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STRENGTHENING FISHING COMMUNITIES AND INCREASING FLEXIBILITY IN FISHERIES MANAGEMENT ACT

JUNE 19, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 200]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 200) to amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, 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.

This Act may be cited as the "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.
Sec. 4. References.

TITLE I—MAGNUSON-STEVENS ACT FINDINGS AND DEFINITIONS AMENDMENTS AND REAUTHORIZATION

Sec. 101. Amendments to findings.
Sec. 102. Amendments to definitions.
Sec. 103. Authorization of appropriations.

TITLE II—FISHERIES MANAGEMENT FLEXIBILITY AND MODERNIZATION

Sec. 201. Definitions.

Sec. 202. Process for allocation review for South Atlantic and Gulf of Mexico mixed-use fisheries.
Sec. 203. Alternative fishery management measures.
Sec. 204. Modifications to the annual catch limit requirement.
Sec. 205. Limitation on future catch share programs.
Sec. 206. Study of limited access privilege programs for mixed-use fisheries.
Sec. 207. Cooperative data collection.
Sec. 208. Recreational fishing data.
Sec. 209. Miscellaneous amendments relating to fishery management councils.

TITLE III—HEALTHY FISHERIES THROUGH BETTER SCIENCE

Sec. 301. Healthy fisheries through better science.
Sec. 302. Transparency and public process.
Sec. 303. Flexibility in rebuilding fish stocks.
Sec. 304. Exempted fishing permits.
Sec. 305. Cooperative research and management program.
Sec. 306. Gulf of Mexico fisheries cooperative research and red snapper management.
Sec. 307. Ensuring consistent management for fisheries throughout their range.

TITLE IV— STRENGTHENING FISHING COMMUNITIES

Sec. 401. Estimation of cost of recovery from fishery resource disaster.
Sec. 402. Deadline for action on request by Governor for determination regarding fishery resource disaster.
Sec. 403. North Pacific Fishery management clarification.
Sec. 404. Limitation on harvest in North Pacific directed pollock fishery.
Sec. 405. Arctic community development quota.
Sec. 406. Reallocation of certain unused harvest allocation.
Sec. 407. Prohibition on shark feeding off coast of Florida.
Sec. 408. Restoration of historically freshwater environment.

SEC. 3. DEFINITIONS.

In this Act, any term used that is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) shall have the same meaning such term has under that section.

SEC. 4. REFERENCES.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a provision, the reference shall be considered to be made to a provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

TITLE I—MAGNUSON-STEVENS ACT FINDINGS AND DEFINITIONS AMENDMENTS AND REAUTHORIZATION

SEC. 101. AMENDMENTS TO FINDINGS.

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

(1) in paragraph (1), by inserting "cultural well-being," after "economy,"; and

(2) in paragraph (10), by inserting "and traditional ways of life" after "economic growth".

SEC. 102. AMENDMENTS TO DEFINITIONS.

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

(1) in paragraph (2), by striking "management program";

(2) in paragraph (34), by striking "The terms 'overfishing' and 'overfished' mean" and inserting "The term 'overfishing' means"; and

(3) by inserting after paragraph (8) the following:

"(8a) The term 'depleted' means, with respect to a stock of fish or stock complex, that the stock or stock complex has a biomass that has declined below a level that jeopardizes the capacity of the stock or stock complex to produce maximum sustainable yield on a continuing basis."; and

(4) by inserting after paragraph (43) the following:

"(43a)(A) The term 'subsistence fishing' means fishing in which the fish harvested are intended for customary and traditional uses, including for direct personal or family consumption as food or clothing; for the making or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and for customary exchange or trade.

"(B) In this paragraph—

"(i) the term 'family' means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

"(ii) the term 'barter' means the exchange of a fish or fish part—

"(I) for another fish or fish part; or

"(II) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.".

(b) SUBSTITUTION OF TERM.—The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended—

(1) in the heading of section 304(e), by striking "OVERFISHED" and inserting "DEPLETED"; and

(2) by striking "overfished" each place it appears and inserting "depleted".

(c) CLARITY IN ANNUAL REPORT.—Section 304(e)(1) (16 U.S.C. (e)(1)) is amended by adding at the end the following: "The report shall distinguish between fisheries that are depleted (or approaching that condition) as a result of fishing and fisheries that are depleted (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as depleted or approaching that condition, whether the fishery is the target of directed fishing.".

