant factors;

(5) recommend a proposed schedule for accomplishing the development purposes of community development quotas; and

(6) address such other matters as the National Academy of Sciences deems appropriate.

(i) EXISTING QUOTA PLANS.—Nothing in this Act or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 109. ACTION BY THE SECRETARY.

(a) SECRETARIAL REVIEW OF PLANS AND REGULATIONS.—Section 304 (16 U.S.C. 1854) is amended by striking subsections (a) and (b) and inserting the following:

''(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 the 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 re-evaluation under paragraph (1).

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

(b) PREPARATION BY THE SECRETARY.—Section 304(c) (16 U.S.C. 1854(c)) is amended—

(1) by striking the subsection heading and inserting ''PREPARATION AND REVIEW OF SECRETARIAL PLANS'';

(2) by striking ''or'' at the end of paragraph (1)(A);

(3) by striking all that follows ''further revised plan'' in paragraph (1) and inserting ''or amendment; or'';

(4) by inserting after subparagraph (1)(B), as amended, the following new subparagraph:

''(C) the Secretary is given authority to prepare such plan or amendment under this section.'';

(5) by striking paragraph (2) and inserting:

''(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.'';

(6) by inserting ''for a fishery under the authority of a Council'' after ''paragraph (1)'' in paragraph (3);

(7) by striking ''system described in section 303(b)(6)'' in paragraph (3) and inserting ''system, including any individual fishing quota program''; and

(8) by inserting after paragraph (3) the following new paragraphs:

''(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.''.

(c) INDIVIDUAL FISHING QUOTA AND COMMUNITY DEVELOPMENT QUOTA FEES.—Section 304(d) (16 U.S.C. 1854(d)) is amended—

(1) by inserting ''(1)'' immediately before the first sentence; and

(2) by inserting at the end the following:

''(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 of any—

''(i) individual fishing quota 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 commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

''(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.''.

(d) DELAY OF FEES.—Notwithstanding any other provision of law, the Secretary shall not begin the collection of fees under section 304(d)(2) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the surf clam and ocean (including mahogany) quahog fishery or in the wreckfish fishery until after January 1, 2000.

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

''(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 international 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.''.

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—Section 304(f) is amended by striking paragraph (3).

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—Section 304 (16 U.S.C. 1854) is amended further by striking subsection (g) and inserting the following:

''(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) 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) COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY.—(1) The Secretary of Commerce shall—

(A) establish an advisory panel under section 302(g)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species;

(B) conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;

(C) to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and

(D) complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.

(2) Based on the study under paragraph (1)(D) and consistent with requirements of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000.

(i) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—Section 304, as amended, is further amended by adding at the end the following:

''(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.''.

(j) AMERICAN LOBSTER FISHERY.—Section 304(h) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, shall not apply to the American Lobster Fishery Management Plan.

SEC. 110. OTHER REQUIREMENTS AND AUTHORITY.

(a) Section 305 (18 U.S.C. 1855) is amended—

(1) by striking the title and subsection (a);

(2) by redesignating subsection (b) as subsection (f); and

(3) by inserting the following before subsection (c):

''SEC. 305. OTHER REQUIREMENTS AND AUTHORITY.

''(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.''.

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

(1) in the heading by striking ''ACTIONS'' and inserting ''ACTIONS AND INTERIM MEASURES'';

(2) in paragraphs (1) and (2)—

(A) by striking ''involving'' and inserting ''or that interim measures are needed to reduce overfishing for''; and

(B) by inserting ''or interim measures'' after ''emergency regulations''; and

(C) by inserting ''or overfishing'' after ''emergency''; and

(3) in paragraph (3)—

(A) by inserting ''or interim measure'' after ''emergency regulation'' each place such term appears;

(B) by striking subparagraph (B);

(C) by redesignating subparagraph (C) as subparagraph (D); and

(D) by inserting after subparagraph (A) the following:

''(B) shall, except as provided in subparagraph (C), remain in effect for not more than

180 days after the date of publication, and may be extended by publication in the Federal Register for 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''.

(c) Section 305(e) is amended—

(1) by striking ''12291, dated February 17, 1981,'' and inserting ''12866, dated September 30, 1993,''; and

(2) by striking ''subsection (c) or section 304(a) and (b)'' and inserting ''subsections (a), (b), and (c) of section 304''.

(d) Section 305, as amended, is further amended by adding at the end the following:

''(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, 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 nonjudicial 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 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.''.

(e) REGISTRY TRANSITION.—Security interests on permits described under section 305(h)(1) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, that are effective and perfected by otherwise applicable law on the date of the final regulations implementing section 305(h) shall remain effective and perfected if, within 120 days after such date, the secured party submits evidence satisfactory to the Secretary of Commerce and in compliance with such regulations of the perfection of such security.

SEC. 111. PACIFIC COMMUNITY FISHERIES.

(a) HAROLD SPARCK MEMORIAL COMMUNITY DEVELOPMENT QUOTA PROGRAM.—Section 305, as amended, is amended further by adding at the end:

''(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 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 westernmost 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 submits 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.

''(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 reporting 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.''.

(b) WESTERN PACIFIC DEMONSTRATION PROJECTS.—(1) The Secretary of Commerce and the Secretary of the Interior are 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. The total amount of grants awarded under this subsection shall not exceed $500,000 in 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 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 Fishery Conservation and Management Act, as amended by this Act.

SEC. 112. STATE JURISDICTION.

(a) Paragraph (3) of section 306(a) (16 U.S.C. 1856(a)) is amended to read as follows:

''(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

''(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable federal fishing regulations for the fishery in which the vessel is operating.

''(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

''(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this Act is approved and implemented for such fishery.''.

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

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

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

(1) by striking ''(4)(C); and'' in subparagraph (A) and inserting ''(4)(C) or has received a permit under section 204(d);'';

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

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

''(C) the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.''.

(d) INTERIM AUTHORITY FOR DUNGENESS CRAB.—(1) Subject to the provisions of this subsection and notwithstanding section 306(a)) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(a)), the States of Washington, Oregon, and California may each enforce State laws and regulations governing fish harvesting and processing against any vessel operating in the exclusive economic zone off each respective State in a fishery for Dungeness crab (Cancer magister) for which there is no fishery management plan implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) Any law or regulation promulgated under this subsection shall apply equally to vessels operating in the exclusive economic zone and adjacent State waters and shall be limited to—

(A) establishment of season opening and closing dates, including presoak dates for crab pots;

(B) setting of minimum sizes and crab meat recovery rates;

(C) restrictions on the retention of crab of a certain sex; and

(D) closure of areas or pot limitations to meet the harvest requirements arising under the jurisdiction of *United States* v. *Washington*, subproceeding 89–3.

(3) With respect to the States of Washington, Oregon, and California—

(A) any State law limiting entry to a fishery subject to regulation under this subsection may not be enforced against a vessel that is operating in the exclusive economic zone off that State and is not registered under the law of that State, if the vessel is otherwise legally fishing in the exclusive economic zone, except that State laws regulating landings may be enforced; and

(B) no vessel may harvest or process fish which is subject to regulation under this subsection unless under an appropriate State permit or pursuant to a Federal court order.

(4) The authority provided under this subsection to regulate the Dungeness crab fishery shall terminate on October 1, 1999, or when a fishery management plan is implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) for such fishery, whichever date is earlier.

(5) Nothing in this subsection shall reduce the authority of any State, as such authority existed on July 1, 1996, to regulate fishing, fish processing, or landing of fish.

(6)(A) It is the sense of Congress that the Pacific Fishery Management Council, at the earliest practicable date, should develop and submit to the Secretary fishery management plans for shellfish fisheries conducted in the geographic area of authority of the Council, especially Dungeness crab, which are not subject to a fishery management plan on the date of enactment of this Act.

(B) Not later than December 1, 1997, the Pacific Fishery Management Council shall provide a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives describing the progress in developing the fishery management plans referred to in subparagraph (A) and any impediments to such progress.

SEC. 113. PROHIBITED ACTS.

(a) Section 307(1)(J)(i) (16 U.S.C. 1857(1)J)(i)) is amended—

(1) be striking ''plan,'' and inserting ''plan''; and

(2) by inserting before the semicolon the following: '', 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.)''.

(b) Section 307(1)(K) (16 U.S.C. 1857(1)(K)) is amended—

(1) by striking ''knowingly steal or without authorization, to'' and inserting ''to steal or attempt to steal or to negligently and without authorization''; and

(2) by striking ''gear, or attempt to do so;'' and insert ''gear;''.

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

''(L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, 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;''.

(d) Section 307(1) (16 U.S.C. 1857(1)) is amended—

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

(2) by striking ''pollock.'' in subparagraph (N) and inserting ''pollock; or''; and

(3) by adding at the end the following:

''(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).''.

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

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

''(i) recreational fishing permitted under section 201(i);

''(ii) fish processing permitted under section 306(c); or

''(iii transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);''.

(f) Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is amended—

(1) by striking ''(j)'' and inserting ''(i)''; and

(2) by striking ''204(b) or (c)'' and inserting ''204(b), (c), (d)''.

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

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

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

SEC. 114. CIVIL PENALTIES AND PERMIT SANCTIONS; REBUTTABLE PRESUMPTIONS.

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

(c) Section 308(g)(1)(C) (16 U.S.C. 1858(g)(1)(C)) is amended by striking the matter from ''or (C) any'' through ''overdue,'' and inserting the following: ''(C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a 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,''.

(d) Section 310(e) (16 U.S.C. 1860(e)) is amended by adding at the end the following new paragraph:

''(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. 115. ENFORCEMENT.

(a) the second sentence of section 311(d) (16 U.S.C. 1861(d)) is amended—

(1) by striking ''Guam, any Commonwealth, territory, or'' and inserting ''Guam or any''; and

(2) by inserting a comma before the period and the following: ''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''.

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

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

(2) by inserting ''of not less than 20 percent of the penalty collected or $20,000, which ever is the lesser amount,'' after ''reward'' in subparagraph (B), and

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

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

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

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

(d) Section 311 (16 U.S.C. 1861) is amended by redesignating subsection (g) as subsection (h), and by inserting the following after subsection (f):

''(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.''.

''(e) Section 311 (16 U.S.C. 1861), as amended by subsection (d), is amended by striking ''201(b), (c),'' in subsection (i)(1), as redesignated, and inserting ''201(b) or (c), or section 204(d),''.

SEC. 116. TRANSITION TO SUSTAINABLE FISHERIES.

''(A) Section 312 is amended to read as follows:

''SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.

''(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; 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 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.

''(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 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 fish management plan—

''(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, 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 capable of repaying any debt obligation incurred under section 111 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

''(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, 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, may conduct a referendum on such system. Prior to the referendum, the Secretary, in consultation with the Council, 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.

''(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; 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.''.

(b) STUDY OF FEDERAL INVESTMENT.—The Secretary of Commerce shall establish a task force comprised of interested parties to study and report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives within 2 years of the date of enactment of this Act on the role of the Federal government in—

(1) subsidizing the expansion and contraction of fishing capacity in fishing fleets managed under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

(2) otherwise influencing the aggregate capital investments in fisheries.

(c) Section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c3(b)(1)(A)) is amended—

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

(2) by striking the period at the period at the end of clause (iii) and inserting a semicolon and the word ''and''; and

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

''(iv) to fund the Federal share of a fishing capacity reduction program established under section 312 of the Magnuson fishery Conservation and Management Act; and''.

SEC. 117. NORTH PACIFIC AND NORTHWEST ATLANTIC OCEAN FISHERIES.

(a) NORTH PACIFIC FISHERIES CONSERVATION.—Section 313 (16 U.S.C. 1862) is amended—

(1) by striking ''RESEARCH PLAN'' in the section heading and inserting ''CONSERVATION'';

(2) in subsection (a) by striking ''North Pacific Fishery Management Council'' and inserting ''North Pacific Council''; and

(3) by adding at the end the following:

''(f) BYCATCH REDUCTION.—In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

''(g) BYCATCH REDUCTION INCENTIVES.—(1) Notwithstanding section 304(d), the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this Act, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed $25,000 per vessel per season. Any fines collected shall be deposited

in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.

''(2)(A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, provided that—

''(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

''(ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.

''(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

''(h) CATCH MEASUREMENT.—(1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.

''(2) To the extent the measures submitted under paragraph (1) do not require United States fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

''(i) FULL RETENTION AND UTILIZATION.—(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

''(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, 'processing waste' means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.''.

''(b) NORTHWEST ATLANTIC OCEAN FISHERIES.—Section 314 (16 U.S.C. 1863) is amended by striking ''1997'' in subsection (a)(4) and inserting ''1999''.

TITLE II—FISHERY MONITORING AND RESEARCH

SEC. 201. CHANGE OF TITLE.

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

''TITLE IV—FISHERY MONITORING AND RESEARCH''.

SEC. 202. REGISTRATION AND INFORMATION MANAGEMENT.

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

''SEC. 401. REGISTRATION AND INFORMATION MANAGEMENT.

''(a) STANDARD 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 nonduplicative 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 403(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.''.

SEC. 203. INFORMATION COLLECTION.

Section 402 is amended to read as follows:

"SEC. 402. INFORMATION COLLECTION.

''(a) 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 regarding a Council request shall be made within a reasonable period of time after receipt of that request.

''(b) CONFIDENTIALITY OF INFORMATION.—(1) Any information submitted to the Secretary by an 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 identify 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;

''(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.

''(2) 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 towards 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. 204. OBSERVERS.

Section 403 is amended to read as follows:

"SEC. 403. OBSERVERS.

''(a) GUIDELINES FOR CARRYING OBSERVERS.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

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

''(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

''(b) TRAINING.—The Secretary, in cooperation with the appropriate States and the National Sea Grant College Program, shall—

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

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

''(3) ensure that an observer has received adequate training in basic vessel safety; and

''(4) make use of university and any appropriate private nonprofit organization training facilities and resources, where possible, in carrying out this subsection.

''(c) OBSERVER STATUS.—An observer on a vessel and under contract to carry out responsibilities under this Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall be deemed to be a Federal employee for the purpose of compensation under the Federal Employee Compensation Act (5 U.S.C. 8101 et seq.).''

SEC. 205. FISHERIES RESEARCH.

Section 404 is amended to read as follows:

"SEC. 404. FISHERIES RESEARCH.

''(a) IN GENERAL.—The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and 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 five years immediately following such publication. The plan shall—

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

''(2) indicate 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 degradation, 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.''.

SEC. 206. INCIDENTAL HARVEST RESEARCH.

Section 405 is amended to read as follows:

''SEC. 405. INCIDENTAL HARVEST RESEARCH.

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

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

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

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

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

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

''(d) BYCATCH REDUCTION PROGRAM.—Not later than 12 months after the enactment of the Sustainable Fisheries Act, the Secretary shall, in cooperation with affected interests, and based upon the best scientific information available, complete a program to—

''(1) develop technological devices and other changes in fishing operations necessary and appropriate to minimize the incidental mortality of bycatch in the course of shrimp trawl activity to the extent practicable, taking into account the level of bycatch mortality in the fishery on November 28, 1990;

''(2) evaluate the ecological impacts and the benefit and costs of such devices and changes in fishing operations; and

''(3) assess whether it is practicable to utilize bycatch which is not avoidable.

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

''(f) IMPLEMENTATION CRITERIA.—Any conservation and management measure implemented under this Act to reduce the incidental mortality of bycatch in the course of shrimp trawl fishing shall be consistent with—

''(1) measures applicable to fishing throughout the range in United States waters of the bycatch species concerned; and

''(2) the need to avoid any serious adverse environmental impacts on such bycatch species or the ecology of the affected area.''.

SEC. 207. MISCELLANEOUS RESEARCH.

(A) FISHERIES SYSTEMS RESEARCH.—Section 406 (16 U.S.C. 1882) is amendment to read as follows:

''SEC. 406. FISHERIES SYSTEMS RESEARCH.

''(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 individual and include—

''(1) individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystem; 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).''.

(b) GULF OF MEXICO RED SNAPPER RESEARCH.—Title IV of the Act (16 U.S.C. 1882) is amended by adding the following new section:

''SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.

''(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 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, 2000, 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, 2000, 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 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 weight 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 requirements for the referendum and the proposed individual fishing quota 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 specified in part 641.24 and 641.25 of title 50, Code of Federal Regulations (as revised as of October 1, 1995), and do not reflect any harvests in excess of such allocations.''.

SEC. 208. STUDY OF CONTRIBUTION OF BYCATCH TO CHARITABLE ORGANIZATIONS.

(a) STUDY.—The Secretary of Commerce shall conduct a study of the contribution of bycatch to charitable organizations by commercial fishermen. The study shall include determinations of—

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

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

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

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

(c) BYCATCH DEFINED.—In this section the term ''bycatch'' has the meaning given that term in section 3 of the Magnuson Fishery Conservation and Management Act, as amended by section 102 of this Act.

SEC. 209. STUDY OF IDENTIFICATION METHODS FOR HARVEST STOCKS.

(a) IN GENERAL.—The Secretary of Commerce shall conduct a study to determine the best possible method of identifying various Atlantic and Pacific salmon and steelhead stocks in the ocean at time of harvest. The study shall include an assessment of—

(1) coded wire tags;

(2) fin clipping; and

(3) other identification methods.

(b) REPORT.—The Secretary shall report the results of the study, together with any recommendations for legislation deemed necessary based on the study, within 6 months after the date of enactment of this Act to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 210. REVIEW OF NORTHEAST FISHERY STOCK ASSESSMENTS.

The National Academy of Sciences, in consultation with regionally recognized fishery experts, shall conduct a peer review of Canadian and United States stock assessments, information collection methodologies, biological assumptions and projections, and other relevant scientific information used as the basis for conservation and management in the Northeast multispecies fishery. The National Academy of Sciences shall submit the results of such review to the Congress and the Secretary of Commerce no later than March 1, 1997.

SEC. 211. CLERICAL AMENDMENTS.

The table of contents is amended by striking the matter relating to title IV and inserting the following:

TITLE III—FISHERIES FINANCING

SEC. 301. SHORT TITLE.

This title may be cited as the ''Fisheries Financing Act''.

SEC. 302. INDIVIDUAL FISHING QUOTA LOANS.

(a) AMENDMENT OF MERCHANT MARINE ACT, 1936.—Section 1104A of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274) is amended—

(1) by striking ''or'' at the end of subsection (a)(5);

(2) by striking the period at the end of subsection (a)(6) and inserting a semicolon and ''or'';

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

''(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 Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).''; and

(4) by striking ''paragraph (6)'' in the last sentence of subsection (a) and inserting ''paragraphs (6) and (7)''; and

(5) by striking ''equal to'' in the third proviso of subsection (b)(2) and inserting ''not to exceed''.

(b) PROHIBITION.—Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased harvesting capacity within the United States exclusive economic zone.

SEC. 303. FISHERIES FINANCING AND CAPACITY REDUCTION.

(a) CAPACITY REDUCTION AND FINANCING AUTHORITY.—Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), is amended by adding at the end the following new sections:

''SEC. 1111. (a) The Secretary is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to such conditions as the Secretary deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

''(b) Any debt obligation guaranteed under this section shall—

''(1) be treated in the same manner and to the same extent as other obligations guaranteed under this title, except with respect to provisions of this title that by their nature cannot be applied to obligations guaranteed under this section;

''(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

''(3) not exceed $100,000,000 in an unpaid principal amount outstanding at any one time for a program;

''(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

''(5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2)) and as the exclusive payment security, the fishing fees established under the program; and

''(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

''(c)(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the 'fund'). Within the fund, at least one sub= account shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

''(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section; provided that funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

''(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

''(d) The Secretary is authorized and directed to issue such regulations as the Secretary deems necessary to carry out this section.

''(e) For the purposes of this section, the term 'program' means a fishing capacity reduction program established under section 312 of the Magnuson Fishery Conservation and Management Act.

''SEC. 1112. (a) Notwithstanding any other provision of this title, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this title after the date of enactment of the Sustainable Fisheries Act shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this title except with respect to provisions of this title which by their nature can only be applied to obligations guaranteed under this title.

''(b) Notwithstanding any other provisions of this title, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.''.

TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS

SEC. 401. MARINE FISH PROGRAM AUTHORIZATION OF APPROPRIATIONS.

(a) FISHERIES INFORMATION COLLECTION AND ANALYSIS.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out fisheries information and analysis activities under the

Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, $51,800,000 for fiscal year 1997, and $52,345,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, the collection, analysis, and dissemination of scientific information necessary for the management of living marine resources and associated marine habitat.

(b) FISHERIES CONSERVATION AND MANAGEMENT OPERATIONS.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out activities relating to fisheries conservation and management operations under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, $29,028,000 for fiscal year 1997, and $29,899,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, development, implementation, and enforcement of conservation and management measures to achieve continued optimum use of living marine resources, hatchery operations, habitat conservation, and protected species management.

(c) FISHERIES STATE AND INDUSTRY COOPERATIVE PROGRAMS.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out State and industry cooperative programs under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, $27,932,000 for fiscal year 1997, and $28,226,000 for each of the fiscal years 1998, 1999, and 2000. These activities include, but are not limited to, ensuring the quality and safety of seafood products and providing grants to States for improving the management of interstate fisheries.

(d) AUTHORIZATION OF APPROPRIATIONS FOR CHESAPEAKE BAY OFFICE.—Section 2(e) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98–210; 97 Stat. 1409) is amended—

(1) by striking ''1992 and 1993'' and inserting ''1997 and 1998'';

(2) by striking ''establish'' and inserting ''operate'';

(3) by striking ''306'' and inserting ''307''; and

(4) by striking ''1991'' and inserting ''1992''.

(e) RELATION TO OTHER LAWS.—Authorizations under this section shall be in addition to monies authorized under the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 3301 et seq.), the Anadromous Fish Conservation Act (16 U.S.C. 757 et seq.), and the Interjurisdictional Fisheries Act (16 U.S.C. 4107 et seq.).

(f) NEW ENGLAND HEALTH PLAN.—The Secretary of Commerce is authorized to provide up to $2,000,000 from previously appropriated funds to Caritas Christi for the implementation of a health care plan for fishermen in New England if Caritas Christi submits such plan to the Secretary no later than January 1, 1997, and the Secretary, in consultation with the Secretary of Health and Human Services, approves such plan.

SEC. 402. INTERJURISDICTIONAL FISHERIES ACT AMENDMENTS.

(a) REAUTHORIZATION.—Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) by amending subsection (a) to read as follows:

''(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

''(1) $3,400,000 for fiscal year 1996;

''(2) $3,900,000 for fiscal year 1997;

''(3) $4,400,000 for each of the fiscal years 1998, 1999, and 2000.'';

(2) by striking ''$350,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, and $600,000 for each of the fiscal years 1994 and 1995,'' in subsection (c) and inserting ''$700,000 for fiscal year 1997, and $750,000 for each of the fiscal years 1998, 1999, and 2000,''.

(b) NEW ENGLAND REPORT.—Section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)) is amended by adding at the end the following new paragraph:

''(7) With respect to funds available for the New England region, the Secretary shall submit to the Congress by January 1, 1997, with annual updates thereafter as appropriate, a report on the New England fishing capacity reduction initiative which provides:

''(A) the total number of Northeast multispecies permits in each permit category and calculates the maximum potential fishing capacity of vessels holding such permits based on the principal gear, gross registered tonnage, engine horsepower, length, age, and other relevant characteristics;

''(B) the total number of days at sea available to the permitted Northeast multispecies fishing fleet and the total days at sea weighted by the maximum potential fishing capacity of the fleet;

''(C) an analysis of the extent to which the weighted days at sea are used by the active participants in the fishery and of the reduction in such days as a result of the fishing capacity reduction program; and

''(D) an estimate of conservation benefits (such as reduction in fishing mortality) directly attributable to the fishing capacity reduction program.''.

SEC. 403. ANADROMOUS FISHERIES AMENDMENTS.

Section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) is amended to read as follows:

''SEC. 4. (a)(1) There are authorized to be appropriated to carry out the purposes of this Act not to exceed the following sums:

''(A) $4,000,000 for fiscal year 1997; and

''(B) $4,250,000 for each of fiscal years 1998, 1999, and 2000.

''(2) Sums appropriated under this subsection are authorized to remain available until expended.

''(b) Not more than $625,000 of the funds appropriated under this section in any one fiscal year shall be obligated in any one State.''.

SEC. 404. ATLANTIC COASTAL FISHERIES AMENDMENTS.

(a) DEFINITION.—Paragraph (1) of section 803 of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5102) is amended—

(1) by inserting ''and'' after the semicolon in subparagraph (A);

(2) by striking ''States; and'' in subparagraph (B) and inserting ''States.''; and

(3) by striking subparagraph (C);

(b) IMPLEMENTATION STANDARD FOR FEDERAL REGULATION.—Subparagraph (A) of section 804(b)(1) of such Act (16 U.S.C. 5103(b)(1)) is amended by striking ''necessary to support'' and inserting ''compatible with''.

(c) AMERICAN LOBSTER MANAGEMENT.—Section 809 (16 U.S.C. 5108) and section 810 of such Act are redesignated as section 811 and 812, respectively, and the following new section is inserted at the end of section 808:

''SEC. 809. STATE PERMITS VALID IN CERTAIN WATERS.

''(a) PERMITS.—Notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.), or any requirement of a fishery management plan or coastal fishery management plan to the contrary, a person holding a valid license issued by the State of Maine which lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American Lobster in the following areas designated as federal waters, if such fishing is conducted in such waters in accordance with all other applicable federal and state regulations:

''(1) west of Monhegan Island in the area located north of the line 43° 42′ 08″ N, 69° 34′ 18″ W and 43° 42′ 15″ N, 69° 19′ 18″ W;

''(2) east of Monhegan Island in the area located west of the line 43° 44′ 00″ N, 69° 15′ 05″ W and 43° 48′ 10″ N, 69° 08′ 01″ W;

''(3) south of Vinalhaven in the area located west of the line 43° 52′ 21″ N, 68° 39′ 54″ W and 43° 48′ 10″ N, 69° 08′ 01″ W; and

''(4) south of Bois Bubert Island in the area located north of the line 44° 19′ 15″ N, 67° 49′ 30″ W and 44° 23′ 45″ N, 67° 40′ 33″ W.

''(b) ENFORCEMENT.—The exemption from federal fishery permitting requirements granted by subsection (a) may be revoked or suspended by the Secretary in accordance with section 308(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858(g)) for violations of such Act or this Act.

''SEC. 810. TRANSITION TO MANAGEMENT OF AMERICAN LOBSTER FISHERY BY COMMISSION.

''(a) TEMPORARY LIMITS.—Notwithstanding any other provision of this Act or of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), if no regulations have been issued under section 804(b) of this Act by December 31, 1997, to implement a coastal fishery management plan for American lobster, then the Secretary shall issue interim regulations before March 1, 1998, that will prohibit any vessel that takes lobsters in the exclusive economic zone by a method other than pots or traps from landing lobsters (or any parts thereof) at any location within the United States in excess of—

''(1) 100 lobsters (or parts thereof) for each fishing trip of 24 hours or less duration (up to a maximum of 500 lobsters, or parts thereof, during any 5-day period); or

''(2) 500 lobsters (or parts thereof) for a fishing trip of 5 days or longer.

''(b) SECRETARY TO MONITOR LANDINGS.—Before January 1, 1998, the Secretary shall monitor, on a timely basis, landings of American lobster, and, if the Secretary determines that catches from vessels that take lobsters in the exclusive economic zone by a method other than pots or traps have increased significantly, then the Secretary may, consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801), and after opportunity for public comment and consultation with the Atlantic States Marine Fisheries Commission, implement regulations under section 804(b) of this Act that are necessary for the conservation of American lobster.

''(c) REGULATIONS TO REMAIN IN EFFECT UNTIL PLAN IMPLEMENTED.—Regulations issued under subsection (a) or (b) shall remain in effect until the Secretary implements regulations under section 804(b) of this Act to implement a coastal fishery management plan for American lobster.''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 810 of such Act, as amended by this Act, is amended further by striking ''1996.'' and inserting ''1996, and $7,000,000 for each of the fiscal years 1997, 1998, 1999, and 2000.''.

SEC. 405. TECHNICAL AMENDMENTS TO MARITIME BOUNDARY AGREEMENT.

(a) EXECUTION OF PRIOR AMENDMENTS TO DEFINITIONS.—Notwithstanding section 308 of

the Act entitled ''An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary'', approved March 9, 1992 (Public Law 102–251; 106 Stat. 66) hereinafter referred to as the ''FGB Act'', section 301(b) of that Act (adding a definition of the term ''special areas'') shall take effect on the date of enactment of this Act.

(b) CONFORMING AMENDMENTS.—

(1) Section 301(h)(2)(A) of the FGB Act is repealed.

(2) Section 304 of the FGB Act is repealed.

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

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

''(A) the territorial sea of the United States;

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

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

SEC. 406. AMENDMENTS TO THE FISHERIES ACT.

Section 309(b) of the Fisheries Act of 1995 (Public Law 104–43) is amended by striking ''July 1, 1996'' and inserting ''July 1, 1997''.

HUTCHISON AMENDMENT NO. 5383

Mrs. HUTCHISON proposed an amendment to the bill, S. 39, supra; as follows:

On page 142, line 7, insert ''To the maximum extent practicable,'' before ''Any''.

On page 142, line 10, strike ''must'' and insert in lieu thereof ''should''.

On page 148, strike lines 1 through 17.

ECONOMIC ESPIONAGE ACT OF 1996

SPECTER (AND KOHL) AMENDMENT NO. 5384

Mr. STEVENS (for Mr. SPECTER for himself and Mr. KOHL) proposed an amendment to the bill (H.R. 3723) to amend title 18, United States Code, to protect proprietary economic information, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Economic Espionage Act of 1996''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) sustaining a healthy and competitive national economy is imperative;

(2) the development and production of proprietary economic information involves every aspect of interstate commerce and business;

(3) the development, production, protection, and lawful exchange, sale, and transfer of proprietary economic information is essential to maintaining the health and competitiveness of interstate commerce and the national economy;

(4) much proprietary economic information moves in interstate and foreign commerce and proprietary economic information that does not move in interstate or foreign commerce directly and substantially affects proprietary economic information that does;

(5) the theft, wrongful destruction or alteration, misappropriation, and wrongful conversion of proprietary economic information substantially affects and harms interstate commerce, costing United States firms, businesses, industries, and consumers millions of dollars each year; and

(6) enforcement of existing State laws protecting proprietary economic information is frustrated by the ease with which stolen or wrongfully appropriated proprietary economic information is transferred across State and national boundaries.

(b) PURPOSE.—The purpose of this Act is—

(1) to promote the development and lawful utilization of United States proprietary economic information produced for, or placed in, interstate and foreign commerce by protecting it from theft, wrongful destruction or alteration, misappropriation, and conversion; and

(2) to secure to authors and inventors the exclusive right to their respective writings and discoveries.

SEC. 3. PREVENTION OF ECONOMIC ESPIONAGE AND PROTECTION OF PROPRIETARY ECONOMIC INFORMATION IN INTERSTATE AND FOREIGN COMMERCE.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 89 the following new chapter:

''CHAPTER 90—PROTECTION OF PROPRIETARY ECONOMIC INFORMATION

''§ 1831. Definitions

''As used in this chapter:

''(1) The term 'person' means a natural person, corporation, agency, association, institution, or any other legal, commercial, or business entity.

''(2) The term 'proprietary economic information' means all forms and types of financial, business, scientific, technical, economic, or engineering information, including data, plans, tools, mechanisms, compounds, formulas, designs, prototypes, processes, procedures, programs, codes, or commercial strategies, whether tangible or intangible, and whether stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing that—

''(A) the owner thereof has taken reasonable measures, under the circumstances, to keep such information confidential; and

''(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable, acquired, or developed by legal means by the public.

The term does not include any general knowledge, experience, training, or skill that a person lawfully has acquired due to his work as an employee of or as an independent contractor for any person.

''(3) The term 'owner' means the person or persons in whom, or government component, department, or agency in which, rightful legal, or equitable title to, or license in, proprietary economic information is reposed.

''(4) The term 'without authorization' means not permitted, expressly or implicitly, by the owner.

