

MAGNUSON-STEVENSON ACT AMENDMENTS OF 2002

OCTOBER 11, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4749]

The Committee on Resources, to whom was referred the bill (H.R. 4749) to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENT REFERENCES.**

(a) **SHORT TITLE.**—This Act may be cited as the “Magnuson-Stevens Act Amendments of 2002”.

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

- Sec. 1. Short title; table of contents; amendment references.
- Sec. 2. Technical corrections to definitions.
- Sec. 3. Report on over capitalization.
- Sec. 4. Buyout provisions.
- Sec. 5. Data collection.
- Sec. 6. Ecosystem-based management.
- Sec. 7. Observers.
- Sec. 8. Overfishing.
- Sec. 9. Bycatch and seabird interactions.
- Sec. 10. Fish habitat research and protection.
- Sec. 11. Demonstration program for oyster sanctuaries and reserves.
- Sec. 12. Individual quota limited access programs.
- Sec. 13. Cooperative education and research.
- Sec. 14. Report on highly migratory species.
- Sec. 15. Prohibited acts.
- Sec. 16. Membership of fishery management councils.
- Sec. 17. Miscellaneous amendments to purposes and policy.
- Sec. 18. Foreign fishing.
- Sec. 19. Driftnets.
- Sec. 20. Sources for data in fisheries research.
- Sec. 21. Miscellaneous fishery protections in fishery management plans.
- Sec. 22. Cooperative marine education and research program.
- Sec. 23. Assessment of cumulative impacts of conservation and management measures for a fishery.
- Sec. 24. Regional stock assessments.

Sec. 25. National Academy of Sciences guidance and standards regarding best scientific information available.  
 Sec. 26. National Academy of Sciences definition of maximum sustainable yield.  
 Sec. 27. Administration of Pacific Insular Area fishery agreements.  
 Sec. 28. Highly migratory species bycatch mortality reduction research program.  
 Sec. 29. Authorization of appropriations.

(c) AMENDMENT OF MAGNUSON-STEVENS 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-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

## SEC. 2. TECHNICAL CORRECTIONS TO DEFINITIONS.

(a) EXECUTION OF PRIOR AMENDMENTS.—

(1) CONTINENTAL SHELF FISHERY RESOURCES.—Section 102(2) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3561) is amended—

(A) by striking “COELENTERATA” and inserting “COELENTERATA”;

(B) by striking “CNIDARIA” and inserting “CNIDARIA”; and

(C) by striking “CRUSTACEA” and inserting “CRUSTACEA”.

(2) UNITED STATES HARVESTED FISH.—Section 102(11) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3563) is amended by striking “(42)” and inserting “(43)”.

(3) EFFECTIVE DATE.—This subsection shall take effect on the effective date of section 102 of Public Law 104–297.

(b) CORRECTIONS RELATING TO SPECIAL AREAS.—Section 3 (16 U.S.C. 1802) is amended—

(1) by striking paragraphs (35) and (36);

(2) by redesignating paragraphs (37) through the last paragraph (relating to the definition of “waters of a foreign nation”) in order as paragraphs (35) through (44);

(3) by inserting “(a) GENERAL DEFINITIONS.—” before “As used in this Act”; and

(4) by adding at the end the following:

“(b) TERMS RELATING TO AGREEMENT WITH THE FORMER SOVIET UNION.—As used in this Act 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.”.

## SEC. 3. REPORT ON OVER CAPITALIZATION.

(a) IN GENERAL.—The Secretary shall, within 12 months after the date of the enactment of this Act, submit to the Congress a report—

(1) identifying and describing the 20 fisheries in United States waters with the most severe examples of excess harvesting capacity in the fisheries, based on value of each fishery and the amount of excess harvesting capacity as determined by the Secretary;

(2) recommending measures for reducing such excess harvesting capacity, including the retirement of any latent fishing permits that could contribute to further excess harvesting capacity in those fisheries; and

(3) potential sources of funding for such measures.

(b) BASIS FOR RECOMMENDATIONS.—The Secretary shall base the recommendations made with respect to a fishery on—

(1) the most cost effective means of achieving voluntary reduction in capacity for the fishery using the potential for industry financing; and

(2) including measures to prevent the capacity that is being removed from the fishery from moving to other fisheries in the United States, in the waters of a foreign nation, or in the high seas.

## SEC. 4. BUYOUT PROVISIONS.

(a) DISCRETION OF SECRETARY TO CONDUCT FISHING CAPACITY REDUCTION PROGRAM.—Section 312(b) (16 U.S.C. 1861a(b)) is amended—

(1) in paragraph (1) by striking “, 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,”;

(2) in paragraph (1), by inserting “that is managed under a limited access system authorized by section 303(b)(6),” after “in a fishery”; and

(3) by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following:

“(4) The Council, or the Governor of a State, having authority over a fishery may request the Secretary to conduct a fishing capacity reduction program in the fishery under this subsection.”

(b) REQUIREMENT TO SURRENDER ALL PERMITS.—Section 312(b)(2) (16 U.S.C. 1861a(b)(2)) is amended to read as follows:

“(2)(A) 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.

“(B) To achieve that objective, the Secretary is authorized to pay an amount to the owner of a fishing vessel, if—

“(i) such vessel is scrapped, or 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;

“(ii) all permits authorizing the participation of the vessel in any fishery under the jurisdiction of the United States are surrendered for permanent revocation; and

“(iii) the owner of the vessel and such permits relinquishes any claim associated with the vessel and such permits that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established.”

(c) ENSURING VESSELS DO NOT ENTER FOREIGN OR HIGH SEAS FISHERIES.—Section 312(b) (16 U.S.C. 1861a(b)) is further amended by adding at the end the following:

“(6) The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped, unless the Secretary certifies that the vessel will not be used for any fishing, including fishing in the waters of a foreign nation and fishing on the high seas.”

#### SEC. 5. DATA COLLECTION.

(a) COLLECTION OF RECREATIONAL CATCH DATA.—Section 402 (16 U.S.C. 1881a) is amended by adding at the end the following:

“(f) COLLECTION OF RECREATIONAL CATCH DATA.—(1) The Secretary shall develop and implement a program for the sharing of recreational catch data for all federally managed fisheries through the use of information gathered from State-licensed recreational fishermen.

“(2) The Secretary shall conduct the program in consultation with the principle State officials having marine fishery management responsibility and expertise.

“(3) The Secretary shall report to the Congress within three years after the effective date of this subsection, on—

“(A) the progress made in developing such a program; and

“(B) whether the program has resulted in significantly better data collection for the recreational fishing sector.”

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Commerce shall submit to the Congress a report describing the following:

(1) Economic data from United States processors that is necessary to conduct fishing community and economic analysis determinations required under chapter 6 of title 5, United States Code, popularly known as the Regulatory Flexibility Act.

(2) The reasons why such information is not available through other sources such as tax returns, the Bureau of Labor Statistics, and State labor departments.

(3) The steps the Secretary would take under section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a) to ensure the confidentiality of such information (especially proprietary information), if the information were obtained by the Secretary.

#### SEC. 6. ECOSYSTEM-BASED MANAGEMENT.

(a) POLICY.—Section 2(c) (16 U.S.C. 1851(c)) by striking “and” after the semicolon at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting “; and”, and by adding at the end the following:

“(8) to support and encourage efforts to understand the interactions of species in the marine environment and the development of ecosystem-based approaches to fisheries conservation and management that will lead to better stewardship and sustainability of the Nation’s coastal fishery resources and fishing communities.”

(b) AUTHORIZATION OF RESEARCH.—Section 404(c) (16 U.S.C. 1881c(c)) is amended by adding at the end the following:

“(5) The interaction of species in the marine environment, and the development of ecosystem-based approaches to fishery conservation and management that will lead to better stewardship and sustainability of coastal fishery resources.”.

(c) DEFINITIONS AND CRITERIA FOR MANAGEMENT PLANS.—

(1) IN GENERAL.—The Secretary shall, in conjunction with the Councils—

(A) create a definition for “ecosystem” and for “marine ecosystem”; and  
(B) establish criteria for the development of ecosystem-based management plans by each regional fishery management council based on the recommendations of the Ecosystems Principles Advisory Panel.

(2) REPORT.—The Secretary shall report to the Congress within 2 years after the date of the enactment of this Act on the criteria, including an identification and description of those criteria for which sufficient data is not available.

(d) IDENTIFICATION OF MARINE ECOSYSTEMS; RESEARCH PLAN.—

(1) IN GENERAL.—Within one year after the date of the submission of the report under subsection (c)(2) to the Congress, the Secretary, in conjunction with the regional science centers and the regional fishery management councils, shall—

(A) identify specific marine ecosystems within each region; and  
(B) also develop and begin to implement regional research plans to meet the information deficit identified in the report.

(2) RESEARCH PLANS.—The research plans shall suggest reasonable timelines and cost estimates for the collection of the required information.

(3) REPORTS.—The Secretary shall report to the Congress annually on the progress of the regional research plans.

(e) ECOSYSTEM-BASED FISHERY MANAGEMENT PLAN PILOT PROGRAM.—

(1) IN GENERAL.—Upon the completion of development of regional research plans under subsection (d)(1), the Secretary of Commerce shall establish and begin implementing a pilot program for the management of one fishery on the east coast of the United States and one fishery on the west coast of the United States under an ecosystem-based fishery management plan under the Magnuson-Stevens Fishery Conservation and Management Act.

(2) CONSULTATION.—The Secretary shall develop and implement ecosystem-based fishery management plans under this subsection in consultation with the appropriate Regional Fishery Management Councils.

(f) DISCRETIONARY PROVISION IN FISHERY MANAGEMENT PLANS.—Section 303(b)(12) (16 U.S.C. 1853(b)(12)) is amended by inserting before the period the following: “or for the health or stability of the marine ecosystem”.

**SEC. 7. OBSERVERS.**

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary shall report to the Congress on the needs for a national observer program.

(b) RECOMMENDATIONS.—The report shall make recommendations on observation options, including electronic data collection technologies and on-board observers.

(c) OTHER CONTENTS.—The Secretary, in the report, shall include the following:

(1) A determination of whether the data collection needs are for management or enforcement purposes.

(2) A statement of the level of observer coverage necessary in various types of fisheries to provide statistically reliable information.

(3) Cost estimates for various levels of observer coverage.

(4) Options for the funding of observer coverage.

(5) The types of vessels and fisheries for which observer coverage cannot be required due to safety concerns.

(6) Recommendations for the use of the data gathered by the observing systems.

(7) Recommendations for the confidentiality of proprietary information collected through the program.

**SEC. 8. OVERFISHING.**

(a) CLARIFICATION OF DEFINITION.—Section 3 (16 U.S.C. 1802) is further amended by amending paragraph (29) of subsection (a) to read as follows:

“(29)(A) The term ‘overfished’ means, with respect to a stock of fish, that the stock is of a size that is below the natural range of fluctuation associated with the production of maximum sustainable yield.

“(B) The term ‘overfishing’ means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.”.

(b) DISTINGUISHING IN REPORTS.—Section 304(e)(1) (16 U.S.C. 1854(e)(1)) is amended by adding at the end the following: “The report shall distinguish between

fisheries that are overfished (or approaching that condition) as a result of fishing and fisheries that are overfished (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as overfished or approaching that condition, whether the fishery is the target of directed fishing.”

(c) NATIONAL ACADEMY OF SCIENCES DEFINITION OF OVERFISHED.—

(1) IN GENERAL.—The Secretary of Commerce shall enter into an arrangement with the National Academy of Sciences under which the Academy shall develop a definition of “overfished” for purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). The Academy shall consider the definition of the term in that Act (as amended by this Act) and the National Marine Fisheries Service operational definition of the term. The Academy shall also consider environmental variability and other factors that contribute to low abundance of fish stocks.

(2) PUBLICATION AND OPPORTUNITY FOR COMMENT.—The Secretary shall publish the results of the activities of the Academy under paragraph (1) and provide an opportunity for the submission of comments regarding the definition developed under paragraph (1).

**SEC. 9. BYCATCH AND SEABIRD INTERACTIONS.**

(a) BYCATCH REPORTING.—

(1) REPEAL OF STANDARDIZED BYCATCH REPORTING METHODOLOGY REQUIREMENT.—Section 303(a)(11) (16 U.S.C. 1853(a)(11)) is amended in the matter preceding subparagraph (A) by striking “establish” and all that follows through “fishery, and”.

(2) DEVELOPMENT OF BYCATCH REPORTING METHODOLOGIES.—Section 304 (16 U.S.C. 1854) is amended by adding at the end the following:

“(i) DEVELOPMENT OF BYCATCH REPORTING METHODOLOGIES.—The Secretary shall, in cooperation with the Councils, develop bycatch reporting methodologies to assess the amount and type of bycatch occurring in United States fisheries.”.

(3) REPORT.—The Secretary of Commerce shall report to the Congress within one year after the date of the enactment of this Act on progress the Secretary has made in developing bycatch reporting methodologies pursuant to the amendment made by paragraph (2).

(b) CHARITABLE DONATION OF BYCATCH.—Section 303(b) (16 U.S.C. 1853(b)) is amended by striking “and” after the semicolon at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting a semicolon, and by adding at the end the following:

“(13) allow the retention and donation for charitable purposes of all dead bycatch that cannot otherwise be avoided under terms that ensure, through the use of onboard fishery observers or other equally effective means, that such retention and donation do not allow the evasion of vessel trip limits, total allowable catch levels, or other conservation and management measures;”.

(c) BYCATCH REDUCTION GEAR DEVELOPMENT.—

(1) IN GENERAL.—Title IV (1 U.S.C. 1881 et seq.) is amended by adding at the end the following:

**“SEC. 408. GEAR DEVELOPMENT.**

“(a) IDENTIFICATION OF FISHERIES WITH SIGNIFICANT BYCATCH AND SEABIRD INTERACTION PROBLEMS.—(1) The Secretary, in conjunction with the Councils, shall identify and publish in the Federal Register a list of fisheries with significant bycatch problems or seabird interaction problems, as determined under criteria developed by the Secretary.

“(2) The list shall contain, for each fishery identified, information on—

“(A) the number of participants in the fishery;

“(B) the types of gears used in the fishery;

“(C) the bycatch species and species of seabirds that interact with fishing gear;

“(D) the amount of bycatch, and the percentage of total catch that is bycatch; and

“(E) any other relevant information.

“(3) The Secretary shall solicit comments on each list published under this subsection.

“(b) IDENTIFICATION OF FISHERIES WITH MOST URGENT PROBLEMS.—The Secretary shall—

“(1) identify those fisheries included in a list under paragraph (1) that have the most urgent bycatch problems or seabird interaction problems, based on comments received regarding the list; and

- “(2) work in conjunction with the Councils and fishing industry participants to develop new fishing gear, or modifications to existing fishing gear, that will help minimize bycatch and seabird interactions to the extent practicable.
- “(c) GRANT AUTHORITY.—The Secretary shall, subject to the availability of appropriations, make grants for the development of fishing gear and modifications to existing fishing gear that will help—
- “(1) minimize bycatch and seabird interactions; and
- “(2) minimize adverse fishing gear impacts on habitat areas of particular concern.
- “(d) REPORT.—The Secretary shall report to the Congress annually on—
- “(1) the amount expended to implement this section in the preceding year;
- “(2) developments in gear technology achieved under this section;
- “(3) the reductions in bycatch associated with implementation of this section; and
- “(4) any other relevant information.
- “(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary \$10,000,000 for each of fiscal years 2003 through 2007.”.
- (2) CLERICAL AMENDMENT.—The table of contents in the first section is amended by adding at the end of the items relating to title IV the following:
- “Sec. 408. Gear development.”.
- (d) REPORT.—The Secretary of Commerce shall report to the Congress within one year after the date of the enactment of this Act on—
- (1) the extent of the problem of seabird interaction with fisheries of the United States;
- (2) efforts by the fishing industry and Regional Fishery Management Councils to address that problem; and
- (3) the extent of the problem of seabird interaction with fisheries other than the fisheries of the United States.
- (e) INTERNATIONAL ACTION.—The Secretary of Commerce shall take appropriate action at appropriate international fisheries management bodies to reduce seabird interactions in fisheries.

**SEC. 10. FISH HABITAT RESEARCH AND PROTECTION.**

- (a) PRIORITY RESEARCH.—Section 404 (16 U.S.C. 1881c) is amended by adding at the end the following:
- “(e) PRIORITY FOR RESEARCH REGARDING OVERFISHED FISHERIES.—In carrying out or funding fisheries research under this and other laws regarding essential fish habitat, the Secretary shall give priority to research to identify such habitat for fisheries that are overfished or approaching an overfished condition.”.
- (b) REQUIRED PROVISION IN FISHERY MANAGEMENT PLANS.—Section 303(a)(7) (16 U.S.C. 1853(a)(7)) is amended to read as follows:
- “(7)(A) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A);
- “(B) minimize to the extent practicable adverse effects on such habitat caused by fishing for those fisheries identified by the Council as having available information on the growth, reproduction, or survival rates within habitats or production rates by habitat, or for those fisheries that the Council determines the specific fishing activity effects on the essential fish habitat jeopardize the ability of the fishery to produce maximum sustained yield on a continuing basis;
- “(C) minimize to the extent practicable adverse effects on habitat areas of particular concern caused by fishing; and
- “(D) identify other actions to encourage the conservation and enhancement of such habitat;”.
- (c) DISCRETIONARY PROVISION IN FISHERY MANAGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b)) is further amended by adding after paragraph (13) the following:
- “(14) minimize to the extent practicable adverse effects caused by fishing, on essential fish habitat described and identified under section 303(a)(7)(A);”.
- (d) HABITAT AREA OF PARTICULAR CONCERN DEFINED.—Section 3 (16 U.S.C. 1802) is further amended in subsection (a) by redesignating paragraphs (19) through (44) in order as paragraphs (20) through (45), and by inserting after paragraph (18) the following:
- “(19) The term ‘habitat area of particular concern’ means a discrete habitat area that is essential fish habitat and that—
- “(A) provides important ecological functions;
- “(B) is sensitive to human-induced environmental degradation; or
- “(C) is a rare habitat type.”.

**SEC. 11. DEMONSTRATION PROGRAM FOR OYSTER SANCTUARIES AND RESERVES.**

(a) **IN GENERAL.**—The Secretary of Commerce, through the National Oceanic and Atmospheric Administration Chesapeake Bay Office, shall develop a program for the design, construction, and placement of oyster sanctuaries or reserves consistent with the agreement known as the Chesapeake 2000 Agreement. The program shall be developed in conjunction with the Corps of Engineers, the Coast Guard, the Environmental Protection Agency, the United States Fish and Wildlife Service, the State of Maryland, the Commonwealth of Virginia, the Oyster Recovery Partnership, the Chesapeake Bay Foundation, the Oyster Heritage Foundation, local commercial and recreational fishing organizations, the Port of Baltimore, the Port of Hampton Roads, the University of Maryland, the Virginia Institute of Marine Sciences, and other users of the waters of the Chesapeake Bay, as appropriate.

(b) **STRUCTURES.**—The program shall include the design, construction, placement, and restoration of structures, including reefs and bars, to act as beds for oyster production. The structures should be designed to maximize the production of oysters while minimizing conflicts with existing uses such as fishing or navigation. The structures shall be placed in areas in which they will not be hazards to navigation. The Secretary shall work with interested parties to ensure that all sites are adequately marked on navigation charts as appropriate.

(c) **RESEARCH PLAN.**—The Secretary shall develop a research plan, consistent with efforts to implement the Chesapeake 2000 Agreement, for the placement of structures under the program, including measurable goals and a monitoring program to determine the effectiveness of the structures in recovering native oyster populations.

(d) **FISHING REGULATIONS.**—The Secretary shall recommend State regulations restricting fishing in the waters surrounding structures placed under this section as necessary to ensure the reproduction of oysters on the structures. The restrictions may be seasonal in nature, and shall not apply in any area that is located more than 100 meters from such a structure.

(e) **RESTORATION OF NATIVE OYSTERS.**—The program shall use only native oyster species.