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

Section 4 (16 U.S.C. 1803) is amended—

(1) by striking "this Act" and all that follows through "(7)" and inserting "this Act"; and

(2) by striking "fiscal year 2013" and inserting "each of fiscal years 2018 through 2022".

TITLE II—FISHERIES MANAGEMENT FLEXIBILITY AND MODERNIZATION

SEC. 201. DEFINITIONS.

For the purposes of implementing this title:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term "appropriate committees of Congress" means—

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) LIMITED ACCESS PRIVILEGE PROGRAM.—The term "limited access privilege program" means a program that meets the requirements of section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853a).

(3) MIXED-USE FISHERY.—The term "mixed-used fishery" means a Federal fishery in which two or more of the following occur:

(A) Recreational fishing.

(B) Charter fishing.

(C) Commercial fishing.

SEC. 202. PROCESS FOR ALLOCATION REVIEW FOR SOUTH ATLANTIC AND GULF OF MEXICO MIXED-USE FISHERIES.

(a) STUDY OF ALLOCATIONS IN MIXED-USE FISHERIES.—Not later than 60 days after the date of enactment of this Act, the Secretary of Commerce shall seek to enter into an arrangement with the National Academy of Sciences to conduct a study of South Atlantic and Gulf of Mexico mixed-use fisheries—

(1) to provide guidance to each applicable Council on criteria that could be used for allocating fishing privileges, including consideration of the conservation and socioeconomic benefits of the commercial, recreational, and charter components of a fishery, in the preparation of a fishery management plan;

(2) to identify sources of information that could reasonably support the use of such criteria in allocation decisions;

(3) to develop procedures for allocation reviews and potential adjustments in allocations; and

(4) that shall consider the ecological, economic and social factors relevant to each component of the mixed-use fishery including but not limited to: fairness and equitability of all current allocations; percent utilization of available allocations by each component; consumer and public access to the resource; and the application of economic models for fully estimating the direct and indirect value-added contributions of the various commercial and recreational fishing industry market sectors throughout chain of custody.

(b) REPORT.—Not later than 1 year after the date an arrangement is entered into under subsection (a), the National Academy of Sciences shall submit to the appropriate committees of Congress a report on the study conducted under that subsection.

(c) PROCESS FOR ALLOCATION REVIEW AND ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and every 5 years thereafter, an applicable Council shall perform a review

of the allocations to the commercial fishing sector and the recreational fishing sector of all applicable fisheries in its jurisdiction.

(2) CONSIDERATIONS.—In conducting a review under paragraph (1), an applicable Council shall consider, in each allocation decision, the conservation and socioeconomic benefits of—

(A) the commercial fishing sector; and

(B) the recreational fishing sector.

(d) DEFINITION OF APPLICABLE COUNCIL.—In this section, the term "applicable Council" means—

(1) the South Atlantic Fishery Management Council; or

(2) the Gulf of Mexico Fishery Management Council.

SEC. 203. ALTERNATIVE FISHERY MANAGEMENT MEASURES.

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

(1) in paragraph (7)(C), by striking "; and" and inserting a semicolon;

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7), the following:

"(8) have the authority to use alternative fishery management measures in a recreational fishery (or the recreational component of a mixed-use fishery), including extraction rates, fishing mortality targets, and harvest control rules, in developing a fishery management plan, plan amendment, or proposed regulations; and".

SEC. 204. MODIFICATIONS TO THE ANNUAL CATCH LIMIT REQUIREMENT.

(a) REGIONAL FISHERY MANAGEMENT COUNCILS.—Section 302 (16 U.S.C. 1852) is amended by adding at the end the following:

"(m) CONSIDERATIONS FOR MODIFICATIONS TO ANNUAL CATCH LIMIT REQUIREMENTS.—

"(1) ANNUAL CATCH LIMIT REQUIREMENT FOR CERTAIN DATA-POOR FISHERIES.—Notwithstanding subsection (h)(6), in the case of a stock of fish for which the total annual catch limit is 25 percent or more below the overfishing limit, a peer-reviewed stock survey and stock assessment have not been performed during the preceding 5 fishing years, and the stock is not subject to overfishing, a Council may, after notifying the Secretary, maintain the current annual catch limit for the stock until a peer-reviewed stock survey and stock assessment are conducted and the results are considered by the Council and its scientific and statistical committee.