''§ 1832. Criminal activities affecting proprietary economic information

''(a) Any person, with intent to, or reason to believe that it will, injure any owner of proprietary economic information and with intent to convert it to his or her own use or benefit or the use or benefit of another, who knowingly—

''(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information;

''(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information;

''(3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

''(4) attempts to commit any offense described in paragraphs (1) through (3);

''(5) solicits another to commit any offense described in paragraphs (1) through (3); or

''(6) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined up to $250,000, or twice the value of the proprietary economic information, whichever is greater, or imprisoned not more than 10 years, or both.

''(b) Any organization that commits any offense described in subsection (a) shall be fined up to $10,000,000, or twice the value of the proprietary economic information, whichever is greater.

''(c) This section does not prohibit the reporting of any suspected criminal activity or regulatory violation to any appropriate agency or instrumentality of the United States, a State, a political subdivision of a State, or to Congress.

''§ 1833. Criminal forfeiture

''(a) Notwithstanding any provision of State law, any person or organization convicted of a violation under this chapter shall forfeit to the United States—

''(1) any property constituting or derived from, any proceeds the person or organization obtained, directly or indirectly, as the result of such violation; and

''(2) any of the person's or organization's property used, or intended to be used, in any manner or part to commit or facilitate the commission of such violation.

''(b) The court, in imposing a sentence on such person or organization, shall order, in addition to any other sentence imposed pursuant to this chapter, that the person or organization forfeit to the United States all property described in this section.

''(c) Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.

''(d) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund established under section 1402 of

the Victims of Crime Act of 1984 (42 U.S.C. 10601) all amounts from the forfeiture of property under this section remaining after the payment of expenses and sale authorized by law.

"§ 1834. Civil remedies

''(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of sections 1832 of this chapter by issuing appropriate orders.

''(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

''(c) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

"§ 1835. Extraterritoriality

''(a) This chapter applies to conduct occurring within the United States.

''(b) This chapter also applies to conduct occurring outside the United States if—

''(1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; or

''(2) an act in furtherance of the offense was committed in the United States.

"§ 1836. Construction with other laws

''This chapter shall not be construed to preempt or displace any other Federal or State remedies, whether civil or criminal, for the misappropriation of proprietary economic information, or to affect the otherwise lawful disclosure of information by any government employee under section 552 of title 5 (commonly known as the Freedom of Information Act).

"§ 1837. Preservation of confidentiality

''In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of proprietary economic information, consistent with rule 16 of the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of proprietary economic information.

"§ 1838. Prior authorization requirement

''The United States may not file a charge under this chapter or use a violation of this chapter as a predicate offense under any other law without the personal approval of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division of the Department of Justice or the Acting Attorney General, the Acting Deputy Attorney General, or the Acting Assistant Attorney General for the Criminal Division of the Department of Justice.

"§ 1839. Law enforcement and intelligence activities

''This chapter does not prohibit any and shall not impair otherwise lawful activity conducted by an agency or instrumentality of the United States, a State, or a political subdivision of a State.''.

(b) TECHNICAL AMENDMENT.—The table of chapters for title 18, United States Code, is amended by inserting after the item relating to chapter 89 the following new item:

"90. Protection of Proprietary Economic Information ..... 1831".

(c) REPORT.—Not later than 2 years and 4 years after the date of enactment of this Act, the Attorney General shall report to Congress on the amounts received and distributed from forfeitures of property deposited as provided in section 1833(d) of title 18, United States Code, as added by subsection (a) of this section.

SEC. 4. WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS.

Section 2516(1)(a) of title 18, United States Code, is amended by inserting ''chapter 90 (relating to economic espionage and protection of proprietary economic information in interstate and foreign commerce),'' after ''title:''.

SEC. 5. PREVENTION OF FOREIGN ECONOMIC ESPIONAGE.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 27 the following new chapter:

"CHAPTER 28—ECONOMIC ESPIONAGE

"§ 571. Definitions

''For purposes of this chapter, the following definitions shall apply:

''(1) FOREIGN AGENT.—The term 'foreign agent' means any officer, employee, proxy, servant, delegate, or representative of a foreign government.

''(2) FOREIGN INSTRUMENTALITY.—The term 'foreign instrumentality' means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government or subdivision thereof.

''(3) OWNER.—The term 'owner' means the person or persons in whom, or the government component, department, or agency in which, rightful legal, or equitable title to, or license in, proprietary economic information is reposed.

''(4) PROPRIETARY ECONOMIC INFORMATION.—The term 'proprietary economic information' means all forms and types of financial, business, scientific, technical, economic, or engineering information (including data, plans, tools, mechanisms, compounds, formulas, designs, prototypes, processes, procedures, programs, codes, or commercial strategies) whether tangible or intangible, and whether stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, if—

''(A) the owner thereof has taken reasonable measures to keep such information confidential; and

''(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through legal means by, the public.

''(5) WITHOUT AUTHORIZATION.—The term 'without authorization' means not permitted, expressly or implicitly, by the owner.

"§ 572. Economic espionage

''(a) IN GENERAL.—Any person who, with knowledge or reason to believe that he or she is acting on behalf of, or with the intent to benefit, any foreign government, instrumentality, or agent, knowingly—

''(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains proprietary economic information;

''(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys proprietary economic information;

''(3) receives, buys, or possesses proprietary economic information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

''(4) attempts to commit any offense described in any of paragraphs (1) through (3);

''(5) solicits another to commit any offense described in any of paragraphs (1) through (4); or

''(6) conspires with one or more other persons to commit any offense described in any of paragraphs (1) through (4), and one or more of such persons do any act to effect the object of the conspiracy,

shall, except as provided in subsection (b), be fined not more than $500,000, or twice the value of the proprietary economic information, whichever is greater, or imprisoned not more than 25 years, or both.

''(b) ORGANIZATIONS.—Any organization that commits any offense described in subsection (a) shall be fined not more than $10,000,000, or twice the value of the proprietary economic information, whichever is greater.

''(c) EXCEPTION.—It shall not be a violation of this section to disclose proprietary economic information in the case of—

''(1) appropriate disclosures to Congress; or

''(2) disclosures to an authorized official of an executive agency that are deemed essential to reporting a violation of United States law.

"§ 573. Criminal forfeiture

''(a) IN GENERAL.—Notwithstanding any provision of State law to the contrary, any person or organization convicted of a violation under this chapter shall forfeit to the United States—

''(1) any property constituting, or derived from, any proceeds the person or organization obtained, directly or indirectly, as the result of such violation; and

''(2) any of the property of that person or organization used, or intended to be used, in any manner or part, to commit or facilitate the commission of such violation.

''(b) COURT ACTION.—The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this chapter, that the person forfeit to the United States all property described in this section.

''(c) APPLICABILITY OF OTHER LAW.—Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section.

"§ 574. Scope of extraterritorial jurisdiction

''(a) This chapter applies to conduct occurring within the United States.

''(b) This chapter also applies to conduct occurring outside the United States if—

''(1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; or

''(2) an act in furtherance of the offense was committed in the United States.

"§ 575. Civil remedies

''(a) The district courts of the United States shall have jurisdiction to prevent and

restrain violations of section 572 of this chapter by issuing appropriate orders.

''(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

''(c) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

''§ 576. Prior authorization requirement

''The United States may not file a charge under this chapter or use a violation of this chapter as a predicate offense under any other law without the personal approval of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division of the Department of Justice or the Acting Attorney General, the Acting Deputy Attorney General, or the Acting Assistant Attorney General for the Criminal Division of the Department of Justice.

''§ 577. Construction with other laws

''This chapter shall not be construed to preempt or displace any other remedies, whether civil or criminal, provided by Federal, State, commonwealth, possession, or territorial laws that are applicable to the misappropriation of proprietary economic information.

''§ 578. Preservation of confidentiality

''In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of proprietary economic information, consistent with the requirements of the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and all other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of proprietary economic information.

''§ 579. Law enforcement and intelligence activities

''This chapter does not prohibit, and shall not impair, otherwise lawful activity conducted by an agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 27 the following new item:

''28. Economic Espionage ..... **571''.**

(c) CONFORMING AMENDMENT.—Section 2516(1)(a) of title 18, United States Code, is amended by inserting ''chapter 28 (relating to economic espionage),'' after ''or under the following chapters of this title:''.

GRASSLEY (AND KYL) AMENDMENT NO. 5835

Mr. STEVENS (for Mr. GRASSLEY, for himself and Mr. KYL) proposed an amendment to amendment No. 5384 to the bill, H.R. 3723, supra; as follows:

At the appropriate place, add the following new section:

SEC. 6. (a) WIRE AND COMPUTER FRAUD.—Section 1343 of title 18, United States Code, is amended—

(1) by adding at the end the following new subsection:

''(b) SECRET SERVICE JURISDICTION.—''The Secretary of the Treasury and the Attorney General are authorized to enter into an agreement under which the United States Secret service may investigate certain offenses under this section.''

(b) USE OF CERTAIN TECHNOLOGY TO FACILITATE CRIMINAL CONDUCT.—

(1) INFORMATION.—The Administrative Office of the United States Courts shall establish policies and procedures for the inclusion in all Presentence Reports of information that specifically identifies and describes any use of encryption or scrambling technology that would be relevant to an enhancement under Section 3C1.1 (dealing with Obstructing or Impeding the Administration of Justice) of the Sentencing Guidelines or to offense conduct under the Sentencing Guidelines.

(2) COMPILING AND REPORT.—The United States Sentencing Commission shall—

(A) compile and analyze any information contained in documentation described in paragraph (1) relating to the use of encryption or scrambling technology to facilitate or conceal criminal conduct; and

(B) based on the information compiled and analyzed under subparagraph (A), annually report to the Congress on the nature and extent of the use of encryption or scrambling technology to facilitate or conceal criminal conduct.''

(c) Section 1029 of Title 18, United States Code is amended by—''Striking the (a)(5) in the second place it appears and replacing it with (a)(8); by striking the (a)(6) the second place it appears and replacing it with (a)(9); and by adding the following new section:

''(a)(10) knowingly and with intent to defraud uses, produces, traffics in, or possesses any device containing electronically stored monetary value.''

HATCH AMENDMENT NO. 5386

Mr. STEVENS (for Mr. HATCH) proposed an amendment to amendment No. 5384 to the bill, H.R. 3723, supra; as follows:

At the appropriate place in the bill, add the following:

SEC. ___. TRANSFER OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY.

(a) AMENDMENT OF SECTION 4243 OF TITLE 18.—Section 4243 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(i) CERTAIN PERSONS FOUND NOT GUILTY BY REASON OF INSANITY IN THE DISTRICT OF COLUMBIA.—

''(1) TRANSFER TO CUSTODY OF THE ATTORNEY GENERAL.—Notwithstanding section 301(h) of title 24 of the District of Columbia Code, and notwithstanding subsection 4247(j) of this title, all persons who have been committed to a hospital for the mentally ill pursuant to section 301(d)(1) of title 24 of the District of Columbia Code, and for whom the United States has continuing financial responsibility, may be transferred to the custody of the Attorney General, who shall hospitalize the person for treatment in a suitable facility.

''(2) APPLICATION.—

''(A) IN GENERAL.—The Attorney General may establish custody over such persons by filing an application in the United States District Court for the District of Columbia, demonstrating that the person to be transferred is a person described in this subsection.

''(B) NOTICE.—The Attorney General shall, by any means reasonably designed to do so, provide written notice of the proposed transfer of custody to such person or such person's guardian, legal representative, or other lawful agent. The person to be transferred shall be afforded an opportunity, not to exceed 15 days, to respond to the proposed transfer of custody, and may, at the court's discretion, be afforded a hearing on the proposed transfer of custody. Such hearing, if granted, shall be limited to a determination of whether the constitutional rights of such person would be violated by the proposed transfer of custody.

''(C) ORDER.—Upon application of the Attorney General, the court shall order the person transferred to the custody of the Attorney General, unless, pursuant to a hearing under this paragraph, the court finds that the proposed transfer would violate a right of such person under the United States Constitution.

''(D) EFFECT.—Nothing in this paragraph shall be construed to—

''(i) create in any person a liberty interest in being granted a hearing or notice on any matter;

''(ii) create in favor of any person a cause of action against the United States or any officer or employee of the United States; or

''(iii) limit in any manner or degree the ability of the Attorney General to move, transfer, or otherwise manage any person committed to the custody of the Attorney General.

''(3) CONSTRUCTION WITH OTHER SECTIONS.—Subsections (f) and (g) and section 4247 shall apply to any person transferred to the custody of the Attorney General pursuant to this subsection.''.

(b) TRANSFER OF RECORDS.—Notwithstanding any provision of the District of Columbia Code or any other provision of law, the District of Columbia and St. Elizabeth's Hospital—

(1) not later than 30 days after the date of enactment of this Act, shall provide to the Attorney General copies of all records in the custody or control of the District or the Hospital on such date of enactment pertaining to persons described in section 4243(i) of title 18, United States Code (as added by subsection (a));

(2) not later than 30 days after the creation of any records by employees, agents, or contractors of the District of Columbia or of St. Elizabeth's Hospital pertaining to persons described in section 4243(i) of title 18, United States Code, provide to the Attorney General copies of all such records created after the date of enactment of this Act;

(3) shall not prevent or impede any employee, agent, or contractor of the District of Columbia or of St. Elizabeth's Hospital who has obtained knowledge of the persons described in section 4243(i) of title 18, United States Code, in the employee's professional capacity from providing that knowledge to the Attorney General, nor shall civil or criminal liability attach to such employees, agents, or contractors who provide such knowledge; and

(4) shall not prevent or impede interviews of persons described in section 4243(i) of title 18, United States Code, by representatives of the Attorney General, if such persons voluntarily consent to such interviews.

(c) CLARIFICATION OF EFFECT ON CERTAIN TESTIMONIAL PRIVILEGES.—The amendments made by this section shall not be construed to affect in any manner any doctor-patient or psychotherapist-patient testimonial privilege that may be otherwise applicable to persons found not guilty by reason of insanity and affected by this section.

(d) SEVERABILITY.—If any provision of this section, an amendment made by this section, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of

this section and the amendments made by this section shall not be affected thereby.

HATCH (AND KOHL) AMENDMENT NO. 5387

Mr. STEVENS (for Mr. HATCH, for himself and Mr. KOHL) proposed an amendment to amendment No. 5384 proposed by Mr. SPECTER to the bill, H.R. 3723, supra; as follows:

At the appropriate place in the bill, add the following:

SEC. ___. ESTABLISHING BOYS AND GIRLS CLUBS.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) the Boys and Girls Clubs of America, chartered by an Act of Congress on December 10, 1991, during its 90-year history as a national organization, has proven itself as a positive force in the communities it serves;

(B) there are 1,810 Boys and Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 2,420,000 youths nationwide;

(C) 71 percent of the young people who benefit from Boys and Girls Clubs programs live in our inner cities and urban areas;

(D) Boys and Girls Clubs are locally run and have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement;

(E) Boys and Girls Clubs are located in 289 public housing sites across the Nation;

(F) public housing projects in which there is an active Boys and Girls Club have experienced a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime;

(G) these results have been achieved in the face of national trends in which overall drug use by youth has increased 105 percent since 1992 and 10.9 percent of the Nation's young people use drugs on a monthly basis; and

(H) many public housing projects and other distressed areas are still underserved by Boys and Girls Clubs.

(2) PURPOSE.—It is the purpose of this section to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,000 additional local Boys and Girls Clubs in public housing projects and other distressed areas by 2001.

(b) DEFINITIONS.—For purposes of this section—

(1) the terms ''public housing'' and ''project'' have the same meanings as in section 3(b) of the United States Housing Act of 1937; and

(2) the term ''distressed area'' means an urban, suburban, or rural area with a high percentage of high risk youth as defined in section 509A of the Public Health Service Act (42 U.S.C. 290aa–8(f).

(c) ESTABLISHMENT.—

(1) IN GENERAL.—For each of the fiscal years 1997, 1998, 1999, 2000, and 2001, the Director of the Bureau of Justice Assistance of the Department of Justice shall provide a grant to the Boys and Girls Clubs of America for the purpose of establishing Boys and Girls Clubs in public housing projects and other distressed areas.

(2) CONTRACTING AUTHORITY.—Where appropriate, the Secretary of Housing and Urban Development, in consultation with the Attorney General, shall enter into contracts with the Boys and Girls Clubs of America to establish clubs pursuant to the grants under paragraph (1).

(d) REPORT.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing Boys and Girls Clubs in public housing projects and other distressed areas, and the effectiveness of the programs in reducing drug abuse and juvenile crime.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(A) $20,000,000 for fiscal year 1997;

(B) $20,000,000 for fiscal year 1998;

(C) $20,000,000 for fiscal year 1999;

(D) $20,000,000 for fiscal year 2000; and

(E) $20,000,000 for fiscal year 2001.

(2) VIOLENT CRIME REDUCTION TRUST FUND.—The sums authorized to be appropriated by this subsection may be made from the Violent Crime Reduction Trust Fund.

THE NATIONAL INFORMATION INFRASTRUCTURE PROTECTION ACT OF 1996

HATCH AMENDMENTS NOS. 5388–5389

Mr. STEVENS (for Mr. HATCH) proposed two amendments to the bill (S. 982) to protect the national information infrastructure, and for other purposes; as follows:

AMENDMENT NO. 5388

At the appropriate place in the bill, add the following:

SEC. . TRANSFER OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY.

(a) AMENDMENT OF SECTION 4243 OF TITLE 18.—Section 4243 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(i) CERTAIN PERSONS FOUND NOT GUILTY BY REASON OF INSANITY IN THE DISTRICT OF COLUMBIA.—

''(1) TRANSFER TO CUSTODY OF THE ATTORNEY GENERAL.—Notwithstanding section 301(h) of title 24 of the District of Columbia Code, and notwithstanding subsection 4247(j) of this title, all persons who have been committed to a hospital for the mentally ill pursuant to section 301(d)(1) of title 24 of the District of Columbia Code, and for whom the United States has continuing financial responsibility, may be transferred to the custody of the Attorney General, who shall hospitalize the person for treatment in a suitable facility.

''(2) APPLICATION.—

''(A) IN GENERAL.—The Attorney General may establish custody over such persons by filing an application in the United States District Court for the District of Columbia, demonstrating that the person to be transferred is a person described in this subsection.

''(B) NOTICE.—The Attorney General shall, by any means reasonably designed to do so, provide written notice of the proposed transfer of custody to such person or such person's guardian, legal representative, or other lawful agent. The person to be transferred shall be afforded an opportunity, not to exceed 15 days, to respond to the proposed transfer of custody, and may, at the court's discretion, be afforded a hearing on the proposed transfer of custody. Such hearing, if granted, shall be limited to a determination of whether the constitutional rights of such person would be violated by the proposed transfer of custody.

''(C) ORDER.—Upon application of the Attorney General, the court shall order the person transferred to the custody of the Attorney General, unless, pursuant to a hearing under this paragraph, the court finds that the proposed transfer would violate a right of such person under the United States Constitution.

''(D) EFFECT.—Nothing in this paragraph shall be construed to—

''(i) create in any person a liberty interest in being granted a hearing or notice on any matter;

''(ii) create in favor of any person a cause of action against the United States or any officer or employee of the United States; or

''(iii) limit in any manner or degree the ability of the Attorney General to move, transfer, or otherwise manage any person committed to the custody of the Attorney General.

''(3) CONSTRUCTION WITH OTHER SECTIONS.—Subsections (f) and (g) and section 4247 shall apply to any person transferred to the custody of the Attorney General pursuant to this subsection.''.

(b) TRANSFER OF RECORDS.—Notwithstanding any provision of the District of Columbia Code or any other provision of law, the District of Columbia and St. Elizabeth's Hospital—

(1) not later than 30 days after the date of enactment of this Act, shall provide to the Attorney General copies of all records in the custody or control of the District or the Hospital on such date of enactment pertaining to persons described in section 4243(i) of title 18, United States Code (as added by subsection (a));

(2) not later than 30 days after the creation of any records by employees, agents, or contractors of the District of Columbia or of St. Elizabeth's Hospital pertaining to persons described in section 4243(i) of title 18, United States Code, provide to the Attorney General copies of all such records created after the date of enactment of this Act;

(3) shall not prevent or impede any employee, agent, or contractor of the District of Columbia or of St. Elizabeth's Hospital who has obtained knowledge of the persons described in section 4243(i) of title 18, United States Code, in the employee's professional capacity from providing that knowledge to the Attorney General, nor shall civil or criminal liability attach to such employees, agents, or contractors who provide such knowledge; and

(4) shall not prevent or impede interviews of persons described in section 4243(i) of title 18, United States Code, by representatives of the Attorney General, if such persons voluntarily consent to such interviews.

(c) CLARIFICATION OF EFFECT ON CERTAIN TESTIMONIAL PRIVILEGES.—The amendments made by this section shall not be construed to affect in any manner any doctor-patient or psychotherapist-patient testimonial privilege that may be otherwise applicable to persons found not guilty by reason of insanity and affected by this section.

(d) SEVERABILITY.—If any provision of this section, an amendment made by this section, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this section and the amendments made by this section shall not be affected thereby.

AMENDMENT NO. 5389

At the appropriate place in the bill, add the following:

SEC. . ESTABLISHING BOYS AND GIRLS CLUBS.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) the Boys and Girls Clubs of America, chartered by an Act of Congress on December 10, 1991, during its 90-year history as a national organization, has proven itself as a positive force in the communities it serves;

(B) there are 1,810 Boys and Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 2,420,000 youths nationwide;

(C) 71 percent of the young people who benefit from Boys and Girls Clubs programs live in our inner cities and urban areas;

(D) Boys and Girls Clubs are locally run and have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement;

(E) Boys and Girls Clubs are located in 289 public housing sites across the Nation;

(F) public housing projects in which there is an active Boys and Girls Club have experienced a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime;

(G) these results have been achieved in the face of national trends in which overall drug use by youth has increased 105 percent since 1992 and 10.9 percent of the Nation's young people use drugs on a monthly basis; and

(H) many public housing projects and other distressed areas are still underserved by Boys and Girls Clubs.

(2) PURPOSE.—It is the purpose of this section to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,000 additional local Boys and Girls Clubs in public housing projects and other distressed areas by 2001.

(b) DEFINITIONS.—For purposes of this section—

(1) the terms ''public housing'' and ''project'' have the same meanings as in section 3(b) of the United States Housing Act of 1937; and

(2) the term ''distressed area'' means an urban, suburban, or rural area with a high percentage of high risk youth as defined in section 509A of the Public Health Service Act (42 U.S.C. 290aa–8(f)).

(c) ESTABLISHMENT.—

(1) IN GENERAL.—For each of the fiscal years 1997, 1998, 1999, 2000, and 2001, the Director of the Bureau of Justice Assistance of the Department of Justice shall provide a grant to the Boys and Girls Clubs of America for the purpose of establishing Boys and Girls Clubs in public housing projects and other distressed areas.

(2) CONTRACTING AUTHORITY.—Where appropriate, the Secretary of Housing and Urban Development, in consultation with the Attorney General, shall enter into contracts with the Boys and Girls Clubs of America to establish clubs pursuant to the grants under paragraph (1).

(d) REPORT.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing Boys and Girls Clubs in public housing projects and other distressed areas, and the effectiveness of the programs in reducing drug abuse and juvenile crime.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(A) $20,000,000 for fiscal year 1997;

(B) $20,000,000 for fiscal year 1998;

(C) $20,000,000 for fiscal year 1999;

(D) $20,000,000 for fiscal year 2000; and

(E) $20,000,000 for fiscal year 2001.

(2) VIOLENT CRIME REDUCTION TRUST FUND.—The sums authorized to be appropriated by this subsection may be made from the Violent Crime Reduction Trust Fund.

THE NATIONAL TRANSPORTATION SAFETY BOARD AMENDMENTS OF 1996

PRESSLER AMENDMENT NO. 5390

Mr. STEVENS (for Mr. PRESSLER) proposed an amendment to the bill (S. 1831) to amend title 49. United States Code, to authorize appropriations for fiscal years 1997, 1998, and 1999 for the National Transportation Safety Board, and for other purposes; as follows:

On page 2, before line 1, insert the following:

TITLE I—NTSB AMENDMENTS

On page 2, line 1, strike ''**SECTION 1.**'' and insert ''**SEC. 101.**''.

On page 2, line 4, strike ''**SEC. 2.**'' and insert ''**SEC. 102.**''.

On page 3, line 3, strike ''**SEC. 3.**'' and insert ''**SEC. 103.**''.

On page 3, line 17, strike ''**SEC. 4.**'' and insert ''**SEC. 104.**''.

On page 4, line 8, strike ''**SEC. 5.**'' and insert ''**SEC. 105.**''.

On page 4, after line 15, insert the following:

TITLE II—INTERMODAL TRANSPORTATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Intermodal Safe Container Transportation Amendments Act of 1996''.

SEC. 202. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49 of the United States Code.

SEC. 203. DEFINITIONS.

Section 5901 (relating to definitions) is amended—

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

''(1) except as otherwise provided in this chapter, the definitions in sections 10102 and 13102 of this title apply.'';

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(3) by inserting after paragraph (5) the following:

''(6) 'gross cargo weight' means the weight of the cargo, packaging materials (including ice), pallets, and dunnage.''.

SEC. 204. NOTIFICATION AND CERTIFICATION.

(a) PRIOR NOTIFICATION.—Subsection (a) of section 5902 (relating to prior notification) is amended—

(1) by striking ''Before a person tenders to a first carrier for intermodal transportation a'' and inserting ''If the first carrier to which any'';

(2) by striking ''10,000 pounds (including packing material and pallets), the person shall give the carrier a written'' and inserting ''29,000 pounds is tendered for intermodal transportation is a motor carrier, the person tendering the container or trailer shall give the motor carrier a'';

(3) by striking ''trailer.'' and inserting ''trailer before the tendering of the container or trailer.'';

(4) by striking ''electronically.'' and inserting ''electronically or by telephone.''; and

(5) by adding at the end thereof the following: ''This subsection applies to any person within the United States who tenders a container or trailer subject to this chapter for intermodal transportation if the first carrier is a motor carrier.''

(b) CERTIFICATION.—Subsection (b) of section 5902 (relating to certification) is amended to read as follows:

''(b) CERTIFICATION.—

''(1) IN GENERAL.—A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation shall provide a certification of the contents of the container or trailer in writing, or electronically, before or when the container or trailer is so tendered.

''(2) CONTENTS OF CERTIFICATION.—The certification required by paragraph (1) shall include—

''(A) the actual gross cargo weight;

''(B) a reasonable description of the contents of the container or trailer;

''(C) the identity of the certifying party;

''(D) the container or trailer number; and

''(E) the date of certification or transfer of data to another document, as provided for in paragraph (3).

''(3) TRANSFER OF CERTIFICATION DATA.—A carrier who receives a certification may transfer the information contained in the certification to another document or to electric format for forwarding to a subsequent carrier. The person transferring the information shall state on the forwarded document the date on which the data was transferred and the identity of the party who performed the transfer.

''(4) SHIPPING DOCUMENTS.—For purposes of this chapter, a shipping document, prepared by the person who tenders a container or trailer to a first carrier, that contains the information required by paragraph (2) meets the requirements of paragraph (1).

''(5) USE OF 'FREIGHT ALL KINDS' TERM.—The term 'Freight All Kinds' or 'FAK' may not be used for the purpose of certification under section 5902(b) after December 31, 2000, as a commodity description for a trailer or container if the weight of any commodity in the trailer or container equals or exceeds 20 percent of the total weight of the contents of the trailer or container. This subsection does not prohibit the use of the term after that date for rating purposes.

''(6) SEPARATE DOCUMENT MARKING.—If a separate document is used to meet the requirements of paragraph (1), it shall be conspicuously marked 'INTERMODAL CERTIFICATION'.

''(7) APPLICABILITY.—This subsection applies to any person, domestic or foreign, who first tenders a container or trailer subject to this chapter for intermodal transportation within the United States.''.

(c) FORWARDING CERTIFICATIONS.—Subsection (c) of section 5902 (relating to forwarding certifications to subsequent carriers) is amended—

(1) by striking ''transportation.'' and inserting ''transportation before or when the loaded intermodal container or trailer is tendered to the subsequent carrier. If no certification is received by the subsequent carrier before or when the container or trailer is tendered to it, the subsequent carrier may presume that no certification is required.''; and

(2) by adding at the end thereof the following: ''If a person inaccurately transfers the information on the certification, or fails to forward the certification to a subsequent carrier, then that person is liable to any person who incurs any bond, fine, penalty, cost (including storage), or interest for any such fine, penalty, cost (including storage), or interest incurred as a result of the inaccurate transfer of information or failure to forward the certification. A subsequent carrier who incurs a bond, fine, penalty, or cost (including storage), or interest as a result of the inaccurate transfer of the information, or the failure to forward the certification, shall

have a lien against the contents of the container or trailer under section 5905 in the amount of the bond, fine, penalty, or cost (including storage), or interest and all court costs and legal fees incurred by the carrier as a result of such inaccurate transfer or failure.''.

(d) LIABILITY.—Section 5902 is amended by redesignating subsection (d) as subsection (e), and by inserting after subsection (c) the following:

''(d) LIABILITY TO OWNER OR BENEFICIAL OWNER.—If—

''(1) a person inaccurately transfers information on a certification required by subsection (b)(1), or fails to forward a certification to the subsequent carrier;

''(2) as a result of the inaccurate transfer of such information or a failure to forward a certification, the subsequent carrier incurs a bond, fine, penalty, or cost (including storage), or interest; and

''(3) that subsequent carrier exercises its rights to a lien under section 5905,

then that person is liable to the owner or beneficial owner, or to any other person paying the amount of the lien to the subsequent carrier, for the amount of the lien and all costs related to the imposition of the lien, including court costs and legal fees incurred in connection with it.''.

(e) NONAPPLICATION.—Subsection (e) of section 5902, as redesignated, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by inserting before paragraph (2), as redesignated, the following:

''(1) The notification and certification requirements of subsections (a) and (b) of this section do not apply to any intermodal container or trailer containing consolidated shipments loaded by a motor carrier if that motor carrier—

''(A) performs the highway portion of the intermodal movement; or

''(B) assumes the responsibility for any weight-related fine or penalty incurred by any other motor carrier that performs a part of the highway transportation.''.

SEC. 205. PROHIBITIONS.

Section 5903 (relating to prohibitions) is amended—

(1) by inserting after ''person'' a comma and the following: ''To whom section 5902(b) applies,'';

(2) by striking subsection (b) and inserting the following:

''(b) TRANSPORTING PRIOR TO RECEIVING CERTIFICATION.—

''(1) PRESUMPTION.—If no certification is received by a motor carrier before or when a loaded intermodal container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight of the container or trailer is less than 29,001 pounds.

''(2) COPY OF CERTIFICATION NOT REQUIRED TO ACCOMPANY CONTAINER OR TRAILER.—Notwithstanding any other provision of this chapter to the contrary, a copy of the certification required by section 5902(b) is not required to accompany the intermodal container or trailer.'';

(3) by striking ''10,000 pounds (including packing materials and pallets)'' in subsection (c)(1) and inserting ''29,000 pounds''; and

(4) by adding at the end the following:

''(d) NOTICE TO LEASED OPERATORS.—

''(1) IN GENERAL.—If a motor carrier knows that the gross cargo weight of an intermodal container or trailer subject to the certification requirements of section 5902(b) would result in a violation of applicable State gross vehicle weight laws, then—

''(A) the motor carrier shall give notice to the operator of a vehicle which is leased by the vehicle operator to a motor carrier that transports an intermodal container or trailer of the gross cargo weight of the container or trailer as certified to the motor carrier under section 5902(b);

''(B) the notice shall be provided to the operator prior to the operator being tendered the container or trailer;

''(C) the notice required by this subsection shall be in writing, but may be transmitted electronically; and

''(D) the motor carrier shall bear the burden of proof to establish that it tendered the required notice to the operator.

''(2) REIMBURSEMENT.—If the operator of a leased vehicle transporting a container or trailer subject to this chapter is fined because of a violation of a State's gross vehicle weight laws or regulations and the lessee motor carrier cannot establish that it tendered to the operator the notice required by paragraph (1) of this subsection, then the operator shall be entitled to reimbursement from the motor carrier in the amount of any fine and court costs resulting from the failure of the motor carrier to tender the notice to the operator.''.