(f) **REPORT.**—The Secretary of Commerce shall submit to the Congress annual reports on the program under this section.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—To carry out this section there is authorized to be appropriated to the Secretary \$5,000,000 for each of fiscal years 2004 through 2009.

(2) **LIMITATION.**—Not more than 5 percent of amounts appropriated under this section may be available for administrative expenses.

**SEC. 12. INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS.**

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

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

“(A) in developing such system, the Councils and the Secretary take into account—

“(i) the need to promote conservation,

“(ii) present participation in the fishery,

“(iii) historical fishing practices in, and dependence on, the fishery,

“(iv) the economics of the fishery,

“(v) the capability of fishing vessels used in the fishery to engage in other fisheries,

“(vi) the cultural and social framework relevant to the fishery and fishing communities, and

“(vii) any other relevant considerations; and

“(B) in the case of such a system that provides for the allocation and issuance of individual quotas (as that term is defined in subsection (d)), the system complies with subsection (d).”.

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

(1) by redesignating paragraphs (2), (3), (4), and (5) in order as paragraphs (10), (11), (12), and (13), and by moving such paragraphs 2 ems to the left;

(2) in paragraph (11)(B), as so redesignated, by inserting “, including as a result of a violation of this Act or any regulation prescribed under this Act” before the semicolon;

(3) by adding at the end the following:

“(14) As used in this subsection:

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

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

(4) by striking so much as precedes paragraph (10), as so redesignated, and inserting the following:

“(d) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA SYSTEMS.—(1) A fishery management plan for a fishery that is managed under a limited access system authorized by subsection (b)(6) may establish an individual quota system for the fishery in accordance with this subsection.

“(2) A fishery management plan that establishes an individual quota system for a fishery—

“(A) shall provide for administration of the system by the Secretary in accordance with the terms of the plan;

“(B) shall include provisions that establish procedures and requirements for each Council having authority over the fishery, for—

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

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

“(C) shall include provisions to—

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

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

“(iii) provide for monitoring the temporary or permanent transfer of individual quotas under the system;

“(D) shall include provisions that prevent any person from acquiring an excessive share of individual quotas issued for a fishery; and

“(E) shall include measurable conservation goals.

“(3) An individual quota issued under an individual quota system established by a fishery management plan may be received, held, or transferred in accordance with regulations prescribed by the Secretary under this Act.

“(4)(A) Except as otherwise provided in this paragraph, any fishery management plan that establishes an individual quota system for a fishery may authorize individual quotas to be held by or issued under the system to fishing vessel owners, fishermen, crew members, fishing communities, other persons as specified by the Council and United States fish processors under the jurisdiction of the North Pacific Fishery Management Council.

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

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

“(D)(i) A fishing community may not hold individual quotas under an individual quota system established under this subsection for a fishery that authorize harvest of more than the lesser of—

“(I) 1 percent of the total authorized harvest in the fishery; or

“(II) a percentage of such total authorized harvest established by the Council having jurisdiction over the fishery.

“(ii) This subparagraph does not apply to a community that is eligible to participate in the western Alaska community development program or the western Pacific community development program, under section 305(i).

“(5) Any fishery management plan that establishes an individual quota system for a fishery may include provisions that—

“(A) allocate individual quotas under the system among categories of vessels; and

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

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

“(7)(A) A fishery management plan that establishes an individual quota system for a fishery—

“(i) must include measurable conservation goals; and

“(ii) to monitor achievement of such goals, may require greater observer coverage or electronic data collection technology on any vessel fishing under an individual quota issued under the system.

“(B) Not later than 5 years after the date of the establishment of an individual quota system for a fishery under this section by a Council or the Secretary, and every 5 years thereafter, the Council or Secretary, respectively, shall review the effectiveness of the system in achieving the conservation goals required under this paragraph.

“(8)(A) The Secretary or a Council—

“(i) may not develop a proposal to establish an individual quota system for a fishery, unless development of the proposal has been approved by a referendum conducted in accordance with this paragraph; and

“(ii) may not issue a proposed fishery management plan or amendment to such a plan to establish such a system unless the proposed plan or amendment, respectively, has been approved by a referendum conducted in accordance with this paragraph.

“(B) The Secretary, at the request of a Council, shall conduct the referenda required by subparagraph (A). Each referendum with respect to a fishery shall be decided by a 60-percent majority of the votes cast by persons who are determined by the Council, based on guidelines developed by the Secretary, to be eligible to vote in the referendum.

“(C) The Secretary shall develop guidelines to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

“(9) Any individual quota system established under section 303(b)(6) after the date of enactment of the Magnuson-Stevens Act Amendments of 2002, and any individual quota issued under such a system, shall not apply after the end of the 10-year period beginning on the date the system is established, or after the end of any 10-year period thereafter, unless the Council has reviewed and taken affirmative action to continue the system before the end of each such 10-year period.”.

(c) FEES.—Section 304(d) is amended—

(1) in paragraph (2)(A) by striking “any” and all that follows through “(ii)” and inserting “any”; and

(2) by adding at the end the following:

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

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

“(i) With respect to any initial allocation under a limited access system established after the date of the enactment of the Magnuson-Stevens Act Amendments of 2002, an initial allocation fee in an amount, determined by the Secretary, equal to 1 percent of the ex-vessel value of fish authorized in one year under an individual quota, that shall be collected from the person to whom the individual quota is first issued.

“(ii) An annual fee in an amount, determined by the Secretary, not to exceed 3 percent of the ex-vessel value of fish authorized each year under an individual quota share, that shall be collected from the holder of the individual quota share.

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

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

“(D) The Secretary, in consultation with the Councils, shall promulgate regulations prescribing the method of determining under this paragraph the ex-vessel value of fish authorized under an individual quota share, the amount of fees, and the method of collecting fees.

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

(d) APPROVAL OF FISHERY MANAGEMENT PLANS ESTABLISHING INDIVIDUAL QUOTA SYSTEMS.—Section 304 (16 U.S.C. 1854) is further amended by adding at the end the following:

“(j) ACTION ON LIMITED ACCESS SYSTEMS.—(1) In addition to the other requirements of this Act, after the date of the enactment of the Magnuson-Stevens Act Amendments of 2002 the Secretary may not approve a fishery management plan that establishes a limited access system that provides for the allocation of individual quotas (in this subsection referred to as an ‘individual quota system’) unless the plan complies with section 303(d).

“(2) The Secretary shall issue regulations that establish requirements for establishing an individual quota system. The regulations shall—

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

“(B) ensure that any individual quota system is consistent with the requirements of sections 303(a) and 303(d), and require the collection of fees in accordance with subsection (d)(3) of this section;

“(C) provide for appropriate penalties for violations of individual quotas systems, including the suspension or revocation of individual quotas for such violations;

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

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

(e) RESTRICTION ON NEW INDIVIDUAL QUOTA SYSTEMS PENDING REGULATIONS.—

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

(2) COVERED QUOTA SYSTEM PLAN DEFINED.—In this subsection, the term “covered quota system plan” means a fishery management plan or amendment to a fishery management plan, that—

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

(B) is not approved by the Secretary before May 1, 2002.

(f) 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 of Commerce before May 1, 2002.

### SEC. 13. COOPERATIVE EDUCATION AND RESEARCH.

(a) DISCRETIONARY PROVISIONS IN FISHERY MANAGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b)) is further amended by adding after paragraph (14) the following:

“(15) include provisions to create a cooperative research component including the use of commercial or charter vessels for the gathering of data on stock abundance, composition, distribution, or other relevant information important for the implementation of the plan; and”.

(b) BLACK SEA BASS.—Section 404 (16 U.S.C. 1881c) is further amended by adding at the end the following:

“(f) BLACK SEA BASS COOPERATIVE RESEARCH PROGRAM.—The Secretary, through the New England Fisheries Science Center, shall develop and implement a cooperative stock assessment program, using vessels from the commercial black sea bass fishing industry if appropriate and available. This cooperative program shall include research on the range of the stock, a determination as to whether there is more than one stock, and a black sea bass genetic study to determine whether there is more than one stock of such species requiring different management regimes.”.

### SEC. 14. REPORT ON HIGHLY MIGRATORY SPECIES.

(a) ANNUAL REPORT.—Section 102 (16 U.S.C. 1812) is amended—

(1) by inserting “(a) IN GENERAL.—” before “The United States”; and

(2) by adding at the end the following:

“(b) ANNUAL REPORT.—The Secretary shall, within one year after the date of the enactment of this subsection and annually thereafter, report to the Congress on—

“(1) any nation that is fishing for Atlantic highly migratory species and is not in compliance with the fishery conservation and management provisions or any

rebuilding recommendations or provisions enacted by the international body charged with developing such measures; and

“(2) any recommendations for addressing those nations identified under paragraph (1) and actions the United States might take to ensure such compliance by such nations.”

(b) NATIONAL ACADEMY OF SCIENCES REVIEW.—

(1) IN GENERAL.—The Secretary of Commerce shall enter into an arrangement with the National Academy of Sciences under which the Academy shall—

(A) review the adequacy of existing measures (including closures) to protect Atlantic white marlin; and

(B) make recommendations to the Congress and the Secretary, regarding future conservation measures for Atlantic white marlin, if warranted.

(2) FISHING IN MID-ATLANTIC BIGHT.—The review shall examine, in particular, the effects of fishing in the Mid-Atlantic Bight.

(3) REPORT.—The Academy shall report to the Congress and the Secretary regarding the review and recommendations under this subsection within 2 years after the date of the enactment of this Act.

**SEC. 15. PROHIBITED ACTS.**

Section 307 (16 U.S.C. 1857) is amended by striking “and” after the semicolon at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting “; and”, and by adding at the end the following:

“(6) to sell or purchase any fish caught in recreational fishing.”

**SEC. 16. MEMBERSHIP OF FISHERY MANAGEMENT COUNCILS.**

(a) NEW ENGLAND COUNCIL.—Section 302(a)(1)(A) (16 U.S.C. 1852(a)(1)(A)) is amended by—

(1) inserting “New York,” after “Massachusetts;” and

(2) striking “18” and inserting “19”.

(b) ADDITIONAL MEMBER OF EACH COUNCIL.—Section 302 (16 U.S.C. 1852) is further amended as follows:

(1) In the last sentence of subsection (a)(1)(A)—

(A) by striking “19” and inserting “20”;

(B) by striking “12” and inserting “13”; and

(C) by inserting before the period the following: “and including one appointed by the Secretary in accordance with subsection (b)(6)”.

(2) In the last sentence of subsection (a)(1)(B)—

(A) by striking “21” and inserting “22”;

(B) by striking “13” and inserting “14”; and

(C) by inserting before the period the following: “and including one appointed by the Secretary in accordance with subsection (b)(6)”.

(3) In the last sentence of subsection (a)(1)(C)—

(A) by striking “13” and inserting “14”;

(B) by striking “8” and inserting “9”; and

(C) by inserting before the period the following: “and including one appointed by the Secretary in accordance with subsection (b)(6)”.

(4) In the last sentence of subsection (a)(1)(D)—

(A) by striking “7” and inserting “8”;

(B) by striking “4” and inserting “5”; and

(C) by inserting before the period the following: “and including one appointed by the Secretary in accordance with subsection (b)(6)”.

(5) In the last sentence of subsection (a)(1)(E)—

(A) by striking “17” and inserting “18”;

(B) by striking “11” and inserting “12”; and

(C) by inserting before the period the following: “and including one appointed by the Secretary in accordance with subsection (b)(6)”.

(6) In the last sentence of subsection (a)(1)(F)—

(A) by striking “14” and inserting “15”;

(B) by striking “8” and inserting “9”;

(C) by inserting “by the Secretary” after “including one appointed”; and

(D) by inserting before the period the following: “and one appointed by the Secretary in accordance with subsection (b)(6)”.

(7) In the last sentence of subsection (a)(1)(H)—

(A) by striking “13” and inserting “14”;

(B) by striking “8” and inserting “9”; and

(C) by inserting before the period the following: “and including one appointed by the Secretary in accordance with subsection (b)(6)”.

(8) In subsection (b)—

(A) by redesignating paragraph (6) as paragraph (7);

(B) in paragraph (7), as so redesignated, by striking “paragraphs (2) or (5)” and inserting “paragraph (2), (5), or (6)”; and

(C) by inserting after paragraph (5) the following:

“(6) The member of each Council who is required to be appointed in accordance with this paragraph—

“(A) shall not be an individual who is directly employed by, or receives a majority of his or her livelihood from, the commercial, charter, or recreational fishing community; and

“(B) shall be appointed without regard to subparagraphs (B) and (C) of paragraph (2).”.

**SEC. 17. MISCELLANEOUS AMENDMENTS TO PURPOSES AND POLICY.**

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

(1) in subsection (b)(6) by inserting “ecologically sound” after “to encourage the”; and

(2) in subsection (c)(6) by inserting “, restore,” after “to foster”.

**SEC. 18. FOREIGN FISHING.**

Section 201(e)(1)(E) (16 U.S.C. 1821(e)(1)(E)) is amended—

(1) in clause (iii) by inserting “and compliance with and enforcement of international fishing agreements and treaties” after “fishing regulations”; and

(2) in clause (vii) by inserting “, conservation,” after “fishery research”.

**SEC. 19. DRIFTNETS.**

Section 206(c)(1) (16 U.S.C. 1826(c)(1)) is amended by inserting before the semicolon at the end the following: “and comply with any further action or resolution adopted by the United Nations on large-scale driftnet fishing to which the United States is a signatory”.

**SEC. 20. SOURCES FOR DATA IN FISHERIES RESEARCH.**

Section 404(a) (16 U.S.C. 1881c(a)) is amended by adding at the end the following: “The program shall acquire such knowledge and data using both fishery-dependent and fishery-independent data sources.”.

**SEC. 21. MISCELLANEOUS FISHERY PROTECTIONS IN FISHERY MANAGEMENT PLANS.**

Section 303(b) (16 U.S.C. 1853(b)) is further amended by adding after paragraph (15) the following:

“(16) designate closed areas, seasonal closures, time/area closures, gear restrictions, or other methods for limiting impacts on habitat, limiting bycatch impacts of gear, or limiting fishing impact on spawning congregations in specific geographic areas.”.

**SEC. 22. COOPERATIVE MARINE EDUCATION AND RESEARCH PROGRAM.**

(a) PROGRAM.—The Secretary of Commerce may enter into cooperative agreements with universities and institutions of higher learning in order to conduct research in areas that support conservation and management of living marine resources.

(b) INCLUDED RESEARCH.—Research conducted under the program may include biological research concerning—

(1) the abundance and life history parameters of stocks of fish;

(2) the interdependence of fisheries or stocks of fish and other ecosystem components; and

(3) the linkages between fish habitat and fish production and abundance.

**SEC. 23. ASSESSMENT OF CUMULATIVE IMPACTS OF CONSERVATION AND MANAGEMENT MEASURES FOR A FISHERY.**

Section 303(a)(9)(A) (16 U.S.C. 1853(a)(9)(A)) is amended by inserting before the semicolon the following: “, as well as the cumulative impacts on such participants and communities of conservation and management measures for that fishery under other fishery management plans and regulations”.

**SEC. 24. REGIONAL STOCK ASSESSMENTS.**

(a) IN GENERAL.—Title IV (16 U.S.C. 1881 et seq.) is further amended by adding at the end the following:

**“SEC. 409. REGIONAL STOCK ASSESSMENTS.**

“(a) IN GENERAL.—The Secretary shall conduct periodic regional assessments of stocks of fish.

“(b) INDEPENDENT REVIEW.—The Secretary shall ensure that each periodic assessment under this section is independently reviewed in a manner that—

“(1) will not delay the process of providing to Regional Fishery Management Councils current assessments for use in managing fisheries; and

“(2) is as transparent as possible, so that the regulated community can provide input during the review process.”.

(b) CLERICAL AMENDMENT.—The table of contents in the first section is further amended by adding at the end of the items relating to title IV the following:

“Sec. 409. Regional stock assessments.”.

**SEC. 25. NATIONAL ACADEMY OF SCIENCES GUIDANCE AND STANDARDS REGARDING BEST SCIENTIFIC INFORMATION AVAILABLE.**

(a) IN GENERAL.—The Secretary of Commerce shall enter into an arrangement with the National Academy of Sciences under which the Academy shall by not later than 1 year after the date of the enactment of this Act, develop guidance and standards for determining what should be considered the best scientific information available for purposes of sections 2(c)(3) and 301(a)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801(c)(3), 1851(a)(2)).

(b) FACTORS CONSIDERED.—Guidance and standards developed under subsection (a) shall take into consideration—

(1) the need for relevance and timeliness of information; and

(2) how to treat the use of gray literature and anecdotal information.

(c) PUBLICATION AND OPPORTUNITY FOR COMMENT.—The Secretary shall publish the results of the activities of the Academy under subsection (a) and provide an opportunity for the submission of comments regarding the definition developed under subsection (a)(1).

**SEC. 26. NATIONAL ACADEMY OF SCIENCES DEFINITION OF MAXIMUM SUSTAINABLE YIELD.**

(a) IN GENERAL.—The Secretary of Commerce shall enter into an arrangement with the National Academy of Sciences under which the Academy shall—

(1) develop a definition of the term “maximum sustainable yield” for purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), that considers environmental variability; and

(2) examine the use of alternatives for calculating sustainable harvest levels in cases in which maximum sustainable yield cannot be calculated or is not appropriate.

(b) PUBLICATION AND OPPORTUNITY FOR COMMENT.—The Secretary shall publish the results of the activities of the Academy under subsection (a) and provide an opportunity for the submission of comments regarding the definition developed under subsection (a)(1).

**SEC. 27. ADMINISTRATION OF PACIFIC INSULAR AREA FISHERY AGREEMENTS.**

Section 204(e)(6) (16 U.S.C. 1824(e)(6)) is amended in the matter preceding subparagraph (A) by striking “into” and all that follows through “to the” the first place it appears and inserting “into the”.

**SEC. 28. HIGHLY MIGRATORY SPECIES BYCATCH MORTALITY REDUCTION RESEARCH PROGRAM.**

(a) ESTABLISHMENT OF A PROGRAM.—(1) There is established within the National Marine Fisheries Service a pelagic longline highly migratory species bycatch and mortality reduction research program. The Program shall be developed by a design team established by the Secretary of Commerce. The Program design shall be submitted to the Secretary no later than 120 days after the first meeting of the design team and shall include a statistically significant recommendation for the level of observer coverage on pelagic longline fishing vessels that is necessary to monitor the fishery effectively and participate in the research program. The design team shall be available as a resource to the Secretary throughout the research and the development of the recommendations.

(2) The program shall identify and test a variety of pelagic longline fishing gear configurations and uses and determine which of those configurations and uses are the most effective in reducing highly migratory species mortality. The program shall place an emphasis on determining the gear configurations and uses that are the most effective in reducing blue and white marlin mortality in the exclusive economic zone of the United States in the Atlantic Ocean. The program shall also include a provision for observers to be placed on pelagic longline fishing vessels for the purposes of monitoring the fishery and participating in the research program.

(3) The highly migratory species program shall conduct research to determine the impact of existing time and area closures designed to reduce the bycatch of longline vessels. The program shall focus on whether existing closures should be modified to decrease bycatch by longline vessels and shall determine what adjustments to the existing boundaries and temporal constraints should be made as a result of any research. Any vessel participating in the program shall be provided an observer by the National Marine Fisheries Service. The full cost of the observer and any incidental costs to the vessel as a result of being included in the research program shall be paid for by the National Marine Fisheries Service. The National Marine Fisheries Service may authorize, without notice and comment, scientific research permits authorizing a vessel to enter and fish in any closed area in the Atlantic Ocean so long

as there is 100 percent observer coverage and the activities of the vessel are in furtherance of the research program. Access to any closed area may be granted only after consideration of the scientific need for access.

(b) DESIGN TEAM.—(1) Knowledgeable members of the pelagic longline fishing sector, the recreational billfish and tuna sector, and the conservation community, along with scientists associated with each such entity, shall be appointed by the Secretary to the program design team. Each of the sectors shall to the extent practicable be fairly represented on the design team. The design team shall not exceed nine members only one of which may be an employee of the Federal Government. The design team shall select a chairman and establish its own rules of operation. Each member of the design team who is not employed by the Federal Government shall be compensated in the manner provided for members of a Fishery Management Council under section 302(d) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(d)).