"(2) CONSIDERATION OF ECOSYSTEM AND ECONOMIC IMPACTS.—In establishing annual catch limits a Council may, consistent with subsection (h)(6), consider changes in an ecosystem and the economic needs of the fishing communities.

"(3) LIMITATIONS TO ANNUAL CATCH LIMIT REQUIREMENT FOR SPECIAL FISHERIES.—Notwithstanding subsection (h)(6), a Council is not required to develop an annual catch limit for—

"(A) an ecosystem-component species;

"(B) a fishery for a species that has a life cycle of approximately 1 year, unless the Secretary has determined the fishery is subject to overfishing; or

"(C) a stock for which—

"(i) more than half of a single-year class will complete their life cycle in less than 18 months; and

"(ii) fishing mortality will have little impact on the stock.

"(4) RELATIONSHIP TO INTERNATIONAL FISHERY EFFORTS.—

"(A) IN GENERAL.—Each annual catch limit, consistent with subsection (h)(6)—

"(i) may take into account management measures under international agreements in which the United States participates; and

"(ii) in the case of an annual catch limit developed by a Council for a species, shall take into account fishing for the species outside the exclusive economic zone and the life-history characteristics of the species that are not subject to the jurisdiction of the Council.

"(B) EXCEPTION TO ANNUAL CATCH LIMIT REQUIREMENT.—If fishery management activities by another country with respect to fishing outside the exclusive economic zone may hinder conservation efforts by United States fishermen for a fish species for which any of the recruitment, distribution, life history, or fishing activities are transboundary, and for which there is no informal transboundary agreement with that country in effect, then—

"(i) notwithstanding subsection (h)(6), no annual catch limit is required to be developed for the species by a Council; and

"(ii) if an annual catch limit is developed by a Council for the species, the catch limit shall take into account fishing for the species outside

the exclusive economic zone that is not subject to the jurisdiction of the Council.

"(5) AUTHORIZATION FOR MULTISPECIES COMPLEXES AND MULTIYEAR ANNUAL CATCH LIMITS.—For purposes of subsection (h)(6), a Council may establish—

"(A) an annual catch limit for a stock complex; or'including'

"(B) annual catch limits for each year in any continuous period that is not more than three years in duration.

"(6) ECOSYSTEM-COMPONENT SPECIES DEFINED.—In this subsection the term 'ecosystem-component species' means a stock of fish that is a nontarget, incidentally harvested stock of fish in a fishery, or a nontarget, incidentally harvested stock of fish that a Council or the Secretary has determined—

"(A) is not subject to overfishing, approaching a depleted condition or depleted; and

"(B) is not likely to become subject to overfishing or depleted in the absence of conservation and management measures.

"(7) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as providing an exemption from the requirements of section 301(a) of this Act.".

(b) ACTION BY THE SECRETARY.—Section 304 (16 U.S.C. 1854) is amended—

(1) by striking "(i) INTERNATIONAL OVERFISHING.—" and inserting "(j) INTERNATIONAL OVERFISHING.—";

(2) in subsection (j)(1), as redesignated, by inserting "shall" before "immediately"; and

(3) by adding at the end the following:

"(k) STOCK SURVEYS AND ASSESSMENTS.—Not later than 2 years after the date that the Secretary receives notice from a Council under section 302(m), the Secretary shall complete a peer-reviewed stock survey and stock assessment of the applicable stock of fish and transmit the results of the survey and assessment to the Council.".

SEC. 205. LIMITATION ON FUTURE CATCH SHARE PROGRAMS.

(a) CATCH SHARE DEFINED.—Section 3 (16 U.S.C. 1802) is amended by inserting after paragraph (2) the following:

"(2a) The term 'catch share' means any fishery management program that allocates a specific percentage of the total allowable catch for a fishery, or a specific fishing area, to an individual, cooperative, community, processor, representative of a commercial sector, or regional fishery association established in accordance with section 303A(c)(4), or other entity.".