SEC. 206. LIENS.

Section 5905 (relating to liens) is amended—

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

''(a) GENERAL.—If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required, because of a violation of a State's gross vehicle weight laws or regulations, to post a bond or pay a fine, penalty, cost (including storage), or interest resulting from—

''(1) erroneous information provided by the certifying party in the certification to the first carrier in violation of section 4903(a) of this title;

''(2) the failure of the party required to provide the certification to the first carrier to provide it;

''(3) the failure of a person required under section 5902(c) to forward the certification to forward it; or

''(4) an error occurring in the transfer of information on the certification to another document under section 5902(b)(3) or (c), then the person posting the bond, or paying the fine, penalty, costs (including storage), or interest has a lien against the contents equal to the amount of the bond, fine, penalty, cost (including storage), or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents, or from the person responsible for making or forwarding the certification, or transferring the information from the certification to another document.'';

(2) by inserting a comma and ''or the owner or beneficial owner of the contents,'' after ''first carrier'' in subsection 9(b)(1); and

(3) by striking ''cost, or interest.'' in subsection (b)(1) and inserting ''cost (including storage), or interest. The lien shall remain in effect until the lien holder has received payment for all costs and expenses described in subsection (a) of this section.''.

SEC. 207. PERISHABLE AGRICULTURAL COMMODITIES.

Section 5906 (relating to perishable agricultural commodities) is amended by striking ''Sections 5904(a)(2) an 5905 of this title do'' and inserting ''Section 5905 of this title does''.

SEC. 208. EFFECTIVE DATE.

(a) IN GENERAL.—Section 5907 (relating to regulations and effective date) is amended to read as follows:

''§ 5907. Effective date

''This chapter shall take effect 180 days after the date of enactment of the Intermodal Safe Container Transportation Amendments Act of 1996.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 59 is amended by striking the item relating to section 5709 and inserting the following:

''§ 5907. Effective date''.

SEC. 209. RELATIONSHIP TO OTHER LAWS.

(a) IN GENERAL.—Chapter 59 is amended by adding at the end thereof the following:

''§ 5908. Relationship to other laws

''Nothing in this chapter affects—

''(1) chapter 51 (relating to transportation of hazardous material) or the regulations promulgated under that chapter; or

''(2) any State highway weight or size law or regulation applicable to tractor-trailer combinations.''.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by adding at the end thereof the following:

''5908. Relationship to other laws''

NOTICE OF HEARING

SPECIAL COMMITTEE ON AGING

Mr. COHEN. Mr. President, I wish to announce that the Special Committee on Aging will hold a hearing on Tuesday, September 24, 1996, at 9 a.m., in room 628 of the Dirksen Senate Office Building. The hearing will discuss Social Security reform.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 2 p.m. on Wednesday, September 18, 1996, in closed/open session, to receive testimony on the report of the Downing Assessment Task Force on the bomb attack on Khobar Towers in Saudi Arabia, and other issues related to United States policy in the Middle East.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, September 18, 1996, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to consider S. 1920, a bill to amend the Alaska National Interest Lands Conservation Act, and for other purposes; and S. 1998, a bill to provide for expedited negotiations between the Secretary of the Interior and the villages of Chickaloon-Moose Creek Native Association, Inc., Ninilchik Native Association, Inc., Seldovia Native Association, Inc., Tyonek Native Corporation, and Knikatnu, Inc., regarding the conveyances of certain lands in Alaska under the Alaska Native Claims Settlement Act, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to

meet during the session of the Senate on Wednesday, September 18, 1996, at 10 a.m. to hold a hearing on S. 1961, the Omnibus Patent Act of 1996.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, September 18, 1996, at 2 p.m. to hold a hearing on violent and drug trafficking crimes: the Bailey decision's effect on prosecutions under 924(c).

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 18, 1996, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON HUD OVERSIGHT

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Subcommittee on HUD Oversight and Structure of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, September 18, 1996, to conduct a hearing on oversight of the Fair Housing Act and its enforcement.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

ENTHRONEMENT OF ARCHBISHOP SPYRIDON

●Ms. SNOWE. Mr. President, as a member of the Greek Orthodox faith, I would like to join my colleagues and so many other Americans in honoring the enthronement for His Eminence Metropolitan Spyridon to become the fifth Archbishop of America since the establishment in 1922 of the Greek Orthodox Archdiocese of North and South America. The Christian Orthodox faith, under the spiritual guidance of the Ecumenical Patriarch, is one of the world's great religions. It traces its roots to the original Holy Apostles, and today includes over 250 million faithful worldwide.

Archbishop Spyridon's enthronement this Saturday, September 21, at the Archdiocesan Cathedral of the Holy Trinity in New York City, is an historic occasion. This event, coming after the long and venerated reign of Archbishop Iakovos, is a hallowed symbol of the Church's continuity in the Americas under the spiritual guidance and jurisdiction of the Ecumenical Patriarchate. At the same time, this sacred event demonstrates the growth and maturation of the Greek Orthodox Church in our hemisphere, with the enthronement of the first Archbishop born and raised within the Archdiocese of North and South America.

Archbishop Spyridon, the son of Clara and the late Dr. Constantine Papageorge, was born in Warren, OH, on September 24, 1944. He attended school in the United States, and graduated from high school in Tarpon Springs, FL.

Archbishop Spyridon then went on to study at the renowned Theological School of Halki in Turkey, where he graduated in 1966 with highest honors. Until closed by the Turkish Government in 1971, this was the only theological school maintained by the Christian Orthodox Ecumenical Patriarchate. The Halki Theological School, if it were still in operation, would last year have celebrated its 150th anniversary. Archbishop Spyridon undertook subsequent postgraduate studies at the University of Geneva in Switzerland and at the Bochum University in Germany.

Since finishing his education, Archbishop Spyridon undertook high religious missions in a variety of locales. Early in his career, he served as secretary of the Ecumenical Patriarchate delegation to the World Council of Churches, as secretary of the Orthodox Center of the Ecumenical Patriarchate at Chambesy in Geneva, and as dean of the Greek Orthodox Community of St. Andrew in Rome. In 1985 the Ecumenical Patriarchate selected him titular bishop of Apamea and assigned him as the auxiliary bishop to the Greek Orthodox Archdiocese of Austria and Exarchate of Italy. In 1991 the Holy Synod of the Ecumenical Patriarchate elected Spyridon as the first Metropolitan for the newly created Archdiocese of Italy and Exarchate of Southern Europe.

Mr. President, these are just the highlights of service so far of this tremendously skilled, youthful and devoted man of faith, a man who is fluent in Greek, French, Italian, German, and, of course, English. Now he will bring his energy and experiences to his new calling as Archbishop of the Greek Orthodox Archdiocese of North and South America, where, in America alone, he will preside over 550 Greek Orthodox parishes, with over 1.5 million members.

I again wish to add my voice to all those honoring Archbishop Spyridon at the time of his enthronement. This is, of course, a time for celebration and prayer. But it is also a time for welcoming the Archbishop home after his decades of service to the faith throughout the world.●

EVOLUTION OF A PLATFORM PLANK

● Mr. MOYNIHAN. Mr. President, I would like to make a few, brief comments about the evolution of the welfare plank in the Democratic Party's national platform for the coming election.

JULY 8: FIRST DRAFT

Staff members of the Democratic National Committee wrote the initial draft of the party platform. The document was dated July 8, 1996, and contained the following plank on welfare:

Welfare Reform. There is no greater gap between mainstream American values and modern American government than our failed welfare system. When Bill Clinton became President, the welfare system undermined the very values—work, family, and, especially, personal responsibility—that it should promote. Over the past four years, President Clinton—without help from Congress—has dramatically transformed the welfare system. He has freed 40 states from federal rules and regulations so they can reform their welfare systems. The Clinton Administration has granted [70] waivers—more than twice as many waivers as granted in the Reagan-Bush years. For 75 percent of all Americans on welfare, the rules have changed for good, and welfare is becoming what it should be: a second chance, not a way of life. Welfare rolls are finally coming down—there are 1.3 million fewer people on welfare today than there were in 1992.

The President has also taken strong executive action to make sure that the welfare system strengthens families and demands responsibility. He ordered states to require minor mothers to stay in school and turn their lives around so they can get a job and get off welfare for good. He also ordered states to require mothers to name the father of their children before they can get welfare, so we can find those fathers and make them pay the child support they owe.

Now we must finish the job. We should pass national welfare reform to end welfare as we know it across America. Unfortunately, the plan proposed by Senator Dole and Speaker Gingrich was weak on work and tough on children. That's the wrong approach. We should be tough on work and demand responsibility, but we shouldn't punish children for their parents' mistakes. A real bipartisan welfare reform plan should require that anyone on welfare who can work, goes to work. And we should provide child care and health care so parents can work. We should impose strict time limits so that no one who can work can stay on welfare forever. We should require minor mothers to live with their parents or another responsible adult.

JULY 26: INITIAL DRAFT REVISED BY DRAFTING COMMITTEE

The initial draft was sent to members of the drafting committee, chaired by Georgia Gov. Zell Miller. The 15 members of the drafting committee met on July 11 in Kansas City to revise the initial draft. On July 26, the drafting committee issued its revised draft of the platform and sent it to the members of the platform committee. The revised welfare plank was slightly longer, but contained essentially the same language as the first version:

Welfare reform. Today's Democratic Party knows there is no greater gap between mainstream American values and modern American government than our failed welfare system. When Bill Clinton became President, the welfare system undermined the very values—work, family, and personal responsibility—that it should promote. The welfare system should reflect those values: we want to help people who want to help themselves and their children.

Over the past 4 years, President Clinton—acting alone—has dramatically transformed the welfare system. He has freed 41 states from federal rules and regulations so they

can reform their welfare systems. The Clinton Administration has granted 69 waivers—more than twice as many waivers as granted in the Reagan-Bush years. For 75 percent of all Americans on welfare, the rules have changed for good already, and welfare is becoming what it should be: a second chance, not a way of life. Welfare rolls are finally coming down—there are 1.3 million fewer people on welfare today than there were when President Clinton took office in January 1993.

The President has also taken strong executive action to make sure that the welfare system strengthens families and demands responsibility. He ordered states to require minor mothers to stay in school and turn their lives around so they can get a job and get off welfare for good. He also directed states to require mothers to help identify and find absent fathers so we can make them pay the child support they owe. He challenged all states to require teen mothers to live at home or with a responsible adult. And the President fought to make sure that poor children get health care and nutrition to meet their basic needs.

Now we must finish the job, and pass national welfare reform. Unfortunately, the plan proposed by Senator Dole and Speaker Gingrich was weak on work and tough on children. That is the wrong approach. We should be tough on work and demand responsibility, but we should not punish children for their parents' mistakes. A real bipartisan welfare reform plan should require that, anyone on welfare who can work, goes to work. And we should provide child care and health care so parents can work. We should impose strict time limits so that no one who can work can stay on welfare forever. We should require minor mothers to live with their parents or another responsible adult. If the Republican Party puts politics aside, we can finish the job President Clinton started, and end welfare as we know it across America. Passing legislation is not enough; we should make sure people get the skills they need to get jobs, and that there are jobs for them to go to so they leave welfare and stay off. Welfare reform should put more people to work and move them into the economic mainstream, not take jobs away from working families.

JULY 31–AUGUST 4: DNC STAFF CHANGE PLATFORM

The President announced on July 31 that he would sign the Dole-Gingrich welfare plan into law—which he did on August 22. Democratic National Committee staff thereupon revised the platform plank on welfare to reflect the President's newly announced intentions. The platform plank on welfare, which previously denounced the legislation Congress had passed, now endorsed it.

AUGUST 5: FINAL PLATFORM ISSUED

The full platform committee met in Pittsburgh, PA on August 5 and approved the changes to the Kansas City draft. The new platform plank on welfare, as changed by DNC staff, was nearly identical to the final version approved by the convention delegates in Chicago on August 27 with the exception of one sentence noted below which was formally added as an amendment during the Pittsburgh session. The new plank reads as follows:

Welfare reform. Today's Democratic Party knows there is no greater gap between mainstream American values and modern American government than our failed welfare system. When Bill Clinton became President, the welfare system undermined the very values—work, family, and personal responsibility—that it should promote. The welfare system should reflect those values: we want to help people who want to help themselves and their children.

Over the past 4 years, President Clinton has dramatically transformed the welfare system. He has freed 41 states from federal rules and regulations so they can reform their welfare systems. The Clinton Administration has granted 69 waivers—more than twice as many waivers as granted in the Reagan-Bush years. For 75 percent of all Americans on welfare, the rules have changed for good already, and welfare is becoming what it should be: a second chance, not a way of life. Welfare rolls are finally coming down —there are 1.3 million fewer people on welfare today than there were when President Clinton took office in January 1993.

Now, because of the President's leadership and with the support of a majority of the Democrats in Congress, national welfare reform is going to make work and responsibility the law of the land. Thanks to President Clinton and the Democrats, the new welfare bill includes the health care and child care people need so they can go to work confident their children will be cared for. Thanks to President Clinton and the Democrats, the new welfare bill imposes time limits and real work requirements—so anyone who can work, does work, and so that no one who can work can stay on welfare forever. Thanks to President Clinton and the Democrats, the new welfare bill cracks down on deadbeat parents and requires minor mothers to live at home with their parents or with another responsible adult.

We are proud the President forced Congressional Republicans to abandon their wrongheaded and mean-spirited efforts to punish the poor. Republicans wanted to eliminate the guarantee of health care for the poor, the elderly, and the disabled. They were wrong, and we stopped them. Republicans wanted to destroy the food stamp and school lunch programs that provide basic nutrition to millions of working families and poor children. They were wrong, and we stopped them. Republicans wanted to gut child abuse prevention and foster care. They were wrong, and we stopped them. Republicans wanted to cut off young, unwed mothers—because they actually thought their children would be better off living in an orphanage. They were dead wrong, and we stopped them. The bill Republicans in Congress passed last year was values-backward—it was soft on work and tough on children, and we applaud the President for stopping it.

We know the new bill passed by Congress is far from perfect—parts of it should be fixed because they go too far and have nothing to do with welfare reform. First, Republicans cut too far into nutritional assistance for working families with children; we are committed to correcting that. Second, Republicans insisted on using welfare reform as a vehicle to cut off help to legal immigrants. That was wrong. Legal immigrants work hard, pay their taxes, and serve America. It is wrong to single them out for punishment just because they are immigrants. We pledge to make sure that legal immigrant families with children who fall on hard times through no fault of their own can get help when they need it. And we are committed to continuing the President's efforts to make it easier for legal immigrants who are prepared to accept the responsibilities of citizenship to do so.

But the new welfare plan gives America an historic chance: to break the cycle of dependency for millions of Americans, and give them a real chance for an independent future. It reflects the principles the President has insisted upon since he started the process that led to welfare reform. Our job now is to make sure this welfare reform plan succeeds, transforming a broken system that holds people down into a working system that lifts people up and gives them a real chance to build a better life.

States asked for this responsibility—now we have to make sure they shoulder it. We must make sure as many people as possible move from welfare to work. We must make sure that children are protected. In addition to health care and nutritional assistance, states should provide in-kind vouchers to children whose parents have reached the time limit. We challenge states to exempt battered women from time limits and other restrictions. [We challenge states to ensure that hard-earned, federal taxpayer dollars are spent effectively and fraud and abuse are prevented.] (The preceding sentence was added as an amendment to the platform during the Pittsburgh meeting.) We challenge the business community to provide more of the private sector jobs people on welfare need to build good lives and strong families. We know that passing legislation is not enough; we must make sure people get the skills they need to get jobs, and that there are jobs for them to go to so they leave welfare and stay off. We want to make sure welfare reform will put more people to work and move them into the economic mainstream, not take jobs away from working families.

We call on all Americans to make the most of this opportunity—never to use welfare reform as an excuse to demonize or demean people, but rather as a chance to bring all our people fully into the economic mainstream, to have a chance to share in the prosperity and the promise of American life.

Following the Pittsburgh meeting, in an August 6 Washington Post article by Kevin Merida entitled ''Democrats Play Down Platform Differences,'' White House deputy chief of staff Harold Ickes was quoted as characterizing disputes over platform planks as ''some fusses around the edges,'' and as stating, ''I can't think of any changes of consequence since the drafting'' of the platform in Kansas City.

In an August 29 Washington Post column entitled ''Bathos and Nothingness,'' columnist Robert D. Novak wrote, ''The platform's denunciation of Republican welfare reform was obediently reversed, with neither protest nor debate, once Clinton signed the bill. Nor was the change mentioned on the convention floor in the non-debate preceding voice-vote approval of the platform. Far from being debated, the declaration of party principles was not even explained.'' Indeed.●

TRIBUTE TO THE VERMONT EXPOS

● Mr. LEAHY. Mr. President, I stand here today to pay tribute to Vermont's only professional sports team, the Vermont Expos, who won the New York Penn League baseball championship last week.

In 1994, the Vermont Expos arrived in Burlington thanks to my good friend Ray Pecor, who worked exhaustively with State and local officials to bring professional baseball back to Vermont. He wanted the Expos to be a team the entire State could be proud of. Now,

after just 3 years in Vermont, the Expos are champions.

This year, the Expos played with a never say die style. They came from behind regularly to snatch victory from the jaws of defeat. In the championship series, the Expos came from behind to win in three of their four playoff victories. This never say die attitude not only made baseball extremely exciting in Vermont this summer, but helped the Expos develop a mystique that many teams take years to build.

The gritty style of play the Expos showed throughout the year reflects the attitude of their manager, Kevin Higgins, who had the responsibility of molding a team of rookies into a championship ball club. After the Expos beat the St. Catharines Stompers, 4 to 3, on Wednesday to win the championship, Higgins acknowledged that ''these are the best fans in the league and I think they know it.''

The workmanlike efforts of the Expos also reflect the hard work of their General Manager, Kyle Bostwick of St. Albans, and his predecessor, the late Tom Racine of Burlington. These two men were major factors in bringing a championship ball club to Burlington.

Never before have I seen a community become so attached to a team so quickly. Take John Douglas of Colchester, who housed Expos teammates Jamey Carroll and Shannon Swaino for the season. Douglas said he treats the two young men as if they were his own.

But the bond between the team and their fans goes beyond the cool summer nights at Centennial Field. It stretches into the very culture of our State. In Vermont, we take pride in our work ethic. We believe that hard work will be rewarded. In all my years of following professional sports, I have never seen a team that so typified the culture around them. I can honestly say this group of young ballplayers will never be forgotten.

I ask my colleagues to join me in congratulating the Vermont Expos and their fans for winning the 1996 New York Penn League championship. Now there are two ''Champs'' in Vermont.●

ENTHRONEMENT OF ARCHBISHOP SPYRIDON

● Mr. SARBANES. Mr. President, a new chapter commences in the life of the Greek Orthodox Church of America this Saturday with the enthronement in New York of new Archbishop Spyridon at the Holy Trinity Cathedral in New York City. Archbishop Spyridon, the first American-born hierarch to hold this position, assumes this important responsibility at a time when the Orthodox Church in America faces great challenges and opportunities. All Americans of Greek Orthodox faith have great hope that this new spiritual leader will continue the Greek Orthodox Church's positive role in the religious life of our country.

In pursuing this mission, the new Archbishop will build on a firm foundation established by his predecessors—Archbishop Iakovos, who did so much to advance Orthodoxy in the Americas, Archbishop Michael, and the late Patriarch Athenagoras, who led the church during its early and difficult period in America.

Archbishop Spyridon was born in Warren, OH, the son of Clara and the late Dr. Constantine Papageorge, and spent most of his youth in Tarpon Springs, FL where, as a teenager, he divided his summers between Florida and the Island of Rhodes, the home of his father. The Archbishop graduated high school in Tarpon Springs and then enrolled in the Theological School of Halki near Istanbul, Turkey, where he was graduated with honors. He pursued graduate studies in Switzerland and Germany and is fluent in English, French, Greek, German, and Italian. He eventually was assigned to the permanent delegation of the Ecumenical Patriarchate to the World Council of Churches in Geneva, Switzerland, and later served as Secretary of the Orthodox Center of the Ecumenical Patriarchate located in Chambesy, Switzerland. In 1976 he was assigned to duties as Dean of the Greek Orthodox community of St. Andrew's in Rome and later assumed added responsibilities as Orthodox Executive Secretary of the International Joint Commission for Theological Dialogue Between the Orthodox and Roman Catholic Churches. He was elected a Bishop on November 5, 1985; and in 1991 he became the first person ever elevated to Metropolitan of Venice, Italy.

The new Archbishop's responsibility includes serving as the direct representative in the United States of the Ecumenical Patriarchate in Istanbul, the spiritual center of world Orthodox Christianity. His personal and ecclesiastical experience combine a rich grounding in Orthodox spirituality, a meaningful involvement in interfaith-ecumenical activities, and an understanding of the American tradition of religious freedom and separation of church and state.

I join with Orthodox throughout our country and all Americans of good faith who wish His Eminence a long life, a productive ministry, and the strength and wisdom to meet the many challenges which await him.●

SWISS AGREEMENT TO INVESTIGATE JEWISH FUNDS IN SWISS BANKS

● Mr. D'AMATO. Mr. President, I rise today to discuss the recent agreement of the Swiss to investigate the issue of Jewish money, as well as looted assets that were deposited in Swiss banks before and during the war.

The Swiss, in responding to overwhelming international pressure have agreed to yet another commission to investigate the issue. I must state that we have heard this before. We were told at the end of the WWII that the Swiss would look for Jewish assets and they responded by saying that they found nothing. Yet in 1949, the Swiss concluded an agreement with the Polish Government to turn over the assets of heirless, largely meaning Jewish assets. The problem was that they made this agreement with the Communist-run Polish Government and not the Jewish people to whom the assets belonged. According to their own sources, the Swiss had no laws on the books providing for this. Nevertheless, they did the same thing the following year with the Communist-run Hungarian and Czech Governments. While saying all along they had no Jewish assets in Switzerland, the Swiss nevertheless found enough to conclude agreements with other governments to turn over funds that did not belong to them. Clearly they have not been forthcoming with the world.

The Swiss again investigated the subject in the early 1960's. Again, they found money, some $2 million. Yet, all along there were public statements to the effect that little money would be found.

In 1995, another search was made and some $32 million in dormant accounts were found. Again, Swiss banks and Swiss Government officials said this proves that there was not a lot of money left over.

One must ask oneself, however, if the Swiss keep saying that there is no Jewish money in Switzerland from the 1930's and 1940's, why then do they keep finding money? Clearly the answer must be that they are in fact sitting on great sums of money and are letting it come out in drips and drabs, only in response to immense international pressure. They seem to think that they can outlast us. Well, they are wrong.

They can create commission after commission to study the issue, but the only way to solve the issue once and for all is to open their books, entirely, and put this all to rest. Stonewalling will not work, we understand what they are trying to do. Enough is enough. Open the books now.●

REV STEVEN D. RILEY

● Mr. LEVIN. Mr. President, I rise today to honor a distinguished Michigan citizen, Rev. Steven D. Riley, who celebrates his 15th year as Pastor of Christ Temple Baptist Church in Ypsilanti, MI.

Reverend Riley was born and educated in Michigan, and is the only child of Geraldine Riley. He was baptized into the Christian faith in 1967, ordained a Minister of the Baptist Church on March 17, 1974, and installed as Pastor of Christ Temple Baptist Church on January 25, 1981. Reverend Riley has traveled across the country conducting numerous preaching revivals in his service to the Christian faith. He has also served the Ypsilanti community at hundreds of weddings and funerals. Reverend Riley's public service

also extends to affiliations with the NAACP, the Fraternal Order of Police, and Operation PUSH.

Rev. Steven D. Riley has devoted his life to his community and the betterment of humankind, and in doing so has become a role model for us all. I know that my Senate colleagues join me in honoring Reverend Riley on his 15 years of outstanding service at Christ Temple Baptist Church.●

WILMINGTON BLUE ROCKS WIN CAROLINA LEAGUE CHAMPIONSHIP

● Mr. BIDEN. Mr. President, last Wednesday evening, with a 6–4, 11th-inning victory over the Kinston Indians, the Wilmington Blue Rocks captured the Carolina League championship for the second time in their 4-year history. I would like to take this opportunity to join all Delawareans in congratulating Manager John Mizerock, his players and coaches, and the entire Blue Rocks' organization for their oustanding season, and—again on behalf of all Delawareans—I'd like to thank them for providing us with yet another summer of enjoyable family entertainment.

For 40 years, up until the spring of 1993, Wilmington was without professional baseball until our late Mayor Dan Frawley, former State Representative Steve Taylor, and dozens of other public officials, businesspersons, and community leaders made a commitment to build a stadium and lure a minor league franchise to the city. Now, ''The Boys of Summer'' have returned each spring, averaging more than 300,000 fans annually as the Blue Rocks have captured the Northern Division title in each of their 4 years, winning the League Championship in 1994 and again this year.

But for all of their success on the field, the Blue Rocks' real contribution has been the sense of community pride which they have brought to the Wilmington area. The people of Wilmington have welcomed these young men from around the country and from as far away as Latin America into their homes and their hearts, and in droves have brought their families out to Frawley Stadium on spring and summer afternoons and evenings to share a few hours of family fun watching their boys in action. In return, the Blue Rocks players and management have involved themselves in the community, visiting schools and conducting baseball clinics, providing our youngsters with fine role models. What's more, the construction of Frawley Stadium and the activity at the stadium has led to the revitalization of an old neighborhood, with the South Madison Street corridor becoming a prime location for restaurants and community events.

Matt Minker and his partners, including my good friends Frank and Fran Long, have given the club ownership with a local flavor, ensuring that the franchise is more than just a business, but an integral part of community life in Wilmington. Ken Shepard, the vice president of baseball operations, and his fine staff have run a first-rate operation where excellent baseball is played in a stadium that is fan-friendly—and especially kid-friendly—and always immaculately clean. A friend of mine remembers hearing Ken Shepard tell his staff just minutes after the Blue Rocks concluded their championship season of 1994, that even though there wouldn't be another game for more than 6 months, he wanted the stadium cleaned up ''as if there was going to be a game here tomorrow night''—and it was. That commitment to excellence has led to national recognition of the Wilmington Blue Rocks' as one of the premier minor-league organizations in the Nation.

Blue Rocks' fans will remember another season of first-rate baseball on the diamond at Frawley Stadium; the dramatic win last Wednesday night on Matt Smith's 11th-inning home run; Sean McNally's ninth-inning scamper around the bases to score all the way from first-base on Michael Evans' hit to right-center field clinching the Northern Division title on Labor Day night; Jimmy Byington playing all nine positions in a single game in June; and countless other late-inning rallies, dramatic home runs, and superb pitching performances.

But they've taken home a lot of other memories this summer as well. Memories of clear blue-sky afternoons when the yard work took a back seat to a couple of hours with the kids in the sun at Frawley Stadium; and of summer evenings with the sun setting beyond the stands down the left-field line as a crowd of 5 or 6,000 stood and cheered as the Blue Rocks' pitcher fired a strike to open the game. There'll be memories of legions of kids trailing along behind Rocky Bluewinkle, the blue moose who is the team's mascot; and memories of the mad scrambles to catch the souvenir frisbees that Rocky threw into the stands; of the hilarious Dizzy Bat Races which every evening left several volunteers from the audience sprawled on the green grass, disoriented, and having the time of their lives; and of The Macarena dance at the end of the fifth inning and thousands of fans moving in unison to ''YMCA'' during the seventh-inning stretch each evening.

Nor will fans forget some of the characters who highlighted their afternoons and evenings at our ''Field of Dreams''; Blue Rocks employee Chris ''The Dancing Machine'' Parise standing on the third-base dugout and leading the fans in ''The Chicken Dance''; stadium organist Mike Mixon playing ''McNamara's Band'' whenever third-baseman Sean McNally came to bat; Jimmy, the soft-pretzel vendor in the stands whose energy and charisma probably doubled the sale of soft pretzels at the stadium; the ''Balloon Man'' enchanting the younger children with hats and animals made out of balloons; and countless other players, employees, and fans who made each trip to the ballpark a memorable one.

For most fans, however, the Blue Rocks memories of summer 1996 will revolve around the family and friends who shared those good times with them. It is the sharing of good times like that that binds families and friends together, and as we congratulate the Blue Rocks on their Carolina League championship, we thank them for allowing us to share their success with one another.●

''COUNTDOWN TO A MELTDOWN''

● Mr. MOYNIHAN. Mr. President, this past Sunday, September 15, 1996, the Outlook section of the Washington Post contained an excellent article, ''Countdown to a Meltdown,'' by Lanny J. Davis, an attorney with the firm of Patton Boggs, L.L.P. The article concerns the Y2K problem, as the computer literate refer to it. What happens to the internal clocks and software of the Nation's—indeed, the world's—government, business, and personal computers at 12:01 a.m. on January 1, 2000, when they need date code space for four digits, rather than two? Will the computers crash? Will they assume the year is 1900? Mr. Davis quotes one industry expert as calling the Y2K defect ''the most devastating virus ever to infect the world's business and information technology systems.'' Estimates of the cost of fixing this defect range as high as $75 billion—if we act expeditiously. The longer we delay, the more costly the solution.

On July 31, I wrote to the President concerning this problem. I offered the following suggestion:

> A presidential aide should be appointed to take responsibility for assuring that all Federal agencies including the military be Y2K date compliant by January 1, 1999 and that all commercial and industrial firms doing business with the Federal government also be compliant by that date. I am advised that the Pentagon is further ahead on the curve here than any of the Federal agencies. You may wish to turn to the military to take command of dealing with the problem.

A general—given the national security implications—to take charge, to determine what the Federal government must do to respond to this looming menace, and how it ought to go about doing it. I put a copy of this letter, along with the summary of a Congressional Research Service (CRS) report I requested on the subject, in the September 5 CONGRESSIONAL RECORD.

I will introduce legislation shortly to establish a commission to investigate the problem and suggest remedies. There is not much time left to resolve it. The consequences of procrastination, as the attached article indicates, are grave indeed.

I ask that the article, ''Countdown to a Meltdown,'' appear in the RECORD at this point.

The article follows:

[The Washington Post, Sept. 15, 1996]

COUNTDOWN TO A MELTDOWN

BEFORE THE YEAR 2000, WE HAVE TO SPEND BILLIONS TO FIX A VERY STRANGE GLITCH

(By Lanny J. Davis)

In the classic '50s science fiction film ''The Day the Earth Stood Still,'' an alien lands his flying saucer in front of the Washington Monument and demands that the earthlings destroy their nuclear weapons. When they doubt his powers, the alien gives them a demonstration. At noon on a designated day, he eliminates all sources of energy on the planet, from electricity to water power to gasoline. Cars stop. Trains stop. Telephones stop. The lights go out.

At 12:01 a.m., Jan. 1, year 2000—or the ''Y2K,'' as computer aficionados refer to it—the world won't exactly ''stand still.'' But it could come close unless the world's major governments and businesses start to fix their computer systems right away.

The general public knows Y2K (for Year Two Kilo—the Greek prefix kilo meaning 1,000) as the ''Year 200 Problem.'' Although it's finally beginning to get some attention, there is still little sense of urgency because it is seen as three years away. But the fact is that for some institutions, including parts of the federal government, it will very soon be too late. We could end up with a real catastrophe that could affect many people's lives around the globe in annoying and profound ways.

The reason is simple: Virtually all computers used by business and government won't know what to do when their internal clocks try to switch from 1999 to 2000. They'll go haywire. (Most newer personal computers for home use will be unaffected.)

The problem is that computers (and the software inside that tells them what to do) are programmed with only the last two digits in the year being variable, i.e., 19XX. But when the clock moves to 12:01 a.m. on Jan 1, 2000, the computer's program will need code space for four digits. One of two things will happen: The computer will cease functioning (''crash''); or more likely, it will change the last two digits from ''99'' to ''00,'' thus causing the computer's internal calendar to register as if the current date is Jan. 1, 1900.

There is a solution, but it is time consuming and costly.

Current estimates for business and government range from $50 billion to $75 billion—and will only increase as 2000 draws closer. Unfortunately, the alternative is unthinkable. One industry expert has called the Y2K defect ''the most devastating virus ever to infect the world's business and information technology systems.'' If the problem isn't fixed, here are just some of the things that will happen:

Vital military and defense systems will shut down.