(2) The design team shall not be considered to be an advisory committee for the purposes of the Federal Advisory Committee Act (5 U.S.C. App.), but shall hold its deliberations in meetings for which prior notice is published in the Federal Register and that are open to the public.

(c) MID-ATLANTIC CONSERVATION ZONE FOR HIGHLY MIGRATORY SPECIES.—Section 304(g) (16 U.S.C. 1854(g)) is amended by adding at the end the following:

“(3) MID-ATLANTIC CONSERVATION ZONE FOR HIGHLY MIGRATORY SPECIES.—

“(A) No person shall engage in pelagic longline fishing—

“(i) in the lower mid-Atlantic Conservation Zone in the period beginning August 15 and ending October 1 each year; or

“(ii) in the upper mid-Atlantic Conservation Zone in the period beginning July 15 and ending September 1 each year.

“(B) In this paragraph the term ‘lower mid-Atlantic Conservation Zone’ means the area that is enclosed by a series of geodesics connecting in succession the points at the following coordinates:

“(i) 36 degrees 30 minutes north latitude, 75 degrees 0 minutes west longitude.

“(ii) 37 degrees 0 minutes north latitude, 75 degrees 0 minutes west longitude.

“(iii) 38 degrees 0 minutes north latitude, 74 degrees 0 minutes west longitude.

“(iv) 38 degrees 0 minutes north latitude, 73 degrees 0 minutes west longitude.

“(v) 37 degrees 0 minutes north latitude, 74 degrees 0 minutes west longitude.

“(vi) 36 degrees 30 minutes north latitude, 75 degrees 0 minutes west longitude.

“(C) In this paragraph the term ‘upper mid-Atlantic Conservation Zone’ means the area that is enclosed by a series of geodesics connecting in succession the points at the following coordinates:

“(i) 38 degrees 0 minutes north latitude, 74 degrees 0 minutes west longitude.

“(ii) 40 degrees 0 minutes north latitude, 72 degrees 0 minutes west longitude.

“(iii) 39 degrees 0 minutes north latitude, 72 degrees 0 minutes west longitude.

“(iv) 38 degrees 0 minutes north latitude, 73 degrees 0 minutes west longitude.

“(v) 38 degrees 0 minutes north latitude, 74 degrees 0 minutes west longitude.

“(D) This paragraph shall not apply after the end of the 4-year period beginning on the date of the enactment of this paragraph.”.

(d) REPORT TO CONGRESS.—The Secretary of Commerce shall submit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(1) an interim report of the findings of the research conducted under this section within two years after the date of enactment of this Act; and

(2) a final report with the necessary regulatory documents to initiate implementation of any adjustments to time and area closures, gear configurations, or fishing techniques warranted as a result of the research.

(e) AUTHORIZATION OF APPROPRIATIONS.—For research under this section there is authorized to be appropriated to the Secretary of Commerce \$5,000,000 for fiscal years 2003 through 2007.

**SEC. 29. AUTHORIZATION OF APPROPRIATIONS.**

Section 4 (16 U.S.C. 1893) is amended to read as follows:

**“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:

- “(1) \$200,500,000 for fiscal year 2003;
- “(2) \$214,000,000 for fiscal year 2004;
- “(3) \$222,000,000 for fiscal year 2005;
- “(4) \$230,000,000 for fiscal year 2006; and
- “(5) \$238,000,000 for fiscal year 2007.”.

**PURPOSE OF THE BILL**

The purpose of H.R. 4749 is to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.

**BACKGROUND AND NEED FOR LEGISLATION**

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), passed in 1976, is the primary law dealing with fisheries resources and fishing activities in federal waters (those waters extending from the edge of State waters to the 200-mile limit). It was passed largely in an effort to eliminate foreign fishing in U.S. waters which, at its height, accounted for almost 70 percent of the fish harvested in U.S. waters.

The original goals of the Magnuson-Stevens Act were the conservation and management of the U.S. fishery resources, the development of U.S. domestic fisheries, and the phasing-out of foreign fishing activities within the 200-mile fisheries conservation zone adjacent to the U.S. coastline. This area became known as the Exclusive Economic Zone (EEZ) following a 1983 proclamation by President Reagan.

The Magnuson-Stevens Act has achieved the goals of eliminating foreign fishing in the EEZ and developing domestic fisheries. The percentage of fish harvested by foreign nations has declined from 71 percent of the total domestic catch in 1977 to near zero percent since 1992.

The Magnuson-Stevens Act created eight Regional Fishery Management Councils charged with implementing these goals in coordination with the National Marine Fisheries Service (NMFS), located within the Department of Commerce. Councils are made up of State marine fishery management agency representatives and other knowledgeable individuals who are selected by the Secretary from a list of individuals submitted by the Governors of the States represented on the Council. In addition to managing the fisheries resources for conservation purposes, Councils are responsible for allocating resources among various and often competing users. The process of managing fisheries is accomplished through the preparation of FMPs for each fishery. To date, the Regional Councils have prepared and implemented 35 FMPs, some now with numerous amendments.

The Magnuson-Stevens Act includes a list of ten National Standards for fishery conservation and management that guide the Councils' work when developing fishery management plans (FMPs) and amendments. Included in this list is the principle of optimum yield (which includes ecological, social, and economic factors) which requires the Councils to achieve a balance among users and be-

tween science and economics. In attempting to achieve this balance, the Councils are often criticized by those who believe that particular uses or factors are not properly addressed.

Following the development of an FMP, a Council forwards the plan and proposed regulations to the Department of Commerce. The Department must approve the plan or send it back to the Council for further consideration. If the plan is approved, NMFS must then issue regulations to implement the plan. Many criticize that this process is too lengthy and inefficient since the Department does not begin to review an FMP until the plan has been completed and submitted by a Council. Some argue that the Department often fails to meet statutorily-mandated deadlines in approving the plan.

On October 18, 1995, the House of Representatives passed H.R. 39, the reauthorization of the Magnuson Act with a number of specific provisions meant to address specific problems or perceived problems with fisheries management or Council procedures. The Senate passed S. 39, the Sustainable Fisheries Act (SFA), on September 19, 1996, with many provisions similar to the House-passed bill. Despite differences between the two versions and because of the few remaining days of legislative session remaining in the 104th Congress, the House passed S. 39 on September 27, 1996, without amendment and forwarded it to the President for his signature.

The main provisions of the SFA included efforts: to reduce bycatch and the mortality of bycatch that could not be avoided; to prevent overfishing and address overfished fisheries; to describe, identify, and protect essential habitat for fish in the fishery for spawning, breeding, feeding or growth to maturity; to study the use and effects of Individual Fishing Quotas (IFQs); to prohibit the implementation of any new IFQ plans; to clarify the Community Development Quota program; to modify Council procedures; to establish a fishing capacity reduction program; to create a Pacific Insular Area Fishing Agreement procedure; and to reauthorize the Magnuson-Stevens Act through Fiscal Year 1999.

The Sustainable Fisheries Act (Public Law 104-297) was signed into law by President Clinton on October 11, 1996. In addition, Public Law 104-208 changed the name of the Magnuson Fishery Conservation and Management Act to the Magnuson-Stevens Fishery Conservation and Management Act.

The Subcommittee on Fisheries Conservation, Wildlife and Oceans held six oversight and one legislative hearing on the reauthorization of the Magnuson-Stevens Act during the 107th Congress, in addition to the two oversight hearings that were held in the 106th Congress. The hearings during the 107th Congress involved more than 50 different witnesses.

One of the issues that was raised during the hearings and concerns the Committee is the number of lawsuits facing NMFS, the primary federal fisheries conservation and management authority for fisheries found in the EEZ. While a number of different statutes have been used to initiate lawsuits against the agency, the result of this substantial increase in lawsuits since the enactment of the SFA has forced the agency to spend time and personnel to defend its actions. NMFS estimates that it is currently spending as much as one tenth of its manpower and funding to address lawsuits. Be-

fore the enactment of the SFA, the number of lawsuits facing the Secretary of Commerce over fisheries conservation and management issues was 16. The Secretary is currently facing 104 with petitions pending which could lead to a number of additional, new lawsuits. It is clear that if fisheries conservation and management measures are to be effective, NMFS cannot continue to spend more than 10 percent of its funding and staff time on litigation.

Litigation was not a major concern of the agency before the SFA; however, it has become a factor in fisheries management since the enactment of the SFA. This concern has been heightened because the SFA added a number of new mandates for NMFS. In fact, the SFA: amended or added 15 definitions; added three new National Standards and amended one existing Standard; added eight new provisions for the Councils to comply with in developing any new FMP and required that all existing plans be amended to comply with these new required provisions; included five new discretionary provisions for Councils to consider when developing FMPs; and required 13 new reports.

The Councils and NMFS have moved forward in meeting these new requirements. While amending FMPs to comply with the new SFA requirements has added to the burden facing the agency, the Councils and the Secretary of Commerce have been able to create nine new FMPs for species that had not been previously covered by an FMP. These efforts to move forward to establish conservation and management measures for additional fisheries, in addition to making necessary changes to existing FMPs, should be commended. In addition to these new requirements, many of the Councils and the regional NMFS offices have begun to update outdated environmental impact statements required under the National Environmental Policy Act.

While the Councils and the Secretary have moved forward in a number of conservation and management areas, both before and after the enactment of the SFA, these successes have not always been recognized. The Committee notes that Councils should be credited with measures taken prior to enactment of the SFA in reducing bycatch, protecting habitat, and preventing or reducing overfishing. The Committee notes that in some cases the Councils have not been successful in quantifying or publicizing these measures and that each Council should quantify and report on measures taken both prior to and subsequent to the enactment of the SFA. In a recent court decision, the judge noted that one Council had not taken action to reduce bycatch following the enactment of the SFA. In some cases Councils have already taken action to minimize bycatch to the extent practicable, as required by the law, but in some such cases, the Councils have not sufficiently articulated these successes. The Committee believes that the Councils should make an effort to better communicate its activities and successes to the general public as well as its constituent groups.

The strides that the Councils have made since enactment of the SFA are commendable and should be recognized. Rather than burden them with new, unreasonable mandates, steps should be taken to move incrementally forward to better meet the existing requirements of the Magnuson-Stevens Act.

In particular, the SFA included a mandate that FMPs contain criteria for determining if the fishery covered by the FMP is over-

fished, that the Secretary identify any stock of fish that is overfished or approaching a condition of being overfished, and that all FMPs contain measures to rebuild overfished stocks in addition to preventing overfishing. Prior to the SFA, there was no prior identification of stocks that were in danger of overfishing. Little effort was made to try to identify stocks that might be in danger so that action could be taken before a crisis occurred.

According to the 2001 report to Congress on the Status of Stocks, stock levels for many marine fish managed by the U.S. are healthy and others are steadily rebuilding. According to the report, a number of examples show the progress made for fisheries in the U.S. For example: the number of stocks with sustainable harvest rates rose by 45 percent between 1999 and 2001 (from 159 to 230). The number of stocks with sustainable stocks sizes increased by a third. The number of stocks being over-harvested has been reduced by 15 percent (from 77 stocks to 65). The number of stocks deemed as overfished declined by 12 percent in 2001. Last year, two species—Georges Bank and Mid-Atlantic sea scallops—were fully rebuilt due in part to the use of rotating closed harvesting areas. Eleven more were taken off the overfished species list (down from 92 stocks to 81). One of these species—summer flounder—is doing so well that regulations were relaxed last year, allowing fishermen to harvest 36 percent more while the stock continues to rebuild. The total stock size of summer flounder almost doubled to 80 million pounds between 1992 and 1999. There are currently 74 rebuilding plans in place: 67 for stocks that are currently overfished and seven for stocks that have been rebuilt far enough to be no longer considered overfished but that are not yet rebuilt to a biomass level necessary to produce the Maximum Sustainable Yield (MSY). Of the 81 species that are still classified as overfished, 67 are steadily growing under rebuilding programs, nine have plans under development, two do not have any plans submitted or under development, one has no plan but none is required because there is no fishing allowed (Atlantic salmon), one has been disapproved, and one is under development by the Atlantic States Marine Fisheries Commission (Atlantic Sturgeon).

The report notes that of the more than 900 stocks of fish reviewed in the report, the status of more than 600 stocks was unknown; however, the 1999 report notes that the status of 674 stocks was unknown. While this shows improvement, more information on the status of federally-managed stocks is needed.

While the Committee recognizes these successes, fisheries management in the United States is not perfect and there are a number of areas that need to be addressed in legislation to move the Councils and the Secretary closer to sustainable, scientifically-based fisheries management.

#### COMMITTEE ACTION

H.R. 4749 was introduced on May 16, 2002, by Congressman Wayne T. Gilchrest. The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. The Subcommittee held seven hearings on the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, including six oversight hearings on various aspects of the reauthorization and one legisla-

tive hearing on a discussion draft for the authorization. The Subcommittee heard from 59 public witnesses and a number of Members of Congress.

Hearings were held on: implementation of the SFA and the reauthorization of the Magnuson-Stevens Act on April 4, 2001 (Printed Hearing 107-15); federal capacity reduction programs, federal investments in fisheries and how these programs relate to the reauthorization of the Magnuson-Stevens Act on May 10, 2001 (Printed Hearing 107-26); ecosystem-based fishery management and the reauthorization of the Magnuson-Stevens Act on June 14, 2001 (Printed Hearing 107-38); Western Alaska Community Development Quota Programs Implementation Improvement Act on July 19, 2001 (Printed Hearing 107-50); Cooperative Research issues as they affect the reauthorization of the Magnuson-Stevens Act on December 6, 2001 (Printed Hearing 107-79); Individual Fishing Quotas (IFQs) on February 13, 2002 (Printed Hearing 107-84); and a legislative hearing on the discussion draft of H.R. 4749 on May 2, 2002 (Printed Hearing 107-111).

On May 23, 2002, the Subcommittee on Fisheries Conservation, Wildlife and Oceans met to mark up the bill. Congressman Robert A. Underwood (D-GU) offered and withdrew an amendment relating to essential fish habitat was withdrawn. Congressman Solomon P. Ortiz (D-TX) offered and withdrew an amendment to add at the end of the bill a section entitled "National Standard Regarding Cumulative Impacts". Congressman Walter B. Jones offered and withdrew an amendment to add at the end of the bill a section entitled "Ensuring Use of Best Scientific Information Available" and a section entitled "Peer Review Stock Assessments". Congressman Jim Saxton (R-NJ) offered and withdrew an amendment to add at the end of the bill a section entitled "Mid-Atlantic Conservation Zone for Highly Migratory Species". Mr. Underwood offered and withdrew an amendment to strike the provision in the bill to allow Councils to report to the Secretary if they could not meet the one-year time period for establishing a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery and the requirement that the Secretary then take appropriate action to address the reasons stated by the Council for not meeting the requirement. Mr. Saxton offered and withdrew an amendment to add at the end of the bill a section entitled "Prohibition on Use of Large Rockhopper and Roller Gear on Bottom Trawl Nets". Mr. Saxton offered and withdrew an amendment to strike provisions of Section 16 "Membership of Fishery Management Councils". Mr. Underwood offered and withdrew an amendment to modify the definition of "overfished". Congressman W.J. "Billy" Tauzin offered and withdrew an amendment to: (1) modify the definitions of "overfished" and "overfishing"; and (2) to add definitions of "carrying capacity", "Maximum Sustainable Yield", and "surplus production". No further amendments were offered and the bill was then ordered favorably reported to the Full Committee by voice vote.

The Full Committee on Resources met in open markup session on Wednesday, June 26, 2002, to consider the bill. An amendment in the nature of a substitute offered by Mr. Gilchrest included the following provisions: the Chesapeake Bay Oyster Demonstration Program; "fishing impact statement" for fishery management plans;

peer review process for stock assessments; National Academy of Sciences contract regarding “Best Scientific Information Available.”; National Academy of Sciences contract regarding “maximum sustainable yield”; technical corrections; standardized reporting methodology for bycatch; “seabirds”; minimizing adverse fishing gear impacts on habitat areas of particular concern; National Academy of Sciences review regarding Atlantic white marlin; and deletion of the provision which added an additional seat for the North Pacific Council.

Congressman Nick J. Rahall II (D-WV) offered a substitute amendment to the Gilchrest amendment in the nature of a substitute which: included seabirds in the definition of bycatch; established a one year deadline for the establishment of a bycatch reporting system; required Councils to account for all sources of fishing mortality; required the impacts of fishing on ecosystems; and prohibited the introduction of any new gears in a fishery; required the Secretary to issue regulations within two years; and required implementation of a national observer program. The amendment was not agreed to by a rollcall vote of 15 yeas to 21 noes, as follows:

**COMMITTEE ON RESOURCES**  
U.S. House of Representatives  
107<sup>th</sup> Congress

Date: June 26, 2002Convened: 10:00amAdjourned: 12:20pm

Meeting on: **On Agreeing to the Mr. Rahall Substitute to the Amendment in the Nature of a Substitute offered by Mr. Gilchrest (#1A) to H.R. 4749, To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.**

 Attendance Voice Vote Roll Call VoteTotal Yeas 15 Nays 21

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Hansen, UT, Chairman		✓		Mr. Jones, NC		✓	
<i>Mr. Rahall, WV</i>	✓			<i>Mr. Kind, WI</i>	✓		
Mr. Young, AK		✓		Mr. Thornberry, TX			
<i>Mr. Miller, CA</i>	✓			<i>Mr. Inslee, WA</i>		✓	
Mr. Tauzin, LA				Mr. Cannon, UT		✓	
<i>Mr. Markey, MA</i>	✓			<i>Mrs. Napolitano, CA</i>	✓		
Mr. Saxton, NJ		✓		Mr. Peterson, PA			
<i>Mr. Kildee, MI</i>	✓			<i>Mr. Tom Udall, NM</i>	✓		
Mr. Gallegly, CA				Mr. Schaffer, CO			
<i>Mr. DeFazio, OR</i>		✓		<i>Mr. Mark Udall, CO</i>	✓		
Mr. Duncan, TN		✓		Mr. Gibbons, NV			
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Holt, NJ</i>	✓		
Mr. Hefley, CO		✓		Mr. Souder, IN		✓	
<i>Mr. Abercrombie, HI</i>		✓		<i>Mr. Acevedo-Vilá, PR</i>			
Mr. Gilchrest, MD		✓		Mr. Walden, OR		✓	
<i>Mr. Ortiz, TX</i>		✓		<i>Ms. Solis, CA</i>	✓		
Mr. Calvert, CA		✓		Mr. Simpson, ID			
<i>Mr. Pallone, NJ</i>				<i>Mr. Carson, OK</i>	✓		
Mr. McInnis, CO		✓		Mr. Tancredo, CO			
<i>Mr. Dooley, CA</i>	✓			<i>Ms. McCollum, MN</i>	✓		
Mr. Pombo, CA		✓		Mr. Hayworth, AZ		✓	
<i>Mr. Underwood, GU</i>	✓			VACANCY			
Mrs. Cubin, WY				Mr. Otter, ID			
<i>Mr. Smith, WA</i>		✓		Mr. Osborne, NE		✓	
Mr. Radanovich, CA				Mr. Flake, AZ		✓	
<i>Ms. Christensen, VI</i>	✓			Mr. Rehberg, MT			
				<b>Total</b>	<b>15</b>	<b>21</b>	

Mr. Saxton offered and withdrew an amendment (Saxton 2a) to the Gilchrest amendment in the nature of a substitute which added at the end of the bill a new section entitled "Highly Migratory Species Bycatch Mortality Reduction Research Program."

Mr. Saxton offered and withdrew an amendment (Saxton 2b) to the Gilchrest amendment in the nature of a substitute to add at the end of the bill a new section entitled "Highly Migratory Species Bycatch Mortality Reduction Research Program."

Mr. Saxton offered an amendment (Saxton 2c) to the Gilchrest amendment in the nature of a substitute to add at the end of the bill a new section entitled "Highly Migratory Species Bycatch Mortality Reduction Research Program." This amendment was agreed to by a rollcall vote of 24 yeas to 6 noes, as follows:



Congressman George Miller (D-CA) offered an amendment to the Gilchrest amendment in the nature of a substitute to strike section 12 and insert a new section 12 entitled "Individual Quota Limited Access Programs". This amendment was pending before the Committee when the Committee recessed until July 10, 2002.

The Full Committee on Resources reconvened on July 10, 2002, and continued consideration of the bill.

The Miller amendment described above was not agreed to by voice vote.

Congressman Miller offered an amendment to the Gilchrest amendment in the nature of a substitute to strike "or process" on page 24, line 19, and to strike ", and United States fish processors" or page 26, line 21. The amendment was agreed to by voice vote.

Congressman Joel Hefley (R-CO) offered an amendment to the Gilchrest amendment in the nature of a substitute to insert at the end of the bill a new section entitled "Prohibition on Use of Large Rockhopper and Roller Gear on Bottom Trawl Nets.". The amendment was not agreed to by a rollcall vote of 14 yeas to 28 noes, as follows:

**COMMITTEE ON RESOURCES**  
U.S. House of Representatives  
107<sup>th</sup> Congress

Date: July 10, 2002Convened: 10:00amAdjourned: 6:50pm

Meeting on: **On Agreeing to the Mr. Hefley amendment to the Amendment in the Nature of a Substitute offered by Mr. Gilchrest to H.R. 4749. To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.**

Attendance       Voice Vote       Roll Call Vote      Total Yeas 14 Nays 28

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Hansen, UT, Chairman		✓		Mr. Jones, NC		✓	
<i>Mr. Rahall, WV</i>	✓			<i>Mr. Kind, WI</i>		✓	
Mr. Young, AK		✓		Mr. Thornberry, TX		✓	
<i>Mr. Miller, CA</i>	✓			<i>Mr. Inslee, WA</i>		✓	
Mr. Tauzin, LA				Mr. Cannon, UT		✓	
<i>Mr. Markey, MA</i>				<i>Mrs. Napolitano, CA</i>		✓	
Mr. Saxton, NJ	✓			Mr. Peterson, PA		✓	
<i>Mr. Kildee, MI</i>				<i>Mr. Tom Udall, NM</i>	✓		
Mr. Gallegly, CA		✓		Mr. Schaffer, CO	✓		
<i>Mr. DeFazio, OR</i>		✓		<i>Mr. Mark Udall, CO</i>	✓		
Mr. Duncan, TN		✓		Mr. Gibbons, NV		✓	
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Holt, NJ</i>	✓		
Mr. Hefley, CO	✓			Mr. Souder, IN		✓	
<i>Mr. Abercrombie, HI</i>		✓		<i>Mr. Acevedo-Vila, PR</i>	✓		
Mr. Gilchrest, MD		✓		Mr. Walden, OR		✓	
<i>Mr. Ortiz, TX</i>		✓		<i>Ms. Solis, CA</i>	✓		
Mr. Calvert, CA		✓		Mr. Simpson, ID		✓	
<i>Mr. Pallone, NJ</i>	✓			<i>Mr. Carson, OK</i>			
Mr. McInnis, CO				Mr. Tancredo, CO	✓		
<i>Mr. Dooley, CA</i>				<i>Ms. McCollum, MN</i>	✓		
Mr. Pombo, CA		✓		Mr. Hayworth, AZ		✓	
<i>Mr. Underwood, GU</i>				<i>Mr. Holden, PA</i>		✓	
Mrs. Cubin, WY				Mr. Otter, ID	✓		
<i>Mr. Smith, WA</i>		✓		Mr. Osborne, NE		✓	
Mr. Radanovich, CA		✓		Mr. Flake, AZ		✓	
<i>Ms. Christensen, VI</i>				Mr. Rehberg, MT		✓	
				<b>Total</b>	<b>14</b>	<b>28</b>	

Congressman Peter A. DeFazio (D-OR) offered an amendment to the Gilchrest amendment in the nature of a substitute to strike section 4 and insert a provision regarding fishing capacity reduction in U.S. groundfish fisheries. The amendment was not agreed to by voice vote.

Mr. Saxton offered an amendment to the Gilchrest amendment in the nature of a substitute to correct the Highly Migratory Species Bycatch Mortality Reduction Research Program provision. The amendment was agreed to by voice vote.

Mr. Saxton offered an amendment to the Gilchrest amendment in the nature of a substitute to replace a provision dealing with standardized bycatch reporting methodology requirement. The amendment was agreed to by voice vote.

Mr. Saxton offered an amendment to the Gilchrest amendment in the nature of a substitute to insert a National Academy of Sciences definition of "overfished". The amendment was agreed to by voice vote.

Congressman Jay Inslee (D-WA) offered an amendment to the Gilchrest amendment in the nature of a substitute to insert the following: "and United States fish processors under the jurisdiction of the North Pacific Fishery Management Council" after the word "Council" and on page 24, line 20, insert "or process such fish which are under the jurisdiction of the North Pacific Management Council" after "fishery". This amendment was agreed to by voice vote.

Mr. Inslee offered and withdrew an amendment to the Gilchrest amendment in the nature of a substitute to establish a fishery observer program.

Mr. Inslee offered and withdrew an amendment to the relating to the scientific panels which advise the regional fishery management councils.

Congressman Greg Walden (R-OR) offered and withdrew an amendment to the Gilchrest amendment in the nature of a substitute to strike a pilot project in one fishery on the west coast of the United States.

The Gilchrest amendment in the nature of a substitute as amended was agreed to by a rollcall vote of 19 yeas to 15 noes, as follows:



The bill, as amended, was then ordered favorably reported to the House of Representatives by a rollcall vote of 23 ayes and 17 noes, as follows:

COMMITTEE ON RESOURCES  
U.S. House of Representatives  
107<sup>th</sup> Congress

Date: July 10, 2002Convened: 10:00amAdjourned: 6:50pm

Meeting on: On Final Passage of H.R. 4749, To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes, as amended.

 Attendance Voice Vote Roll Call VoteTotal Yeas 23 Nays 17

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Hansen, UT, Chairman	✓			Mr. Jones, NC		✓	
<i>Mr. Rahall, WV</i>		✓		<i>Mr. Kind, WI</i>		✓	
Mr. Young, AK	✓			Mr. Thornberry, TX			
<i>Mr. Miller, CA</i>		✓		<i>Mr. Inslee, WA</i>		✓	
Mr. Tauzin, LA	✓			Mr. Cannon, UT	✓		
<i>Mr. Markey, MA</i>		✓		<i>Mrs. Napolitano, CA</i>		✓	
Mr. Saxton, NJ	✓			Mr. Peterson, PA	✓		
<i>Mr. Kildee, MI</i>		✓		<i>Mr. Tom Udall, NM</i>		✓	
Mr. Gallegly, CA	✓			Mr. Schaffer, CO			
<i>Mr. DeFazio, OR</i>		✓		<i>Mr. Mark Udall, CO</i>		✓	
Mr. Duncan, TN				Mr. Gibbons, NV			
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Holt, NJ</i>		✓	
Mr. Hefley, CO				Mr. Souder, IN	✓		
<i>Mr. Abercrombie, HI</i>	✓			<i>Mr. Acevedo-Vilá, PR</i>			
Mr. Gilchrest, MD	✓			Mr. Walden, OR	✓		
<i>Mr. Ortiz, TX</i>				<i>Ms. Solis, CA</i>		✓	
Mr. Calvert, CA	✓			Mr. Simpson, ID	✓		
<i>Mr. Pallone, NJ</i>		✓		<i>Mr. Carson, OK</i>			
Mr. McClinnis, CO	✓			Mr. Tancredo, CO	✓		
<i>Mr. Dooley, CA</i>	✓			<i>Ms. McCollum, MN</i>		✓	
Mr. Pombo, CA	✓			Mr. Hayworth, AZ	✓		
<i>Mr. Underwood, GU</i>				<i>Mr. Holden, PA</i>		✓	
Mrs. Cubin, WY	✓			Mr. Otter, ID	✓		
<i>Mr. Smith, WA</i>		✓		Mr. Osborne, NE	✓		
Mr. Radanovich, CA	✓			Mr. Flake, AZ			
<i>Ms. Christensen, VI</i>				Mr. Rehberg, MT	✓		
				<b>Total</b>	<b>23</b>	<b>17</b>	

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title; table of contents; amendment references*

This section gives the short title of the bill as “the Magnuson-Stevens Act Amendments of 2002”, includes a table of contents for the bill, and establishes that all amendments, unless otherwise noted, are to the Magnuson-Stevens Fishery Conservation and Management Act.

*Section 2. Technical corrections to definitions*

This section makes technical corrections to the Magnuson-Stevens Fishery Conservation and Management Act.

*Section 3. Report on overcapitalization*

This section would require the Secretary of Commerce to report to Congress identifying and describing the 20 U.S. fisheries which face the worst problem with excess harvesting capacity. In addition, the report would include recommendations for reducing the excess capacity including the retirement of any latent capacity that might contribute to further overcapitalization if activated. This section was in response to the one issue that witnesses identified more than any other as the biggest problem facing sustainable fisheries: overcapacity. This provision would identify the most pressing problems facing U.S. fisheries so that funds can be better directed to address the most urgent needs.

*Section 4. Buyout provisions*

This section would change the existing statutory requirements for any buyout conducted under section 312(b) of the Magnuson-Stevens Act. Rather than allow a buyout program to purchase vessels or permits, this section would require any program to purchase vessels and all existing permits. Vessels would not have to be scrapped; however, the Secretary would be required to ensure that the vessel could not fish in U.S. waters.

In addition, this section would require the Secretary to ensure that any vessels purchased under this section could not move to any other fishery on the high seas or in foreign waters and contribute to overcapacity problems in other parts of the world.

Past efforts using federal funding to reduce overcapacity have been appropriated with no national prioritization of those fisheries most in need of rationalization and little if any identification of other sources of funding that might be available for such buyouts. It is important for the fisheries managers and Congress to identify those fisheries most in need and to identify sources of funding that will enable fisheries managers to meet those needs most effectively and to reduce the overcapacity in the fisheries with the greatest problems.

*Section 5. Data collection*

This section would require the Secretary to coordinate with the coastal States in developing and implementing a program to gather data from those in the recreational fishing sector which are licensed under State regulations and participating in federally-managed fisheries. The Secretary would be required to report to Congress after three years on the progress in developing the program

and whether the program has resulted in significantly better data collection from the recreational sector.

The Committee notes that not all States have a saltwater fishing license; however, the Committee believes that NMFS would benefit from using information gathered in coordination with State agencies on the habits and frequency of fishing trips by State license holders in addition to or in place of the information the agency currently gets from a random survey of coastal residents. The information gathered in coordination with State fisheries managers could augment or replace existing data sources and provide a more accurate assessment of the impact of recreational fishermen on federal fishery resources.

This section would also require the Secretary to report to Congress on what types of economic data fishery managers need from the processing sector to comply with existing laws (such as the Regulatory Flexibility Act), why the information is necessary and not available from existing sources, and what steps the Secretary would take to ensure the confidentiality of any proprietary information once submitted.

The Committee notes that despite a provision in the SFA concerning the confidentiality of federal tax information which was being required by some NMFS regions to show eligibility for fishing permits, one regional director continued to require such documents contrary to the provision of the SFA. There are continued concerns about the ability of NMFS to make protection of proprietary information a priority before the information is collected.

#### *Section 6. Ecosystem-based management*

This section would include a new provision within the Policy section of the Magnuson-Stevens Act stating that it is one of the policies of Congress through this legislation to “support and encourage efforts to understand the interactions of species in the marine environment and the development of ecosystem-based approaches to fisheries conservation and management that will lead to better stewardship and sustainability of the Nation’s coastal fishery resources and fishing communities.”

This section would also add a new provision to the section of the Magnuson-Stevens Act describing the fisheries research activities of the Secretary to add a new area of research dealing with ecosystem-based approaches to fishery conservation and management (consistent with the language above).

This section would require the Secretary, in conjunction with the Councils, to create a definition for “ecosystem” and “marine ecosystem”, and establish criteria for the development of ecosystem-based management plans by each regional fishery management Council based on the recommendations of the Ecosystems Principles Advisory Panel. This section would further require the Secretary to report to Congress, within two years, on the criteria and include an identification and description of those areas of scientific understanding for which sufficient data are not available. Following the submission of the report to Congress, the Secretary would be required, in conjunction with the regional science centers and the Councils, to identify specific marine ecosystems within each region. The Secretary would then be required to develop and begin to implement regional research plans to meet the information

deficit identified in the report. These research plans must include suggestions for reasonable timelines and cost estimates for the collection of the required information. The Secretary would then be required to report to Congress annually on the progress of the regional research plans.

This section also requires the Secretary to identify two fisheries—one from the east coast and one from the west coast—and then develop and implement, in consultation with the appropriate Councils, an ecosystem-based FMP for those two fisheries.

It is important that the Secretary use sound judgment in selecting the two fisheries so that the fisheries selected for such an ecosystem-based FMP be unrelated fisheries and not fisheries whose current management is so complicated that further layers of management will open the fishery to extensive litigation or place an unacceptable burden on the fishery managers. It is also important that the fisheries selected by the Secretary not be burdened with extensive litigation at the time of selection for such ecosystem-based fishery management.

#### *Section 7. Observers*

This section would require the Secretary to report to Congress within one year on the needs for a national observer program including recommendations on what forms of observation options are available, whether the data collection needs are for management or enforcement purposes, what level of coverage is necessary in various fisheries to provide statistically reliable information, cost estimates for various options and various levels of coverage, options for funding such a program, what, if any, vessel sizes should be exempted for safety purposes, how data will be gathered, and how the proprietary information will be kept confidential.

While better data collection certainly should be a priority for the agency, the agency has not yet been able to tell Congress what a comprehensive observer program should look like, what fisheries should have coverage, what level of coverage will yield statistically reliable results in different types of fisheries, and how much such a program will cost. While NMFS has been developing a National Observer Program, little if any information on such a plan has been shared with Congress. It is clear that observer coverage in some fisheries will provide the agency with much needed information on levels of harvest and levels of bycatch. The Committee notes that the Secretary currently has the authority to implement observer programs and has done so in more than 20 fisheries under the Magnuson-Stevens Act authorities and also under the authorities in the Marine Mammal Protection Act.

In addition, the Committee notes that technology has changed since the enactment of the SFA and advances in technology could reduce the need for actual on-board observers.

Currently, NMFS appears to have certified just one type of Vessel Monitoring System hardware technology and has been slow to accept or certify new technologies that could provide the necessary information to fisheries managers and be obtained by fishermen at a lower cost. The Committee is aware of a number of vessel monitoring technologies which also provide additional benefits for the vessel owner without requiring duplicative systems. The Committee is aware that there are private sector initiatives to develop

software-based solutions to the statutory requirement to monitor the locations of commercial fishing vessels in various parts of the United States. To date, however, only hardware-based systems are authorized under NOAA regulations. This has resulted in the limitation of vendors and systems available to carry out the mandate of the Magnuson-Stevens Act. Such limitations impede competition and innovation and may result in less efficiency in, and higher cost to, the fishing industry.

In addition, the Committee notes that a National Observer Program will certainly increase the amount of data being reported to fishery managers. The Committee hopes that the required report will detail how NMFS will gather, store, interpret and make available to appropriate institutions such new information.

The Committee notes that in a few cases, an adequate number of qualified or certified observers have not been available to satisfy the demand by those fishing vessels which are required to carry observers. These occasional occurrences where qualified observers could not be hired or were unavailable when needed should be addressed in any National Observer Plan or the plan needs to include enough flexibility that fishing opportunities are not lost due to unavailability of qualified observers. This should not be used as an excuse by fishermen to avoid the burden of carrying observers; however, an adequate number of trained observers needs to be available in the regions where any observer requirements are put in place. Observers may need to be available at short notice and the agency may need to be aware of the costs of moving observers from one region to another if necessary to the conduct of a fishery with observer requirements.

Finally, it has been noted that the current requirements for certification as an observer include the need for a four-year college degree. With a number of fishermen displaced in a variety of fisheries around the country, NMFS should investigate whether displaced fishermen—even those without a college degree—could be trained and certified as observers. In some cases, a knowledge of fisheries and fishing practices could prove valuable to the observer program while providing jobs “on the water” for displaced fishermen.

#### *Section 8. Overfishing*

This section would split the definitions of “overfished” and “overfishing” to clarify that these are two different terms and are used differently in the Magnuson-Stevens Act. These new definitions follow the existing definitions and are based on recommendations by the NMFS’s Magnuson-Stevens Act Reauthorization Task Force report.

This section would also make changes to the annual Status of Stocks report to Congress on overfishing, stocks that are overfished, and those stocks that are approaching an overfished condition. These changes would make it clear whether the stocks that are identified as overfished or approaching an overfished condition are actually overfished as a result of fishing activities or other causes. These changes in the report would not change the necessity for rebuilding plans when appropriate. The report to Congress would also be changed so that any fishery which is identified as overfished or approaching an overfished condition will be clearly identified as to whether it is the target of a commercial fishery.

This section also requires the Secretary to contract with the National Academy of Sciences (Academy) to develop a definition of “overfished”. The Academy shall consider the definition as added to the Magnuson-Stevens Act by this legislation as well as the operational definition used by NMFS. The Academy shall consider environmental variability and other factors that contribute to low abundance of fish stocks in developing the definition. The Secretary shall publish the results of the Academy’s work and provide an opportunity for public comment.

*Section 9. Bycatch and seabird interactions*

This section would move the existing statutory provision which requires Councils to establish a standardized reporting methodology for bycatch for each FMP to section of the Magnuson-Stevens Act which includes requirements for the Secretary. The Secretary would develop these methodologies in cooperation with the Councils and then be required to report to Congress within one year of the date of enactment on the progress in developing these standardized reporting methodologies.

This change is necessary because it has become clear that the Councils are unable to comply with the current Magnuson-Stevens Act’s provision. Whether this inability is because of the lack of available information or because the Councils are currently too burdened with other statutory requirements, a change is necessary if the standardized bycatch methodologies are to be established. This legislation moves the requirement for developing standardized bycatch reporting methodologies from the Councils to the Secretary, who is currently responsible for data collection duties. In addition, it is unclear if a standardized reporting methodology is necessary for each individual FMP or whether the Secretary can develop broader methodologies that can be used for multiple fisheries.

This section also includes a discretionary provision authorizing Councils to include a provision in an FMP allowing for the donation of bycatch that is already dead and cannot be avoided for charitable purposes. This allowance could not be used to evade vessel trip limits, total allowable catch levels, or other conservation and management measures. This would provide low cost protein for food banks as long as the provision was not used to evade measures designed to decrease bycatch and the mortality of the bycatch.

This section includes a requirement that the Secretary identify the fisheries with significant bycatch problems or problems with seabird interactions. The Secretary would then be required to work with the Councils and the fishing industry to develop new gear or modifications to existing gear that will help minimize the identified bycatch or seabird interaction problems. The provision also includes a requirement for a new research grant program to fund research into gear technology which minimizes bycatch, minimizes seabird interactions, and minimizes adverse fishing gear impacts on habitat areas of particular concern. This grant program is authorized at \$10 million for each of five years for Fiscal Years 2003 through 2007. The Secretary would then be required to report annually to Congress on the amounts expended on the grant program and what bycatch reductions have been identified as a result of this section.

The Secretary would also be required to report within one year of the date of enactment on the extent of the seabird interaction problem in U.S. fisheries, what efforts have been undertaken by the U.S. fishing industry and the Councils to address the problem, and the extent of the seabird interaction problem in other fisheries outside the U.S. In preparing this report on fisheries with significant bycatch problems or seabird interactions, the Secretary shall take into consideration successful past efforts and on-going efforts by the Councils and fishing industry to minimize bycatch problems or seabird interactions. When reporting to Congress on seabird interaction with fisheries of the U.S., the Secretary shall acknowledge where Council and/or fishing industry initiatives have reduced seabird interactions to the extent practicable. The Committee notes that current voluntary seabird avoidance technologies and fishing methods have resulted in some U.S. fisheries reducing their seabird bycatch by up to 90 percent. This technology has also been shared with foreign fishermen in an attempt to reduce the problem in fisheries outside the U.S.