Taxpayers will receive notices from the IRS saying that they owe millions of dollars in back taxes.

Banks will shut off credit and send foreclosure notices to millions.

Social Security, Medicare and other government benefit programs based on age will not function, as the computer determines, for instance, that retirees are minus 35 years old, instead of 65 (take the year 1900 and subtract their birth year of 1935). Millions of workers will not receive their pension checks.

Thousands of airplanes all over the world will be grounded when records show that maintenance has not been done for 100 years.

For the same reason, prison records will show criminals overdue for release.

The economic and political ramifications of this issue are immense. Kevin Shick, research director of the Gartner Group, a consulting firm that developed early expertise on this issue, told the House Information and Technology subcommittee in April that it is highly probable that 90 percent of all computer program applications in the world are dependent on the correct date being recorded.

The questions are: How'd we get into this mess? Who's to blame? What do we do about it? Who's going to pay to fix it?

A major sub-industry has arisen in the last few years to correct the problems. There are many small software houses and consulting companies that have developed ''software for the calendrically challenged'' and other ''tools'' to address the problem. And such giants as Oracle, Computer Associates, IBM and Arthur Anderson have shown interest in assisting companies to solve the Y2K problems, often at costs in the tens of millions of dollars or more.

Experts differ on the extent of corporate America's state of readiness for the Y2K: The computer magazine Datamation estimated that, as of last year, more than two-thirds of the companies that use mainframe computers at least has a team in place to consider how to deal with the problem. However the Gartner Group's Schick says that only 17 percent of the companies have sought the necessary outside help.

Governments are waking up, but slowly. At a recent Y2K conference in Austin, an industry expert warned that fewer than 25 percent of state government systems will be ready. One of the first public officials to take notice of the problem, Sen. Daniel Patrick Moynihan (D-N.Y.), is just now planning to ask President Clinton to appoint a blue ribbon commission to study and make recommendations on this issue. They're going to need to work fast. Recently, the Securities and Exchange Commission announced that it may promulgate rules requiring public companies to detail their readiness for the Y2K.

One reason for the urgency is that this is not a simple problem to fix. There are three options: replace all old software, which would likely be prohibitively expensive; modify the software's two-digit year code to a four-digit code, with instructions that 2000 follows 1999, which would require the location and correction of every ''time field'' in millions of lines of code in every software and hardware system; or program the computer so that, when faced with two double-zero dates, it chooses the more logical of them. For example, a computer can be told that a 1996 driver's license with a five-year term has expired in the year 2001, even though the internal clock reads 1901. This last solution seems on its face the simplest, and cheapest. Unfortunately, it doesn't do the job in most instances. For example, if the issue is knowing the person's age, the computer has no way of knowing whether someone born in the year 2002 is 2 years old or 102 years old.

Finding a solution that identifies and corrects all Y2K defects may well prove impossible. Certain programs were deliberately written in obscure programming languages. In the Pentagon, for example, many of the codes were uniquely written by one or two individuals using top-secret technology and cannot be addressed by off-the-shelf software.

Even for the best technicians, the nightmare is finding all the Y2K defects in a computer system. For instance, the dates themselves have been expressed in a variety of ways by programmers—December 12, 1945, 12 December 1945, 12–12–45, etc. All conceivable methods of expressing those date fields must be located and corrections made. If only a few have been missed, it can cause a ripple effect through a computer network, leading to a crash.

The solution is time and money.

But why should those who bought computer products be left with the tab for cleaning this mess up? Wasn't it obvious when software was being written that at some point the year 2000 would come? Why didn't programmers anticipate the problem and deal with it?

As one leading Y2K commentator, Warren Reid, notes: ''The Year 2000 problem was caused by shortsightedness and human error.'' One thing is certain—there is plenty of blame to go around.

Programmers and software houses say the main reason was cost. George Munoz, chief financial officer of the Treasury Department, testified recently that in the early 1980s, when most of these systems were being developed, memory was expensive and the cost of adding another two digits to every date field would have been considerable. Thus, he and other industry experts explain, programmers decided to save the money and make the fix when 2000 got closer.

For this reason, many in the industry suggest that responsibility for the Y2K problem is not assignable. As Munoz testified in April: ''Did this problem arise because of someone's negligence? To this, we emphatically respond: No.''

But if that is the ''no fault'' explanation, why weren't the purchasers and licensees of these software programs and computer systems at least informed about the coming problem? Why weren't they allowed to decide for themselves whether they wanted to pay then or pay later? And what about hardware and software sold in the recent years, when memory is much less of a problem (with today's PCs having more storage space and processing capacity than many mainframes 30 years ago)?

These questions may get answered in court as businesses go looking to recover their costs from the vendors who sold them these products, though no major Y2K lawsuits have yet been filed.

On the other hand, vendors (and their attorneys) are likely to remind any customers pressing these theories that they should have known that when the year 2000 tolled, the problem would arise. For the most part, the buyers of these big systems are sophisticated information managers.

Ultimately, the verdict is likely to be that everyone shares a piece of the blame—both vendors who failed to inform and buyers who chose to ignore, figuring someone else would fix it. Perhaps it's human nature: Governments, and people, are more likely to respond to a crisis than anticipate it.

Though costs are hard to estimate, they can be approximated, based on the amount of computer code within a particular company or government agency. Coopers & Lybrand has found that on average one of every 50 lines of code contains a date reference. Each individual application may contain thousands of lines of code. All software must be searched line by line; for every million lines of code, nine to 16 staff years will be needed to correct the problem.

It costs about $1–$2 per line of code, most industry analysts say. The Information Technology Association of America, representing the software and information services industry, estimates the total U.S. cost in the range of $50 billion to $75 billion. The Social Security Administration says it will take between $30 million and $60 million to fix its programs, the Defense Department over $1 billion. For the state of Maryland, current estimates for the fix exceed $25 million. Recent hearings by the House Information Technology Subcommittee found that when state and local government costs are taken into account, as well as the various indirect costs of lost productivity and diversion of personnel and resources, the public

sector costs of the Y2K crisis reaches tens of billions of dollars in the United States alone.

Private sector costs are likely to be as high. The Gartner Group estimates that a mid-sized company with 8,000 computer programs will spend between $3.6 million and $4.2 million to repair ''date challenged'' software.

Who's left paying the bill? Surprise: first and foremost, the taxpayer. Then, either in the courts or by negotiation, the rest of the pain of solving the problem is likely to be shared by vendors, users and consumers. And the longer a company or an agency waits, the more it will cost. At the start of 1999, the cost will be three times that of starting today, because the supply of trained programmers able to fix the problem will not keep up with demand.

Once the alien in the movie made the Earth stand still, he convened the leaders of the world to a meeting in front of his space ship. The Earth's leaders told him they now believed in his powers and promised to destroy all the planet's nuclear weapons forthwith. But as soon as the alien left, they went back to their old habits of building more.

The real-life inhabitants of a planet that is so dependent on computers might take a lesson from that. Having let the technology experts put one past us this time, we shouldn't let them do it again.●

RECLAMATION RECYCLING AND WATER CONSERVATION ACT

● Mr. REID. Mr. President, I want to express my support for the Reclamation Recycling and Water Conservation Act, S. 1901, and its companion bill, H.R. 3660, that promotes the desalination and water reclamation projects in the arid West. I have long supported water reclamation and desalination as a means of conserving water which is a precious commodity in Nevada and other Western States.

In the past, with the senior Senator from Illinois [Senator SIMON], I have advocated legislation that would authorize desalination technology research on a national scale. Public investment in desalination technology is vital to the future of fresh water supply of the Nation. Nevertheless, I support this regional legislation because of the special water needs of NV, Utah, California, and New Mexico. I particularly note that this bill will provide for Clark County, NV, the fastest growing county in the Nation, to reduce its dependence on fresh water from the Colorado River and rely on desalination and wastewater recycling to meet the needs of the expanding community. This approach by Clark County and other Western communities to their water problems appears to be insightful recognition of the limited fresh water resources of the West.

This legislation is good common sense and I commend my colleague from Utah [Senator BENNETT], for his sponsorship. Not only does reclamation and reuse make good conservation policy but will also prove cost effective because it will cost less for municipalities to provide for recycling than to build new reservoirs and conduits. Consequently, there should not be any opposition to a bill that encourages conservation initiatives as well as fiscal responsibility of municipalities and Federal assistance.

I recommend this authorizing bill to my colleagues for unanimous consent so that the Secretary of the Interior can initiate such planning, designing, and construction of the projects that are itemized within the bill.●

NATIONAL PAYROLL WEEK

● Mr. WARNER. Mr. President, I rise today during National Payroll Week to recognize the contributions to American businesses and workers that are regularly made by payroll professionals. I am proud to participate in National Payroll Week by paying tribute to the professionals who pay the wages, report the earnings, and withhold the taxes of over 124 million American workers annually.

Payroll departments collectively withhold, report, and deposit nearly $880 billion in taxes on behalf of the Federal Government alone. They spend more than $15 billion each year just to comply with the huge web of Federal, State, and local wage and tax laws and an additional $6 billion annually complying with Federal, State, and local, unemployment insurance laws.

More importantly, however, payroll professionals routinely protect American workers by helping to enforce fair labor practices by ensuring that workers receive overtime pay that they are due. Payroll departments also ensure through wage reporting that retirees' Social Security benefits accurately reflect their career earnings.

The work of payroll departments transcends office matters, though. Payroll professionals help identify deadbeat parents by filing new hire reports to child support enforcement agencies in more than two dozen States. This action helps identify noncustodial parents and ensures that child support payments can be withheld from a parent's pay, if appropriate. In fact, payroll departments collect from noncustodial parents more than half of all child support payments—more than $8.1 billion over the last 10 years.

Mr. President, payroll professionals clearly play an essential role benefiting millions of Americans across our Nation. I am indeed glad to take this opportunity to express my appreciation and that of the people of Virginia for the fine work of America's payroll professionals.●

THE IMPORTANCE OF DIET IN CANCER PREVENTION

● Mr. HOLLINGS. Mr. President, very few cancer researchers have stressed the importance of diet in the prevention of cancer. Dr. Daniel Nixon of Charleston, SC is a pioneer in this field. I ask that there be printed in the RECORD an article from *the Post and Courier* profiling Dr. Nixon's professional accomplishments in preventative medicine.

The article follows:

DANIEL NIXON—HE FIGHTS CANCER WITH STRAWBERRIES

(By Dottie Ashley)

Some people dream of having a lavish home in the Bahamas or owning a private jet.

Dr. Daniel Nixon dreams of a super strawberry springing from the soil in South Carolina.

If Nixon's dream comes true, the results could prolong the lives of thousands of cancer patients so that they, too, may dream once more.

''South Carolina is a perfect place for cancer research because here we have both tumors of affluence and tumors of poverty, a large population of the very rich and of the very poor,'' say Nixon.

In the war against cancer, Nixon, associate director for Cancer Prevention and Control of the Hollings Cancer Center at the Medical University of South Carolina, is in charge of special weapons and tactics.

As the Folk Professor of Experimental Oncology at MUSC, Nixon has mounted his attack on cancer with an arsenal of cancer-preventing compounds that block the formation of cancer cells.

VOLUNTEERS ARE TESTED

A former associate director for the Cancer Prevention Research Program of the National Cancer Institute, Nixon has formed a networking arrangement between MUSC and other state agencies.

To conduct his research, which is funded largely by grants from the Washington State Raspberry Commission, Nixon has called on the services of the General Clinical Research Center at MUSC to monitor the concentrations of ellagic acid in the blood and urine of 12 healthy volunteers who are fed bowls of raspberries.

His research has been recognized by the Society for Nutritional Oncology Adjuvant Therapy, and Nixon will receive the Green Ribbon Award at a ceremony Sept. 18 in Philadelphia. The award is given by the society to recognize outstanding clinical research contributions to nutritional oncology in the areas of prevention, supportive nutrition and adjunctive therapy.

Nixon has seen both sides of the cancer-treatment coin.

''For 13 years, I administered chemotherapy to cancer patients, and finally I had to convince myself that we were not going to get rid of cancer by treatment only, that we had to have prevention as well,'' says Nixon, who also is the former head of medical oncology at Emory University's Winship Oncology clinic.

TREATED MISS LILLIAN

At Emory, Nixon was oncologist for Lillian Carter, mother of President Jimmy Carter.

''Dan Nixon is the most dedicated doctor I know. No matter how bad the news may be, he exudes hope,'' says Carter's sister-in-law, Sybil Carter, reached at her home in Plains, Ga. ''He's Jimmy Carter's favorite physician.''

Nixon recalls, ''Miss Lillian was wonderful. She gave me a baseball that Fernando Valenzuela had signed and I still have it.''

Prevention research is designed not only for those who do not have cancer, but also for those who have received, or are receiving treatment for cancer. Nixon believes that where cancer cells are already growing, in many cases, they may retreat when bombarded with raspberries and strawberries—more specifically, ellagic acid.

Raspberries and strawberries are extremely high in ellagic acid, a nutrient Nixon believes will prevent both the formation and advance of certain cancers, even in

people considered to be at high risk for the disease.

''Ellagic acid is an effective cancer prevention agent in animals. It stops the development of several types of cancer tumors, and there's reason to believe it can do the same for humans,'' says Nixon.

His research efforts include gathering information linking the connection between diet and cancer in the body by using a whole-body calorimeter, a $80,000 machine that he had brought to MUSC which monitors fluctuations in whole-body temperature over a 90 to 120-minute period.

MEASURES HEAT LOSS

''This is the newest calorimeter in the United States. The calorimeter measures heat loss, which is calories expended. If a person is obese, he is calorically thrifty and suffers a greater cancer risk. The calorimeter helps us determine why that is.''

Still retaining his soft-spoken Southern accent, despite time spent at Harvard and in Washington, D.C., Nixon has a calm demeanor that's reassuring to patients.

''The most important thing is to really take time and listen to your patients,'' he says. ''They help you make the diagnosis and teach you so much about cancer treatment.''

Born in Brunswick, Nixon moved with his family to Ware County and later to Bacon County, Ga., when his father, who was a forester, took a job in the Okefenokee Swamp.

After enrolling at the University of Georgia, Nixon double-majored in chemistry and zoology and went on to attend the Medical College of Georgia in Augusta.

He did his internship in Augusta, then served as a Clinical Fellow in Medicine (Oncology) at Massachusetts General Hospital and as a Research Fellow in The Huntington Laboratories at Harvard Medical School.

In spite of his gentle manner, Nixon is all business.

''I want people to realize that this work we are doing in science, not home economics,'' he says, as he points out that at work in his experiments are thousands of phytochemicals which have been manufactured by plants to protect themselves against insects and other predators.

FRUITS AND VEGETABLES

''These are not the usual vitamins and minerals that we are studying. We've known that fruits and vegetables are good for us. Now we want to know why.''

As Nixon has investigated the connection between cancer and diet over the years, he has concluded that often the feeding of a normal American high-fat diet to a cancer patient may actually feed the tumor and encourage its growth.

''When I did a metabolic balance study, I found the cancer patients gained fat weight, not lean weight,'' he says. ''People must learn to view eating food such as high-fiber cereal as the same as taking a drug to battle cancer. We need to learn how to feed our cancer patients without feeding their cancers.''

For the past year, Nixon has worked in collaboration with scientific investigators at Clemson University who test the ellagic acid-laden blood which he sends them to find out what it does to tumor cells.

''We've found that the ellagic acid is readily absorbed and a lot of it gets into the blood stream. This is an effective delivery system to cells throughout the body.

''In animals it seems to protect genes against carcinogens, maybe even against tobacco carcinogens. Diets heavy in fats are the worst, as it appears that cancer thrives on fat calories.''

He advises limiting fat intake to 20 to 25 percent of the total calories consumed daily.

WOMEN'S NUTRITION

Nixon's work with cancer prevention ranges from Emory's Winship clinic for Neoplastic Disease to working with the National Cancer Institute in Bethesda, Md., where he participated in a National Health Institute-funded Women's Intervention Nutrition Study designed to determine if reduced caloric intake contributes to a more favorable outcome in cancer therapy and reducing the chance of relapse.

After living in Bethesda for 2½ years, the Nixons returned to Atlanta, where Nixon served as vice president for cancer detection and treatment for the American Cancer Society.

In 1994, Nixon was asked to come to MUSC. He is enthusiastic concerning the support he has received from MUSC president Dr. James B. Edwards and Sen. Ernest F. Hollings.

''They have been wonderful about getting things going here in cancer prevention. For the past two years, we have been putting together a statewide network involving Clemson, the USC School of Public Health, oncologists in Spartanburg and Greenville as well as the S.C. Primary Research Consortium, based here at MUSC.

''We are working with a grant from the Centers for Disease Control which is funding volunteers in intervention control groups. People can be subjects in the groups or they can be counselors, whom we will train, to work with the cancer patients.

''We now know that about 70 percent of malignancies are either caused by tobacco or are in some way related to what we eat.

''If we can get rid of 70 percent of cancer, then we can turn our time and money to heart disease, diabetes, osteoporosis and toward antiaging research. There's no reason that humans can't live to be 120 years old.''

WEIGHT LOSS

One of the cancer patients who volunteered in a clinical trial is Clare Howard, 64, who was the first patient to have her metabolic activity measured in the calorimeter.

Required to keep a record of what she has eaten each day, she has lost 26 pounds in the past year.

''I'm glad to take part in these cancer trials,'' she says. ''And most of all, it's been wonderful to work with a doctor who is as compassionate as Dr. Nixon. I feel like he really cares.''

Nixon's work is greatly admired by Dr. David Gangemi, director of Greenville Hospital System/Clemson University Biomedical Cooperative. ''Dr. Nixon is a true star in the field of cancer prevention. And, going beyond that, this cooperation between Clemson and MUSC could change the economy of this state. If we are able to develop a strawberry with even more ellagic acid, then some farmers who grow tobacco could simply switch to strawberries.

''Also, this national grant we have will bring preventive medicine to the forefront, and this is greatly needed because there are some people in the medical community, such as some surgeons, who don't fully appreciate the preventive approach to cancer.''

Dr. Dwight Camper of Clemson's Plant Pathology and Physiology Department, says of the MUSC partnership, ''We are elated because this project gives us an opportunity to team the plant scientists with the medical professionals—the first time this has been done in South Carolina.

NAVAL RESERVE CAPTAIN

Nixon doesn't restrict his research to institutions of higher learning. About six years ago, Nixon, who holds the rank of captain in the Naval Reserve, worked with the Navy on a nutrition experiment that involved two destroyers which spent six months at sea.

''We worked with the chef on one of the destroyers to prepare food that followed the National Cancer Institute Dietary Guidelines and on the other ship they served regular Navy food,'' says Nixon.

''On the ship using the Dietary Guidelines, those who were obese lost weight. Also, the sailors seemed to like this food better,'' says Nixon.

Also, he has established a relationship with Johnson & Wales University to train future chefs to cook high-fiber, low-fat dishes.

''I tell them that chefs are the pharmacists of the future,'' says Nixon. ''And I truly believe that.

''This year we have started to go into the schools systems to teach nutrition and we've opened a teaching center on St. Helena Island at the Beaufort-Jasper Comprehensive Health Agency clinic, near the Penn Center. There, we have teaching kitchens to demonstrate good nutrition because lots of diabetes and cancer can be found among the people there.''

People can, in fact, alter their taste buds, Nixon says. ''I grew up eating traditional, good Southern food, like fried chicken and vegetables cooked with fat. But I no longer enjoy fatty foods. Now, with all the no-fat and low-fat foods on the market, you don't really have to sacrifice enjoyment.''

And to experience an impromptu dinner with the Nixons, indeed is proof.

It's a rainy summer evening and Nixon and his wife, Gayle, who is a cardiology research nurse, are in the middle of packing up their Sullivan's Island home to move into town for several months, while their new home is being built.

''We are donating this house to the United Methodist Relief Center, which is part of the Hibben Street United Methodist Church in Mount Pleasant,'' explains Mrs. Nixon, who points out after the house is moved, they plan to build their new home on the beachfront site.

For dinner, Mrs. Nixon serves boiled shrimp, along with carrots, grapes, blueberries, nonfat potato chips, as well as iced tea.

A careful shopper, she was glad when the National Labeling Education Act was implemented in 1993.

''When the amount of fat a food contains is listed on the bottle or box, they you know for sure whether you want to buy it,'' she says.

The Nixons met when she was a nurse in training at the Medical College of Georgia and he was in medical school.

''Gayle kind of pushed me into getting interested in nutrition,'' says Nixon. ''She was also very interested in public health work and in the way that the food in people's diets had an impact on their well being.''

This shared interest led to their book ''The Cancer Recovery Eating Plan: The Right Foods to Help Fuel Your Recovery,'' published by Random House in 1994 and released in paperback last spring.

The Nixons say they don't miss the bustle of Atlanta.

''I was the 'stadium doc' at the home Atlanta Braves games, which meant if somebody got hit in the head with a foul ball that I would go and put an ice pack on it,'' Nixon says. ''That was fun, but I don't really miss Atlanta at all.''

Nixon feels he has found his dream job.

''Now I can really talk to patients; whereas, when I was doing chemotherapy, sometimes I would have as many as 60 patients a day, and I really had no time to talk.''●

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Ernest F. Hollings:									
Korea	Won	252,590	323.00					252,590	323.00
China	Yuan	6,598	794.00					6,598	794.00
Hong Kong	Dollar	5,412.40	700.00					5,412.40	700.00
Malaysia	Ringgit	830.68	203.00					830.68	203.00
Scott B. Gudes:									
Korea	Won	252,590	323.00					252,590	323.00
China	Yuan	6,598	794.00					6,598	794.00
Hong Kong	Dollar	5,412.40	700.00					5,412.40	700.00
Malaysia	Ringgit	830.68	203.00					830.68	203.00
Total			4,040.00						4,040.00

MARK O. HATFIELD,
Chairman, Committee on Appropriations, July 15, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Dan Inouye:									
Israel	Dollar		1,470.00						1,470.00
Total			1,470.00						1,470.00

MARK O. HATFIELD,
Chairman, Committee on Appropriations, June 27, 1996.

ADDENDUM.—CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John Glenn:									
China	Dollar		866.40						866.40
Hong Kong	Dollar		904.98						904.98
Total			1,771.38						1,771.38

STROM THURMOND,
Chairman, Committee on Armed Services, Aug. 26, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator William S. Cohen:									
Korea	Won	252,590	323.00					252,590	323.00
China	Yuan	6,598	794.00					6,598	794.00
Hong Kong	Dollar	5,412.40	700.00					5,412.40	700.00
Malaysia	Ringgit	1,033.68	406.00					1,033.68	406.00
James M. Bodner:									
Korea	Won	252,590	323.00					252,590	323.00
China	Yuan	6,598	794.00					6,598	794.00
Hong Kong	Dollar	5,412.40	700.00					5,412.40	700.00
Malaysia	Ringgit	1,033.68	406.00					1,033.68	406.00
Robert S. Tyrer:									
Korea	Won	252,590	323.00					252,590	323.00
China	Yuan	6,598	794.00					6,598	794.00
Hong Kong	Dollar	5,412.40	700.00					5,412.40	700.00
Malaysia	Ringgit	1,033.68	406.00					1,033.68	406.00
Senator Dan Coats:									
Croatia	Dollar		150.00						150.00
Germany	Dollar		100.00						100.00
Richard DeBobes:									
Italy	Dollar		1,420.00						1,420.00
Total			8,339.00						8,339.00

STROM THURMOND,
Chairman, Committee on Armed Services, Aug. 26, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Thomas O. Melius:									
Scotland	Dollar		1,550.00						1,550.00
United States	Dollar				1,878.05				1,878.05
Earl W. Comstock:									
Scotland	Dollar		2,050.00						2,050.00
United States	Dollar				1,164.05				1,164.05
Total			3,600.00		3,042.10				6,642.10

LARRY PRESSLER,
Chairman, Committee on Commerce, Science, and Transportation, July 10, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Frank Murkowski:									
Republic of Marshall Islands	Dollar		529.00		1,327.89				1,856.89
Taiwan	Dollar		632.00						632.00
Republic of Palau	Dollar		346.00						346.00
Federated States of Micronesia	Dollar		293.00						293.00
Senator Daniel Akaka:									
Republic of Marshall Islands	Dollar		529.00		1,327.89				1,856.89
Taiwan	Dollar		632.00						632.00
Republic of Palau	Dollar		346.00						346.00
Federated States of Micronesia	Dollar		293.00						293.00
James P. Beirne:									
Republic of Marshall Islands	Dollar		429.00		1,327.89				1,756.89
Taiwan	Dollar		532.00						532.00
Republic of Palau	Dollar		230.00						230.00
Federated States of Micronesia	Dollar		193.00						193.00
David Garman:									
Republic of Marshall Islands	Dollar		429.00		1,327.89				1756.89
Taiwan	Dollar		532.00						532.00
Republic of Palau	Dollar		230.00						230.00
Federated States of Micronesia	Dollar		193.00						193.00
Deanna Tanner Okun:									
Republic of Marshall Islands	Dollar		429.00		1,327.88				1,756.88
Taiwan	Dollar		532.00						532.00
Republic of Palau	Dollar		230.00						230.00
Federated States of Micronesia	Dollar		193.00						193.00
Charles Kleeschulte:									
Republic of Marshall Islands	Dollar		429.00		1,327.88				1,756.88
Taiwan	Dollar		532.00						532.00
Republic of Palau	Dollar		230.00						230.00
Federated States of Micronesia	Dollar		193.00						193.00
Esther Kiaaina:									
Republic of Marshall Islands	Dollar		429.00		1,327.88				1,756.88
Taiwan	Dollar		532.00						532.00
Republic of Palau	Dollar		230.00						230.00
Federated States of Micronesia	Dollar		193.00						193.00
Total			10,520.00		9,295.20				19,815.20

FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, July 19, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator J. Bennett Johnston:									
China	Yuan	3,116.25	375.00					3,116.25	375.00
Hong Kong	Dollar	5,412.40	700.00					5,412.40	700.00
Vietnam	Dollar		600.00						600.00
Thailand	Baht	10,919.50	434.00					10,919.50	434.00
Indonesia	Rupiah	11,595.00	500.00					11,595.00	500.00
Singapore	Dollar	355.72	253.00					355.72	253.00
Matthew S. Prince:									
China	Yuan	3,116.25	375.00					3,116.25	375.00
Hong Kong	Dollar	5,412.40	700.00					5,412.40	700.00
Vietnam	Dollar		600.00						600.00
Thailand	Baht	10,919.50	434.00					10,919.50	434.00
Indonesia	Rupiah	11,595.00	500.00					11,595.00	500.00
Singapore	Dollar	355.72	253.00					355.72	253.00
Eric E. Silagy:									
China	Yuan	3,116.25	375.00					3,116.25	375.00
Hong Kong	Dollar	5,412.40	700.00					5,412.40	700.00
Vietnam	Dollar		600.00						600.00
David K. Garman:									
United States	Dollar				1,810.95				1,810.95
Switzerland	Franc		520.00						520.00
Germany	Mark		86.00						86.00
United Kingdom	Pound		238.00						238.00
Robert M. Simon:									
United States	Dollar				1,810.95				1,810.95
Switzerland	Franc		520.00						520.00
Germany	Mark		86.00						86.00
United Kingdom	Pound		238.00						238.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1996—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Brian P. Moran:									
United States	Dollar				2,308.25				2,308.25
Switzerland	Franc		520.00						520.00
Germany	Mark		86.00						86.00
United Kingdom	Pound		238.00						238.00
Total			9,931.00		5,930.15				15,861.15

FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources. July 19, 1996.

ADDENDUM.—CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator William V. Roth, Jr.:									
Japan	Yen					19,229	180.85	19,229	180.85
Daniel Bob:									
Japan	Yen	56,780	534.00			19,229	180.85	76,009	714.84
Total			534.00				361.69		895.69

WILLIAM V. ROTH, JR.,
Chairman, Committee on Finance. July 24, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM APR. 1 TO JUN. 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Hank Brown:									
Turkey	Dollar		524.00						524.00
Syria	Dollar		208.15						208.15
Pakistan	Rupee	29,419.65	930.82					29,419.65	930.82
United Kingdom	Pound	172.50	279.34					172.50	279.34
United States	Dollar				4,502.75				4,502.75
Steve Biegun:									
Russia	Dollar		2,380.00						2,380.00
United States	Dollar				3,180.95				3,180.95
Dan Fisk:									
Nicaragua	Dollar		370.00						370.00
United States	Dollar		25.00		832.95				857.95
Ed Hall:									
Russia	Dollar		2,478.00						2,478.00
United States	Dollar				3,305.45				3,305.45
Gina Marie Lichaz:									
Chile	Dollar		494.29						494.29
Argentina	Dollar		489.41						489.41
Brazil	Dollar		607.33						607.33
Michelle Maynard:									
Russia	Dollar		2,070.00						2,070.00
United States	Dollar				3,180.95				3,180.95
Patty McNerny:									
Costa Rica	Colon	30,836	184.00					30,836	184.00
Diana Ohlbaum:									
Greece	Drachma	95,186	390.00	3,900	16.00	7,200	30.00	106,286	436.00
Cyprus	Pound	10	21.00	14	30.00	22	47.00	46	98.00
United States	Dollar				4,508.00				4,508.00
Chris Walker:									
Haiti	Gourde	3,188	199.00					3,188	199.00
United States	Dollar		187.00		642.00				829.00
Garrett Grigsby:									
Angola	Dollar		728.00						728.00
Namibia	Dollar	1,082.50	350.00					1,082.50	350.00
South Africa	Rand	3,350.48	772.00					3,350.48	772.00
United States	Dollar				6,099.45				6,099.45
Total			13,687.34		26,298.50		77.00		40,062.84

JESSE HELMS,
Chairman, Committee on Foreign Relations, July 31, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Arlen Specter			496.50		3,251.15				3,747.65
Charles Battaglia			860.00		3,448.15				4,308.15
Suzanne Spaulding			1,192.00		3,448.15				4,640.15
Barry Caldwell			1,140.70						1,140.70
Kenneth Myers			1,215.00		1,532.25				2,747.25
Gary Reese			1,257.00		3,149.75				4,406.75
Emily Francona			1,257.00		3,149.75				4,406.75

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1996—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Total			7,418.20		17,979.20				25,397.40

ARLEN SPECTER,
Chairman, Select Committee on Intelligence, July 11, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE DEMOCRATIC LEADER FROM APR. 1, TO JUNE 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Claiborne Pell:									
Costa Rica	Dollar		196.00						196.00
Brazil	Dollar		700.00						700.00
Chile	Dollar		619.00						619.00
Senator Howell Heflin:									
Costa Rica	Dollar		230.09						230.09
Brazil	Dollar		760.08						760.08
Chile	Dollar		624.08						624.08
Total	Dollar		3,129.25						3,129.25

TOM DASCHLE,
Democratic Leader, July 25, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM APR. 1 TO JUNE 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Randy Scheunemann:									
Haiti	Gourde	5,088	300.00					5,088	300.00
United States	Dollar				642.95				642.95
Senator Alan K. Simpson:									
Brazil	Dollar		755.33						755.33
Chile	Dollar		682.55						682.55
Costa Rica	Dollar		280.12						280.12
Senator Frank Murkowski:									
Costa Rica	Dollar		278.00						278.00
Brazil	Dollar		772.00						772.00
Chile	Dollar		748.00						748.00
Julia Hart:									
Costa Rica	Dollar		368.00						368.00
Brazil	Dollar		949.00						949.00
Chile	Dollar		801.00						801.00
Total			5,934.00		642.95				6,576.95

BOB DOLE,
Republican Leader, July 16, 1996.

COMPREHENSIVE METHAMPHETAMINE CONTROL ACT OF 1996

The text of the bill (S. 1965) to prevent the illegal manufacturing and use of methamphetamine, as passed by the Senate on September 17, 1996, is as follows:

S. 1965

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Comprehensive Methamphetamine Control Act of 1996''.

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

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Methamphetamine is a very dangerous and harmful drug. It is highly addictive and

is associated with permanent brain damage in long-term users.

(2) The abuse of methamphetamine has increased dramatically since 1990. This increased use has led to devastating effects on individuals and the community, including—

(A) a dramatic increase in deaths associated with methamphetamine ingestion;

(B) an increase in the number of violent crimes associated with methamphetamine ingestion; and

(C) an increase in criminal activity associated with the illegal importation of methamphetamine and precursor compounds to support the growing appetite for this drug in the United States.

(3) Illegal methamphetamine manufacture and abuse presents an imminent public health threat that warrants aggressive law enforcement action, increased research on methamphetamine and other substance abuse, increased coordinated efforts to prevent methamphetamine abuse, and increased monitoring of the public health threat methamphetamine presents to the communities of the United States.

TITLE I—IMPORTATION OF METHAMPHETAMINE AND PRECURSOR CHEMICALS

SEC. 101. SUPPORT FOR INTERNATIONAL EFFORTS TO CONTROL DRUGS.

The Attorney General, in consultation with the Secretary of State, shall coordinate international drug enforcement efforts to decrease the movement of methamphetamine and methamphetamine precursors into the United States.

SEC. 102. PENALTIES FOR MANUFACTURE OF LISTED CHEMICALS OUTSIDE THE UNITED STATES WITH INTENT TO IMPORT THEM INTO THE UNITED STATES.

(a) UNLAWFUL IMPORTATION.—Section 1009(a) of the Controlled Substances Import and Export Act (21 U.S.C. 959(a)) is amended—

(1) in the matter before paragraph (1), by inserting ''or listed chemical'' after ''schedule I or II''; and

(2) in paragraphs (1) and (2), by inserting ''or chemical'' after ''substance''.

(b) UNLAWFUL MANUFACTURE OR DISTRIBUTION.—Paragraphs (1) and (2) of section 1009(b) of the Controlled Substances Import and Export Act (21 U.S.C. 959(b)) are amended by inserting ''or listed chemical'' after ''controlled substance''.

(c) PENALTIES.—Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended—

(1) in paragraph (5), by striking ''or'' at the end;

(2) in paragraph (6), by striking the comma at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(7) manufactures, possesses with intent to distribute, or distributes a listed chemical in violation of section 959 of this title.''.

TITLE II—PROVISIONS TO CONTROL THE MANUFACTURE OF METHAMPHETAMINE

SEC. 201. SEIZURE AND FORFEITURE OF REGULATED CHEMICALS.

(a) PENALTIES FOR SIMPLE POSSESSION.—Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended—

(1) in subsection (a)—

(A) by adding after the first sentence the following: ''It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section 303 of this title or section 1008 of title III if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration.''; and

(B) by striking ''drug or narcotic'' and inserting ''drug, narcotic, or chemical'' each place it appears; and

(2) in subsection (c), by striking ''drug or narcotic'' and inserting ''drug, narcotic, or chemical''.

(b) FORFEITURES.—Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended—

(1) in paragraphs (2) and (6), by inserting ''or listed chemical'' after ''controlled substance'' each place it appears; and

(2) in paragraph (9), by—

(A) inserting ''dispensed, acquired,'' after ''distributed,'' both places it appears; and

(B) striking ''a felony provision of''.

(c) SEIZURE.—Section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended—

(1) in subsection (a)(3), by inserting ''or listed chemical'' after ''controlled substance''; and

(2) by amending subsection (b) to read as follows:

''(b) As used in this section, the terms 'controlled substance' and 'listed chemical' have the meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).''.

SEC. 202. STUDY AND REPORT ON MEASURES TO PREVENT SALES OF AGENTS USED IN METHAMPHETAMINE PRODUCTION.

(a) STUDY.—The Attorney General of the United States shall conduct a study on possible measures to effectively prevent the diversion of red phosphorous, iodine, hydrochloric gas, and other agents for use in the production of methamphetamine. Nothing in this section shall preclude the Attorney General from taking any action the Attorney General already is authorized to take with regard to the regulation of listed chemicals under current law.

(b) REPORT.—Not later than January 1, 1998, the Attorney General shall submit a report to the Congress of its findings pursuant to the study conducted under subsection (a) on the need for and advisability of preventive measures.

(c) CONSIDERATIONS.—In developing recommendations under subsection (b), the Attorney General shall consider—

(1) the use of red phosphorous, iodine, hydrochloric gas, and other agents in the illegal manufacture of methamphetamine;

(2) the use of red phosphorous, iodine, hydrochloric gas, and other agents for legitimate, legal purposes, and the impact any regulations may have on these legitimate purposes; and

(3) comments and recommendations from law enforcement, manufacturers of such chemicals, and the consumers of such chemicals for legitimate, legal purposes.

SEC. 203. INCREASED PENALTIES FOR MANUFACTURE AND POSSESSION OF EQUIPMENT USED TO MAKE CONTROLLED SUBSTANCES.

(a) IN GENERAL.—Section 403(d) of the Controlled Substances Act (21 U.S.C. 843(d)) is amended—

(1) by striking ''(d) Any person'' and inserting ''(d)(1) Except as provided in paragraph (2), any person''; and

(2) by adding at the end the following:

''(2) Any person who, with the intent to manufacture or to facilitate the manufacture of methamphetamine, violates paragraph (6) or (7) of subsection (a), shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of that person—

''(A) for a violation of paragraph (6) or (7) of subsection (a);

''(B) for a felony under any other provision of this subchapter or subchapter II of this chapter; or

''(C) under any other law of the United States or any State relating to controlled substances or listed chemicals,

has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than $60,000, or both.''.

(b) SENTENCING COMMISSION.—The United States Sentencing Commission shall amend the sentencing guidelines to ensure that the manufacture of methamphetamine in violation of section 403(d)(2) of the Controlled Substances Act, as added by subsection (a), is treated as a significant violation.

SEC. 204. ADDITION OF IODINE AND HYDROCHLORIC GAS TO LIST II.

(a) IN GENERAL.—Section 102(35) of the Controlled Substances Act (21 U.S.C. 802(35)) is amended by adding at the end the following:

''(I) Iodine.

''(J) Hydrochloric gas.''.

(b) IMPORTATION AND EXPORTATION REQUIREMENTS.—(1) Iodine shall not be subject to the requirements for listed chemicals provided in section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971).

(2) EFFECT OF EXCEPTION.—The exception made by paragraph (1) shall not limit the authority of the Attorney General to impose the requirements for listed chemicals provided in section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971).

SEC. 205. CIVIL PENALTIES FOR FIRMS THAT SUPPLY PRECURSOR CHEMICALS.

(a) OFFENSES.—Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(1) in paragraph (9), by striking ''or'' after the semicolon;

(2) in paragraph (10), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(11) to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of this title or title III, with reckless disregard for the illegal uses to which such a laboratory supply will be put.

As used in paragraph (11), the term 'laboratory supply' means a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals. For purposes of paragraph (11), there is a rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer.''.

(b) CIVIL PENALTY.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)(2)) is amended by adding at the end the following:

''(C) In addition to the penalties set forth elsewhere in this title or title III, any business that violates paragraph (11) of subsection (a) shall, with respect to the first such violation, be subject to a civil penalty of not more than $250,000, but shall not be subject to criminal penalties under this section, and shall, for any succeeding violation, be subject to a civil fine of not more than $250,000 or double the last previously imposed penalty, whichever is greater.''.

SEC. 206. INJUNCTIVE RELIEF.

(a) TEN-YEAR INJUNCTION MAJOR OFFENSES.—Section 401(f) of the Controlled

Substances Act (21 U.S.C. 841(f)) is amended by—

(1) inserting ''manufacture, exportation,'' after ''distribution,''; and

(2) striking ''regulated''.

(b) TEN-YEAR INJUNCTION OTHER OFFENSES.—Section 403 of the Controlled Substances Act (21 U.S.C. 843) is amended—

(1) in subsection (e), by—

(A) inserting ''manufacture, exportation,'' after ''distribution,''; and

(B) striking ''regulated''; and

(2) by adding at the end the following:

''(f) INJUNCTIONS.—(1) In addition to any penalty provided in this section, the Attorney General is authorized to commence a civil action for appropriate declaratory or injunctive relief relating to violations of this section or section 402.

''(2) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business.

''(3) Any order or judgment issued by the court pursuant to this subsection shall be tailored to restrain violations of this section or section 402.

''(4) The court shall proceed as soon as practicable to the hearing and determination of such an action. An action under this subsection is governed by the Federal Rules of Civil Procedure except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.''.

SEC. 207. RESTITUTION FOR CLEANUP OF CLANDESTINE LABORATORY SITES.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding at the end the following:

''(q) The court, when sentencing a defendant convicted of an offense under this title or title III involving the manufacture of methamphetamine, may—

''(1) order restitution as provided in sections 3612 and 3664 of title 18, United States Code;

''(2) order the defendant to reimburse the United States for the costs incurred by the United States for the cleanup associated with the manufacture of methamphetamine by the defendant; and

''(3) order restitution to any person injured as a result of the offense as provided in section 3663 of title 18, United States Code.''.

SEC. 208. RECORD RETENTION.

Section 310(a)(1) of the Controlled Substances Act (21 U.S.C. 830(a)(1)) is amended by striking the dash after ''transaction'' and subparagraphs (A) and (B) and inserting ''for two years after the date of the transaction.''.

SEC. 209. TECHNICAL AMENDMENTS.

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (34), by amending subparagraphs (P), (S), and (U) to read as follows:

''(P) Isosafrole.

''(S) N-Methylephedrine.

''(U) Hydriodic acid.''; and

(2) in paragraph (35), by amending subparagraph (G) to read as follows:

''(G) 2-Butanone (or Methyl Ethyl Ketone).''.

SEC. 210. WITHDRAWAL OF REGULATIONS.

The final rule concerning removal of exemption for certain pseudoephedrine products marketed under the Federal Food, Drug, and Cosmetic Act published in the Federal Register of August 7, 1996 (61 FR 40981–40993) is null and void and of no force or effect.

TITLE III—INCREASED PENALTIES FOR TRAFFICKING AND MANUFACTURE OF METHAMPHETAMINE AND PRECURSORS

SEC. 301. PENALTY INCREASES FOR TRAFFICKING IN METHAMPHETAMINE.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend its guidelines and its policy statements to provide for increased penalties for unlawful manufacturing, importing, exporting, and trafficking of methamphetamine, and other similar offenses, including unlawful possession with intent to commit any of those offenses, and attempt and conspiracy to commit any of those offenses. The Commission shall submit to Congress explanations therefor and any additional policy recommendations for combating methamphetamine offenses.

(b) IN GENERAL.—In carrying out this section, the Commission shall ensure that the sentencing guidelines and policy statements for offenders convicted of offenses described in subsection (a) and any recommendations submitted under such subsection reflect the heinous nature of such offenses, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving methamphetamine, including—

(1) the rapidly growing incidence of methamphetamine abuse and the threat to public safety such abuse poses;

(2) the high risk of methamphetamine addiction;

(3) the increased risk of violence associated with methamphetamine trafficking and abuse; and

(4) the recent increase in the illegal importation of methamphetamine and precursor chemicals.

SEC. 302. ENHANCED PENALTIES FOR OFFENSES INVOLVING CERTAIN LISTED CHEMICALS.

(a) CONTROLLED SUBSTANCES ACT.—Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended by striking ''not more than 10 years,'' and inserting ''not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical,''.

(b) CONTROLLED SUBSTANCE IMPORT AND EXPORT ACT.—Section 1010(d) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d)) is amended by striking ''not more than 10 years,'' and inserting ''not more than 20 years in the case of a violation of paragraph (1) or (3) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (3) involving a list I chemical,''.

(c) SENTENCING GUIDELINES.—

(1) IN GENERAL.—The United States Sentencing Commission shall, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority of that section had not expired, amend the sentencing guidelines to increase by at least two levels the offense level for offenses involving list I chemicals under—

(A) section 401(d) (1) and (2) of the Controlled Substances Act (21 U.S.C 841(d) (1) and (2)); and

(B) section 1010(d) (1) and (3) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d) (1) and (3)).

(2) REQUIREMENT.—In carrying out this subsection, the Commission shall ensure that the offense levels for offenses referred to in paragraph (1) are calculated proportionally on the basis of the quantity of controlled substance that reasonably could have been manufactured in a clandestine setting using the quantity of the list I chemical possessed, distributed, imported, or exported.

SEC. 303. ENHANCED PENALTY FOR DANGEROUS HANDLING OF CONTROLLED SUBSTANCES: AMENDMENT OF SENTENCING GUIDELINES.

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall determine whether the Sentencing Guidelines adequately punish the offenses described in subsection (b) and, if not, promulgate guidelines or amend existing guidelines to provide an appropriate enhancement of the punishment for a defendant convicted of such an offense.

(b) OFFENSE.—The offense referred to in subsection (a) is a violation of section 401(d), 401(g)(1), 403(a)(6), or 403(a)(7) of The Controlled Substances Act (21 U.S.C. 841(d), 841(g)(1), 843(a)(6), and 843(a)(7)), in cases in which in the commission of the offense the defendant violated—

(1) subsection (d) or (e) of section 3008 of the Solid Waste Disposal Act (relating to handling hazardous waste in a manner inconsistent with Federal or applicable State law);

(2) section 103(b) of the Comprehensive Environmental Response, Compensation and Liability Act (relating to failure to notify as to the release of a reportable quantity of a hazardous substance into the environment);

(3) section 301(a), 307(d), 309(c)(2), 309(c)(3), 311(b)(3), or 311(b)(5) of the Federal Water Pollution Control Act (relating to the unlawful discharge of pollutants or hazardous substances, the operation of a source in violation of a pretreatment standard, and the failure to notify as to the release of a reportable quantity of a hazardous substance into the water); or

(4) section 5124 of title 49, United States Code (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material).

TITLE IV—LEGAL MANUFACTURE, DISTRIBUTION, AND SALE OF PRECURSOR CHEMICALS

SEC. 401. DIVERSION OF CERTAIN PRECURSOR CHEMICALS.

(a) IN GENERAL.—Section 102(39) of the Controlled Substances Act (21 U.S.C. 802(39)) is amended—

(1) in subparagraph (A)(iv)(I)(aa), by striking ''as'' through the semicolon and inserting '', pseudoephedrine or its salts, optical isomers, or salts of optical isomers, or phenylpropanolamine or its salts, optical isomers, or salts of optical isomers unless otherwise provided by regulation of the Attorney General issued pursuant to section 204(e) of this title;''; and

(2) in subparagraph (A)(iv)(II), by inserting '', pseudoephedrine, phenylpropanolamine,'' after ''ephedrine''.

(b) LEGITIMATE RETAILERS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (39)(A)(iv)(I)(aa), by adding before the semicolon the following: '', except that any sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction (except as provided in section 401(d) of the Comprehensive Methamphetamine Control Act of 1996)'';

(2) in paragraph (39)(A)(iv)(II), by adding before the semicolon the following: '', except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine products by retail distributors or by distributors required to submit reports by section 310(b)(3) of this title shall be 24 grams of pseudoephedrine or 24 grams of phenylpropanolamine in a single transaction'';

(3) by redesignating paragraph (43) relating to felony drug offense as paragraph (44); and

(4) by adding at the end the following:

''(45) The term 'ordinary over-the-counter pseudoephedrine or phenylpropanolamine product' means any product containing pseudoephedrine or phenylpropanolamine that is—

''(A) regulated pursuant to this title; and

''(B)(i) except for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, and that is packaged in blister packs, each blister containing not more than two dosage units, or where the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches; and

''(ii) for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base.

''(46)(A) The term 'retail distributor' means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

''(B) For purposes of this paragraph, sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use.

''(C) For purposes of this paragraph, entities are defined by reference to the Standard Industrial Classification (SIC) code, as follows:

''(i) A grocery store is an entity within SIC code 5411.

''(ii) A general merchandise store is an entity within SIC codes 5300 through 5399 and 5499.

''(iii) A drug store is an entity within SIC code 5912.''.

(c) REINSTATEMENT OF LEGAL DRUG EXEMPTION.—Section 204 of the Controlled Substances Act (21 U.S.C. 814) is amended by adding at the end the following new subsection:

''(e) REINSTATEMENT OF EXEMPTION WITH RESPECT TO EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE DRUG PRODUCTS.—Pursuant to subsection (d)(1), the Attorney General shall by regulation reinstate the exemption with respect to a particular ephedrine, pseudoephedrine, or phenylpropanolamine drug product if the Attorney General determines that the drug product is manufactured and distributed in a manner that prevents diversion. In making this determination the Attorney General shall consider the factors listed in subsection (d)(2). Any regulation issued pursuant to this subsection may be amended or revoked based on the factors listed in subsection (d)(4).''.

(d) REGULATION OF RETAIL SALES.—

(1) PSEUDOEPHEDRINE.—

(A) LIMIT.—

(i) IN GENERAL.—Not sooner than the effective date of this section and subject to the requirements of clause (ii), the Attorney General may establish by regulation a single-transaction limit of 24 grams of pseudoephedrine base for retail distributors. Notwithstanding any other provision of law, the single-transaction threshold quantity for pseudoephedrine-containing compounds may not be lowered beyond that established in this paragraph.

(ii) CONDITIONS.—In order to establish a single-transaction limit of 24 grams of pseudoephedrine base, the Attorney General shall establish, following notice, comment, and an informal hearing that since the date of enactment of this Act there are a significant number of instances where ordinary over-the-counter pseudoephedrine products as established in paragraph (45) of section 102 of the Controlled Substances Act (21 U.S.C. 802 (45)), as added by this Act, sold by retail distributors as established in paragraph (46) in section 102 of the Controlled Substances Act (21 U.S.C. 802(46)), are being widely used as a significant source of precursor chemicals for illegal manufacture of a controlled substance for distribution or sale.

(B) VIOLATION.—Any individual or business that violates the thresholds established in this paragraph shall, with respect to the first such violation, receive a warning letter from the Attorney General and, if a business, the business shall be required to conduct mandatory education of the sales employees of the firm with regard to the legal sales of pseudoephedrine. For a second violation occurring within 2 years of the first violation, the business or individual shall be subject to a civil penalty of not more than $5,000. For any subsequent violation occurring within 2 years of the previous violation, the business or individual shall be subject to a civil penalty not to exceed the amount of the previous civil penalty plus $5,000.

(2) PHENYLPROPANOLAMINE.—

(A) LIMIT.—

(i) IN GENERAL.—Not sooner than the effective date of this section and subject to the requirements of clause (ii), the Attorney General may establish by regulation a single-transaction limit of 24 grams of phenylpropanolamine base for retail distributors. Notwithstanding any other provision of law, the single-transaction threshold quantity for phenylpropanolamine-containing compounds may not be lowered beyond that established in this paragraph.

(ii) CONDITIONS.—In order to establish a single-transaction limit of 24 grams of phenylpropanolamine base, the Attorney General shall establish, following notice, comment, and an informal hearing, that since the date of enactment of this Act there are a significant number of instances where ordinary over-the-counter phenylpropanolamine products as established in paragraph (45) of section 102 of the Controlled Substances Act (21 U.S.C. 802(45)), as added by this Act, sold by retail distributors as established in paragraph (46) in section 102 of the Controlled Substances Act (21 U.S.C. 802(46)), are being used as a significant source of precursor chemicals for illegal manufacture of a controlled substance in bulk.

(B) VIOLATION.—Any individual or business that violates the thresholds established in this paragraph shall, with respect to the first such violation, receive a warning letter from the Attorney General and, if a business, the business shall be required to conduct mandatory education of the sales employees of the firm with regard to the legal sales of pseudoephedrine. For a second violation occurring within 2 years of the first violation, the business or individual shall be subject to a civil penalty of not more than $5,000. For any subsequent violation occurring within 2 years of the previous violation, the business or individual shall be subject to a civil penalty not to exceed the amount of the previous civil penalty plus $5,000.

(3) SIGNIFICANT NUMBER OF INSTANCES.—

(A) IN GENERAL.—For purposes of this subsection, isolated or infrequent use, or use in insubstantial quantities, of ordinary over-the-counter pseudoephedrine or phenylpropanolamine, as defined in section 102(45) of the Controlled Substances Act, as added by section 401(b) of this Act, and sold at the retail level for the illicit manufacture of methamphetamine or amphetamine may not be used by the Attorney General as the basis for establishing the conditions under paragraph (1)(A)(ii) of this subsection, with respect to pseudoephedrine, and paragraph (2)(A)(ii) of this subsection, with respect to phenylpropanolamine.

(B) CONSIDERATIONS AND REPORT.—The Attorney General shall—

(i) in establishing a finding under paragraph (1)(A)(ii) or (2)(A)(ii) of this subsection, consult with the Secretary of Health and Human Services in order to consider the effects on public health that would occur from the establishment of new single transaction limits as provided in such paragraph; and

(ii) upon establishing a finding, transmit a report to the Committees on the Judiciary in both, respectively, the House of Representatives and the Senate in which the Attorney General will provide the factual basis for establishing the new single transaction limits.

(4) DEFINITION OF BUSINESS.—For purposes of this subsection, the term ''business'' means the entity that makes the direct sale and does not include the parent company of a business not involved in a direct sale regulated by this subsection.

(5) JUDICIAL REVIEW.—Any regulation promulgated by the Attorney General under this section shall be subject to judicial review pursuant to section 507 of the Controlled Substances Act (21 U.S.C. 877).

(e) EFFECT ON THRESHOLDS.—Nothing in the amendments made by subsection (b) or the provisions of subsection (d) shall affect the authority of the Attorney General to modify thresholds (including cumulative thresholds) for retail distributors for products other than ordinary over-the-counter pseudoephedrine or phenylpropanolamine products (as defined in section 102(45) of the Controlled Substances Act, as added by this section) or for non-retail distributors, importers, or exporters.

(f) COMBINATION EPHEDRINE PRODUCTS.—

(1) IN GENERAL.—For the purposes of this section, combination ephedrine products shall be treated the same as pseudoephedrine products, except that—

(A) a single transaction limit of 24 grams shall be effective as of the date of enactment of this Act and shall apply to sales of all combination ephedrine products, notwithstanding the form in which those products are packaged, made by retail distributors or distributors required to submit a report under section 310(b)(3) of the Controlled Substances Act (as added by section 402 of this Act);

(B) for regulated transactions for combination ephedrine products other than sales described in subparagraph (A), the transaction limit shall be—

(i) 1 kilogram of ephedrine base, effective on the date of enactment of this Act; or

(ii) a threshold other than the threshold described in clause (i), if established by the Attorney General not earlier than 1 year after the date of enactment of this Act; and

(C) the penalties provided in subsection (d)(1)(B) of this section shall take effect on the date of enactment of this Act for any individual or business that violates the single transaction limit of 24 grams for combination ephedrine products.

(2) DEFINITION.—For the purposes of this section, the term ''combination ephedrine product'' means a drug product containing ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically significant quantities of another active medicinal ingredient.

(g) EFFECTIVE DATE OF THIS SECTION.—Notwithstanding any other provision of this Act, this section shall not apply to the sale of any pseudoephedrine or phenylpropanolamine product prior to 12 months after the date of enactment of this Act, except that, on application of a manufacturer of a particular pseudoephedrine or phenylpropanolamine drug product, the Attorney General may, in

her sole discretion, extend such effective date up to an additional six months. Notwithstanding any other provision of law, the decision of the Attorney General on such an application shall not be subject to judicial review.

SEC. 402. MAIL ORDER RESTRICTIONS.

Section 310(b) of the Controlled Substances Act (21 U.S.C. 830(b)) is amended by adding at the end the following:

''(3) MAIL ORDER REPORTING.—(A) Each regulated person who engages in a transaction with a nonregulated person which—

''(i) involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals); and

''(ii) uses or attempts to use the Postal Service or any private or commercial carrier;

shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General in such form, containing such data, and at such times as the Attorney General shall establish by regulation.

''(B) The data required for such reports shall include—

''(i) the name of the purchaser;

''(ii) the quantity and form of the ephedrine, pseudoephedrine, or phenylpropanolamine purchased; and

''(iii) the address to which such ephedrine, pseudoephedrine, or phenylpropanolamine was sent.''.

TITLE V—EDUCATION AND RESEARCH

SEC. 501. INTERAGENCY METHAMPHETAMINE TASK FORCE.

(a) ESTABLISHMENT.—There is established a ''Methamphetamine Interagency Task Force'' (referred to as the ''interagency task force'') which shall consist of the following members:

(1) The Attorney General, or a designee, who shall serve as chair.

(2) 2 representatives selected by the Attorney General.

(3) The Secretary of Education or a designee.

(4) The Secretary of Health and Human Services or a designee.

(5) 2 representatives of State and local law enforcement and regulatory agencies, to be selected by the Attorney General.

(6) 2 representatives selected by the Secretary of Health and Human Services.

(7) 5 nongovernmental experts in drug abuse prevention and treatment to be selected by the Attorney General.

(b) RESPONSIBILITIES.—The interagency task force shall be responsible for designing, implementing, and evaluating the education and prevention and treatment practices and strategies of the Federal Government with respect to methamphetamine and other synthetic stimulants.

(c) MEETINGS.—The interagency task force shall meet at least once every 6 months.

(d) FUNDING.—The administrative expenses of the interagency task force shall be paid out of existing Department of Justice appropriations.

(e) FACA.—The Federal Advisory Committee Act (5 U.S.C. App. 2) shall apply to the interagency task force.

(f) TERMINATION.—The interagency task force shall terminate 4 years after the date of enactment of this Act.

SEC. 502. PUBLIC HEALTH MONITORING.

The Secretary of Health and Human Services shall develop a public health monitoring program to monitor methamphetamine abuse in the United States. The program shall include the collection and dissemination of data related to methamphetamine abuse which can be used by public health officials in policy development.

SEC. 503. PUBLIC-PRIVATE EDUCATION PROGRAM.

(a) ADVISORY PANEL.—The Attorney General shall establish an advisory panel consisting of an appropriate number of representatives from Federal, State, and local law enforcement and regulatory agencies with experience in investigating and prosecuting illegal transactions of precursor chemicals. The Attorney General shall convene the panel as often as necessary to develop and coordinate educational programs for wholesale and retail distributors of precursor chemicals and supplies.

(b) CONTINUATION OF CURRENT EFFORTS.—The Attorney General shall continue to—

(1) maintain an active program of seminars and training to educate wholesale and retail distributors of precursor chemicals and supplies regarding the identification of suspicious transactions and their responsibility to report such transactions; and

(2) provide assistance to State and local law enforcement and regulatory agencies to facilitate the establishment and maintenance of educational programs for distributors of precursor chemicals and supplies.

SEC. 504. SUSPICIOUS ORDERS TASK FORCE.

(a) IN GENERAL.—The Attorney General shall establish a ''Suspicious Orders Task Force'' (the ''Task Force'') which shall consist of—

(1) appropriate personnel from the Drug Enforcement Administration (the ''DEA'') and other Federal, State, and local law enforcement and regulatory agencies with the experience in investigating and prosecuting illegal transactions of listed chemicals and supplies; and

(2) representatives from the chemical and pharmaceutical industry.

(b) RESPONSIBILITIES.—The Task Force shall be responsible for developing proposals to define suspicious orders of listed chemicals, and particularly to develop quantifiable parameters which can be used by registrants in determining if an order is a suspicious order which must be reported to DEA. The quantifiable parameters to be addressed will include frequency of orders, deviations from prior orders, and size of orders. The Task Force shall also recommend provisions as to what types of payment practices or unusual business practices shall constitute prima facie suspicious orders. In evaluating the proposals, the Task Force shall consider effectiveness, cost and feasibility for industry and government, an other relevant factors.

(c) MEETINGS.—The Task Force shall meet at least two times per year and at such other times as may be determined necessary by the Task Force.

(d) REPORT.—The Task Force shall present a report to the Attorney General on its proposals with regard to suspicious orders and the electronic reporting of suspicious orders within one year of the date of enactment of this Act. Copies of the report shall be forwarded to the Committees of the Senate and House of Representatives having jurisdiction over the regulation of listed chemical and controlled substances.

(e) FUNDING.—The administrative expenses of the Task Force shall be paid out of existing Department of Justice funds or appropriations.

(f) FACA.—The Federal Advisory Committee Act (5 U.S.C. App. 2) shall apply to the Task Force.

(g) TERMINATION.—The Task Force shall terminate upon presentation of its report to the Attorney General, or two years after the date of enactment of this Act, whichever is sooner.

MEASURE READ THE FIRST TIME—SENATE JOINT RESOLUTION 61

Mr. STEVENS. Mr. President, I send to the desk a joint resolution on behalf of Senators THURMOND and HEFLIN and ask for its first reading.

The PRESIDING OFFICER. The clerk will read the joint resolution for the first time.

A joint resolution (S.J. Res. 61) regarding the Emergency Management Assistant Compact.

Mr. STEVENS. Mr. President, I now ask for second reading, and I object to my own request on behalf of the other side of the aisle.

The PRESIDING OFFICER. The bill will be read on the next legislative day.

ECONOMIC ESPIONAGE ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3723, which is now at the desk.

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 3723) to amend Title 18 U.S. Code to protect proprietary economic information, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 5384

(Purpose: To propose a substitute)

Mr. STEVENS. Mr. President, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] for Mr. SPECTER, for himself and Mr. KOHL, proposes an amendment numbered 5384.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

AMENDMENT NO. 5385 TO AMENDMENT NO. 5384

(Purpose: To amend title 18, United States Code, to prohibit certain activities relating to the use of computers, and for other purposes)

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. GRASSLEY, for himself and Mr. KYL, proposes an amendment numbered 5385 to Amendment No. 5384.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following new section: Sec. 6.

(a) WIRE AND COMPUTER FRAUD.—Section 1343 of title 18, United States Code, is amended——

(1) by adding at the end the following new subsection:

''(b) SECRET SERVICE JURISDICTION.—''The Secretary of the Treasury and the Attorney General are authorized to enter into an agreement under which the United States Secret Service may investigate certain offenses under this section.''

(a) USE OF CERTAIN TECHNOLOGY TO FACILITATE CRIMINAL CONDUCT.——

(1) INFORMATION.—The Administrative Office of the United States Courts shall establish policies and procedures for the inclusion in all Presentence Reports of information that specifically identifies and describes any use of encryption or scrambling technology that would be relevant to an enhancement under Section 3C1.1 (dealing with Obstructing or Impeding the Administration of Justice) of the Sentencing Guidelines or to offense conduct under the Sentencing Guidelines.

(2) COMPILING AND REPORT.—The United States Sentencing Commission shall——

(A) compile and analyze any information contained in documentation described in paragraph (1) relating to the use of encryption or scrambling technology to facilitate or conceal criminal conduct; and

(B) based on the information compiled and analyzed under subparagraph (A), annually report to the Congress on the nature and extent of the use of encryption or scrambling technology to facilitate or conceal criminal conduct.''

(c) Section 1029 of Title 18, United States Code is amended by—''Striking the (a)(5) in the second place it appears and replacing it with (a)(8); by striking the (a)(6) the second place it appears and replacing it with (a)(9); and by adding the following new section:

''(a)(10) knowingly and with intent to defraud uses, produces, traffics in, or possesses any device containing electronically stored monetary value.''

Mr. GRASSLEY. Mr. President, I'm pleased that the Senate has passed the eonomic espionage bill. This is an important measure that I believe will save American business significant amounts of money. The theft of confidential information from American businesses is a serious problem, and this bill takes important steps in the right direction.

I am particularly pleased that the Senate has accepted the amendment I offered with Senator KYL. This amendment commissions the first-ever study on the criminal misuse of encryption technologies. Under the Grassley-Kyl amendment, court officers who prepare pre-sentencing reports will include information on the use of encryption to conceal criminal conduct, obstruct investigations, and commit crimes. The sentencing commission will then collect and collate this information and include it in its annual report to congress.

In this way, I am hopeful that Congress and executive branch will have reliable data on whether the criminal misuse of encryption is actually a problem and, if so, what response to this problem would be appropriate.

As chairman of the Oversight Subcommittee on the Judiciary Committee, I did an informal survey of state-level law enforcement concerning the criminal misuse of encryption. This informal survey, while not scientific, provides valuable insights into the actions of the criminal element in our society.

Here are just some of the responses my subcommittee received.

In one case involving John Lucich of the New Jersey attorney general's office was involved, a computer was seized pursuant to a warrant in a serious assault case. Examination revealed that approximately 20 percent of the hard drive files were encrypted. Investigators sought the assistance of two different Federal agencies. Both of these agencies were unsuccessful in decrypting the files. Finally, a third Federal agency was successful in decrypting the files after expending considerable resources. The Decrypted files did not contain evidence of the assault but rather contained evidence of child pornography. The encryption type likely used was ''DES.''