The Secretary would also be required to take action at the appropriate international fisheries management bodies to reduce seabird interactions in those fisheries outside the United States.

#### *Section 10. Fish habitat research and protection*

This section contains a number of new provisions including a requirement that funding for research on essential fish habitat (EFH) be prioritized for those fisheries which are overfished or approaching an overfished condition.

The section includes a provision requiring that Councils take action to minimize, to the extent practicable, adverse impacts on EFH caused by fishing for those EFH areas which were identified based on: information on the growth, reproduction, or survival rates within habitats; information on the production rates by habitat; or for those fisheries which the Secretary determines have a specific fishing activity that is having an adverse effect on EFH which jeopardizes the ability of the fishery to produce Maximum Sustainable Yield (MSY) on a continuing basis. In addition, the Secretary would be required to minimize to the extent practicable adverse effects on habitat areas of particular concern caused by fishing.

This section would maintain the Councils' current statutory discretionary authority to minimize, to the extent practicable, adverse effects caused by fishing on EFH regardless of the amount of information available.

The implementation of the EFH provisions of the SFA has created controversy within the fishing industry and among those other industries which are affected by the provisions. While the provisions were well intended and were meant to protect discrete areas of the ocean that were important to the continued production of a sustainable level of fisheries, the provisions as implemented by NMFS, have become unnecessarily onerous and unreasonable. The provisions of H.R. 4749 are intended to minimize potential lawsuits made possible by the agency's interpretation of the statutory provisions in the SFA without causing the agency to reconsider all of the implementing regulations or identification guidelines for the Councils.

While the language that was included in the SFA in 1996 was supported by fishermen and the environmental community, the implementation of the provisions has eliminated much of the fishing industry support. The guidelines that the Councils followed in identifying EFH have led to very large areas being identified for some fisheries. In addition to the broad identifications, the Councils are required under the SFA to “minimize to the extent practicable adverse effects on such habitat caused by fishing.” In cases like the North Pacific groundfish fishery, this would require the Council to analyze and minimize any adverse effects for each of six different gear types for 350,000 square miles. Since the habitat types will vary significantly in such a huge area, this current requirement is unreasonable. Given that there are more than 40 FMPs in effect and multiple gear types used in each fishery, the burdens placed on the Councils and the potential for litigation are immense.

In addition to it being unreasonable, with the existing areas of EFH as identified by the Councils being so broad, the term has become almost meaningless. One witness testified that if everything is essential then nothing is essential. The provisions in H.R. 4749 will focus the efforts on minimizing gear impacts where they are truly important—the habitats that are most productive, the habitats for fisheries that are overfished, and habitat areas of particular concern (HAPC).

This section also defines “habitat areas of particular concern.” Many Councils have already identified significant areas as HAPC and have also taken action to close significant areas to various fishing practices either because of bycatch concerns or to protect habitat. Although it has been suggested that a new mandate should be added to the Magnuson-Stevens Act to require that each Council amend each management plan to identify HAPCs, this new mandate would add to an already overburdened Council system and potentially add to the litigation burden faced by the agency.

The Magnuson-Stevens Act currently authorizes Councils to take action to protect specific habitat areas and in fact, many of the Councils have already taken action to protect sensitive habitat from the effects of bottom trawling. Where appropriate, Councils have taken the necessary steps to restrict damaging gear. In some cases, all bottom trawling is prohibited. In other cases, the Councils have acted to protect the habitat areas that need protection, but have allowed bottom trawling in those areas where the effects are minimal. The blanket restrictions on all bottom gear proposed by some sets a bad precedent and the results may be counter productive by actually increasing bycatch at the same time it is attempting to protect habitat. In addition, this would preempt the Councils from acting on a case-by-case or gear-by-gear basis.

A recently-released report by the National Academy of Sciences Ocean Studies Board entitled *Effects of Bottom Trawling and Dredging on Seafloor Habitats* was requested by NMFS in response to ongoing concerns about the ecological effects of trawling and dredging on the seafloor, and whether such effects may be reducing the productivity of some fish stocks. The Ocean Studies Board found that to assess the ecosystem effects of trawling and dredging three factors must be fully considered: gear-specific effects on different habitat types (obtained experimentally); frequency and geographic distribution of bottom tows; and physical and biological

characteristics of seafloor habitats (seafloor mapping). The report summarizes the currently available data in these three areas and although the Board affirmed that trawling and dredging could be destructive in ecologically vulnerable habitats, it also found that some habitats are resilient to the effects of such activities, especially sandy habitats in areas that experience naturally high levels of disturbance. The report makes it clear that there are some habitat types that are more severely impacted by bottom trawling than other types, and that fishery managers should focus management efforts on those areas that are in most need of protection. The report also emphasizes the need for additional research into the impact of other gear types (besides trawls and dredges) on seafloor habitats and additional research and mapping to determine the locations and spatial extent of different types of habitats.

The Committee agrees that much more information is necessary on the effects of all types of fishing gear on important and sensitive habitats. The Committee also notes that the Councils and the Secretary currently have the authority to restrict or prohibit gear types from being used in specific habitat areas. Using this authority, a number of Councils have already taken action to close areas to bottom trawling to protect habitat. The New England Council has prohibited the use of roller gear larger than 12 inches in diameter in some of the most sensitive habitats in the Gulf of Maine, and has closed almost 1200 square miles of the Gulf of Maine to most types of trawling gear. In addition, roughly 30 percent (6,600 square miles) of Georges Bank has been closed through the implementation of three large closed areas in which all bottom-tending mobile fishing gear is prohibited. The South Atlantic Council has prohibited the use of all roller gear by bottom trawlers. The Gulf of Mexico Council has established a prohibition on all bottom trawling in near shore areas. All bottom trawling in the geographic area under the jurisdiction of the Caribbean Fishery Management Council is currently prohibited. The North Pacific Council has closed many areas to protect important habitats. Over 90,000 square nautical miles of the Alaska EEZ is closed to bottom trawling year-round. In the geographic area under the jurisdiction of the Western Pacific Fishery Management Council all bottom trawling is prohibited.

*Section 11. Demonstration program for oyster sanctuaries and reserves*

This section would require the Secretary to develop a program for the design, construction and placement of oyster sanctuaries or reserves in the Chesapeake Bay consistent with the Chesapeake 2000 Agreement. The Secretary, through the National Oceanic and Atmospheric Administration's Chesapeake Bay Office, would be required to develop the program in conjunction with the Army Corps of Engineer, the Coast Guard, the Environmental Protection Agency, the U.S. Fish and Wildlife Service, the State of Maryland, the Commonwealth of Virginia, the Oyster Restoration Partnership, the Chesapeake Bay Foundation, the Oyster Heritage Foundation, local commercial and recreational fishing organizations, the Port of Baltimore, the Port of Hampton Roads, the University of Maryland, the Virginia Institute of Marine Sciences, and other users of the waters of the Chesapeake Bay.

The program would include the design, construction and placement of structures to maximize the production of oysters and minimize the conflicts with existing users. The placement of such structures must not be hazards to navigation and must be adequately marked on navigational charts. The program would also include a research plan to include measurable goals and a monitoring program to determine the effectiveness of the structures.

The Secretary is required to make recommendations to the affected States on regulations prohibiting fishing in the waters surrounding these structures as necessary to ensure the reproduction of oysters. These restrictions may be seasonal in nature and may not be larger than 100 meters from any structure.

The Secretary is required to use only native oyster species.

A specific authorization of \$5 million for each of five Fiscal Years (Fiscal Years 2004 through 2009) is provided; however, no more than five percent of the funds appropriated may be made available for administrative purposes.

#### *Section 12. Individual quota limited access programs*

This section would remove the moratorium on the implementation of any Individual Fishing Quota (IFQ) fishery management plans and replace it with specific guidelines for the Councils to follow in the development and implementation of any new IFQ FMP.

This section would authorize the Secretary to establish an IFQ plan and require the Councils and the Secretary to take into account the need to promote conservation, the present participation in the fishery, the historical fishing practices in the fishery, the dependence on the fishery, the economics of the fishery, the capability of fishing vessels used in the fishery to engage in other fisheries, the cultural and social frame-work relevant to the fishery and local coastal communities, and any other relevant considerations when developing such a plan or plan amendment.

This section provides that an FMP that establishes an individual quota system for a fishery shall provide for administration of the system by the Secretary in accordance with the terms of the plan, and shall include provisions that establish procedures and requirements for each Council having authority over the fishery for reviewing and revising the terms of the plan that establish the system and for renewing, reallocating, and reissuing individual quotas if determined appropriate by each Council. The plan is required to include provisions to provide for fair and equitable allocation of individual quotas under the system, and minimize negative social and economic impacts of the system on local coastal communities, ensure adequate enforcement of the system, including the use of observers where appropriate, and provide for monitoring the temporary or permanent transfer of individual quotas under the system. The plan must include provisions that prevent any person from acquiring an excessive share of individual quotas issued for a fishery and shall include measurable conservation goals.

An individual quota issued under an individual quota system may be received, held, or transferred in accordance with regulations prescribed by the Secretary under this legislation. Except as otherwise provided, any FMP that establishes an individual quota system for a fishery may authorize individual quotas to be held by or issued under the system to fishing vessel owners, fishermen,

crew members, communities, other persons as specified by the Council, and United States fish processors under the jurisdiction of the North Pacific Council. An individual who is not a citizen of the United States may not hold an individual quota issued under an FMP. A federal agency or official may not hold, administer, or re-allocate an individual quota issued under an FMP, other than the Secretary and the Council having authority over the fishery for which the individual quota is issued. A community may not hold more than one percent of the total authorized harvest in the fishery, or a percentage less than one percent as determined by the Council.

This section specifies that any FMP which establishes an individual quota system for a fishery may include provisions that allocate individual quotas under the system among categories of vessels, and provide a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, or crew members who do not hold or qualify for individual quotas. An individual quota system established for a fishery may be limited or terminated at any time by the Secretary or through an FMP or amendment developed by the Council having authority over the fishery for which it is established, if necessary for the conservation and management of the fishery. An FMP that establishes an individual quota system for a fishery must include measurable conservation goals and to monitor achievement of such goals, may require greater observer coverage or electronic data collection technology on any vessel fishing under an individual quota issued under the system.

Not later than five years after the date of the establishment of an individual quota system for a fishery under this section by a Council or the Secretary, and every five years thereafter, the Council or Secretary would be required to review the effectiveness of the system in achieving the conservation goals required under this paragraph.

The Secretary or a Council would be required to hold a referendum of the eligible participants before proceeding with the development of an IFQ plan or plan amendment. This referendum would require a 60 percent affirmative vote for the Council or Secretary to proceed.

The eligible participants would be determined by the Council based on criteria developed by the Secretary. In addition, following the development of an IFQ plan or plan amendment but before forwarding the plan to the Secretary for approval, a second referendum would be required following the same criteria and percentage required for action.

As used in this subsection, the term "individual quota system" means a system that limits access to a fishery to achieve optimum yields through the allocation and issuance of individual quotas. The term "individual quota" means a grant of permission to harvest, or in the fisheries under the jurisdiction of the North Pacific Council to harvest or process a quantity of fish in a fishery, during each fishing season for which the permission is granted, equal to a stated percentage of the total allowable catch for the fishery.

The Committee notes that in IFQ fisheries currently in place, processors are allowed to hold harvesting quota shares. The legislation does nothing to change this authority and this legislation is not intended to give the Secretary any additional authority to issue

processing quota shares in fisheries already managed through an IFQ FMP.

This section would require that the Council review and take affirmative action to continue any individual quota plan once every ten years for any plan implemented by the Secretary after the enactment of this bill.

This section also maintains the three percent cap on the annual fee paid by holders of individual quota, but would add a new one percent fee on the initial allocation of any individual quota issued under a new plan or plan amendment, and a one percent fee on the transfer of any individual quota. This three-tier fee system would replace the existing IFQ fee system. The calculation of the fees would be based on a percentage of the ex-vessel value of the quota shares for that year. The initial allocation fee would be a one-time fee based on a percentage of the ex-vessel value of the quota shares issued and the transfer fee would be charged on a one-time basis following each transfer of shares and would be based on a percentage of the ex-vessel value of the quota shares transferred. The Secretary would be required to determine the amount of these fees to ensure that the amount of the fees is commensurate with the cost of managing the fishery for which the fee is being collected. The fees would only be available to the Secretary for the purposes of administering and implementing this Act for that fishery from which the fee was collected.

This section would also require the Secretary to issue regulations implementing these provisions and to specify factors that would be required to be considered by a Council in determining whether a fishery should be managed under an individual quota system. The Secretary would also be required to: ensure that any individual quota system be consistent with the requirements of sections 303(b) and 303(d) of the Magnuson-Stevens Act; collect fees based on the provisions above; provide for appropriate penalties for violations of individual quotas systems, including the revocation of individual quotas for such violations; include recommendations for potential management options related to individual quotas, including the authorization of individual quotas that may not be transferred by the holder, and the use of leases or auctions by the federal government in the establishment or allocation of individual quotas; and establish a central lien registry system for the identification, perfection, and determination of lien priorities, and nonjudicial foreclosure of encumbrances, on individual quotas.

This section would prevent any new individual quota plan from being implemented before the Secretary has issued regulations to implement this section and prevent the implementation of any plan that had not been implemented by May 1, 2002.

This section makes it clear that nothing in these new IFQ provisions would require a reallocation of individual quotas under an FMP already implemented by the Secretary.

This section maintains the current statutory language that makes it clear that an individual quota issued under an individual quota system shall be considered a permit for the purposes of the Magnuson-Stevens Act, may be revoked or limited at any time in accordance with this Act, 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

shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested.

*Section 13. Cooperative education and research*

This section would allow Councils to include a cooperative research component to an FMP using commercial or charter vessels to gather data on stock abundance, composition, distribution or other relevant information for the implementation of the plan. This is a discretionary provision.

This section would also require the Secretary to develop and implement a cooperative stock assessment program for black sea bass, through the New England Fisheries Science Center, using vessels from the commercial fishing industry, if appropriate and available. This cooperative program would be required to include research on the range of the stock, a determination as to whether there is more than one stock, and include a genetic research component to determine if there is more than one stock of black sea bass which would require different management regimes.

*Section 14. Report on highly migratory species.*

The Secretary would be required, within one year, to report to Congress on any nation that is fishing for Atlantic highly migratory species (HMS) and is not in compliance with the conservation and management provisions or any rebuilding recommendations enacted by the international management body. The report shall also include recommendations for actions the U.S. could take to ensure such compliance.

This section also includes a requirement that the Secretary contract with the National Academy of Sciences to review the adequacy of the existing measures to protect Atlantic white marlin, and in particular, to examine the effects of fishing in the Mid-Atlantic Bight. The Academy would then report back to Congress within two years of the date of enactment with the review and making recommendations for any future conservation measures that might be warranted.

*Section 15. Prohibited acts*

This provision would make it a violation of the Magnuson-Stevens Act to sell or buy recreationally-caught fish. All coastal States except one currently require a commercial permit to sell fish and/or prevent the sale of recreationally-caught fish. While the bill would prohibit the sale of recreationally-caught fish, this provision does not change the ability of recreational fishermen, subject to appropriate State laws, from retaining and consuming their catch.

*Section 16. Membership of fishery management councils*

This section adds one new seat to the New England Fishery Management Council for the State of New York.

This section would also add one new voting seat to each Council (except the North Pacific), to be appointed by the Secretary and based on the existing statutory qualifications, and who is not directly employed or receive a majority of their livelihood from the commercial, charter, or recreational fishing industry. These new seats would be covered by all existing disclosure and conflict of interest provisions.

The Committee notes that the Report to Congress on Apportionment of Membership on the Regional Fishery Management Councils prepared by NMFS in January 2002 contains the following recommendation for the Gulf of Mexico Council: "Current membership appears to include members with knowledge and experience for most fisheries that will be involved in the upcoming management actions. However, sector representation is not in balance this year with seven recreational fishing sector members, three commercial fishing sector members, and one 'other' sector member. Of the three vacancies next year, it is recommended that three be appointed from the commercial fishing sector to bring the Council into balance."

Despite this recommendation, the Secretary of Commerce on June 17, 2002, announced that the three new appointments for the Gulf of Mexico Council would be two representatives of the recreational fishing sector and one representative of the shrimp aquaculture industry. The Committee notes that this further contributes to the lack of balance noted in the January report to Congress. While the Committee does not address this lack of balance in the legislation, the Committee suggests that the Secretary of Commerce refer to NMFS's report to Congress when making any new appointments to the Gulf of Mexico Council.

*Section 17. Miscellaneous amendments to purposes and policy*

This section would add the phrase "ecologically sound" to modify "development" in the purpose that reads "to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, ensure that optimum yield determinations promote such development in a non-wasteful manner. \* \* \*"

This section also would add the word "restore" after the phrase "to foster" in the current policy statement that reads "to foster and maintain the diversity of fisheries in the United States. \* \* \*"

*Section 18. Foreign fishing*

This section would add the phrase "and compliance with and enforcement of international fishing agreements and treaties" to make it clear that when the Secretary is making allocations to foreign nations from the total allowable level of foreign fishing that the Secretary will include in his or her deliberations whether the nation is in compliance with or enforcing existing international agreements.

*Section 19. Driftnets*

This section would clarify that, in addition to the specifically noted resolution, the United States should implement and comply with any action or resolution dealing with large-scale driftnet fishing which is adopted by the United Nations and to which the U.S. is a signatory nation.

*Section 20. Sources for data in fisheries research*

This section would clarify that the Secretary should make use of both fishery dependent and fishery independent data in gathering information for fisheries research.

*Section 21. Miscellaneous fishery protections in fishery management plans*

This section would provide Councils with the authority to designate closed areas, seasonal closures, time/area closures, gear restrictions, or other methods for limiting impacts on habitat, limiting bycatch impacts of gear, or limiting fishing impact on spawning congregations in specific geographic areas.

*Section 22. Cooperative marine education and research program*

This section would authorize the Secretary to enter into cooperative agreements with universities and institutions of higher learning in order to conduct research in areas that support conservation and management of living marine resources. This section also lists the types of research which may be conducted under this provision.

*Section 23. Assessment of cumulative impacts of conservation and management measures for a fishery*

This section would amend the existing requirement that Councils prepare a fishery impact statement for each FMP, or plan amendment, to add the requirement that the Councils assess the cumulative impacts on the participants and fishing communities of conservation and management measures already taken for that fishery.

*Section 24. Regional stock assessments*

This section makes it clear that the Secretary shall conduct periodic stock assessments. In conducting these stock assessments, the Secretary must ensure that these assessments are independently peer reviewed, are as transparent as possible, do not delay the process of providing the information to the Councils, and allow the regulated community to provide input during the process.

If the Councils are to make conservation and management decisions based on sound, timely science, more information is needed at the beginning of the process. Sources of information such as that acquired through cooperative research surveys, better data collection by the agency, and more timely surveys will allow the Councils and their scientific and statistical committees to make more informed decisions. It is believed that some scientific and statistical committees are making recommendations to the Councils in a "data poor" environment. In addition, the recommendations of the scientific and statistical committees should be made available to the public.

*Section 25. National Academy of Sciences guidance and standards regarding best scientific information available*

This section requires the Secretary to contract with the National Academy of Sciences to develop guidance and standards for determining what should be considered "best scientific information available" for fisheries management under the Magnuson-Stevens Act. The guidance and standards should be developed taking into consideration the need for relevance and timeliness of information as well as recommendations on how to treat the use of gray literature and anecdotal information. This report is due to Congress no later than one year after the date of enactment of this legislation.

*Section 26. National Academy of Sciences definition of maximum sustainable yield*

This section requires the Secretary to contract with the National Academy of Sciences to develop a definition of maximum sustainable yield (MSY) that considers environmental variability and to examine the use of alternatives for calculating sustainable harvest levels in cases where MSY cannot be calculated or is not appropriate.

*Section 27. Administration of Pacific Insular Area Fishery Agreements*

This section would direct that payments made under a Pacific Insular Area Fishery Agreement would go directly to the area for which the agreement was entered into.