And Officer Tim O'Neill of the Roseville, California Police Department reported to the subcommittee that he participated in a search involving a complaint against a subject who was on probation for solicitation/annoyance of minors. The subject had a hidden encrypted file on his personal computer. In the ''slack'' area at the end of the file the officer found names, addresses, school, grade, and phone numbers of 4–5 young teen girls. The encryption type used was known as ''pincrypt.''

Officer Mike Menz of the same department advised the subcommittee that he was working on a joint State/Federal major check fraud case where part of the potential evidence was encrypted.

Ivan Ortman, a senior prosecutor in Seattle, Washington, encountered some encrypted files and password protection in a cellular phone fraud investigation. For a number of files the popular and inexpensive ''PGP'' type of encryption was used. Orton indicated that no effort was even made to examine the files as the police could not locate any method for ''cracking that encryption.''

In other words, why try since such an effort is certain to be futile. Surely a rational society should look long and hard at this situation.

Agent Chuck Davis of the Colorado Bureau of Investigation reported to the subcommittee that he has encountered encryption as well as password protection problems. In one embezzlement case, a computer system has seized. Examination revealed that files on the hard disk were encrypted. The software manufacturers were contacted and the technical personnel who wrote the program advised that, ''they had left no 'back door' access to the product as this would adversely impact sales. The hallmark of the program's appeal is that it cannot be broken, even by those who created it.'' Agent Davis advised that his investigation was ''halted'' due to the time and expense of a ''brute force attack''. The encryption program used was entitled ''watchdog.''

Agent Davis also advised the subcommittee that password protection also presents problems for other types of investigators. In cases involving theft of drugs from an emergency room by a doctor, bribery/extortion by a police officer, and the suicide by an 11 year-old boy after telling friends that he had been molested by a family friend, investigators encountered password protection. The first two cases were successfully resolved through assistance from the manufacturer of the software.

The third case, however, especially illustrates the seriousness of decryption problems—determining the unique key or in this case, password from a large number of possibilities. According to Agent Davis, a mere 4 character password has 1.9 million possibilities due to the number of keyboard characters. Can you imagine how difficult it must be to figure a short, 4 character password. What if the password were 10 characters or 20 or more? It's easy to see why criminals are moving toward password protection for their records.

Mr. President, I don't know what the Grassley-Kyl amendment's study will show. But at least anecdotally, there seems to be a serious and growing problem with criminals using encryption to commit crimes or conceal criminal conduct. I hope we can figure out what to do about the problem in a fair and balanced way. I yield the floor.

Mr. KYL. Mr. President, I rise to comment on the economic espionage bill introduced by Senators SPECTER and KOHL. I was pleased that the Senate Judiciary Committee passed this bill, which will strengthen current public law on crimes against our industries. It will protect our businesses by punishing those who steal vital proprietary information for the benefit of a foreign government or a corporation.

Economic espionage is not a new crime. The success of many U.S. firms has made them a large target for the theft of trade secrets. It is much easier for a foreign firm to steal American trade secrets, with little or no penalty, than it is for a firm to spend a large amount of capital on research and development. Economic espionage may be the future of intelligence.

Only recently have American firms begun to recognize the economic impact espionage has on U.S. firms. In 1992, a survey by the American society for Industrial Security discovered that American firms lost roughly $597 million in product development and specification data and $110 million in manufacturing process information, due to espionage. These losses are likely to continue. I am pleased that the Chairman and ranking member have produced a bill that will for the first time

penalize those who try to steal ideas that Americans have worked hard to develop.

One problem not yet adequately addressed is how to collect necessary intelligence in an age when encryption protects computer communication. In order to maintain our national security interests, I support some measure of constitutional authority to collect intelligence even in situations where communications have been encrypted. To that end, Mr. President, I am hopeful that my colleagues will adopt an amendment to this bill that Senator GRASSLEY and I have sponsored. It will amend the federal sentencing guidelines to require that the Federal Sentencing Commission collect, compile, and report annually on information collected from pretrial sentence reports and other relevant documents indicating the use of encryption to further or conceal criminal conduct.

Whatever one's view of export policy, it is clear that law enforcement must have better records of criminals who use encryption technology. This amendment will accomplish that.

Mr. President, passing an economic espionage law will deter criminals from stealing trade secrets from American businesses. I urge my colleagues to adopt our amendment and pass the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5385) was agreed to.

Mr. GRASSLEY. I am pleased that the amendment I offered with my good friend Senator KYL has been accepted. This amendment requires the Sentencing Commission to report to Congress every year on the criminal misuse of encryption technologies, including to obstruct or impede the administration of justice. I think that this will help Congress obtain reliable data on the question of whether encryption is actually being used by criminals to commit crimes.

The Grassley-Kyl amendment also provides the Attorney General and Secretary of the Treasury with the authority to enter into an agreement providing the United States Secret Service with concurrent jurisdiction to investigate certain types of wire fraud offenses. I considered amending 18 U.S.C. 1343 to specifically encompass computer frauds, but after reviewing the case law (see, *E.G., U.S.* v. *Riggs*, 967 F.2d 561 (11th Cir. 1992)) and consulting with the Justice Department, I have decided that this is not necessary. My hope is that Federal law enforcement and the Justice Department will make more use of section 1343 to prosecute computer crimes. Specifically, I would like this interpretation to be committed to writing and distributed to Federal prosecutors in the field.

Mr. LEAHY. I concur in the view of the Senator from Iowa that amending section 1343 as he originally considered is not necessary. Section 1343 already encompasses frauds effected by the interstate or foreign transmission of wire communications involving, among other things, writings, signs, or signals and, consequently, would encompass frauds effected by means of computers in interstate or foreign commerce. I know the Justice Department already interprets 1343 in this way. I too would urge the Justice Department to ensure that Federal prosecutors in the field are familiar with the scope of criminal conduct, including fraud effected by means of computers, encompassed by the wire fraud statute.

Regarding the new requirement that the Sentencing Commission report on the criminal misuse of encryption technologies. I caution that the results of this report—whatever they may be—will be necessarily incomplete and should not be viewed out of context. Instances in which encryption technologies have been used to thwart the theft of valuable computerized data, which has been encrypted, and to prevent crimes, such as economic espionage, do not usually draw the attention of law enforcement and therefore will not be included in the report.

Mr. GRASSLEY. I wonder whether the chairman and ranking member of the Technology Subcommittee agree with this analysis of section 1343.

Mr. SPECTER. I have listened to your exchange with Senator LEAHY and I fully agree that section 1343 already encompasses computer fraud and that amending it is not necessary.

Mr. KOHL. I too listened to your exchange with Senator LEAHY, and I am also of the view that section 1343 covers some computer crimes and that no amendment was necessary.

AMENDMENT NO. 5386

(Purpose: To improve the treatment and security of certain persons found not guilty by reason of insanity in the District of Columbia, and for other purposes)

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. HATCH, proposes an amendment numbered 5386.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, add the following:

SEC. . TRANSFER OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY.

(a) AMENDMENT OF SECTION 4243 OF TITLE 18.—Section 4243 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(i) CERTAIN PERSONS FOUND NOT GUILTY BY REASON OF INSANITY IN THE DISTRICT OF COLUMBIA.—

''(1) TRANSFER TO CUSTODY OF THE ATTORNEY GENERAL.—Notwithstanding section 301(h) of title 24 of the District of Columbia Code, and notwithstanding subsection 4247(j) of this title, all persons who have been committed to a hospital for the mentally ill pursuant to section 301(d)(1) of title 24 of the District of Columbia Code, and for whom the United States has continuing financial responsibility, may be transferred to the custody of the Attorney General, who shall hospitalize the person for treatment in a suitable facility.

''(2) APPLICATION.—

''(A) IN GENERAL.—The Attorney General may establish custody over such persons by filing an application in the United States District Court for the District of Columbia, demonstrating that the person to be transferred is a person described in this subsection.

''(B) NOTICE.—The Attorney General shall, by any means reasonably designed to do so, provide written notice of the proposed transfer of custody to such person or such person's guardian, legal representative, or other lawful agent. The person to be transferred shall be afforded an opportunity, not to exceed 15 days, to respond to the proposed transfer of custody, and may, at the court's discretion, be afforded a hearing on the proposed transfer of custody. Such hearing, if granted, shall be limited to a determination of whether the constitutional rights of such person would be violated by the proposed transfer of custody.

''(C) ORDER.—Upon application of the Attorney General, the court shall order the person transferred to the custody of the Attorney General, unless, pursuant to a hearing under this paragraph, the court finds that the proposed transfer would violate a right of such person under the United States Constitution.

''(D) EFFECT.—Nothing in this paragraph shall be construed to—

''(i) create in any person a liberty interest in being granted a hearing or notice on any matter;

''(ii) create in favor of any person a cause of action against the United States or any officer or employee of the United States; or

''(iii) limit in any manner or degree the ability of the Attorney General to move, transfer, or otherwise manage any person committed to the custody of the Attorney General.

''(3) CONSTRUCTION WITH OTHER SECTIONS.—Subsections (f) and (g) and section 4247 shall apply to any person transferred to the custody of the Attorney General pursuant to this subsection.''.

(b) TRANSFER OF RECORDS.—Notwithstanding any provision of the District of Columbia Code or any other provision of law, the District of Columbia and St. Elizabeth's Hospital—

(1) not later than 30 days after the date of enactment of this Act, shall provide to the Attorney General copies of all records in the custody or control of the District or the Hospital on such date of enactment pertaining to persons described in section 4243(i) of title 18, United States Code (as added by subsection (a));

(2) not later than 30 days after the creation of any records by employees, agents, or contractors of the District of Columbia or of St. Elizabeth's Hospital pertaining to persons described in section 4243(i) of title 18, United States Code, provide to the Attorney General copies of all such records created after the date of enactment of this Act;

(3) shall not prevent or impede any employee, agent, or contractor of the District of Columbia or of St. Elizabeth's Hospital who has obtained knowledge of the persons described in section 4243(i) of title 18, United States Code, in the employee's professional capacity from providing that knowledge to the Attorney General, nor shall civil or criminal liability attach to such employees, agents, or contractors who provide such knowledge; and

(4) shall not prevent or impede interviews of persons described in section 4243(i) of title 18, United States Code, by representatives of the Attorney General, if such persons voluntarily consent to such interviews.

(c) CLARIFICATION OF EFFECT ON CERTAIN TESTIMONIAL PRIVILEGES.—The amendments made by this section shall not be construed to affect in any manner any doctor-patient or psychotherapist-patient testimonial privilege that may be otherwise applicable to persons found not guilty by reason of insanity and affected by this section.

(d) SEVERABILITY.—If any provision of this section, an amendment made by this section, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this section and the amendments made by this section shall not be affected thereby.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5386) was agreed to.

AMENDMENT NO. 5387 TO AMENDMENT NO. 5384

(Purpose: To provide funding for the establishment of Boys and Girls Clubs in public housing projects and other distressed areas, and for other purposes)

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. HATCH, for himself, and Mr. KOHL, proposes an amendment numbered 5387 to amendment No. 5384.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, add the following:

SEC. . ESTABLISHING BOYS AND GIRLS CLUBS.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) the Boys and Girls Clubs of America, chartered by an Act of Congress on December 10, 1991, during its 90-year history as a national organization, has proven itself as a positive force in the communities it serves;

(B) there are 1,810 Boys and Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 2,420,000 youths nationwide;

(C) 71 percent of the young people who benefit from Boys and Girls Clubs programs live in our inner cities and urban areas;

(D) Boys and Girls Clubs are locally run and have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement;

(E) Boys and Girls Clubs are located in 289 public housing sites across the Nation;

(F) public housing projects in which there is an active Boys and Girls Club have experienced a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime;

(G) these results have been achieved in the face of national trends in which overall drug use by youth has increased 105 percent since 1992 and 10.9 percent of the Nation's young people use drugs on a monthly basis; and

(H) many public housing projects and other distressed areas are still underserved by Boys and Girls Clubs.

(2) PURPOSE.—It is the purpose of this section to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,000 additional local Boys and Girls Clubs in public housing projects and other distressed areas by 2001.

(b) DEFINITIONS.—For purposes of this section—

(1) the terms ''public housing'' and ''project'' have the same meanings as in section 3(b) of the United States Housing Act of 1937; and

(2) the term ''distressed area'' means an urban, suburban, or rural area with the high percentage of high risk youth as defined in section 509A of the Public Health Service Act (42 U.S.C. 290aa–8(f)).

(c) ESTABLISHMENT.—

(1) IN GENERAL.—For each of the fiscal years 1997, 1998, 1999, 2000, and 2001, the Director of the Bureau of Justice Assistance of the Department of Justice shall provide a grant to the Boys and Girls Clubs of America for the purpose of establishing Boys and Girls Clubs in public housing projects and other distressed areas.

(2) CONTRACTING AUTHORITY.—Where appropriate, the Secretary of Housing and Urban Development, in consultation with the Attorney General, shall enter into contracts with the Boys and Girls Clubs of America to establish clubs pursuant to the grants under paragraph (1).

(d) REPORT.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing Boys and Girls Clubs in public housing projects and other distressed areas, and the effectiveness of the programs in reducing drug abuse and juvenile crime.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(A) $20,000,000 for fiscal year 1997;

(B) $20,000,000 for fiscal year 1998;

(C) $20,000,000 for fiscal year 1999;

(D) $20,000,000 for fiscal year 2000; and

(E) $20,000,000 for fiscal year 2001;

(2) VIOLENT CRIME REDUCTION TRUST FUND.—The sums authorized to be appropriated by this subsection may be made from the Violent Crime Reduction Trust Fund.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5387) was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the substitute, as amended, be agreed to, the bill be deemed read the third time, and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee substitute amendment was agreed to.

The bill (H.R. 3723), as amended, was passed.

Mr. KOHL. Mr. President, I am pleased that today the Senate has taken up and passed H.R. 3723. We are sending that bill back to the House with substitute. This language, which I drafted with Senator SPECTER, is based on our companion measures, S. 1556 (''The Economic Espionage Act'') and S.1557 (''The Economic Security Act'').

I would like to take this opportunity to point out several provisions of our legislation and explain their purpose and meaning.

This legislation includes a provision penalizing the theft of proprietary economic information and a second provision penalizing that theft when it is done on behalf of or to benefit a foreign government, instrumentality, or agent. The principle purpose of this second (foreign government) provision is not to punish conventional commercial theft and misappropriation of trade secrets (which is covered by the first provision). Thus, to make out an offense under this section, the prosecution must show in each instance that the perpetrator intended to, or had reason to believe that his or her actions would aid a foreign government, instrumentality, or agent. Enforcement agencies should administer this section with its principle purpose in mind and therefore should not apply section 572 to foreign corporations when there is no evidence of foreign government sponsored or coordinated intelligence activity. This particular concern is borne out in our understanding of the definition of ''foreign instrumentality,'' which indicates that a foreign organization must be ''substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government or subdivision thereof.'' We do not mean for the test of substantial control to be mechanistic or mathematical. The simple fact that the majority of the stock of a company is owned by a foreign government will not suffice under this definition, nor for that matter will the fact that a foreign government only owns 10 percent of a company exempt it from scrutiny. Rather the pertinent inquiry is whether the activities of the company are, from a practical and substantive standpoint, foreign government directed.

To make out a case under these two provisions (sections 1832 and 572), the prosecution would have to show that the accused knew or had reason to know that a trade secret had been stolen or appropriated without authorization. This threshold separates conduct that is criminal from that which is innocent. Thus, for example, these sections would not give rise to prosecution for legitimate economic collection or reporting by personnel of foreign governments or international financial institutions, such as the World Bank, because such legitimate collection or reporting would not include the collection or reporting of trade secrets that had been stolen, misappropriated or converted without authorization.

In the section dealing with foreign government sponsored espionage, and derived from S. 1557, the definition of proprietary economic information is different from the definition of proprietary economic information in section 2. In particular, the definition contained in section 1831(2) indicates that ''general knowledge'' is not included in the term, while the definition in section 571(4) does not. We do not intend

to imply by this difference that general knowledge can or should be the subject of a prosecution under section 572. Of course, someone can use their general experience and skills and work for a foreign government. They cannot, however, steal a piece of proprietary economic information for an owner and thereby violate section 572 of this provision. Our point is simply that when a person is working on behalf of a foreign government, instrumentality or agency, that person has to be particularly careful to ensure that the information being used is not proprietary economic information.

Some people have asked whether a piece of proprietary economic information has to be novel or inventive. Unlike patented material, something does not have to be novel, in the patent law sense, in order to be a piece of proprietary economic information. Of course, often it will be because an owner will have a patented invention that he or she has chosen to maintain the material as a piece of proprietary economic information rather than reveal it through the patent process. Even if the material is not novel in the patent law sense, some form of novelty is probably inevitable since ''that which does not possess novelty is usually known; secrecy, in the context of trade secrets implies at least minimal novelty.'' *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470, 476 (1974). While we do not strictly impose a novelty or inventiveness requirement in order for material to be considered proprietary economic information, looking at the novelty or uniqueness of a piece of information or knowledge should inform courts in determining whether something is a matter of general knowledge, skill or experience.

Although we do not require novelty or inventiveness, the definition of proprietary economic information includes the provision that an owner have taken reasonable measures under the circumstances to keep the information confidential. We do not with this definition impose any requirements on companies or owners. Each owner must assess the value of the material it seeks to protect, the extent of a threat of theft, and the ease of theft in determining how extensive their protective measures should be. We anticipate that what constitutes reasonable measures in one particular field of knowledge or industry may vary significantly from what is reasonable in another field or industry. However, some common sense measures are likely to be common across the board. For example, it is only natural that an owner would restrict access to proprietary economic information to the people who actually need to use the information. It is only natural also that an owner clearly indicate in some form or another that the information is proprietary. However, owners need not take heroic or extreme protective measures in order for their efforts to be reasonable.

Some people have asked how this legislation might affect reverse engineering. Reverse engineering is a broad term that encompasses a variety of actions. The important thing is to focus on whether the accused has committed one of the prohibited acts of this statute rather than whether he or she has ''reverse engineered.'' If someone has lawfully gained access to a trade secret or a piece or proprietary economic information, and can replicate it without violating copyright, patent or this law, then that form of ''reverse engineering'' should be fine. For example, if a person can drink Coca-Cola and, because he happens to have highly refined taste buds, can figure out what the formula is, then this legislation cannot be used against him. Likewise, if a person can look at a product and, by using their own general skills and expertise, dissect the necessary attributes of the product, then that person should be free from any threat of prosecution.

We have been deeply concerned about the efforts taken by courts to protect the confidentiality of proprietary economic information. It is important that in the early stages of a prosecution the issue whether material is proprietary economic information not be litigated. Rather, courts should, when entering these orders, always assume that the material at issue is in fact proprietary economic information.

We are also concerned that victims of economic espionage receive compensation for their losses. This legislation incorporates through reference existing law to provide procedures to be used in the detention, seizure, forfeiture, and ultimate disposition of property forfeited under the section. Under these procedures, the Attorney General is authorized to grant petitions for mitigation or remission of forfeiture and for the restoration of forfeited property to the victims of an offense. The Attorney General may also take any other necessary or proper action to protect the rights of innocent people in the interest of justice. In practice, under the forfeiture laws, victims are afforded priority in the disposition of forfeited property since it is the policy of the Department of Justice to provide restitution to the victims of criminal acts whenever permitted to do so by the law. Procedures for victims to obtain restitution may be found at Section 9 of Title 28, Code of Federal Regulations.

In addition to requesting redress from the Attorney General, any person—including a victim—asserting an interest in property ordered forfeited may petition for a judicial hearings to adjudicate the validity of the alleged interest and to revise the order of forfeiture. Additionally, forfeitures are subject to a requirement of proportionality under the Eight Amendment; that is, the value of the property forfeited must not be excessively disproportionate to the crimes in question.

Finally, we have required that the Attorney General report back to us on victim restitution two and four years after the enactment of this legislation. We have heard from some companies that they only rarely obtain restitution awards despite their eligibility. We wish to carefully monitor restitution to ensure that the current system is working well and make any changes that may be necessary.

Mr. President, we have worked closely in cooperation with the Administration in drafting this legislation. It is a bipartisan measure, broadly supported, and necessary for our country's future industrial vitality.

NATIONAL INFORMATION INFRASTRUCTURE PROTECTION ACT OF 1996

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of Calendar No. 563, S. 982.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 982) to protect the national information infrastructure, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Information Infrastructure Protection Act of 1996''.

SEC. 2. COMPUTER CRIME.

Section 1030 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''knowingly accesses'' and inserting ''having knowingly accessed'';

(ii) by striking ''exceeds'' and inserting ''exceeding'';

(iii) by striking ''obtains information'' and inserting ''having obtained information'';

(iv) by striking ''the intent or'';

(v) by striking ''is to be used'' and inserting ''could be used''; and

(vi) in inserting before the semicolon at the end the following: ''willfully communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it'';

(B) in paragraph (2)—

(i) by striking ''obtains information'' and inserting ''obtains—

''(A) information''; and

(ii) by adding at the end the following new subparagraphs:

''(B) information from any department or agency of the United States; or

''(C) information from any protected computer if the conduct involved an interstate or foreign communication;'';

(C) in paragraph (3)—

(i) by inserting ''nonpublic'' before ''computer of a department or agency'';

(ii) by striking ''adversely''; and

(iii) by striking ''the use of the Government's operation of such computer'' and inserting

''that use by or for the Government of the United States'';

(D) in paragraph (4)—

(i) by striking ''Federal interest'' and inserting ''protected''; and

(ii) by inserting before the semicolon the following: ''and the value of such use is not more than $5,000 in any 1-year period'';

(E) by striking paragraph (5) and inserting the following:

''(5)(A) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer;

''(B) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage; or

''(C) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage;''; and

(F) by inserting after paragraph (6) the following new paragraph:

''(7) with intent to extort from any person, firm, association, educational institution, financial institution, government entity, or other legal entity, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to cause damage to a protected computer;'';

(2) in subsection (c)—

(A) in paragraph (1), by striking ''such subsection'' each place that term appears and inserting ''this section'';

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by inserting '', (a)(5)(C),'' after ''(a)(3)''; and

(II) by striking ''such subsection'' and inserting ''this section'';

(ii) by redesignating subparagraph (B) as subparagraph (C);

(iii) by inserting immediately after subparagraph (A) the following:

''(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(2), if—

''(i) the offense was committed for purposes of commercial advantage or private financial gain;

''(ii) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State; or

''(iii) the value of the information obtained exceeds $5,000;''; and

(iv) in subparagraph (C) (as redesignated)—

(I) by striking ''such subsection'' and inserting ''this section''; and

(II) by adding ''and'' at the end;

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking ''(a)(4) or (a)(5)(A)'' and inserting ''(a)(4), (a)(5)(A), (a)(5)(B), or (a)(7)''; and

(II) by striking ''such subsection'' and inserting ''this section''; and

(ii) in subparagraph (B)—

(I) by striking ''(a)(4) or (a)(5)'' and inserting ''(a)(4), (a)(5)(A), (a)(5)(B), (a)(5)(C), or (a)(7)''; and

(II) by striking ''such subsection'' and inserting ''this section''; and

(D) by striking paragraph (4);

(3) in subsection (d), by inserting ''subsections (a)(2)(A), (a)(2)(B), (a)(3), (a)(4), (a)(5), and (a)(6) of'' before ''this section.'';

(4) in subsection (e)—

(A) in paragraph (2)—

(i) by striking ''Federal interest'' and inserting ''protected'';

(ii) in subparagraph (A), by striking ''the use of the financial institution's operation or the Government's operation of such computer'' and inserting ''that use by or for the financial institution or the Government''; and

(iii) by striking subparagraph (B) and inserting the following:

''(B) which is used in interstate or foreign commerce or communication;'';

(B) in paragraph (6), by striking ''and'' at the end;

(C) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following new paragraphs:

''(8) the term 'damage' means any impairment to the integrity or availability of data, a program, a system, or information, that—

''(A) causes loss aggregating at least $5,000 in value during any 1-year period to one or more individuals;

''(B) modifies or impairs, or potentially modifies or impairs, the medical examination, diagnosis, treatment, or care of one or more individuals;

''(C) causes physical injury to any person; or

''(D) threatens public health or safety; and

''(9) the term 'government entity' includes the Government of the United States, any State or political subdivision of the United States, any foreign country, and any state, province, municipality, or other political subdivision of a foreign country.''; and

(5) in subsection (g)—

(A) by striking '', other than a violation of subsection (a)(5)(B),''; and

(B) by striking ''of any subsection other than subsection (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb)'' and inserting ''involving damage as defined in subsection (e)(8)(A)''.

AMENDMENTS NOS. 5388 AND 5389 EN BLOC

Mr. STEVENS. Mr. President, I send two amendments to the desk, en bloc, on behalf of Senator HATCH, and I ask for their consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. HATCH, proposes amendments numbered 5388 and 5389, en bloc.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 5388

(Purpose: To improve the treatment and security of certain persons found not guilty by reason of insanity in the District of Columbia)

At the appropriate place in the bill, add the following:

SEC. ___. TRANSFER OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY.

(a) AMENDMENT OF SECTION 4243 OF TITLE 18.—Section 4243 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(i) CERTAIN PERSONS FOUND NOT GUILTY BY REASON OF INSANITY IN THE DISTRICT OF COLUMBIA.—

''(1) TRANSFER TO CUSTODY OF THE ATTORNEY GENERAL.—Notwithstanding section 301(h) of title 24 of the District of Columbia Code, and notwithstanding subsection 4247(j) of this title, all persons who have been committed to a hospital for the mentally ill pursuant to section 301(d)(1) of title 24 of the District of Columbia Code, and for whom the United States has continuing financial responsibility, may be transferred to the custody of the Attorney General, who shall hospitalize the person for treatment in a suitable facility.

''(2) APPLICATION.—

''(A) IN GENERAL.—The Attorney General may establish custody over such persons by filing an application in the United States District Court for the District of Columbia, demonstrating that the person to be transferred is a person described in this subsection.

''(B) NOTICE.—The Attorney General shall, by any means reasonably designed to do so, provide written notice of the proposed transfer of custody to such person or such person's guardian, legal representative, or other lawful agent. The person to be transferred shall be afforded an opportunity, not to exceed 15 days, to respond to the proposed transfer of custody, and may, at the court's discretion, be afforded a hearing on the proposed transfer of custody. Such hearing, if granted, shall be limited to a determination of whether the constitutional rights of such person would be violated by the proposed transfer of custody.

''(C) ORDER.—Upon application of the Attorney General, the court shall order the person transferred to the custody of the Attorney General, unless, pursuant to a hearing under this paragraph, the court finds that the proposed transfer would violate a right of such person under the United States Constitution.

''(D) EFFECT.—Nothing in this paragraph shall be construed to—

''(i) create in any person a liberty interest in being granted a hearing or notice on any matter;

''(ii) create in favor of any person a cause of action against the United States or any officer or employee of the United States; or

''(iii) limit in any manner or degree the ability of the Attorney General to move, transfer, or otherwise manage any person committed to the custody of the Attorney General.

''(3) CONSTRUCTION WITH OTHER SECTIONS.—Subsections (f) and (g) and section 4247 shall apply to any person transferred to the custody of the Attorney General pursuant to this subsection.''.

(b) TRANSFER OF RECORDS.—Notwithstanding any provision of the District of Columbia Code or any other provision of law, the District of Columbia and St. Elizabeth's Hospital—

(1) not later than 30 days after the date of enactment of this Act, shall provide to the Attorney General copies of all records in the custody or control of the District or the Hospital on such date of enactment pertaining to persons described in section 4243(i) of title 18, United States Code (as added by subsection (a));

(2) not later than 30 days after the creation of any records by employees, agents, or contractors of the District of Columbia or of St. Elizabeth's Hospital pertaining to persons described in section 4243(i) of title 18, United States Code, provide to the Attorney General copies of all such records created after the date of enactment of this Act;

(3) shall not prevent or impede any employee, agent, or contractor of the District of Columbia or of St. Elizabeth's Hospital who has obtained knowledge of the persons described in section 4243(i) of title 18, United States Code, in the employee's professional capacity from providing that knowledge to the Attorney General, nor shall civil or criminal liability attach to such employees, agents, or contractors who provide such knowledge; and

(4) shall not prevent or impede interviews of persons described in section 4243(i) of title 18, United States Code, by representatives of the Attorney General, if such persons voluntarily consent to such interviews.

(c) CLARIFICATION OF EFFECT ON CERTAIN TESTIMONIAL PRIVILEGES.—The amendments made by this section shall not be construed to affect in any manner any doctor-patient or psychotherapist-patient testimonial privilege that may be otherwise applicable to persons found not guilty by reason of insanity and affected by this section.

(d) SEVERABILITY.—If any provision of this section, an amendment made by this section, or the application of such provision or

amendment to any person or circumstance is held to be unconstitutional, the remainder of this section and the amendments made by this section shall not be affected thereby.

AMENDMENT NO. 5389

(Purpose: To provide funding for the establishment of Boys and Girls Clubs in public housing projects and other distressed areas, and for other purposes)

At the appropriate place in the bill, add the following:

SEC. . ESTABLISHING BOYS AND GIRLS CLUBS.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) the Boys and Girls Clubs of America, chartered by an Act of Congress on December 10, 1991, during its 90-year history as a national organization, has proven itself as a positive force in the communities it serves;

(B) there are 1,810 Boys and Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 2,420,000 youths nationwide;

(C) 71 percent of the young people who benefit from Boys and Girls Clubs programs live in our inner cities and urban areas;

(D) Boys and Girls Clubs are locally run and have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement;

(E) Boys and Girls Clubs are located in 289 public housing sites across the Nation;

(F) public housing projects in which there is an active Boys and Girls Club have experienced a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime;

(G) these results have been achieved in the face of national trends in which overall drug use by youth has increased 105 percent since 1992 and 10.9 percent of the Nation's young people use drugs on a monthly basis; and

(H) many public housing projects and other distressed areas are still underserved by Boys and Girls Clubs.

(2) PURPOSE.—It is the purpose of this section to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,000 additional local Boys and Girls Clubs in public housing projects and other distressed areas by 2001.

(b) DEFINITIONS.—For purposes of this section—

(1) the terms ''public housing'' and ''project'' have the same meanings as in section 3(b) of the United States Housing Act of 1937; and

(2) the term ''distressed area'' means an urban, suburban, or rural area with a high percentage of high risk youth as defined in section 509A of the Public Health Service Act (42 U.S.C. 290aa–8(f)).

(c) ESTABLISHMENT.—

(1) IN GENERAL.—For each of the fiscal years 1997, 1998, 1999, 2000, and 2001, the Director of the Bureau of Justice Assistance of the Department of Justice shall provide a grant to the Boys and Girls Clubs of America for the purpose of establishing Boys and Girls Clubs in public housing projects and other distressed areas.

(2) CONTRACTING AUTHORITY.—Where appropriate, the Secretary of Housing and Urban Development, in consultation with the Attorney General, shall enter into contracts with the Boys and Girls Clubs of America to establish clubs pursuant to the grants under paragraph (1).

(d) REPORT.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing Boys and Girls Clubs in public housing projects and other distressed areas, and the effectiveness of the programs in reducing drug abuse and juvenile crime.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(A) $20,000,000 for fiscal year 1997;

(B) $20,000,000 for fiscal year 1998;

(C) $20,000,000 for fiscal year 1999;

(D) $20,000,000 for fiscal year 2000; and

(E) $20,000,000 for fiscal year 2001.

(2) VIOLENT CRIME REDUCTION TRUST FUND.—The sums authorized to be appropriated by this subsection may be made from the Violent Crime Reduction Trust Fund.

Mr. KYL. Mr. President. I rise to comment on S. 982, the National Information Infrastructure Protection Act. I was pleased that the Senate Judiciary Committee unanimously passed the bill that Senator LEAHY and I introduced, which will strengthen current public law on computer crime and protect the national information infrastructure. It will protect banks, hospitals, and other information-intensive businesses which maintain sensitive computer files from those who improperly enter into computer systems.

Although there has never been an accurate nationwide reporting system for computer crime, it is clear that computer crime is rising. For example, the Computer Emergency and Response Team [CERT] at Carnegie-Mellon University reports that computer intrusions have increased from 132 in 1989 to 2,341 last year. A recent Rand Corporation study reported 1,172 hacking incidents during the first 6 months of 1994. Clearly there is a need to reform the current criminal statutes covering computer abuse.

The law needs to keep pace with technology. Crime is increasingly being perpetrated electronically, and we need to amend our laws to stop it. We, therefore, introduced the National Information Infrastructure Protection Act last year. Why is this bill important? First, it will protect against the interstate or foreign theft of information by computer. The provision is necessary because the court held, in the case of United States v. Brown, 925 F.2d 1301, 1308 (10th Cir. 1991), that purely intangible intellectual property, such as computer programs, do not count as goods, wares, merchandise, securities, or moneys which have been stolen, converted, or taken within the meaning of 18 U.S.C. §2314, the Interstate Transportation of Stolen Property. There are no Federal penalties for theft of computer information across state lines or internationally. In most cases, the Department of Justice attempts to use other statutes to prosecute these criminals.

Second, the provision adds a new section to the Computer Fraud and Abuse Act to provide penalties for the interstate or international transmission of threats against computers, computer networks, and their data and programs. Unlawful threats would include interference in any way with the normal operation of the computer or system in question, such as denying access to authorized users, erasing or corrupting data or programs, slowing down the operation of the computer or system, or encrypting data and then demanding money for the key. The provision is important because there have been cases where hackers have threatened to demolish a computer information system unless they were granted free access to accounts. It is sophisticated extortion.

Finally, S. 982 amends 18 U.S.C. §1030(a)(4) to ensure that felony-level sanctions apply when unauthorized use, or use in excess of authorization, is significant. Hackers, for example, have broken into computers only for the purpose of using their processing programs, sometimes amassing computer time worth far more than $5,000. The bill would penalize those whose trespassing, in which only computer use is obtained, amounts to greater than $5,000 during any 1-year period. Companies should not be stuck with the bill for electronic joyriders. Although they may not damage or steal information, hackers who browse through computer systems are a significant liability to businesses who must pay for a new security system, and the expensive time the hacker used.

There is widespread support for changes to the statute. For example, Attorney General Reno, in connection with the June 27, 1995 oversight hearing of the Department of Justice, said that S. 982 would ''address many of the concerns that have been identified by computer security experts with respect to the need for greater protection of networks.''

As FBI Director Louis Freeh responded, when asked during the February 28, 1996 joint hearing with the Select Committee on Intelligence on Economic Espionage, if he would appreciate the Senate acting on S. 982, ''[S. 982] does fill a gap. It's very important.''

On October 11, 1995 the Deputy Assistant Director of Investigations of the United States Secret Service, speaking before the House Committee on Banking and Financial Services Subcommittee on Domestic and International Monetary Policy, listed S. 982 as one of the bills that ''enhance our ability to investigate and prosecute violations domestically, while offering guidelines for foreign government authorities.''

This bill is timely because of the recent incident concerning the Department of Justice's homepage. Hackers penetrated the DOJ's computers, leaving pictures of swastikas and Adolph Hitler for the world to view. The damage caused by these criminals should not be prosecuted by relying on common law criminal mischief statutes. If our bill had been law, Federal prosecutors could have charged the hackers with violating more than trespassing statutes.

Mr. President, the Kyl-Leahy National Information Infrastructure Protection Act of 1995 will deter criminal

activity and protect our Nation's infrastructure. I urge my colleagues to pass the bill.

Mr. LEAHY. Mr. President, I am pleased that the Senate has today taken the important step of passing the National Information Infrastructure Protection Act of 1996, NII Protection Act, which I have sponsored with Senators KYL and GRASSLEY.

This legislation will help safeguard the privacy, security, and reliability of our national computer systems and networks and the information stored in, and carried on, those networks. Those systems and networks are vulnerable to the threat of attack by hackers, high-technology criminals and spies. The NII Protection Act will increase protection for both government and private computers, and the information on those computers, from the growing threat of computer crime.

Our dependency on computers and the growth of the Internet are both integrally linked to people's confidence in the privacy, security, and reliability of computer networks. That is why I have worked over the past decade to make sure the laws we have in place foster both privacy and security, and provide a sound foundation for new communications technologies to flourish.

Every technological advance provides new opportunities for legitimate uses and the potential for criminal exploitation. Existing criminal statutes provide a good framework for prosecuting most types of computer-related criminal conduct. But as technology changes and high-technology criminals devise new ways to use technology to commit offenses we have yet to anticipate, we must be ready to readjust and update our criminal code.

The NII Protection Act closes a number of gaps in the Computer Fraud and Abuse statute, which was originally enacted in 1984. This legislation would strengthen law enforcement's hands in fighting crimes targeted at computers, networks, and computerized information by, among other things, designating new computer crimes, and by extending protection to computer systems used in foreign or interstate commerce or communications.

We need to protect both government and private computers, and the information on those computers, from the very real and growing threat of computer crime. The facts speak for themselves—computer crime is on the rise. On September 12, a computer hacker attack, which shut down an New York Internet access provider with thousands of business and individual customers, made front page news, and revealed the vulnerability of every network service provider to such an attack. The Computer Emergency and Response Team [CERT] at Carnegie-Mellon University reports that over 12,000 Internet computers were attacked in 2,412 incidents in 1995 alone. A 1996 survey conducted jointly by the Computer Security Institute and the FBI showed that 42 percent of the respondents sustained an unauthorized use or intrusion into their computer systems in the past 12 months.

Nevertheless, while our current statute, in section 1030(a)(2), prohibits misuse of a computer to obtain information from a financial institution, it falls short of protecting the privacy and confidentiality of information on computers used in interstate or foreign commerce and communications. This gap in the law has become only more glaring as more Americans have connected their home and business computers to the global Internet.

This is not just a law enforcement issue, but an economic one. Breaches of computer security result in direct financial losses to American companies from the theft of trade secrets and proprietary information. A December 1995 report by the Computer Systems Policy Project, comprised of the CEO's from 13 major computer companies, estimates that financial losses in 1995 from breaches of computer security systems ranged from $2 to $4 billion. The report predicts that these numbers could rise in the year 2000 to $40 to $80 billion worldwide. The estimated amount of these losses is staggering.

The NII Protection Act would extend the protection already given to the computerized information of financial institutions and consumer reporting agencies, to computerized information held on computers used in interstate or foreign commerce on communications, if the conduct involved interstate or foreign communications. The provision is designed to protect against the interstate or foreign theft of information by computer.

Computer hackers have accessed sensitive government data regarding Operation Desert Storm, penetrated NASA computers, and broken into Federal courthouse computer systems containing confidential records. These outside hackers are subject to criminal prosecution under section 1030(a)(3) of the computer fraud and abuse statute. Yet, this statute contains no prohibition against malicious insiders: Those Government employees who abuse their computer access privileges by snooping through confidential tax returns, or selling confidential criminal history information from the National Crime Information Center [NCIC]. The NCIC is currently the Nation's most extensive computerized criminal justice information system, containing criminal history information, files on wanted persons, and information on stolen vehicles and missing persons.

I am very concerned about continuing reports of unauthorized access to highly personal and sensitive government information about individual Americans, such as NCIC data. For example, a ''Dear Abby'' column that appeared on June 20, 1996 in newspapers across the country carried a letter by a woman who claimed her in-laws ''ran her name through the FBI computer'' and, apparently, used access to the NCIC for personal purposes.

This published complaint comes on the heels of a General Accounting Office [GAO] report presented on July 28, 1993, before the House Government Operations Committee, Subcommittee on Information, Justice, Agriculture, and Transportation, on the abuse of NCIC information. Following an investigation, GAO determined that NCIC information had been misused by insiders—individuals with authorized access—some of whom had sold NCIC information to outsiders and determined whether friends and relatives had criminal records. The GAO found that some of the misuse jeopardized the safety of citizens and potentially jeopardized law enforcement personnel. Yet, no Federal or State laws are specifically directed at NCIC misuse and most abusers of NCIC were not criminally prosecuted. GAO concluded that Congress should enact legislation with strong criminal sanctions for the misuse of NCIC data.

This bill would criminalize these activities by amending the privacy protection provision in section 1030(a)(2) and extending its coverage to Federal Government computers. If the information obtained is of minimal value, the penalty is only a misdemeanor. If, on the other hand, the offense is committed for purposes of commercial advantage or private financial gain, for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State, or if the value of the information obtained exceeds $5,000, the penalty is a felony.

The current statute, in section 1030(a)(5), protects computers and computer systems from damage caused by either outside hackers or malicious insiders ''through means of a computer used in interstate commerce or communications.'' It does not, however, expressly prohibit the transmission of harmful computer viruses or programs from abroad, even though, a criminal armed with a modem and a computer can wreak havoc on computers located in the United States from virtually anywhere in the world. This is a significant challenge in fighting cybercrime: There are no borders or passport checkpoints in cyberspace. Communications flow seamlessly through cyberspace across datelines and the reach of local law enforcement.

Indeed, we have seen a number of examples of computer crimes directed from abroad, including the 1994 intrusion into the Rome Laboratory at Grifess Air Force Base in New York from the United Kingdom and the 1996 intrusion into Harvard University's computers from Buenos Aires, Argentina.

Additionally, the statute falls short of protecting our Government and financial institution computers from intrusive codes, such as computer viruses or worms. Generally, hacker intrusions that inject worms or viruses into a government or financial institution computer system, which is not used in -

interstate communications, are not federal offenses. The legislation would change that limitation and extend federal protection from intentionally damaging viruses to government and financial institution computers, even if they are not used in interstate communications.

The NII Protection Act would close these loopholes. Under the legislation, outside hackers—including those using foreign communications—and malicious insiders face criminal liability for intentionally damaging a computer. Outside hackers who break into a computer could also be punished for any reckless or other damage they cause by their trespass.

The current statute protects against computer abuses that cause computer ''damage'', a term that is defined to require either significant financial losses or potential impact on medical treatment. Yet, the NII and other computer systems are used for access to critical services such as emergency response systems, air traffic control, and the electrical power systems. These infrastructures are heavily dependent on computers. A computer attack that damages those computers could have significant repercussions for our public safety and our national security. The definition of ''damage'' in the Computer Fraud and Abuse statute should be sufficiently broad to encompass these types of harm against which people should be protected. The NII Protection Act addresses this concern and broadens the definition of ''damage'' to include causing physical injury to any person and threatening the public health or safety.

Finally, this legislation address a new and emerging problem of computer-age blackmail. This is a high-technology variation on old fashioned extortion. One case has been brought to my attention in which a person threatened to crash a computer system unless he was given free access to the system and an account. One can imagine situations in which hackers penetrate a system, encrypt a database and then demand money for the decoding key. This new provision would ensure law enforcement's ability to prosecute modern-day blackmailers, who threaten to harm or shut down computer networks unless their extortion demands are met.

Confronting cybercrime with up-to-date criminal laws, coupled with tough law enforcement, are critical for safeguarding the privacy, confidentiality and reliability of our critical computer systems and networks. I commend the Attorney General and the prosecutors within the Department of Justice who have worked diligently on this legislation and for their continuing efforts to address this critical area of our criminal law.

In sum, the NII Protection Act will provide much needed protection for our Nation's critical information infrastructure by penalizing those who abuse computers to damage computer networks, steal classified and valuable computer information, and commit other crimes on-line.

Mr. STEVENS. Mr. President, I ask unanimous consent that the amendments be agreed to, the motions to reconsider be laid on the table, en bloc, the committee amendment be agreed to, the bill be deemed read for the third time, passed, as amended, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 5388 and 5389), en bloc, were agreed to.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 982), as amended, was deemed read the third time, and passed, as follows:

S. 982

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Information Infrastructure Protection Act of 1996''.

SEC. 2. COMPUTER CRIME.

Section 1030 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''knowingly accesses'' and inserting ''having knowingly accessed'';

(ii) by striking ''exceeds'' and inserting ''exceeding'';

(iii) by striking ''obtains information'' and inserting ''having obtained information'';

(iv) by striking ''the intent or'';

(v) by striking ''is to be used'' and inserting ''could be used''; and

(vi) by inserting before the semicolon at the end the following: ''willfully communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it'';

(B) in paragraph (2)—

(i) by striking ''obtains information'' and inserting ''obtains—

''(A) information''; and

(ii) by adding at the end the following new subparagraphs:

''(B) information from any department or agency of the United States; or

''(C) information from any protected computer if the conduct involved an interstate or foreign communication;'';

(C) in paragraph (3)—

(i) by inserting ''nonpublic'' before ''computer of a department or agency'';

(ii) by striking ''adversely''; and

(iii) by striking ''the use of the Government's operation of such computer'' and inserting ''that use by or for the Government of the United States'';

(D) in paragraph (4)—

(i) by striking ''Federal interest'' and inserting ''protected''; and

(ii) by inserting before the semicolon the following: ''and the value of such use is not more than $5,000 in any 1-year period'';

(E) by striking paragraph (5) and inserting the following:

''(5)(A) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer;

''(B) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage; or

''(C) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage;''; and

(F) by inserting after paragraph (6) the following new paragraph:

''(7) with intent to extort from any person, firm, association, educational institution, financial institution, government entity, or other legal entity, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to cause damage to a protected computer;'';

(2) in subsection (c)—

(A) in paragraph (1), by striking ''such subsection'' each place that term appears and inserting ''this section'';

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by inserting '', (a)(5)(C),'' after ''(a)(3)''; and

(II) by striking ''such subsection'' and inserting ''this section'';

(ii) by redesignating subparagraph (B) as subparagraph (C);

(iii) by inserting immediately after subparagraph (A) the following:

''(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(2), if—

''(i) the offense was committed for purposes of commercial advantage or private financial gain;

''(ii) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State; or

''(iii) the value of the information obtained exceeds $5,000;''; and

(iv) in subparagraph (C) (as redesignated)—

(I) by striking ''such subsection'' and inserting ''this section''; and

(II) by adding ''and'' at the end;

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking ''(a)(4) or (a)(5)(A)'' and inserting ''(a)(4), (a)(5)(A), (a)(5)(B), or (a)(7)''; and

(II) by striking ''such subsection'' and inserting ''this section''; and

(ii) in subparagraph (B)—

(I) by striking ''(a)(4) or (a)(5)'' and inserting ''(a)(4), (a)(5)(A), (a)(5)(B), (a)(5)(C), or (a)(7)''; and

(II) by striking ''such subsection'' and inserting ''this section''; and

(D) by striking paragraph (4);

(3) in subsection (d), by inserting ''subsections (a)(2)(A), (a)(2)(B), (a)(3), (a)(4), (a)(5), and (a)(6) of'' before ''this section.'';

(4) in subsection (e)—

(A) in paragraph (2)—

(i) by striking ''Federal interest'' and inserting ''protected'';

(ii) in subparagraph (A), by striking ''the use of the financial institution's operation or the Government's operation of such computer'' and inserting ''that use by or for the financial institution or the Government''; and

(iii) by striking subparagraph (B) and inserting the following:

''(B) which is used in interstate or foreign commerce or communication;'';

(B) in paragraph (6), by striking ''and'' at the end;

(C) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following new paragraphs:

''(8) the term 'damage' means any impairment to the integrity or availability of data, a program, a system, or information, that—

''(A) causes loss aggregating at least $5,000 in value during any 1-year period to one or more individuals;

''(B) modifies or impairs, or potentially modifies or impairs, the medical examination, diagnosis, treatment, or care of one or more individuals;

''(C) causes physical injury to any person; or

''(D) threatens public health or safety; and

''(9) the term 'government entity' includes the Government of the United States, any State or political subdivision of the United States, any foreign country, and any state, province, municipality, or other political subdivision of a foreign country.''; and

(5) in subsection (g)—

(A) by striking '', other than a violation of subsection (a)(5)(B),''; and

(B) by striking ''of any subsection other than subsection (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb)'' and inserting ''involving damage as defined in subsection (e)(8)(A)''.

SEC. 3. TRANSFER OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY.

(a) AMENDMENT OF SECTION 4243 OF TITLE 18.—Section 4243 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(i) CERTAIN PERSONS FOUND NOT GUILTY BY REASON OF INSANITY IN THE DISTRICT OF COLUMBIA.—

''(1) TRANSFER TO CUSTODY OF THE ATTORNEY GENERAL.—Notwithstanding section 301(h) of title 24 of the District of Columbia Code, and notwithstanding subsection 4247(j) of this title, all persons who have been committed to a hospital for the mentally ill pursuant to section 301(d)(1) of title 24 of the District of Columbia Code, and for whom the United States has continuing financial responsibility, may be transferred to the custody of the Attorney General, who shall hospitalize the person for treatment in a suitable facility.

''(2) APPLICATION.—

''(A) IN GENERAL.—The Attorney General may establish custody over such persons by filing an application in the United States District Court for the District of Columbia, demonstrating that the person to be transferred is a person described in this subsection.

''(B) NOTICE.—The Attorney General shall, by any means reasonably designed to do so, provide written notice of the proposed transfer of custody to such person or such person's guardian, legal representative, or other lawful agent. The person to be transferred shall be afforded an opportunity, not to exceed 15 days, to respond to the proposed transfer of custody, and may, at the court's discretion, be afforded a hearing on the proposed transfer of custody. Such hearing, if granted, shall be limited to a determination of whether the constitutional rights of such person would be violated by the proposed transfer of custody.

''(C) ORDER.—Upon application of the Attorney General, the court shall order the person transferred to the custody of the Attorney General, unless, pursuant to a hearing under this paragraph, the court finds that the proposed transfer would violate a right of such person under the United States Constitution.

''(D) EFFECT.—Nothing in this paragraph shall be construed to—

''(i) create in any person a liberty interest in being granted a hearing or notice on any matter;

''(ii) create in favor of any person a cause of action against the United States or any officer or employee of the United States; or

''(iii) limit in any manner or degree the ability of the Attorney General to move, transfer, or otherwise manage any person committed to the custody of the Attorney General.

''(3) CONSTRUCTION WITH OTHER SECTIONS.—Subsections (f) and (g) and section 4247 shall apply to any person transferred to the custody of the Attorney General pursuant to this subsection.''.

(b) TRANSFER OF RECORDS.—Notwithstanding any provision of the District of Columbia Code or any other provision of law, the District of Columbia and St. Elizabeth's Hospital—

(1) not later than 30 days after the date of enactment of this Act, shall provide to the Attorney General copies of all records in the custody or control of the District or the Hospital on such date of enactment pertaining to persons described in section 4243(i) of title 18, United States Code (as added by subsection (a));

(2) not later than 30 days after the creation of any records by employees, agents, or contractors of the District of Columbia or of St. Elizabeth's Hospital pertaining to persons described in section 4243(i) of title 18, United States Code, provide to the Attorney General copies of all such records created after the date of enactment of this Act;

(3) shall not prevent or impede any employee, agent, or contractor of the District of Columbia or of St. Elizabeth's Hospital who has obtained knowledge of the persons described in section 4243(i) of title 18, United States Code, in the employee's professional capacity from providing that knowledge to the Attorney General, nor shall civil or criminal liability attach to such employees, agents, or contractors who provide such knowledge; and

(4) shall not prevent or impede interviews of persons described in section 4243(i) of title 18, United States Code, by representatives of the Attorney General, if such persons voluntarily consent to such interviews.

(c) CLARIFICATION OF EFFECT ON CERTAIN TESTIMONIAL PRIVILEGES.—The amendments made by this section shall not be construed to affect in any manner any doctor-patient or psychotherapist-patient testimonial privilege that may be otherwise applicable to persons found not guilty by reason of insanity and affected by this section.

(d) SEVERABILITY.—If any provision of this section, an amendment made by this section, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this section and the amendments made by this section shall not be affected thereby.

SEC. 4. ESTABLISHING BOYS AND GIRLS CLUBS.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) the Boys and Girls Clubs of America, chartered by an Act of Congress on December 10, 1991, during its 90-year history as a national organization, has proven itself as a positive force in the communities it serves;

(B) there are 1,810 Boys and Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 2,420,000 youths nationwide;

(C) 71 percent of the young people who benefit from Boys and Girls Clubs programs live in our inner cities and urban areas;

(D) Boys and Girls Clubs are locally run and have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement;

(E) Boys and Girls Clubs are located in 289 public housing sites across the Nation;

(F) public housing projects in which there is an active Boys and Girls Club have experienced a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime;

(G) these results have been achieved in the face of national trends in which overall drug use by youth has increased 105 percent since 1992 and 10.9 percent of the Nation's young people use drugs on a monthly basis; and

(H) many public housing projects and other distressed areas are still underserved by Boys and Girls Clubs.

(2) PURPOSE.—It is the purpose of this section to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,000 additional local Boys and Girls Clubs in public housing projects and other distressed areas by 2001.

(b) DEFINITIONS.—For purposes of this section—

(1) the terms ''public housing'' and ''project'' have the same meanings as in section 3(b) of the United States Housing Act of 1937; and

(2) the term ''distressed area'' means an urban, suburban, or rural area with a high percentage of high risk youth as defined in section 509A of the Public Health Service Act (42 U.S.C. 290aa–8(f)).

(c) ESTABLISHMENT.—

(1) IN GENERAL.—For each of the fiscal years 1997, 1998, 1999, 2000, and 2001, the Director of the Bureau of Justice Assistance of the Department of Justice shall provide a grant to the Boys and Girls Clubs of America for the purpose of establishing Boys and Girls Clubs in public housing projects and other distressed areas.

(2) CONTRACTING AUTHORITY.—Where appropriate, the Secretary of Housing and Urban Development, in consultation with the Attorney General, shall enter into contracts with the Boys and Girls Clubs of America to establish clubs pursuant to the grants under paragraph (1).

(d) REPORT.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing Boys and Girls Clubs in public housing projects and other distressed areas, and the effectiveness of the programs in reducing drug abuse and juvenile crime.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(A) $20,000,000 for fiscal year 1997;

(B) $20,000,000 for fiscal year 1998;

(C) $20,000,000 for fiscal year 1999;

(D) $20,000,000 for fiscal year 2000; and

(E) $20,000,000 for fiscal year 2001.

(2) VIOLENT CRIME REDUCTION TRUST FUND.—The sums authorized to be appropriated by this subsection may be made from the Violent Crime Reduction Trust Fund.

HONORARY CITIZENSHIP OF THE UNITED STATES ON MOTHER TERESA

Mr. STEVENS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 191, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 191) to confer honorary citizenship of the United States on Agnes Gonxha Bojaxhiu also known as Mother Teresa.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. STEVENS. Mr. President, I am proud to be able to offer this resolution which confers honorary citizenship of the United States on Mother Teresa.

I ask unanimous consent that the resolution be deemed read the third time, passed, the preamble be agreed to, the motion to reconsider be laid on the table, and that any statements relating to the resolution appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolution (H.J. Res. 191) was deemed read the third time, and passed.

The preamble was agreed to.

SUPPORTING THE INDEPENDENCE AND SOVEREIGNTY OF UKRAINE

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate Foreign Relations Committee be discharged from further consideration of House Concurrent Resolution 120, and the Senate now proceed to its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 120) supporting the independence and sovereignty of Ukraine and the progress of its political and economic reforms.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. STEVENS. I ask unanimous consent the resolution be deemed agreed to, the preamble be agreed to, the motion to reconsider be laid on the table, and that any statements relating to the resolution appear in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 120) was agreed to.

The preamble was agreed to.

OAHU NATIONAL WILDLIFE REFUGE

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of Calendar No. 459, H.R. 1772.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1772) to authorize the Secretary of the Interior to acquire certain interests in the Waihee Marsh for inclusion in the Oahu National Wildlife Refuge Complex.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. I ask unanimous consent that the bill be deemed read for a third time and passed, the motion to reconsider be laid on the table, and any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1772) was deemed read for a third time and passed.

SILVIO O. CONTE NATIONAL FISH AND WILDLIFE REFUGE ACT

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of Calendar No. 517, H.R. 2909.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2909) to amend the Silvio O. Conte National Fish and Wildlife Refuge Act to provide that the Secretary of the Interior may acquire land for purposes of that Act only by donation or exchange, or otherwise with the consent of the owner of the lands.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, I ask unanimous consent that the bill be deemed read for a third time and passed, the motion to reconsider be laid on the table, and any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2909) was deemed read for a third time and passed.

UNANIMOUS-CONSENT AGREEMENT—H.R. 3676, S. 2006, AND S. 2007

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now proceed to the consideration en bloc of H.R. 3676, which is at the desk, Calendar 560, which is S. 2006, and Calendar 561, which is S. 2007.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise in strong support of the Carjacking Correction Act of 1996, a bill I introduced earlier this year in the Senate, the companion of which, H.R. 3676, has now come over from the House. This bill adds an important clarification to the Federal carjacking statute, to provide that a rape committed during a carjacking should be considered a serious bodily injury.

I am pleased to be joined in this effort by the ranking member of the Judiciary Committee, Senator BIDEN. He has long been a leader in addressing the threat of violence against women, and demonstrates that again today.

I also want to thank Representative JOHN CONYERS, the ranking member of the House Judiciary Committee, who brought this matter to my attention, and has led the effort in the House for passage of this legislation.

This correction to the law is necessitated by the fact that at least one court has held that under the Federal carjacking statute, rape would not constitute a serious bodily injury. Few crimes are as brutal, vicious, and harmful to the victim than rape by an armed thug. Yet, under this interpretation, the sentencing enhancement for such injury may not be applied to a carjacker who brutally rapes his victim.

In my view, Congress should act now to clarify the law in this regard. The bill I introduced this year, S. 2006, and its companion House bill, H.R. 3676, would do this by specifically including rape as serious bodily injury under the statute.

I urge my colleagues to support this bill, and anticipate its swift passage.

The bill (H.R. 3676) was ordered to a third reading, was read the third time, and passed.

S. 2006

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Carjacking Correction Act of 1996''.

SEC. 2. CLARIFICATION OF INTENT OF CONGRESS WITH RESPECT TO THE FEDERAL CARJACKING PROHIBITION.

Section 2119(2) of title 18, United States Code, is amended by inserting '', including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title'' after ''(as defined in section 1365 of this title''.;

CARJACKING CORRECTION ACT OF 1996

The bill (S. 2007) to clarify the intent of Congress with respect to the Federal carjacking prohibition, was considered.

Mr. BIDEN. Mr. President, I am very pleased that this bill will soon become law. I commend my cosponsor, Senator HATCH, and I also commend Representative CONYERS, who championed this bill over in the House, and with whom I was proud to work on it.

A few months ago, the first circuit court of appeals made a mistake. It made, in my view, a very big mistake: It said that the term ''serious bodily injury'' in one of our Federal statutes does not include rape.

Let me tell you about the case. One night near midnight, a woman went to her car after work. While she was getting something out of the back seat, a man with a knife came up from behind and forced her back into the car. He drove her to a remote beach, ordered her to take off her clothes, and made her squat down on her hands and knees.

Then he raped her. After the rape, he drove off in her car, leaving her alone on the side of the road.

The man was convicted under the Federal carjacking statute. That statute provides for an enhanced sentence of up to 25 years if the defendant inflicts ''serious bodily injury'' in the course of a carjacking.

When it got time to sentence the defendant, the prosecutor asked the court to enhance the sentence because of the rape. Mind you, there was no dispute that the defendant had, in fact, raped the victim.

The trial judge agreed with the prosecutor, and gave the defendant the statutory 25 years maximum, finding that the rape constituted ''serious bodily injury.''

But when the case went up to the first circuit, that court said ''no''—rape is not serious bodily injury. To support its ruling, and I'm now quoting the opinion, the court said that ''There was no evidence of any cuts or bruises in her vaginal area.''

That, in my view, is absolutely outrageous—and Senator HATCH and I proposed this bill to set matters straight.

Under the code, ''serious bodily injury'' has several definitions. It includes: a substantial risk of death; protracted and obvious disfigurement; protracted loss or impairment of a bodily part or mental faculty; and it also includes extreme physical pain.

It takes no great leap of logic to see that a rape involves extreme physical pain. and I would go so far as to say that only a panel of male judges could fail to make that leap and even think—let alone rule—that rape does not involve extreme pain.

Rape is one of the most brutal and serious crimes any woman can experience. It is a violation of the first order, but it has all too often been treated like a second class crime. According to a report I issued a few years ago, a robber is 30 percent more likely to be convicted than a rapist; a rape prosecution is more than twice as likely as a murder prosecution to be dismissed; a convicted rapist is 50 percent more likely to receive probation than a convicted robber.

No crime carries a perfect record of arrest, prosecution, and incarceration—but the record for rape is especially wanting.

And this first circuit decision helps explain why: too often, our criminal justice system just doesn't get it.

If the first circuit decision were allowed to stand, it would mean that a criminal would spend more time behind bars for breaking a man's arm than for raping a woman.

For 5 long years, I worked to pass a piece of legislation that I have cared about like no other: The Violence Against Women Act. The act does a great many practical things:

It funds more police and prosecutors specially trained and devoted to combating rape and family violence;

It trains police, prosecutors, and judges in the ways of rape and family violence—so they can better understand and respond to the problem;

It provides shelters for more than 60,000 battered women and their children;

It provides extra lighting and emergency phones in subways, bus stops, and parks;

It provides for more rape crises centers;

It set up a national hotline that battered women can call around the clock—to get advice and counseling when they are in the throes of a crisis;

And we're getting rape education efforts going with our young people—so we can break the cycle of violence before it gets started.

But the Violence Against Women Act also meant to do something else, beyond these concrete measures: it also sent a clarion call across our land that crimes against women will no longer be treated as second class crimes.

For too long, the victims of these crimes have been seen not as innocent targets of brutality, but as participants who somehow bear shame or even some responsibility for the violence.

This is especially true when it comes to victims who know their assailants. For too long, we have been quick to call theirs a private misfortune rather than a public disgrace. We have viewed the crime as less than criminal, the abuser less than culpable, and the victim less than worthy of justice.

We must remain ever vigilant in our efforts to make our streets and our neighborhoods and our homes safe for women.

And we need to make sure—right now—that no judge ever misreads the carjacking statute again. With this bill, we are telling them that we intend, that we always intended, for those words ''serious bodily injury'' to mean rape—no if's, and's or but's.

I thank my colleagues for their support.

The bill (S. 2007) was ordered to be engrossed for a third reading, was read the third time, and passed; as follows:

S. 2007

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Carjacking Correction Act of 1996''.

SEC. 2. CLARIFICATION OF INTENT OF CONGRESS WITH RESPECT TO THE FEDERAL CARJACKING PROHIBITION.

Section 2119(2) of title 18, United States Code, is amended by inserting '', including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title'' after ''(as defined in section 1365 of this title)''.

ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of H.R. 3802, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3802) to amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide public access to information in an electronic format, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I am delighted that we have today reached final passage of important amendments to the Freedom of Information Act that will bring the FOIA into the electronic age. Sending these amendments to the President for enactment is a tremendous way to mark the 30th anniversary of the Freedom of Information Act.

The FOIA has served the country well in maintaining the right of Americans to know what their government is doing—or not doing. As President Johnson said in 1966, when he signed the Freedom of Information Act into law:

> This legislation springs from one of our most essential principles: A democracy works best when the people have all the information that the security of the Nation permits.

Just over the past few months, records released under the FOIA have revealed FAA actions against Valujet before the May 11 crash in the Everglades, the government's treatment of South Vietnamese commandos who fought in a CIA-sponsored army in the early 1960's, the high salaries paid to independent counsels, the unsafe lead content of D.C. tap water, and the types of tax cases that the IRS recommends for criminal prosecution.

In the 30 years since the Freedom of Information Act became law, technology has dramatically altered the way government handles and stores information. Gone are the days when agency records were solely on paper stuffed into file cabinets. Instead, agencies depend on personal computers, computer databases and electronic storage media, such as CD—ROM's, to carry out their mission.

The time is long overdue to update this law to address new issues related to the increased use of computers by Federal agencies. Computers are just as ubiquitous in Federal agency offices as in the private sector. We need to make clear that the FOIA is not just a right to know what's on paper law, but that it applies equally to electronic records.