*Section 28. Highly migratory species bycatch mortality reduction research program*

This section establishes a pelagic longline highly migratory species bycatch and mortality reduction research program to be developed by a design team also authorized under this section. The program must be submitted to the Secretary within 120 days of the date of the first meeting of the design team and must include a recommendation for a statistically significant observer program to be paid for by NMFS. The program shall identify and test a variety of pelagic longline fishing gear configurations and place an emphasis on determining which configurations are the most effective in reducing blue and white marlin mortality in the U.S. EEZ.

This section also would require the research program to determine the impact of existing time and area closures and focus on whether the existing closures should be modified to reduce bycatch by longline vessels. This section provides that any vessel participating in the research program shall be provided with an observer and the cost of the observer and any incidental costs to the vessel incurred as a result of being a part of the research program shall be paid by NMFS. This section allows NMFS to authorize, without notice and comment, research permits which allow a vessel to enter and fish in any existing closed area in the Atlantic Ocean provided there is 100 percent observer coverage. Access to any closed area may be granted only after consideration of the scientific need for such access.

This section requires that the design team be made up of no more than nine members, appointed by the Secretary, from knowledgeable members of the pelagic longline fishing sector, the recreational billfish and tuna sector, the conservation community, and scientists associated with each entity.

This section creates two Mid-Atlantic Conservation Zones for Highly Migratory Species. The first zone, the Lower Mid-Atlantic Conservation Zone, shall be closed to any person engaged in pelagic longline fishing from August 15 through October 1 each year. The second zone, the Upper Mid-Atlantic Conservation Zone, shall be closed to any person engaged in pelagic longline fishing from July 15 through September 1 each year. The boundaries of each conservation zone are delineated in this section.

This section requires that the Secretary provide an interim report to the House Committee on Resources and the Senate Com-

mittee on Commerce, Science, and Transportation within two years of the date of enactment and provide a final report with necessary regulatory documents to initiate implementation of any adjustments to time and area closures, gear configurations, or fishing techniques warranted as a result of the research program.

This section authorizes an appropriation of \$5 million for each of the Fiscal Years 2003 through 2007.

The potential listing of white marlin as endangered under the Endangered Species Act concerns the Committee because actions within U.S. waters and by U.S. vessels on the high seas have a limited impact on the species. This species is harvested primarily as a bycatch by a number of countries. The international fisheries management body which oversees the management of marlin species is the International Commission of the Conservation of Atlantic Tunas (ICCAT). The last stock assessment by ICCAT's scientific committee assessed Atlantic blue marlin at 40 percent of its maximum sustainable yield level and Atlantic white marlin at 15 percent of its maximum sustainable yield level. Based on these assessments, ICCAT has passed recommendations (which were sponsored by the U.S. delegation) to promote the live release of Atlantic marlin and a 25 percent reduction of harvested Atlantic marlin. In addition, at its 2001 annual meeting, ICCAT adopted an additional resolution requiring nations to reduce the harvested level of Atlantic marlin by 50 percent of 1996 or 1999 levels, whichever is greater.

The U.S. recreational and commercial industries have adopted measures which bring the U.S. into compliance with the ICCAT resolutions and should be commended for their efforts; however, the total U.S. catches of white marlin, including recreational catch (both released and harvested) and commercial catch by longline vessels, accounts for only a small portion of the species' total mortality in the Atlantic Ocean (including the Gulf of Mexico and the Caribbean). In fact, the U.S. fleet takes a small portion of the Atlantic-wide harvest (5 percent). U.S. commercial longline vessels have been prohibited since 1988 from landing Atlantic marlin and have been taking measures to release alive any hooked Atlantic marlin. Despite U.S. efforts, white marlin population levels remain a concern. Unfortunately, despite the ICCAT efforts, the vast majority of mortality is due to foreign longline vessels, especially the European Union/Spanish longline fleet. The Committee notes that it plans further hearings on this issue and may pursue additional legislation to address this international problem.

*Section 29. Authorization of appropriations*

This section would authorize appropriations for Fiscal Years 2003 through 2007 at the levels noted below:

Fiscal Year	
2003	\$200,500,000
2004	214,000,000
2005	222,000,000
2006	230,000,000
2007	238,000,000

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

## FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committee authorized in the bill are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

## CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. The Committee on Resources believes that enactment of this bill will not have a significant effect on the total budget of the United States. The bill authorizes appropriations of \$1.1135 billion over five years.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. The Committee notes that section 12 of the bill authorizes fees for individual quotas and that the Secretary of Commerce may retain and expend these fees. The Committee believes that the collection and expenditure of these fees will have a negligible impact on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

## COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 102 OF THE SUSTAINABLE FISHERIES ACT**

**SEC. 102. DEFINITIONS.**

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

(1) \* \* \*

(2) in paragraph (7) (as redesignated)—

(A) by striking “[COELENTERATA] *COELENTERATA*” from the heading of the list of corals and inserting “[CNIDARIA] *CNIDARIA*”; and

(B) in the list appearing under the heading “[CRUSTACEA] *CRUSTACEA*”, by striking “Deep-sea Red Crab—*Geryon quinquedens*” and inserting “Deep-sea Red Crab—*Chaceon quinquedens*”;

\* \* \* \* \*

(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)] (43) (as redesignated) and inserting “regulated under this Act”; and

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**MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Magnuson-Stevens Fishery Conservation and Management Act”.*

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**SEC. 2. FINDINGS, PURPOSES AND POLICY.**

(a) \* \* \*

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

(1) \* \* \*

\* \* \* \* \*

(6) to encourage the *ecologically sound* development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that

optimum yield determinations promote such development in a non-wasteful manner; and

\* \* \* \* \*

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

(1) \* \* \*

\* \* \* \* \*

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

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

(8) *to support and encourage efforts to understand the interactions of species in the marine environment and the development of ecosystem-based approaches to fisheries conservation and management that will lead to better stewardship and sustainability of the Nation’s coastal fishery resources and fishing communities.*

**SEC. 3. DEFINITIONS.**

(a) *GENERAL DEFINITIONS.*—As used in this Act, unless the context otherwise requires—

(1) \* \* \*

\* \* \* \* \*

(19) *The term “habitat area of particular concern” means a discrete habitat area that is essential fish habitat and that—*

*(A) provides important ecological functions;*

*(B) is sensitive to human-induced environmental degradation; or*

*(C) is a rare habitat type.*

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

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

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

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

**[(23)]** (24) The term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total

length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

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

[(25)] (26) The term “migratory range” means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

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

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

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

(A) \* \* \*

\* \* \* \* \*

[(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)(A) *The term “overfished” means, with respect to a stock of fish, that the stock is of a size that is below the natural range of fluctuation associated with the production of maximum sustainable yield.*

(B) *The term “overfishing” means 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)] (31) The term “Pacific Insular Area” means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.

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

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

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

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

[(35)] 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.

[(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.]

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

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

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

[(40)] (39) The term “tuna species” means the following:

Albacore Tuna—*Thunnus alalunga*;  
Bigeye Tuna—*Thunnus obesus*;  
Bluefin Tuna—*Thunnus thynnus*;  
Skipjack Tuna—*Katsuwonus pelamis*; and  
Yellowfin Tuna—*Thunnus albacares*.

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

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

[(43)] (42) The term “United States harvested fish” means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented.

[(44)] (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)).

[(45)] (44) The term “vessel of the United States” means—

(A) \* \* \*

\* \* \* \* \*

[(33)] (45) The term “waters of a foreign nation” means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

(b) *TERMS RELATING TO AGREEMENT WITH THE FORMER SOVIET UNION.*—As used in this Act 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.

**[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;
- [(3) \$155,000,000 for fiscal year 1998; and
- [(4) \$159,000,000 for fiscal year 1999.]

**SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

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

- (1) \$200,500,000 for fiscal year 2003;
- (2) \$214,000,000 for fiscal year 2004;
- (3) \$222,000,000 for fiscal year 2005;
- (4) \$230,000,000 for fiscal year 2006; and
- (5) \$238,000,000 for fiscal year 2007.

**TITLE I—UNITED STATES RIGHTS AND AUTHORITY  
REGARDING FISH AND FISHERY RESOURCES**

\* \* \* \* \*

**SEC. 102. HIGHLY MIGRATORY SPECIES.**

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

(b) *ANNUAL REPORT.*—The Secretary shall, within one year after the date of the enactment of this subsection and annually thereafter, report to the Congress on—

- (1) any nation that is fishing for Atlantic highly migratory species and is not in compliance with the fishery conservation and management provisions or any rebuilding recommenda-

*tions or provisions enacted by the international body charged with developing such measures; and*

*(2) any recommendations for addressing those nations identified under paragraph (1) and actions the United States might take to ensure such compliance by such nations.*

**TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS**

**SEC. 201. FOREIGN FISHING.**

(a) \* \* \*

\* \* \* \* \*

(e) ALLOCATION OF ALLOWABLE LEVEL.—(1)(A) \* \* \*

\* \* \* \* \*

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

(i) \* \* \*

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

**SEC. 204. PERMITS FOR FOREIGN FISHING.**

(a) \* \* \*

\* \* \* \* \*

(e) PACIFIC INSULAR AREAS.—

(1) \* \* \*

\* \* \* \* \*

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

(A) \* \* \*

\* \* \* \* \*

**SEC. 206. LARGE-SCALE DRIFTNET FISHING.**

(a) \* \* \*

\* \* \* \* \*

(c) POLICY.—It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225 *and comply with any further action or resolution adopted by the United Nations on large-scale driftnet fishing to which the United States is a signatory*;

\* \* \* \* \*

**TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM**

\* \* \* \* \*

**SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.**

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

(A) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, *New York*, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have [18] 20 voting members, including [12] 13 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 by the Secretary in accordance with subsection (b)(6)*.

(B) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have [21] 22 voting members, including [13] 14 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 by the Secretary in accordance with subsection (b)(6)*.

(C) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have [13] 14 voting members, including [8] 9 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 by the Secretary in accordance with subsection (b)(6)*.

(D) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Com-

monwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The Caribbean Council shall have ~~7~~ 8 voting members, including ~~4~~ 5 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 by the Secretary in accordance with subsection (b)(6).*

(E) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in paragraph (3)). The Gulf Council shall have ~~17~~ 18 voting members, including ~~11~~ 12 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 by the Secretary in accordance with subsection (b)(6).*

(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~~ 15 voting members, including ~~8~~ 9 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 *by the Secretary* from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5) *and one appointed by the Secretary in accordance with subsection (b)(6).*

\* \* \* \* \*

(H) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have ~~13~~ 14 voting members, including ~~8~~ 9 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands) *and including one appointed by the Secretary in accordance with subsection (b)(6).*

\* \* \* \* \*

(b) VOTING MEMBERS.—(1) \* \* \*

\* \* \* \* \*

(6) *The member of each Council who is required to be appointed in accordance with this paragraph—*

*(A) shall not be an individual who is directly employed by, or receives a majority of his or her livelihood from, the commercial, charter, or recreational fishing community; and*

*(B) shall be appointed without regard to subparagraphs (B) and (C) of paragraph (2).*

**[(6)]** (7) 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)]** *paragraph (2), (5), or (6) if—*

(A) \* \* \*

\* \* \* \* \*

**SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.**

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

(1) \* \* \*

\* \* \* \* \*

**[(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;]**

*(7)(A) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A);*

*(B) minimize to the extent practicable adverse effects on such habitat caused by fishing for those fisheries identified by the Council as having available information on the growth, reproduction, or survival rates within habitats or production rates by habitat, or for those fisheries that the Council determines the specific fishing activity effects on the essential fish habitat jeopardize the ability of the fishery to produce maximum sustained yield on a continuing basis;*

*(C) minimize to the extent practicable adverse effects on habitat areas of particular concern caused by fishing; and*

*(D) identify other actions to encourage the conservation and enhancement of such habitat;*

\* \* \* \* \*

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on—

(A) participants in the fisheries and fishing communities affected by the plan or amendment, *as well as the cumulative impacts on such participants and communities of conservation and management measures for that fishery under other fishery management plans and regulations;* and

\* \* \* \* \*

(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) \* \* \*

\* \* \* \* \*

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) \* \* \*

\* \* \* \* \*

[(6) establish a limited access system for the fishery in order to achieve optimum yields if, in developing such system, the Council and the Secretary take into account—

[(A) present participation in the fishery,

[(B) historical fishing practices in, and dependence on, the fishery,

[(C) the economics of the fishery,

[(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

[(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

[(F) any other relevant considerations;]

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

*(A) in developing such system, the Councils and the Secretary take into account—*

*(i) the need to promote conservation,*

*(ii) present participation in the fishery,*

*(iii) historical fishing practices in, and dependence on, the fishery,*

*(iv) the economics of the fishery,*

*(v) the capability of fishing vessels used in the fishery to engage in other fisheries,*

*(vi) the cultural and social framework relevant to the fishery and fishing communities, and*

*(vii) any other relevant considerations; and*

*(B) in the case of such a system that provides for the allocation and issuance of individual quotas (as that term is defined in subsection (d)), the system complies with subsection (d).*

\* \* \* \* \*

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; [and]

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery[.] *or for the health or stability of the marine ecosystem;*

(13) *allow the retention and donation for charitable purposes of all dead bycatch that cannot otherwise be avoided under terms that ensure, through the use of onboard fishery observers or other equally effective means, that such retention and donation do not allow the evasion of vessel trip limits, total allowable catch levels, or other conservation and management measures;*

(14) minimize to the extent practicable adverse effects caused by fishing, on essential fish habitat described and identified under section 303(a)(7)(A);

(15) include provisions to create a cooperative research component including the use of commercial or charter vessels for the gathering of data on stock abundance, composition, distribution, or other relevant information important for the implementation of the plan; and

(16) designate closed areas, seasonal closures, time/area closures, gear restrictions, or other methods for limiting impacts on habitat, limiting bycatch impacts of gear, or limiting fishing impact on spawning congregations in specific geographic areas.

\* \* \* \* \*

[(d) INDIVIDUAL FISHING QUOTAS.—

[(1)(A) A Council may not submit and the Secretary may not approve or implement before October 1, 2002, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program.

[(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately returned by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).]

(d) *SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA SYSTEMS.—(1) A fishery management plan for a fishery that is managed under a limited access system authorized by subsection (b)(6) may establish an individual quota system for the fishery in accordance with this subsection.*

(2) *A fishery management plan that establishes an individual quota system for a fishery—*

*(A) shall provide for administration of the system by the Secretary in accordance with the terms of the plan;*

*(B) shall include provisions that establish procedures and requirements for each Council having authority over the fishery, for—*

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

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

*(C) shall include provisions to—*

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

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

*(iii) provide for monitoring the temporary or permanent transfer of individual quotas under the system;*

*(D) shall include provisions that prevent any person from acquiring an excessive share of individual quotas issued for a fishery; and*

*(E) shall include measurable conservation goals.*

*(3) An individual quota issued under an individual quota system established by a fishery management plan may be received, held, or*

*transferred in accordance with regulations prescribed by the Secretary under this Act.*

*(4)(A) Except as otherwise provided in this paragraph, any fishery management plan that establishes an individual quota system for a fishery may authorize individual quotas to be held by or issued under the system to fishing vessel owners, fishermen, crew members, fishing communities, other persons as specified by the Council and United States fish processors under the jurisdiction of the North Pacific Fishery Management Council.*

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

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

*(D)(i) A fishing community may not hold individual quotas under an individual quota system established under this subsection for a fishery that authorize harvest of more than the lesser of—*

*(I) 1 percent of the total authorized harvest in the fishery; or*

*(II) a percentage of such total authorized harvest established by the Council having jurisdiction over the fishery.*

*(ii) This subparagraph does not apply to a community that is eligible to participate in the western Alaska community development program or the western Pacific community development program, under section 305(i).*

*(5) Any fishery management plan that establishes an individual quota system for a fishery may include provisions that—*

*(A) allocate individual quotas under the system among categories of vessels; and*

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

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

*(7)(A) A fishery management plan that establishes an individual quota system for a fishery—*

*(i) must include measurable conservation goals; and*

*(ii) to monitor achievement of such goals, may require greater observer coverage or electronic data collection technology on any vessel fishing under an individual quota issued under the system.*

*(B) Not later than 5 years after the date of the establishment of an individual quota system for a fishery under this section by a Council or the Secretary, and every 5 years thereafter, the Council or Secretary, respectively, shall review the effectiveness of the system in achieving the conservation goals required under this paragraph.*

*(8)(A) The Secretary or a Council—*

*(i) may not develop a proposal to establish an individual quota system for a fishery, unless development of the proposal has been approved by a referendum conducted in accordance with this paragraph; and*

(ii) may not issue a proposed fishery management plan or amendment to such a plan to establish such a system unless the proposed plan or amendment, respectively, has been approved by a referendum conducted in accordance with this paragraph.

(B) The Secretary, at the request of a Council, shall conduct the referenda required by subparagraph (A). Each referendum with respect to a fishery shall be decided by a 60-percent majority of the votes cast by persons who are determined by the Council, based on guidelines developed by the Secretary, to be eligible to vote in the referendum.

(C) The Secretary shall develop guidelines to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(9) Any individual quota system established under section 303(b)(6) after the date of enactment of the Magnuson-Stevens Act Amendments of 2002, and any individual quota issued under such a system, shall not apply after the end of the 10-year period beginning on the date the system is established, or after the end of any 10-year period thereafter, unless the Council has reviewed and taken affirmative action to continue the system before the end of each such 10-year period.

[(2)] (10)(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.

\* \* \* \* \*

[(3)] (11) An individual fishing quota or other limited access system authorization—

(A) \* \* \*

(B) may be revoked or limited at any time in accordance with this Act, including as a result of a violation of this Act or any regulation prescribed under this Act;

\* \* \* \* \*

[(4)] (12)(A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the—

(i) \* \* \*

\* \* \* \* \*

[(5)] (13) In submitting and approving any new individual fishing quota program on or after October 1, 2002, the Councils and the Secretary shall consider the report of the National Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program—

(A) \* \* \*

\* \* \* \* \*

(14) As used in this subsection:

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

(B) *The term “individual quota” means a grant of permission to harvest a quantity of fish in a fishery or process such fish which are under the jurisdiction of the North Pacific Management Council, during each fishing season for which the permission is granted, equal to a stated percentage of the total allowable catch for the fishery.*

**SEC. 304. ACTION BY THE SECRETARY.**

(a) \* \* \*

\* \* \* \* \*

(d) ESTABLISHMENT OF FEES.—(1) \* \* \*

(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)] *any* community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

\* \* \* \* \*

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

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

(i) *With respect to any initial allocation under a limited access system established after the date of the enactment of the Magnuson-Stevens Act Amendments of 2002, an initial allocation fee in an amount, determined by the Secretary, equal to 1 percent of the ex-vessel value of fish authorized in one year under an individual quota, that shall be collected from the person to whom the individual quota is first issued.*

(ii) *An annual fee in an amount, determined by the Secretary, not to exceed 3 percent of the ex-vessel value of fish authorized each year under an individual quota share, that shall be collected from the holder of the individual quota share.*

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

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

(D) *The Secretary, in consultation with the Councils, shall promulgate regulations prescribing the method of determining under this paragraph the ex-vessel value of fish authorized under an individual quota share, the amount of fees, and the method of collecting fees.*

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

(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. *The report shall distinguish between fisheries that are overfished (or approaching that condition) as a result of fishing and fisheries that are overfished (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as overfished or approaching that condition, whether the fishery is the target of directed fishing.*

\* \* \* \* \*  
 (g) ATLANTIC HIGHLY MIGRATORY SPECIES.—(1) \* \* \*

\* \* \* \* \*  
 (3) MID-ATLANTIC CONSERVATION ZONE FOR HIGHLY MIGRATORY SPECIES.—

- (A) No person shall engage in pelagic longline fishing—  
 (i) in the lower mid-Atlantic Conservation Zone in the period beginning August 15 and ending October 1 each year; or  
 (ii) in the upper mid-Atlantic Conservation Zone in the period beginning July 15 and ending September 1 each year.

(B) In this paragraph the term “lower mid-Atlantic Conservation Zone” means the area that is enclosed by a series of geodesics connecting in succession the points at the following coordinates:

- (i) 36 degrees 30 minutes north latitude, 75 degrees 0 minutes west longitude.  
 (ii) 37 degrees 0 minutes north latitude, 75 degrees 0 minutes west longitude.  
 (iii) 38 degrees 0 minutes north latitude, 74 degrees 0 minutes west longitude.  
 (iv) 38 degrees 0 minutes north latitude, 73 degrees 0 minutes west longitude.  
 (v) 37 degrees 0 minutes north latitude, 74 degrees 0 minutes west longitude.  
 (vi) 36 degrees 30 minutes north latitude, 75 degrees 0 minutes west longitude.

(C) In this paragraph the term “upper mid-Atlantic Conservation Zone” means the area that is enclosed by a series

of geodesics connecting in succession the points at the following coordinates:

(i) 38 degrees 0 minutes north latitude, 74 degrees 0 minutes west longitude.

(ii) 40 degrees 0 minutes north latitude, 72 degrees 0 minutes west longitude.

(iii) 39 degrees 0 minutes north latitude, 72 degrees 0 minutes west longitude.

(iv) 38 degrees 0 minutes north latitude, 73 degrees 0 minutes west longitude.

(v) 38 degrees 0 minutes north latitude, 74 degrees 0 minutes west longitude.

(D) This paragraph shall not apply after the end of the 4-year period beginning on the date of the enactment of this paragraph.

\* \* \* \* \*

(i) DEVELOPMENT OF BYCATCH REPORTING METHODOLOGIES.—The Secretary shall, in cooperation with the Councils, develop bycatch reporting methodologies to assess the amount and type of bycatch occurring in United States fisheries.

(j) ACTION ON LIMITED ACCESS SYSTEMS.—(1) In addition to the other requirements of this Act, after the date of the enactment of the Magnuson-Stevens Act Amendments of 2002 the Secretary may not approve a fishery management plan that establishes a limited access system that provides for the allocation of individual quotas (in this subsection referred to as an “individual quota system”) unless the plan complies with section 303(d).

(2) The Secretary shall issue regulations that establish requirements for establishing an individual quota system. The regulations shall—

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

(B) ensure that any individual quota system is consistent with the requirements of sections 303(a) and 303(d), and require the collection of fees in accordance with subsection (d)(3) of this section;

(C) provide for appropriate penalties for violations of individual quotas systems, including the suspension or revocation of individual quotas for such violations;

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

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

\* \* \* \* \*

**SEC. 307. PROHIBITED ACTS.**

It is unlawful—

(1) \* \* \*

\* \* \* \* \*

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State or special areas, if—

(A) \* \* \*

\* \* \* \* \*  
unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; **[and]**

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation**].**; *and*

(6) *to sell or purchase any fish caught in recreational fishing.*

\* \* \* \* \*

**SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.**

(a) \* \* \*

(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 *that is managed under a limited access system authorized by section 303(b)(6),* if the Secretary determines that the program—

(A) \* \* \*

\* \* \* \* \*

**[(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.**]**

(2)(A) *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.*

(B) *To achieve that objective, the Secretary is authorized to pay an amount to the owner of a fishing vessel, if—*

*(i) such vessel is scrapped, or 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;*

*(ii) all permits authorizing the participation of the vessel in any fishery under the jurisdiction of the United States are surrendered for permanent revocation; and*

*(iii) the owner of the vessel and such permits relinquishes any claim associated with the vessel and such permits that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established.*

\* \* \* \* \*

(4) *The Council, or the Governor of a State, having authority over a fishery may request the Secretary to conduct a fishing capacity reduction program in the fishery under this subsection.*

**[(4)]** (5) *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.*

(6) *The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped, unless the Secretary certifies that the vessel will not be used for any fishing, including fishing in the waters of a foreign nation and fishing on the high seas.*

\* \* \* \* \*

**TITLE IV—FISHERY MONITORING AND RESEARCH**

\* \* \* \* \*

**SEC. 402. INFORMATION COLLECTION.**

(a) \* \* \*

\* \* \* \* \*

(f) **COLLECTION OF RECREATIONAL CATCH DATA.**—(1) *The Secretary shall develop and implement a program for the sharing of recreational catch data for all federally managed fisheries through the use of information gathered from State-licensed recreational fishermen.*

(2) *The Secretary shall conduct the program in consultation with the principle State officials having marine fishery management responsibility and expertise.*

(3) *The Secretary shall report to the Congress within three years after the effective date of this subsection, on—*

*(A) the progress made in developing such a program; and*

*(B) whether the program has resulted in significantly better data collection for the recreational fishing sector.*

\* \* \* \* \*

**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. *The program shall acquire such knowledge and data using both fishery-dependent and fishery-independent data sources.*

\* \* \* \* \*

(c) **AREAS OF RESEARCH.**—Areas of research are as follows:

(1) \* \* \*

\* \* \* \* \*

*(5) The interaction of species in the marine environment, and the development of ecosystem-based approaches to fishery conservation and management that will lead to better stewardship and sustainability of coastal fishery resources.*

\* \* \* \* \*

(e) **PRIORITY FOR RESEARCH REGARDING OVERFISHED FISHERIES.**—*In carrying out or funding fisheries research under this and other laws regarding essential fish habitat, the Secretary shall give priority to research to identify such habitat for fisheries that are overfished or approaching an overfished condition.*

(f) **BLACK SEA BASS COOPERATIVE RESEARCH PROGRAM.**—*The Secretary, through the New England Fisheries Science Center, shall develop and implement a cooperative stock assessment program, using vessels from the commercial black sea bass fishing industry if appropriate and available. This cooperative program shall include research on the range of the stock, a determination as to whether there is more than one stock, and a black sea bass genetic study to determine whether there is more than one stock of such species requiring different management regimes.*

\* \* \* \* \*

**SEC. 408. GEAR DEVELOPMENT.**

(a) **IDENTIFICATION OF FISHERIES WITH SIGNIFICANT BYCATCH AND SEABIRD INTERACTION PROBLEMS.**—(1) *The Secretary, in conjunction with the Councils, shall identify and publish in the Federal Register a list of fisheries with significant bycatch problems or seabird interaction problems, as determined under criteria developed by the Secretary.*

(2) *The list shall contain, for each fishery identified, information on—*

- (A) *the number of participants in the fishery;*
- (B) *the types of gears used in the fishery;*
- (C) *the bycatch species and species of seabirds that interact with fishing gear;*
- (D) *the amount of bycatch, and the percentage of total catch that is bycatch; and*

(E) any other relevant information.

(3) *The Secretary shall solicit comments on each list published under this subsection.*

(b) **IDENTIFICATION OF FISHERIES WITH MOST URGENT PROBLEMS.**—*The Secretary shall—*

(1) *identify those fisheries included in a list under paragraph (1) that have the most urgent bycatch problems or seabird interaction problems, based on comments received regarding the list; and*

(2) *work in conjunction with the Councils and fishing industry participants to develop new fishing gear, or modifications to existing fishing gear, that will help minimize bycatch and seabird interactions to the extent practicable.*

(c) **GRANT AUTHORITY.**—*The Secretary shall, subject to the availability of appropriations, make grants for the development of fishing gear and modifications to existing fishing gear that will help—*

(1) *minimize bycatch and seabird interactions; and*

(2) *minimize adverse fishing gear impacts on habitat areas of particular concern.*

(d) **REPORT.**—*The Secretary shall report to the Congress annually on—*

(1) *the amount expended to implement this section in the preceding year;*

(2) *developments in gear technology achieved under this section;*

(3) *the reductions in bycatch associated with implementation of this section; and*

(4) *any other relevant information.*

(e) **AUTHORIZATION OF APPROPRIATIONS.**—*To carry out this section there is authorized to be appropriated to the Secretary \$10,000,000 for each of fiscal years 2003 through 2007.*

**SEC. 409. REGIONAL STOCK ASSESSMENTS.**

(a) **IN GENERAL.**—*The Secretary shall conduct periodic regional assessments of stocks of fish.*

(b) **INDEPENDENT REVIEW.**—*The Secretary shall ensure that each periodic assessment under this section is independently reviewed in a manner that—*

(1) *will not delay the process of providing to Regional Fishery Management Councils current assessments for use in managing fisheries; and*

(2) *is as transparent as possible, so that the regulated community can provide input during the review process.*

## DISSENTING VIEWS

We oppose this bill not because, as its supporters claim, it would move fisheries conservation forward. Instead, we are opposed to H.R. 4749 because it actually moves conservation a step backward and undermines some of the historic changes to the law that were made in 1996.

The Magnuson-Stevens Fishery Conservation and Management Act (Act) was first signed into law in 1976, with the initial goal of eliminating foreign fishing in U.S. waters. Over the past two decades the law has been amended several times with the goal of ensuring that the domestic fishing industry harvest our fishery resources in a sustainable manner. Still, it was not until the adoption of the Sustainable Fisheries Act in 1996, that the law mandated, for the first time, that fisheries managers prevent overfishing, protect essential fish habitat, and reduce bycatch. Unfortunately, H.R. 4749 weakens those important achievements in several ways.

First, it makes the protection of Essential Fish Habitat (EFH) discretionary. Under current law, Councils are required for all fisheries to “minimize, to the extent practicable, adverse effects caused by fishing \* \* \* a essential fish habitat.” Few, if any Councils, have taken significant steps to implement this requirement.

Citing the threat of lawsuits result from this inaction as an excuse, the supporters of the bill believe that the solution to this inaction is to simply eliminate the requirement. Claiming to merely “focus” the efforts to protect habitat, the bill would limit the requirement for Councils to minimize the adverse effects of fishing on habitat to only those fisheries where very specific, scientific data is available or for “habitat areas of particular concern” (HAPCs). Unfortunately, because there are few fisheries for which the required scientific data is available, the practical effect of this change will be to eliminate the requirement to protect habitat. Furthermore, few HAPCs have been identified and the bill removes the incentive to identify more, as it would then require Council action to protect them from damaging fishing. Simply put, under H.R. 4749, if Councils don’t identify HAPCs, they don’t have to protect them.

Second, the bill redefines stocks that are “overfished” in such a way that will likely result in fewer declining stocks receiving the protections now required under the law. Currently, the terms “overfishing” and “overfished” are defined as “a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.” NMFS has argued that these two terms should be defined separately as one represents an action, and one represents the status of the stock. While this makes sense, the solution in H.R. 4749 does not, defining an overfished stock as one where “the stock is of a size that is below the natural range of fluctuation associated with the production of maximum sustainable yield.” Because the natural range

of fluctuation for many fisheries is not known, many more fisheries will be classified as “unknown,” and Councils thus not required to protect them even in cases where fisheries have markedly declined. Further, for fisheries which are identified as overfished, management decisions will likely result in more litigation not less, when those who do not want the restrictions that accompany such a designation claim that stock declines are merely the result of natural fluctuation and not overfishing.

Third, while the bill provides grants to develop new fishing gears to reduce bycatch, it also allows an indefinite delay in the implementation of the requirement to establish bycatch reporting systems. Councils are currently required to “establish a standardized reporting methodology to assess the amount and type of bycatch occurring in a fishery, and include conservation and management measures that to the extent practicable \* \* \* minimize bycatch; and minimize the mortality of bycatch that cannot be avoided.” Despite this requirement, after six years Councils have been unable to taken meaningful steps to reduce bycatch, claiming they lack the information necessary to do so, and virtually none have established the required reporting systems that were intended to provide that very information.

Again, using the threat of lawsuits that could occur due to inaction by the Councils, the bill proposes to turn the responsibility for developing reporting systems over to the Secretary, with a requirement to report on that status of developing such a system after one year. No deadline is given for actually completing the development of the reporting system, nor is there a requirement for it to be implemented. This weakening of current law is not offset by the requirements for research and new gear development.

In addition to undermining these three fundamental provisions of the 1996 law, the bill has several other troubling provisions that represent bad policy or delay needed conservation measures. For instance, under the guise of ensuring better science is used in management decisions, the bill required that “independent review” of stock assessments allow input from the regulated community—the fishing industry. Not only does the industry lack the expertise needed to participate in scientific reviews, allowing them to provide input is contradictory to the stated goal of reviews that are truly independent. The fishing industry is already in the unique position of being the only industry that harvests a public resource that gets to write its own management plans. To allow them to provide input into the review of scientific stock assessments that are used to develop those management plans is inappropriate and illogical.

Also, while the bill requires the Secretary to submit a report, within one year, recommending options for a national observer program, it does not require any action to be taken in response to this report. As a result, the implementation of a program that would put observers on fishing vessels to collect accurate and timely data that could greatly improve fisheries management, could be delayed until the next reauthorization of the law.

Finally, while the bill establishes criteria for Individual Fishing Quotas, which remain the topic of much debate within the fishing industry, it does not ensure the adequate recovery of a resource rent or a substantial conservation benefit for the exclusive alloca-

tion of a public resource. It also authorizes the establishment of a highly controversial processor share quota system for all fisheries managed by the North Pacific Fishery Management Council.

In conclusion, H.R. 4749 weakens many of the historic conservation measures that the Sustainable Fisheries Act added to the Magnuson Stevens Act in 1996. The purpose of 1996 amendments were to strengthen the law and ensure that the decline of many fisheries around the country would not continue. While it has not been easy, it is clear the law is having the intended effect. This year, the National Marine Fisheries Service reported that the number of stocks determined to be overfished has declined slightly for the first time since 1997. Still, there are more than 80 stocks that have been identified as overfished. While the Sustainable Fisheries Act has begun to restore our fisheries, now is not the time to roll back the law and undermine the achievements we have made.

NICK RAHALL.  
GEORGE MILLER.  
ANIBAL ACEVEDO-VILA.  
DALE E. KILDEE.  
MARK UDALL.

DISSENTING VIEWS OF THE HONORABLE WALTER B.  
JONES

I want to applaud Mr. Hansen and Mr. Gilchrest for creating legislation that on balance is better than current law. It is with a great deal of reservation and concern that I have had to cast my vote in opposition to this legislation and it is my sincere hope that something can be worked out before the legislation comes to the Floor that will address my concerns.

I want to thank Mr. Gilchrest and his staff for working with me in securing language in the bill requiring independent peer reviews of all stock assessments. In addition, the Committee included language asking the National Academy of Sciences to establish standards for determining "best available science." This provision is necessary because recreational and commercial fishermen in North Carolina and elsewhere are in serious financial distress. Closures based on flawed, substandard, limited or inaccurate data are putting innocent American taxpayers out of work and prohibiting access to a public resource. This language clearly defines what "best scientific information available" means to Magnuson-Stevens. Congress needs to ensure that fisheries data is timely, consistent, independently reviewed, and empirical. This language I think accomplishes that. As everyone already knows, there is no definition of best scientific information available in the Act. In addition, this provision will allow the councils to incorporate scientific review committees to conduct peer reviews of all stock assessments. I believe these two requirements will go a long way in promoting confidence in our nation's fisheries policy and will bring a halt to managing our fisheries through litigation.

The Committee also included innovative language establishing a system for Individual Fishing Quotas. The double referendum proposed by Chairman Gilchrest will ensure fishermen have a voice throughout the process and provide for the fairest allocation of the resource. Also, the bill contains language requiring the National Marine Fisheries Service to include the cumulative impacts on stakeholders when making management decisions. Lastly, I was pleased to see the Committee included language authorizing appropriations for new gear research and development.

While these changes move current law in a favorable direction, I have some grave concerns over Section 28 of the legislation. In my opinion, Section 28 will do nothing to stop the over-capitalization of white marlin, and in fact, will lead to an increased depletion of the resource.

As the National Marine Fisheries Service debated listing white marlin under the authority of the Endangered Species Act, the Committee took steps to impact the issue by supporting an amendment to close the Mid-Atlantic Bight to commercial longline vessels. While this amendment was the least onerous of the those pro-

posed by a Member of the Committee, it did nothing to impact the listing decision, nor will it save a single white marlin. In fact, while causing a further depletion in white marlin stocks, Section 28 will immediately put thousands of Americans out of work. 99 percent of white marlin mortality is caused by foreign vessels with little or no conservation ethic. Rather than targeting US fishermen, Congress should instead focus its efforts the actual source of the problem, foreign fishing fleets.

White marlin is regulated by an international treaty organization, the International Commission for the Conservation of Atlantic Tunas (ICCAT). The 40+ member nation organization has a "use it or lose it" policy regarding quota allocation. ICCAT has already taken steps to reduce white marlin harvest. The annual amount of white marlin that can be landed in years 2001 and 2002 by pelagic longline vessels can be no more than 33 percent of the 1999 landing levels. In 1997, member nations were required to reduce white marlin landings by 25 percent from 1996. Consequently, landings declined by 40 percent of the 1996 levels.

The U.S. has forced conservation issues at ICCAT, especially for billfish. To take actions against our own commercial and recreational fleet will have no impact on white marlin stocks. In fact, unilateral disarmament will undermine U.S. strength before ICCAT. Complete unilateral withdrawal from a fishery will remove us from the negotiating table and management will be left to the worst offenders. Should Congress statutorily close areas within the Exclusive Economic Zone, the U.S. will not meet its quota, not only for white marlin but other stocks as well. This quota will then be reallocated amongst the other member nations, all with conservation practices that fall short of the U.S. model.

The U.S. pelagic longline fleet is responsible for only 3 percent of white marlin mortality. If one were serious about white marlin conservation, one would examine the remaining 97 percent of white marlin mortality. In an effort to foster international white marlin conservation and avoid a listing under the Endangered Species Act, I along with three of my colleagues have introduced House Concurrent Resolution 427. Under our proposal, countries that do not comply with ICCAT management guidelines and therefore that are threatening the continued viability of United States commercial and recreational fisheries would face the imposition of trade sanctions by our nation.

Fewer than 100 vessels remain active in the U.S. pelagic longline fleet today. More than 20 of those vessels are based in my Congressional District. In fact, more than half of the Atlantic pelagic longline fleet packs their stores in Eastern North Carolina. A statutory closure of the Mid-Atlantic Bight will have horrific consequences to my constituents. According to the North Carolina Fisheries Association, more than 300 jobs in my Congressional district will be immediately lost. These vessels account for \$6 million to \$8 million a year, which translates into a total of \$40 to \$60 million per year in total economic impact to the rural coastal communities of North Carolina.

Congress should not be in the business of gear restrictions or fishery closures. Section 28 circumvents an established process of allowing the eight individual Fishery Management Councils make

the appropriate management decisions. The Councils, not the Congress, are the recognized experts on the nation's fisheries.

Lastly, on September 3, 2002, the National Marine Fisheries Service ruled that white marlin is not a candidate for listing under the Endangered Species Act. The ESA defines an endangered species "as any species which is in danger of extinction throughout all or a significant portion of its range." A "threatened species" is defined as "any species which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range." Based on the review, the agency determined that white marlin is not currently at a level that warrants listing under the ESA. The National Marine Fisheries Service went on to say, "The U.S. fishery accounts for approximately five percent of the total mortality of white marlin, which is mostly caught as bycatch in international longline fisheries. The International Commission for the Conservation of Atlantic Tunas (ICCAT) is responsible for the international management of white marlin. By consensus of participating nations, ICCAT adopts binding recommendations to manage for maximum sustainable catch of fish stocks. The U.S. participates in ICCAT-supported stock assessments of white marlin based on data from ICCAT member fishing nations. ICCAT implemented binding measures in 2000 to reduce mortality of white marlin, but these measures have not been in place long enough to fully evaluate their effectiveness. Current U.S. measures include time/area closures, gear and bait restrictions, and a ban on possession of Atlantic white marlins on board commercial vessels."

Clearly, white marlin stocks will be based on international efforts, not unilateral sanctions on U.S. fishermen. Section 28 of the Magnuson-Stevens Act Amendments of 2002 is the wrong tool for conservation. On the other hand, H. Con. Res. 247 will empower the U.S. Commissioners when they go before ICCAT in the Fall of 2002 and ensure that white marlin and other highly migratory species are at the forefront of international conservation efforts.