That is why Senator BROWN, Senator KERRY and I, with the strong support of many library, press, civil liberties, consumer and research groups, have pushed for passage of the Electronic FOIA bill. The Senate recognized the need to update the FOIA in the last Congress by passing an earlier version of this bill.

This legislation takes steps so that agencies use technology to make government more accessible and accountable to its citizens. Storing government information on computers should actually make it easier to provide public access to information in more meaningful formats. For example, people with sight or hearing impairments can use special computer programs to translate electronic information into braille or large print or synthetic speech output.

Electronic records also make it possible to provide dial-up access to any citizen who can use computer networks, such as the Internet. Those Americans living in the remotest rural area in Vermont, or in a distant State far from Federal agencies' public reading rooms here in Washington, DC, should be able to use computer networks to get direct access to the warehouse of unclassified information stored in government computer banks. The explosion of the Internet adds enormously to the need for clarification of the status of electronic government records under the FOIA and the significance of this legislation for citizen access. These amendments to the FOIA will encourage Federal agencies to use the Internet to increase access to Government records for all Americans.

Ensuring public access to electronic government records is not just important for broader citizen access. Information is a valuable commodity and the Federal Government is probably the largest single producer and repository of accurate information. This Government information is a national resource that commercial companies pay for under the FOIA, add value to, and then sell—creating jobs and generating revenue in the process. It is important for our economy and for American competitiveness that fast, easy access to that resource in electronic form be available. The electronic FOIA bill would contribute to our information economy.

I would like to highlight some of what this bill would accomplish. First, it would require agencies to provide records in a requested format whenever possible. Second, the bill would encourage agencies to increase on-line access to government records that agencies currently put in their public reading rooms. These records would include copies of records that are the subject of repeated FOIA requests.

Finally, the bill would address the biggest single complaint of people making FOIA requests: delays in getting a response. I understand that at the FBI, the delays can stretch to over 4 years. Because of these delays, writers, students and teachers and others working under time deadlines, have been frustrated in using FOIA to meet their research needs. Long delays in access can mean no access at all.

The current time limits in the FOIA are a joke. Few agencies actually respond to FOIA requests within the 10-day limit required in the law. Such routine failure to comply with the statutory time limits is bad for morale in the agencies and breeds contempt by citizens who expect government officials to abide by, not routinely break, the law.

I appreciate the budget and resource constraints under which agencies are operating. We have made every effort in this bill to make sure it works for both agencies and requestors. Some agencies, particularly those with huge backlogs of FOIA requests resulting in delays of up to four years for an agency response, are concerned that the bill removes backlogs as an automatic excuse to ignore the time limits. But we should not give agencies an incentive to create backlogs. Agencies will have to show that they are taking steps to reduce their backlogs before they qualify for additional time to respond to a FOIA request.

While increased computer access to government records may necessitate an initial outlay of money and effort, as more information is made available on-line, the labor intensive task of physically searching and producing documents should be reduced. The net result should be increased efficiency in satisfying agency FOIA obligations, reduced paperwork burdens, reduced errors and better service to the public.

The Electronic FOIA bill should help agencies comply with the law's time limits by doubling the ten-day time limit to give agencies a more realistic time period for responding to FOIA requests, making more information available on-line, requiring the use of better record management techniques, such as multi-track processing, and providing expedited access to requestors who demonstrate a compelling need for a speedy response.

All these steps, and others in the bill, may not provide a total cure but should help reduce the endemic delay problems.

This legislation has had a lengthy germination. Senator BROWN and I first introduced the bill in the 102d Congress, when I chaired extensive hearings on the bill. We introduced the legislation again in the 103d Congress, and saw the bill pass through the Judiciary Commitee and then the Senate only to falter in the House of Representatives. In this Congress, the Senate Judiciary Committee again considered this legislation, reported it favorably, and the Senate has passed it for the second time, bringing us to final passage of the legislation.

I commend members of the House Government Reform and Oversight Subcommittee on Government Management, Information and Technology, and, in particular, Chairman Horn, Ranking Member Maloney, and Representatives Tate and Peterson, for taking up the challenge and moving this legislation this year. They saw this bill for what it is: a good government issue, not a partisan one.

We have worked diligently to sort out any differences in the House and Senate bills, and we can all be proud of the final product reflected in the final legislation passed today. I want to specially thank Chairman HATCH and Chairman SPECTER for their cooperation in moving this bill through Committee and the staffs from the House and Senate. In particular, Mark Uncafer, Janie Kong and David McMillan from the House, and David Miller, Richard Hertling, Manus Cooney, and Elizabeth Kessler from the Senate, as well as my own Judiciary Committee staff, should be applauded for their hard work on this legislation and making sure the process worked.

I also want to commend the following organizations because without their support over the years, it would have been much more difficult to pass this legislation: the American Society of Newspaper Editors, the Newspaper Association of America, the National Newspaper Association, the Association of American Publishers, Radio and TV News Directors Association, the Society of Professional Journalists, the National Association of Broadcasters, Public Citizen, OMB Watch, American Library Association, the National Security Archive, the Federation of American Scientists, the ACLU, the Fund for Constitutional Government, the Lawyers Committee for Human Rights, the Electronic Frontier Foundation, the Electronic Privacy Information Center, the Center for Democracy and Technology, and Americans for Tax Reform.

Finally, I want to thank Sally Katzen, the Administrator of the Office of Information and Regulatory Affairs at OMB, for the time and effort she committed to working through the many concerns of Federal agencies who institutionally resist change in this area.

Even as we have worked on this legislation, new issues about the coverage of the FOIA have surfaced. I refer specifically to the recent D.C. Court of Appeals case that decided that the National Security Council is not an ''agency'' subject to the FOIA, despite the fact that the NSC has complied with the FOIA for years under both Republican and Democratic Presidents. Litigation on this matter continues and the case may now go to the U.S. Supreme Court. Clarification of the offices within the White House that are subject to the FOIA may be a matter requiring congressional attention in the next Congress.

As the Federal government increasingly maintains its records in electronic form, we need to make sure that this information is available to citizens on the same basis as information in paper files. Enactment of the Electronic Freedom of Information amendments of 1996 will fulfill the promise first made thirty years ago in the FOIA that citizens have a right to know and a right to see the records the government collects with their tax dollars.

Mr. STEVENS. I ask unanimous consent the bill be deemed read for a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3802) was deemed read for a third time and passed.

NATIONAL TRANSPORTATION SAFETY BOARD AMENDMENTS OF 1996

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 503, S. 1831.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1831) to amend title 49, United States Code, to authorize appropriations for fiscal years 1997, 1998, and 1999 for the National Transportation Safety Board, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. PRESSLER. Mr. President, I am pleased to bring to the Senate S. 1831, the National Transportation Safety Board Amendments of 1996. This bill is sponsored by myself, along with Senators HOLLINGS, LOTT, FORD, and STEVENS. As chairman of the Committee on Commerce, Science, and Transportation, I urge swift passage of this bipartisan reauthorization bill.

Mr. President, the National Transportation Safety Board [NTSB] is one of our government's most important independent agencies. Its statutory mission is to determine the probable cause of transportation accidents and to promote transportation safety. The NTSB is world renown for its timely and expert determinations of accident causation and for issuing realistic and feasible safety recommendations.

The NTSB investigates all types of transportation accidents and incidents. It also conducts transportation safety studies and evaluates the effectiveness of other government agencies' programs for preventing transportation accidents. Indeed, its work product is critical.

As my colleagues are acutely aware, the NTSB is faced with an extremely heavy workload. In addition to investigating the two most recent major aviation accidents, TWA flight 800 and ValuJet flight 592, the NTSB continues its work on several other major ongoing investigations, including the USAir accident near Pittsburgh, Pennsylvania, the school bus/train collision in Fox River Grove, Illinois, and the MARC commuter Train/Amtrak collision near Silver Spring, MD. Many other investigations also are underway.

Mr. President, the NTSB's authorization expires at the end of fiscal year 1996—the end of this month. Earlier this year, the Senate Committee on Commerce, Science, and Transportation held a hearing on issues relating to reauthorization of the NTSB. On June 4, 1996, S. 1831 was introduced. It was ordered reported by a unanimous vote of the Commerce Committee on June 6, 1996.

S. 1831 provides a three year authorization of appropriations for fiscal years 1997, 1998 and 1999 at a level of 370 FTEs. It establishes sufficient funding levels to enable the NTSB to carry out its immense workload, yet does so in a fiscally responsible manner.

The bill also includes a few minor statutory changes as requested by the NTSB. First, the bill provides a temporary deferral of Freedom of Information Act (FOIA) requests regarding the release of foreign aviation accident or incident information for 2 years or until the foreign government leading the investigation approves the release of the information. This would apply to NTSB participation in foreign accident investigations only. Additionally, the NTSB would not be restricted from utilizing foreign accident investigation information in making safety recommendations.

Mr. President, the December 1995 American Airlines accident in Colombia is a good example of the kind of problem this provision seeks to remedy. Because of the location of the accident, the Colombian government is leading the investigation and the NTSB is participating. As a participant, NTSB has complete access to accident information, but the Government of Colombia—as lead investigator—determines when any information can be released. Since NTSB is covered by FOIA, any information in the Board's possession could be requested under FOIA. To avoid releasing information prior to the Colombian government's approval, I am told the NTSB avoids bringing any accident information into its actual possession and control. This hampers NTSB's ability to effectively assist in the investigation of this type of accident.

Second, the legislation creates a statutory exemption from FOIA for aviation data voluntarily supplied to the NTSB. The aviation industry currently generates a wealth of information not required to be collected by the government. While this data could be extremely useful to the NTSB, the industry is reluctant to share it because of concerns it will be released to the public through FOIA requests. This provision is designed to encourage the aviation industry to more freely share significant safety-related data with the Board.

Finally, S. 1831 grants authority to the Board to charge non-NTSB personnel attending its training courses for the costs associated with their attendance.

The NTSB carries out an enormously important public service. They do admirable work and deserve our full support. This legislation will ensure the NTSB can continue its essential work in an efficient manner.

Mr. President, the amendment I am offering to S. 1831 is almost identical to S. 1957, the Intermodal Safe Container Transportation Amendments Act of 1996, which I introduced on July 16, 1996. It is designed to give motor carriers the information necessary to prevent the carriage of overweight intermodal containers. S. 1957, cosponsored by Senators LOTT, INOUYE and BREAUX, is a bipartisan technical corrections bill to the Intermodal Safe Container Transportation Act of 1992.

To address legitimate concerns raised by shippers and carriers about implementation of the 1992 Act, including timely compliance and the need for world-wide education, this amendment would help streamline the implementation process. It would reduce unnecessary paperwork requirements that otherwise would be imposed and allow greater use of electronic interchange technology to expedite the transfer of information. It also would eliminate needless compliance burdens on smaller shipments, yet ensure the intent of the 1992 Act is not jeopardized.

Mr. President, overweight vehicles impair safety and cause severe damage to our nation's highway infrastructure. The purpose of the 1992 Act was to help prevent the operation of overweight vehicles on our nation's roads and highways. This amendment would help ensure the purpose of the 1992 Act is carried out by allowing the law to be implemented in a reasonable manner.

Mr. President, this amendment is critical to the future of intermodal transportation. I urge its adoption and passage of S. 1831.

Mr. FORD. Mr. President, the passage of S. 1831, which reauthorizes the National Transportation Safety Board [NTSB] is a very important matter.

One cannot watch television lately without seeing the NTSB in action. Everyone knows that the NTSB is the primary agency responsible for investigating each accident. When an accident occurs, it is the NTSB's job to secure the scene, and coordinate all activities. The Board has spent and is still spending countless hours trying to figure out the TWA crash off of Long Island, the ValuJet crash in Florida, the USAir crash in Pittsburgh, the American crash in Cali, Colombia, and the crash of Ron Brown's plane in Croatia, to name but a few. No matter what the circumstances of any accident, the NTSB is always there to fulfill their vital role. The Board's work in other transportation areas also continues. Rail, highway, and maritime accidents continue to receive the care and attention of the NTSB needed to make our transportation system safer.

I would like to commend all the NTSB staff and its Board members for their fine work and dedication. While we often recognize the Chairman of the Board, Jim Hall, and the Vice Chairman, Bob Francis, they know the quality of the NTSB employees. The staff's efforts are really an example of public service at its very best.

The President has also given the NTSB a new role. The NTSB has been designated as the lead agency for providing information and coordinating services for the families of victims of aviation disasters. This is a key role. The NTSB may require additional resources, and we may need to revisit the issue next year.

The bill before us today ensures that the NTSB will be able to continue carrying out its mandate. The bill provides $42.4 million for fiscal year 1997, $44.4 million for fiscal year 1998, and $46.6 million for fiscal year 1999. The bill authorizes 370 FTE's, an additional 20 FTE's from the original request submitted by the administration. It is clear from seeing the demands placed on the NTSB that the additional staff are needed.

As a cosponsor of the bill, I urge my colleagues to support it.

Mr. INOUYE. Mr. President, I rise in support of S. 1831 which is similar to H.R. 3152 which the Senate will pass tonight. Title I of this bill reauthorizes the National Transportation Safety Board [NTSB]. The NTSB plays an integral role in the transportation life of this nation and it deserves our continued support and respect. The NTSB has over many years acquitted itself in determining the cause of transportation accidents and recommending actions to prevent repetitions of these accidents. Particularly over the last several months NTSB has shown the World its professionalism. I wish to note my firm support for the agency its members and its personnel and assure them and this body of my continued support for an appropriation that allows it to accomplish its mission. Safety is the highest mission any agency can have and the NTSB clearly is a lead agency in ensuring the safety of the travelling public.

I also support title II of S. 1831, which contains the Intermodal Safe Container Transportation Amendments Act of 1996. These amendments modify the Intermodal Safe Container Transportation Act of 1992, Public Law 102–548 in an effort to strengthen that legislation. These amendments have been crafted in a true bipartisan manner. The Commerce Committee staff has crafted these amendments with industry representatives and in consultation with the Department of Transportation. In fact, these amendments are supported by a wide range of transportation and shipper interests. Carriers of every transportation mode have written in support of these amendments. In addition, the Nation's largest shipper associations and the nation's ports also support this effort.

These amendments will prevent cargo at the Nation's ports from simply lying at those ports and ensure rather that cargo speeds to its destination. Under the original legislation, cargo in containers weighing over 10,000 pounds would have to be certified, in writing, by the shipper before the container could leave the port for its next destination. The truck driver or the rail carrier taking the container to its next destination would be required to carry that certification and subject to a fine if he or she is caught without this piece of paper. Potentially, the certification could be delayed, or in the case of international cargo there could be delayed, or in the case of international cargo there could be confusion as to the requirement for a certificate. Should a container not have a certificate it would be required to stay at the port or at the point of shipment clogging the port and delaying delivery of critical time sensitive cargo.

These amendments clarify and simplify the procedures for certification. One provision of these amendments prevents delay and confusion by the simple expedient of raising the certification requirement to 29,000 pounds. Certification as to the weight of the container will be required if its weight is in excess of that amount. With this provision fewer containers will be required to remain at port or point of shipment awaiting certification.

Another provision dispenses with the requirement that the certification be carried with the container. Instead, the information on the certification will be required to be made available on request. Thus, police officers or state officials requesting the certification information could access it by fax or other electronic means. The information would be provided without the unnecessarily delaying transport.

It is important to note what these amendments do not do. They do not in anyway alter any State or Federal law limiting the amount of weight a motor carrier or rail carrier may carry. Likewise, the amendments do not change current limits concerning the amount of hazardous materials a carrier may transport. These limits are left intact. It bears repeating: These amendments do not change any law respecting the transportation of hazardous materials or place any additional burden on the Nation's highway and bridges.

I urge my colleagues to vote in favor of this legislation.

Mr. HOLLINGS. Mr. President, I am pleased the Senate is considering S. 1831, a bill which reauthorizes the National Transportation Safety Board [NTSB].

As we know, all too well I might add, the NTSB is required to investigate transportation accidents. It is called upon immediately following a transportation catastrophe to send out the right people to carry out a thorough examination of the facts and circumstances surrounding each event. We can see evidence of NTSB investigators carrying out this mandate every day on the news as they continue the grim task of investigating the crash of TWA Flight 800 off the coast of Long Island. This inquiry is being conducted simultaneously with the ValuJet Flight 592 investigation in the Everglades. The NTSB is asked repeatedly to assist in investigations overseas such as the one a few months ago in Croatia where my good friend Ron Brown was killed in a military plane crash. When a barge hits a railroad bridge, or a train collides with another train, the NTSB is called upon to figure out what happened, and more importantly, to figure out how to prevent tragedies from recurring.

Concerning TWA Flight 800, the NTSB is working with local and State officials, the FBI, the Navy, and most importantly, with the families. The investigation is a painstaking, detailed process—literally requiring divers to pick up by hand the wreckage 110 feet below the surface. The divers, working in teams, have done an extraordinary job to facilitate the NTSB's investigation. Teamwork is essential and the efforts of all involved are very much appreciated.

The NTSB does excellent work. I would especially like to commend its Chairman Jim Hall and Vice Chairman Robert Francis for all their hard work and dedication. Their service on the NTSB could not have come at a more critical time, and I appreciate their great efforts as well as those of the other members of the Board and all the NTSB staff.

As I have said before, if this were a perfect world, we would not need the NTSB. But as we have seen all too well in the last few months, we need the NTSB now more than ever. Ensuring the safety of our transportation system is of primary importance, and I believe passage of this bill is vital to that goal.

I urge my colleagues to vote in favor of this legislation.

Mr. BREAUX. Mr. President, I rise in support of the bill that reauthorizes the operations of the National Transportation Safety Board [NTSB]. The NTSB is an extremely important Federal agency, as evidenced by their professionalism in the investigation of the recent Valujet and TWA airplane disasters. Safety should be one of the paramount transportations issues confronting the Federal Government, and the Federal Government's paramount transportation safety agency is the NTSB. The NTSB deserves our support.

I am particularly pleased to see that the NTSB reauthorization has been amended to include a new Title II, which would add the provisions of S. 1957, the Intermodal Safe Container Transportation Act Amendments Act. The Intermodal Safe Container Transportation Amendments Act is a bill which would address some of the problems which were created with the 1992 enactment of the original Intermodal Safe Container Transportation Act.

The purpose for enacting the original Intermodal Safe Container Transportation Act was to ensure that intermodal shipping containers were not exceeding certain weight limitations. Overweight shipping containers constitute a significant threat to the safety of our Nations infrastructure. The principals of the original enactment were sound. Unfortunately, the implementation of that original Intermodal Safe Container Act has the potential to unnecessarily create a number of problems that could impede the transfer of intermodal containers and affect our international and domestic intermodal trade.

A coalition of ocean shipping companies, trucking companies, railroad

companies, ports and shippings have worked hard to develop a legislative proposal to address the problems that could be caused through the implementation of the original law. Senate Commerce Committee staff has worked to further refine the industry proposal. I believe that the provisions embodies in S. 1957, balance the interests of all segments of the transportation community, while at the same time preserving the original bill's intent to protect our infrastructure from overweight containers. This bill in no way impedes the application of current laws governing the safe transportation of hazardous materials

As a Senator from the State of Louisiana, who represents the Port of the New Orleans, I understand the special importance of continuing to facilitate international and domestic trade in as safe a manner as possible. I urge my colleagues to support the NTSB reauthorization bill, and to help facilitate the implementation of the Intermodal Safe Contained Transportation Act.

AMENDMENT NO. 5390

(Purpose: To amend chapter 59 of title 49, United States Code, relating to intermodal safe container transportation)

Mr. STEVENS. Mr. President, Senator PRESSLER has an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. PRESSLER, proposes an amendment numbered 5390.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, before line 1, insert the following:

TITLE I—NTSB AMENDMENTS

On page 2, line 1, strike ''SECTION 1.'' and insert ''SEC. 101.''.

On page 2, line 4, strike ''SEC. 2.'' and insert ''SEC. 102.''.

On page 3, line 3, strike ''SEC. 3.'' and insert ''SEC. 103.''.

On page 3, line 17, strike ''SEC. 4.'' and insert ''SEC. 104.''.

On page 4, line 8, strike ''SEC. 5.'' and insert ''SEC. 105.''.

On page 4, after line 15, insert the following:

TITLE II—INTERMODAL TRANSPORTATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Intermodal Safe Container Transportation Amendments Act of 1996''.

SEC. 202. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49 of the United States Code.

SEC. 203. DEFINITIONS.

Section 5901 (relating to definitions) is amended—

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

''(1) except as otherwise provided in this chapter, the definitions in sections 10102 and 13102 of this title apply.'';

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(3) by inserting after paragraph (5) the following:

''(6) 'gross cargo weight' means the weight of the cargo, packaging materials (including ice), pallets, and dunnage.''.

SEC. 204. NOTIFICATION AND CERTIFICATION.

(a) PRIOR NOTIFICATION.—Subsection (a) of section 5902 (relating to prior notification) is amended—

(1) by striking ''Before a person tenders to a first carrier for intermodal transportation a'' and inserting ''If the first carrier to which any'';

(2) by striking ''10,000 pounds (including packing material and pallets), the person shall give the carrier a written'' and inserting ''29,000 pounds is tendered for intermodal transportation is a motor carrier, the person tendering the container or trailer shall give the motor carrier a'';

(3) by striking ''trailer.'' and inserting ''trailer before the tendering of the container or trailer.'';

(4) by striking ''electronically.'' and inserting ''electronically or by telephone.''; and

(5) by adding at the end thereof the following: ''This subsection applies to any person within the United States who tenders a container or trailer subject to this chapter for intermodal transportation if the first carrier is a motor carrier.''

(b) CERTIFICATION.—Subsection (b) of section 5902 (relating to certification) is amended to read as follows:

''(b) CERTIFICATION.—

''(1) IN GENERAL.—A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation shall provide a certification of the contents of the container or trailer in writing, or electronically, before or when the container or trailer is so tendered.

''(2) CONTENTS OF CERTIFICATION.—The certification required by paragraph (1) shall include—

''(A) the actual gross cargo weight;

''(B) a reasonable description of the contents of the container or trailer;

''(C) the identify of the certifying party;

''(D) the container or trailer number; and

''(E) the date of certification or transfer of data to another document, as provided for in paragraph (3).

''(3) TRANSFER OF CERTIFICATION DATA.—A carrier who receives a certification may transfer the information contained in the certification to another document or to electronic format for forwarding to a subsequent carries. The person transferring the information shall state on the forwarded document the date on which the data was transferred and the identify of the party who performed the transfer.

''(4) SHIPPING DOCUMENTS.—For purposes of this chapter, a shipping document, prepared by the person who tenders a container or trailer to a first carrier, that contains the information required by paragraph (2) meets the requirements of paragraph (1).

''(5) USE OF 'FREIGHT ALL KINDS' TERM.—The term 'Freight All Kinds' or 'FAK' may not be used for the purpose of certification under section 5902(b) after December 31, 2000, as a commodity description for a trailer or container if the weight of any commodity in the trailer or container equals or exceeds 20 percent of the total weight of the contents of the trailer or container. This subsection does not prohibit the use of the term after that date for rating purposes.

''(6) SEPARATE DOCUMENT MARKING.—If a separate document is used to meet the requirements of paragraph (1), it shall be conspicuously marked 'INTERMODAL CERTIFICATION'.

''(7) APPLICABILITY.—This subsection applies to any person, domestic or foreign, who first tenders a container or trailer subject to this chapter for intermodal transportation within the United States.''.

(c) FORWARDING CERTIFICATIONS.—Subsection (c) of section 5902 (relating to forwarding certifications to subsequent carriers) is amended—

(1) by striking ''transportation.'' and inserting ''transportation before or when the loaded intermodal container or trailer is tendered to the subsequent carrier. If no certification is received by the subsequent carrier before or when the container or trailer is tendered to it, the subsequent carrier may presume that no certification is required.''; and

(2) by adding at the end thereof the following: ''If a person inaccurately transfers the information on the certification, or fails to forward the certification to a subsequent carries, then that person is liable to any person who incurs any bond, find, penalty, cost (including storage), or interest for any such fine, penalty, cost (including storage), or interest incurred as a result of the inaccurate transfer of information or failure to forward the certification. A subsequent carrier who incurs a bond, fine, penalty, or cost (including storage), or interest as a result of the inaccurate transfer of the information, or the failure to forward the certification, shall have a lien against the contents of the containers or trailer under section 5905 in the amount of the bond, fine, penalty, or cost (including storage), or interest and all court costs and legal fees incurred by the carrier as a result of such inaccurate transfer or failure.''

(d) LIABILITY.—Section 5902 is amended by redesignating subsection (d) as subsection (e), and by inserting after subsection (c) the following:

''(d) LIABILITY TO OWNER OR BENEFICIAL OWNER.—If—

''(1) a person inaccurately transfers information on a certification required by subsection (b)(1), or fails to forward a certification to the subsequent carrier;

''(2) as a result of the inaccurate transfer of such information or a failure to forward a certification, the subsequent carrier incurs a bond, fine, penalty, or cost (including storage), or interest; and

''(3) that subsequent carrier exercises its rights to a lien under section 5905,

then that person is liable to the owner or beneficial owner, or to any other person paying the amount of the lien to the subsequent carrier, for the amount of the lien and all costs related to the imposition of the lien, including court costs and legal fees incurred in connection with it.''.

(e) NONAPPLICATION.—Subsection (e) of section 5902, as redesignated, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by inserting before paragraph (2), as redesignated, the following:

''(1) The notification and certification requirements of subsections (a) and (b) of this section do not apply to any intermodal container or trailer containing consolidated shipments loaded by a motor carrier if that motor carrier—

''(A) performs the highway portion of the intermodal movement; or

''(B) assumes the responsibility for any weight-related fine or penalty incurred by any other motor carrier that performs a part of the highway transportation.''.

SEC. 205. PROHIBITIONS

Section 5903 (relating to prohibitions) is amended—

(1) by inserting after ''person'' and comma and the following: ''to whom section 5902(b) applies,'';

(2) by striking subsection (b) and inserting the following:

''(b) TRANSPORTING PRIOR TO RECEIVING CERTIFICATION.—

''(1) PRESUMPTION.—If no certification is received by a motor carrier before or when a loaded intermodal container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight of the container or trailer is less than 29,001 pounds.

''(2) COPY OF CERTIFICATION NOT REQUIRED TO ACCOMPANY CONTAINER OR TRAILER.—Notwithstanding any other provision of this chapter to the contrary, a copy of the certification required by section 5902(b) is not required to accompany the intermodal container or trailer.'';

(3) by striking ''10,000 pounds (including packing materials and pallets)'' in subsection (c)(1) and inserting ''29,000 pounds''; and

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

''(d) NOTICE TO LEASED OPERATORS.—

''(1) IN GENERAL.—If a motor carrier knows that the gross cargo weight of an intermodal container or trailer subject to the certification requirements of section 5902(b) would result in a violation of applicable State gross vehicle weight laws, than—

''(A) the motor carrier shall give notice to the operator of a vehicle which is leased by the vehicle operator to a motor carrier that transports an intermodal container or trailer of the gross cargo weight of the container or trailer as certified to the motor carrier under section 5902(b);

''(B) the notice shall be provided to the operator prior to the operator being tendered the container or trailer;

''(C) the notice required by this subsection shall be in writing, but may be transmitted electronically; and

''(D) the motor carrier shall bear the burden of proof to establish that it tendered the required notice to the operator.

''(2) REIMBURSEMENT.—If the operator of a leased vehicle transporting a container or trailer subject to this chapter is fined because of a violation of a State's gross vehicle weight laws or regulations and the lessee motor carrier cannot establish that it tendered to the operator the notice required by paragraph (1) of this subsection, then the operator shall be entitled to reimbursement from the motor carrier in the amount of any fine and court costs resulting from the failure of the motor carrier to tender the notice to the operator.''.

SEC. 206. LIENS.

Section 5905 (relating to liens) is amended—

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

''(a) GENERAL.—If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required, because of a violation of a State's gross vehicle weight laws or regulations, to post a bond or pay a fine, penalty, cost (including storage), or interest resulting from—

''(1) erroneous information provided by the certifying party in the certification to the first carrier in violation of section 5903(a) of this title;

''(2) the failure of the party required to provide the certification to the first carrier to provide it;

''(3) the failure of a person required under section 5902(c) to forward the certification to forward it; or

''(4) an error occurring in the transfer of information on the certification to anther document under section 5902(b)(3) or (c), then the person posting the bond, or paying the fine, penalty, costs (including storage), or interest has a lien against the contents equal to the amount of the bond, fine, penalty, cost (including storage), or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents, or from the person responsible for making or forwarding the certification, or transferring the information from the certification to another document.'';

(2) by inserting a comma and ''or the owner or beneficial owner of the contents,'' after ''first carrier'' in subsection (b)(1); and

(3) by striking ''cost, or interest.'' in subsection (b)(1) and inserting ''cost (including storage), or interest. The lien shall remain in effect until the lien holder has received payment for all costs and expenses described in subsection (a) of this section.''.

SEC. 207. PERISHABLE AGRICULTURAL COMMODITIES.

Section 5906 (relating to perishable agricultural commodities) is amended by striking ''Section 5904(a)(2) and 5905 of this title do'' and inserting ''Section 5905 of this title does''.

SEC. 208. EFFECTIVE DATE.

(a) IN GENERAL.—Section 5907 (relating to regulations and effective date) is amended to read as follows:

§ 5907. Effective date

''This chapter shall take effect 180 days after the date of enactment of the Intermodal Safe Container Transportation Amendments Act of 1996.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 59 is amended by striking the items relating to section 5709 and inserting the following:

''5907. Effective date''.

SEC. 209. RELATIONSHIP TO OTHER LAWS.

(a) IN GENERAL.—Chapter 59 is amended by adding at the end thereof the following:

§ 5908. Relationship to other laws

''Nothing in this chapter affects—

''(1) chapter 51 (relating to transportation of hazardous material) or the regulations promulgated under that chapter; or

''(2) any State highway weight or size law or regulation applicable to tractor-trailer combinations.''.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by adding at the end thereof the following:

''5908. Relationship to other laws''

Mr. STEVENS. I ask this amendment be agreed to.

The amendment (No. 5390) was agreed to.

Mr. STEVENS. I ask unanimous consent the bill be considered read for a third time, the Senate immediately proceed to Calendar 508, H.R. 3159, further, all after the enacting clause be stricken and the text of S. 1831, as amended, be inserted in lieu thereof, the bill be deemed read for a third time and passed, the motion to reconsider be laid upon the table, any statements related to the bill be printed at the appropriate place in the RECORD, and finally, S. 1831 be placed back on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3159), as amended, was deemed read a third time and passed, as follows:

[The bill was not available for printing. It will appear in a future issue of the RECORD.]

ORDERS FOR THURSDAY, SEPTEMBER 19, 1996

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:30 a.m. on Thursday, September 19; further, that immediately following the prayer, the Journal of proceedings be deemed approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and there be a period for the transaction of morning business not to extend beyond the hour of 11 a.m., with the following Senators to be recognized for the designated time: Senator THOMAS for 30 minutes; Senator CONRAD for 30 minutes; Senator HEFLIN for 10 minutes; Senator REID for 10 minutes; Senator MURKOWSKI for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I further ask unanimous consent that following morning business at 11 a.m., the Senate resume consideration of S. 39, the Magnuson fisheries bill. At that time, under a previous order, there will be 4 minutes of debate equally divided on a Hutchison amendment. Following that debate time, I ask unanimous consent that the Senate proceed to a rollcall vote on or in relation to the Hutchison amendment, if necessary, to be followed by a rollcall vote on passage of S. 39, the Magnuson fisheries bill, as amended, and I ask paragraph 4 of rule XII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. STEVENS. Mr. President, tomorrow at 11 a.m., following the 4 minutes of debate, the Senate will proceed to one, perhaps two, consecutive rollcall votes—first, on or in relation to the Hutchison amendment, if necessary, to be followed by a vote on the passage of the Magnuson fisheries bill. Following the votes, or vote, the Senate may be asked to turn to consideration of any of the following items: The pipeline safety bill, the maritime bill, H.R. 1350, available appropriations bills or conference reports. Rollcall votes are, therefore, possible throughout Thursday's session on the items just mentioned or any other items cleared for action.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. STEVENS. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:48 p.m., adjourned until Thursday, September 19, 1996, at 9:30 a.m.