Included in my dissenting view are three items. One is a letter from the North Carolina Fisheries Association, an organization older than the National Marine Fisheries Service, explaining the devastating impacts of Section 28. Second is a letter from the Blue Water Fishermen's Association that also explains the impacts of the Mid-Atlantic Bight closure. Last is the text of a letter from John Graves, a renowned scientist in the field of highly migratory species such as white marlin.

I want to thank the Members of the Committee on Resources and staff for their work on passing a comprehensive rewrite of the Magnuson-Stevens Act and look forward to supporting the proposal once a compromise is reached on Section 28.

WALTER B. JONES.



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July 11, 2002

Hon. Walter B. Jones, Jr.  
422 Cannon House Office Bldg.  
Washington, DC 20515

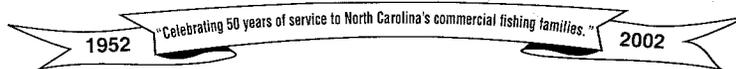
Dear Walter:

As per your request, here is the info regarding impacts to North Carolina's coastal communities as a result of the Saxton longline amendment which was made part of the Magnuson Stevens reauthorization bill adopted by the House Resources Committee.

I will not plow old ground, as the impacts to the east coast longline fishery is outlined in a previous letter dated July 8<sup>th</sup> by the Bluewater Fishermen's Association based in New Jersey. However, it's critical that I emphasize what this measure would do to our state if the bill becomes law as currently written.

North Carolina has about 20 pelagic longline vessels that make a minimum of 75% of their sets in the proposed closed areas as outlined by the Saxton provision. Those vessels account for 300 jobs, including captain, crew, and shoreside support. The income paid directly to the vessels alone accounts for \$6 to \$8 million a year, meaning a total of \$40 to \$60 million per year in total economic impact to the rural coastal communities in our state.

It's obvious that the impacts of this measure are astounding; however, it's only part of the picture. As you know, the commercial fishing industry in our state is very diverse. We employ trawl gear, gillnets, longlines, long haul gear, purse seines, haul seines, pound nets, crab pots, scallop gear, and hand clambers. We have to be good at a lot of different things in order to survive, as the natural cycles provided by the Almighty mean that fishermen must be able to be versatile. That's not only necessary economically, but offers a natural conservation element to the business. When you add governmental mandates to the mix, diversity is even more crucial to survival.



Hon. Walter B. Jones, Jr.  
July 11, 2002  
Page 2

One of our seafood packers in Dare County in particular will be devastated if the Saxton provision goes into effect. It's no exaggeration to state that this particular operation, which emphasizes packing seafood caught with pelagic longline gear, will cease to exist. As horrible as that sounds, it still gets worse.

If that particular seafood packing house ceases, the practical effect is that the North Carolina Fisheries Association goes too! We're talking about a group that has strived to look after commercial fishing families for 50 years!

What I've written is from a very pragmatic viewpoint as to how the Saxton provision will decimate the commercial fishing industry in North Carolina. It should also be obvious how seriously it will harm the fisheries management "process" all over our great land. Mr. Don Young's words yesterday were absolutely on track when he spoke against the amendment offered by Mr. Hefley. Mr. Young said that Congress should not micro manage fisheries because Congress doesn't know enough about the issues. Thankfully, the Resources Committee heeded his advice and did not accept Mr. Hefley's amendment to ban certain trawl gear. That valid argument also pertains to the Saxton longline provision.

By micro managing fisheries through Congressional mandate, the whole process is undermined, making it much more difficult for the Councils to do their job, and it also makes the stakeholders that much more leary of the process.

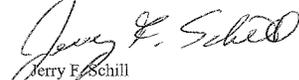
The bottom line on the Saxton longline provision, is that it provides little from a conservation standpoint, it decimates North Carolina's rural, coastal communities, and it makes a mockery of the Council process by micro management.

In the interests of conservation, our rural communities in North Carolina, and faith in the fisheries management process, the Saxton longline provision needs to be stricken from the current House version of the Magnuson Stevens reauthorization bill, or the entire bill needs to be defeated.

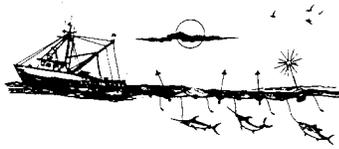
As a member of the Seafood Coalition, we supported the Manager's Amendment originally offered by Chairman Gilchrest, and are truly appreciative of his efforts as well as yours and others to offer it to the Committee. Needless to say, with the addition of the Saxton longline provision we withdrew our support as long as it remained part of the bill.

We appreciate your help in this matter and pray that you will continue in your efforts to assure that the Saxton longline provision is stricken.

Yours truly,



Jerry F. Schill  
President




**BLUE WATER FISHERMEN'S  
ASSOCIATION**

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July 8, 2002

The Honorable Walter B. Jones, Jr.  
U.S. House of Representatives  
422 Cannon House Office Bldg.  
Washington, DC 20515

Dear Congressman Jones:

Thank you for your request to Blue Water Fishermen's Association to provide the following important information that reveals the actual impacts of the Saxton Amendment recently adopted by the Committee. Blue Water Fishermen's Association represents the majority of the US longline fishing industry including those vessels directly affected by the Saxton Amendment.

A fundamental objective of United States fishery conservation and management policy and law is to maximize conservation benefits while minimizing adverse economic impacts on fishermen and fishery-dependent communities. The Saxton Amendment will have precisely the opposite result.

**The Saxton Amendment will minimize if not reverse the conservation of Atlantic white marlin.**

- At best, the Saxton Amendment will have no meaningful or measurable impact on Atlantic white marlin conservation. For this reason, NMFS has concluded that the Saxton Amendment time-area closures will have no effect on the decision on whether to list Atlantic white marlin under the Endangered Species Act. The average annual longline bycatch mortality of Atlantic white marlin in the Saxton Amendment time-area closures is less than one-half of one percent of the total of such mortality reported to ICCAT. More than 99.5 percent of longline fishing white marlin mortality occurs outside of the Saxton Amendment time-area closures. This conclusion is based on the comprehensive analysis of NMFS data.
- At worst, the Saxton Amendment will result in an increase in Atlantic white marlin mortality. On average, a white marlin is killed in the Mid-Atlantic pelagic longline fishery once every sixteen days of fishing. The Saxton Amendment will force a shift of US longline fishing effort from this area where the rate of Atlantic white marlin and blue marlin bycatch (as measured by the catch per unit of effort) is one of the lowest in US waters, to areas where the rate of Atlantic white marlin and blue marlin bycatch is higher. As a result, it is likely that the Saxton Amendment will cause more white marlin to be killed. This conclusion is based on the comprehensive analysis of NMFS data.

- These closures are not based on scientific information nor designed to prevent the catches/mortality of Atlantic white marlin, but rather to enable the catches/mortality of Atlantic white marlin by wealthy sportfishermen. NMFS's data show that the Mid-Atlantic Bight is not the area within the EEZ with the greatest discards of white marlin by pelagic longline fishermen. The faulty perception that U.S. pelagic longline fishermen in the Mid-Atlantic Bight are causing reduced catches of Atlantic white marlin by sportfishermen in the Mid-Atlantic Bight is unfounded and easily disproved by the high catches of recent tournaments in the area.
- The destruction of the US pelagic longline fishery will also have a substantial negative bycatch and directed species conservation consequence in itself. The loss of the US Atlantic pelagic longline fishery will simply cause ICCAT to reallocate the unused US quotas of swordfish and tunas to large fishing nations such as Spain and Japan or smaller newcomers such as Brazil or Namibia. With perhaps the exception of the small Canadian pelagic longline fleet, virtually every other major Atlantic pelagic longline fishing nation has a conservation, bycatch and compliance record that is disgraceful—especially in comparison to the US industry's record. More quota for nations like Spain and Namibia means more pelagic longline fishing effort by Spain and Namibia. More fishing effort by those nations means much greater bycatch mortality of small swordfish and billfish and substantially reduced conservation for swordfish and tuna.

**The Saxton Amendment will impose substantial negative social and economic impacts on longline fishermen and fishery-dependent communities in New York, New Jersey, Maryland and North Carolina.**

The impacts of the proposed closures are very significant. They cannot be dismissed with the simplistic conclusion that fishermen can just go fish in the "open" areas. No fisherman can go just anywhere in the ocean, put their fishing gear in the water and catch fish. It's a little more complicated than that. The oceanographic currents and features, combined with submarine topography, determine where fishing is likely to be successful. In the Mid-Atlantic Bight area, productive fishing usually occurs along the edge of the continental shelf, in the canyons situated 80-100 miles east of the coast. When the Gulf Stream fingers and eddies cross the Mid-Atlantic Bight canyon areas, the concentrations of swordfish, tunas and sharks enable our fishermen's hook-based gear to catch enough to sustain their livelihoods.

These are precisely the areas proposed for closure by the Saxton Amendment, but it is impossible to predict in which of the two closed areas such oceanographic features and productive fishing will occur at any given time during these summer months. The availability of highly migratory species and profitable edges of water, thus the dependent fisheries, are quite cyclic. Single year "snapshots" are deceiving and promote an inaccurate long-term perspective. These are the fallacies of the "rolling closure" concept.

**For example**, during high production cycles for swordfish, tunas and sharks, the pelagic longline fishery contributes as high as 50 to 60% of the total business to area docks, fish dealers and related supply/service businesses. During a low productivity cycle, this may be only 20 to 30% of the total area fisheries economics. However, as Ms. Jean Podinsky, accountant for Lighthouse Marina (one of two commercial landing facilities) and past President of the local

Taxpayers Association, reminded everyone in 2000, "Even though both the commercial and recreational revenues are critical to the overall economics of these businesses and this town, it is the year-round nature of the commercial fishery that provides the revenues and employment opportunities that sustain the year-round economy of Barnegat Light. The commercial docks also provide a majority of the tax-base for the entire borough. The important summer season recreational and commercial revenues are not enough for this town." It is the year-round revenues from the commercial fishery which provide the year-round jobs that support the overall economy of Barnegat Light and similar coastal commercial fishing communities. This year-round characteristic is unique among most seaside resorts that typically only sustain a seasonal economy.

- The Saxton Amendment time-area closures, and the Mid-Atlantic Bight area generally, represent some of the most productive longline fishing grounds for tuna, swordfish and other targeted species in the Atlantic ocean. In fact, US longline fishermen achieve the highest rate of target species catch (as measured by catch per unit effort) in this area as compared to any other area in Atlantic US waters. Closing these areas will maximize the economic impact on US longline fishermen. This conclusion is based on the comprehensive analysis of NMFS data.
- The Saxton Amendment time-area closures encompass nearly all of the productive fishing areas in the Mid-Atlantic Bight. US longline fishermen catch an average of 6-9 million pounds of tuna, swordfish and other target species each year in the Mid-Atlantic Bight for which they are paid \$15-27 million.
- For every Atlantic white marlin incidentally killed by longline fishing in the Mid-Atlantic Bight (Saxton Amendment time-area closures), US longline fishermen catch an average of about 18,274 pounds of tuna, swordfish and other high-quality fish for US consumers for which they are paid \$ 65,714. This conclusion is based on the comprehensive analysis of NMFS data.

**The following are rough estimates of the initial ex-vessel transactions but does not include the ripple along the seafood chain/suppliers/docks/services etc.**

**North Carolina:**

There are approximately 20 active pelagic longline vessels operating out of North Carolina. They range in size from smaller weekly-trip vessels to medium 2-3 week trip vessels. These fishermen make at least 75% of their sets in the proposed closed areas.

Each of these 20 vessels carry a crew of 3-5 crew for total employment of 60-100 onboard. Adding to that is the factor of 10 that NMFS uses for estimating shoreside support employment for each vessel. Therefore, the total employment directly associated with North Carolina longline fishery is approximately 260-300 jobs directly impacted in North Carolina area.

Furthermore, each of these 20 vessels generates an average of \$300,000.00 - \$400,000.00 in annual gross income. Thus, the total annual gross income generated by these vessels is \$6-8 million.

**New Jersey:**

There are 23-26 active pelagic longline vessels operating out of New Jersey. They are of slightly larger average size than the North Carolina vessels. Most are 2-3 week trip vessels. These fishermen make at least 75% of their fishing sets in the proposed closed areas.

Each of these 25 vessels carry a crew of 4-5 crew for total onboard employment of 100-125. Adding to that is the factor of 10 that NMFS uses for estimating shoreside support employment for each vessel. Therefore, the total employment directly associated with New Jersey longline fishery is approximately 350-375 jobs directly impacted in New Jersey area.

Furthermore, each of these 25 vessels generates an average of \$350,000.00 - \$450,000.00 in annual gross income. Thus, the total annual gross income generated by these vessels is \$8.7 to \$11.3 million.

**The following table demonstrates the universe of potentially-impacted permit holders as provided by NMFS as of April 2002.**

State	Total Swordfish or Shark permit holders	Swordfish Directed Permit holders	Pelagic longline gear as primary type
New York	30	16	12
New Jersey	64	32	21*
Delaware	2	2	1
Maryland	11	8	8
Virginia	7	1	1**
North Carolina	24	8	8
TOTAL	138	67	51

\*Four vessels are fishing either in the Pacific or South Atlantic Oceans, not in the Mid-Atlantic Bight

\*\* One vessel is damaged and not fishing; this vessel primarily fished along the east coast of Florida before the closures in 2001.

**Additional points to consider:**

- By closing areas, the Saxton Amendment will force 100% of the effort into the remaining open areas. This will undoubtedly result in unwanted and unforeseen circumstances. Sportfishermen will be just as displeased when they encounter more than double the number of pelagic longline fishermen fishing within view during the time when "their" area is open. In addition, during the August 15-August 31 period when both areas are closed, all pelagic longline fishermen in this area will have no choice but to fish off North Carolina or eastern Long Island, NY.
- If Mid-Atlantic pelagic longline fishermen cannot use their preferred fishing gear, they may choose to "sit" in the productive canyons and use "chunking", "greenstick" and/or "handline/handgear" fishing methods to fish for swordfish and tunas. They will likely need to stay out on the fishing grounds even longer than they do now. These other types

of “hook and line” fishing are likely to catch more white marlin than pelagic longline fishing.

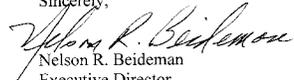
- The pelagic longline fishermen in the Mid-Atlantic Bight are already suffering under a so-called “Bluefin tuna closure” that closes a large area south of Long Island for the entire month of June. If the proposed closures go into effect, the most productive area of fishing in the northwestern Mid-Atlantic Bight will be open for only two weeks and then closed again until September. The cumulative impact of such closures, especially back-to-back closures is enormous, especially considering the short timeframe when highly migratory species are available in this area.
- The small but important northern large coastal shark fishery will be decimated, as its quota opens on July 1 each year and generally only lasts for 3-8 weeks until closed, depending on effort and catches.
- The pelagic longline fishermen and their associated businesses in the Mid-Atlantic Bight depend on the fairer weather during the summer and early autumn months to provide the income needed to sustain them through the poor weather months from December to May. The months of June through October represent 75% of the fishing done by pelagic longline fishermen in the Mid-Atlantic Bight, with more than 51% occurring in the months of July through September. A closure at this time will push these fishermen and their dependants, both families and related service/suppliers, over the edge.

In conclusion, the Saxton Amendment will force US longline fishermen to kill more Atlantic white marlin while suffering substantial adverse economic impacts to the industry and to the fishery-dependent communities of the Mid-Atlantic Bight region.

We hope that this helps to explain why this legislation and other efforts to close areas in the Mid-Atlantic Bight or otherwise progressively dismantle the US pelagic longline fishery is a bad idea. It's bad for tuna and swordfish conservation, it's bad for marlin and sailfish conservation, and it's bad for US fishermen and the American communities in which they live.

Thank you for the opportunity to explain the potential damage and consequences of the proposed closures in the Mid-Atlantic Bight. We appreciate all your assistance in trying to prevent its adoption.

Sincerely,

  
Nelson R. Beideman  
Executive Director  
Blue Water Fishermen's Association

24 June 2002

The Honorable Jim Saxton  
339 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Saxton:

Thank you for sending me three potential substitute amendments to H.R. 4749. I have reviewed the amendments and would like to take this opportunity to discuss the potential impacts of the proposed substitute amendments on the conservation of overexploited highly migratory species, and the potential impact on the relative influence of the United States at the International Commission for the Conservation of Atlantic Tunas (ICCAT). The following are my thoughts and I would prefer that they not be widely circulated.

Several highly migratory species stocks that are currently listed as overfished occur in the proposed closure areas. These include North Atlantic swordfish, North Atlantic albacore, western Atlantic bluefin tuna, bigeye tuna, blue marlin and white marlin. Reductions in fishing effort in the proposed areas would reduce fishing mortality on these species, and the closures could possibly reduce interactions with some endangered species as well. It is clear that the proposed time-area closures are designed to afford protection to white marlin as they aggregate in the Mid-Atlantic bight prior to their annual offshore migration to the Caribbean. The biomass of this species is currently estimated to be 12% of that necessary for maximum sustainable yield (about 6% of the virgin stock size), and the National Marine Fisheries Service is currently considering a petition to list white marlin as an endangered species.

It is important to note that the U.S. is responsible for a small fraction of the total fishing mortality on most stocks of Atlantic highly migratory species. In the case of white marlin, the U.S. commercial and recreation fisheries represent about 6% of the reported mortality on the Atlantic-wide stock, and a cessation of U.S. fishing efforts would not have a significant effect on the status of the stock. Nevertheless, any reduction in fishing mortality will clearly help the species.

The majority of U.S. fishing mortality on white marlin results from the pelagic longline fishery, and some of this mortality occurs in the proposed closed areas. Due to recent changes in geographic distribution of effort of the pelagic longline fleet resulting from the implementation of closed areas in the Gulf of Mexico and along the U.S. south Atlantic coast, it is difficult to estimate the reduction in mortality resulting from the proposed time and area closures. Furthermore, one must consider where vessels displaced from the proposed closed areas would relocate. As white marlin occur along the U.S. Atlantic and Gulf coasts, they are likely to be taken wherever pelagic longline

gear is set. However, it is safe to assume that the proposed closed areas would reduce the probability of "disaster sets", where many white marlin could be taken on a single set at a time when the species is aggregating prior to its annual southern migration.

While the total reduction of mortality on white marlin resulting from the proposed closed areas may not be great, any reduction will be important to slow or reverse the decline of this seriously overfished species. Proactive measures at this time may help to prevent a listing of the species as endangered. It is important to realize that listing white marlin as an endangered species would have a huge negative impact on all U.S. Atlantic commercial and recreational pelagic fisheries, without doing much at all for the status of the stock.

It has been argued that the U.S. might lose quota at ICCAT as a result of continued domestic effort reductions. I doubt that is a serious problem in the near future. Currently the U.S. has quotas for North Atlantic swordfish, western Atlantic bluefin tuna, and North Atlantic albacore, and we are to restrict our landings of blue and white marlin to 250 fish per year. Two of these quotas (swordfish and bluefin tuna) are part of long term (10 and 20 years, respectively) rebuilding program. It is unlikely that quota allocations for these species would be reconsidered until the goals of the rebuilding programs have been reached. Furthermore, it is important to note that the U.S. has never had quota taken away by ICCAT. We have voluntarily reduced takes to achieve sharing arrangements or rebuilding programs, but ICCAT has not adopted a "use it or lose it" policy. It can be argued that we have reduced our takes to help to rebuild stocks.

Will the U.S. lose effectiveness at ICCAT if we take fewer fish? I do not think so. We have an important role at the International Whaling Commission and we do not have a significant take of whales. The use of time-area closures is one means that ICCAT is considering to reduce mortality on bycatch species. A successful domestic implementation will help promote the management tool at ICCAT. However, it is my opinion that if the U.S. were to completely terminate the Atlantic pelagic longline fleet, we would seriously reduce our effectiveness at ICCAT as our commercial fishermen interact extensively with those from other nations and work diligently to achieve U.S. positions.

Of the three proposed substitute amendments, I prefer the rolling closures. It is enforceable and is best suited to the biology of white marlin in the Mid-Atlantic Bight.

Sincerely,

John Graves  
Chair, Department of Fisheries Science  
Chair, U.S. ICCAT Advisory Committee

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