(b) CATCH SHARE REFERENDUM PILOT PROGRAM.—

(1) IN GENERAL.—Section 303A(c)(6)(D) (16 U.S.C. 1853a(c)(6)(D)) is amended to read as follows:

"(D) CATCH SHARE REFERENDUM PILOT PROGRAM.—

"(i) The New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils may not submit a fishery management plan or amendment that creates a catch share program for a fishery, and the Secretary may not approve or implement such a plan or amendment submitted by such a Council or a Secretarial plan or amendment under section 304(c) that creates such a program, unless the final program has been approved, in a referendum in accordance with this subparagraph, by a majority of the permit holders eligible to participate in the fishery. For multispecies permits in the Gulf of Mexico, any permit holder with landings from within the sector of the fishery being considered for the catch share program within the 5-year period preceding the date of the referendum and still active in fishing in the fishery shall be eligible to participate in such a referendum. If a catch share program is not approved by the requisite number of permit holders, it may be revised and submitted for approval in a subsequent referendum.

"(ii) The Secretary may, at the request of the New England Fishery Management Council, allow participation in such a referendum for a fishery under the Council's authority, by fishing vessel crewmembers who derive a significant portion of their livelihood from such fishing.

"(iii) The Secretary shall conduct a referendum under this subparagraph, including notifying all permit holders eligible to participate in the referendum and making available to them—

"(I) a copy of the proposed program;

"(II) an estimate of the costs of the program, including costs to participants;

"(III) an estimate of the amount of fish or percentage of quota each permit holder would be allocated; and

"(IV) information concerning the schedule, procedures, and eligibility requirements for the referendum process.

"(iv) For the purposes of this subparagraph, the term 'permit holder eligible to participate' only includes the holder of a permit for a fishery under which fishing has occurred in 3 of the 5 years preceding a referendum for the fishery, unless sickness, injury, or other unavoidable hardship prevented the permit holder from engaging in such fishing.

"(v) The Secretary may not implement any catch share program for any fishery managed exclusively by the Secretary unless first petitioned by a majority of those permit holders eligible to participate in the fishery.".

(2) LIMITATION ON APPLICATION.—The amendment made by paragraph (1) shall not apply to a catch share program that is submitted to, or proposed by, the Secretary of Commerce before the date of enactment of this Act.

(3) REGULATIONS.—Before conducting a referendum under the amendment made by paragraph (1), the Secretary of Commerce shall issue regulations implementing such amendment after providing an opportunity for submission by the public of comments on the regulations.

SEC. 206. STUDY OF LIMITED ACCESS PRIVILEGE PROGRAMS FOR MIXED-USE FISHERIES.

(a) STUDY ON LIMITED ACCESS PRIVILEGE PROGRAMS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce shall seek to enter into an arrangement under which the Ocean Studies Board of the National Academies of Sciences, Engineering, and Medicine shall—

(1) study the use of limited access privilege programs in mixed-use fisheries, including—

(A) identifying any inequities caused by a limited access privilege program;

(B) recommending policies to address the inequities identified in subparagraph (A); and

(C) identifying and recommending the different factors and information a mixed-use fishery should consider when designing, establishing, or maintaining a limited access privilege program to mitigate any inequities identified in subparagraph (A); and

(2) submit to the appropriate committees of Congress a report on the study under paragraph (1), including the recommendations under subparagraphs (B) and (C) of paragraph (1).

(b) TEMPORARY MORATORIUM.—

(1) IN GENERAL.—Except as provided in paragraph (2), there shall be a moratorium on the submission and approval of a limited access privilege program for a mixed-used fishery until the date that the report is submitted under subsection (a)(1)(B).

(2) EXCEPTION.—Subject to paragraph (3), a Council may submit, and the Secretary of Commerce may approve, for a mixed- use fishery that is managed under a limited access system, a limited access privilege program if such program was part of a pending fishery management plan or plan amendment before the date of enactment of this Act.

(3) MANDATORY REVIEW.—A Council that approves a limited access privilege program under paragraph (2) shall, upon issuance of the report required under subparagraph (a), review and, to the extent practicable, revise the limited access privilege program to be consistent with the recommendations of the report or any subsequent statutory or regulatory requirements designed to implement the recommendations of the report.

(4) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect a limited access privilege program approved by the Secretary of Commerce before the date of enactment of this Act.

SEC. 207. COOPERATIVE DATA COLLECTION.

(a) IMPROVING DATA COLLECTION AND ANALYSIS.—Section 404 (16 U.S.C. 1881c) is amended by adding at the end the following:

"(e) IMPROVING DATA COLLECTION AND ANALYSIS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop, in consultation with the science and statistical committees of the Councils established under section 302(g) and the Marine Fisheries Commissions, and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on facilitating greater incorporation of data, analysis, stock assessments, and surveys from State agencies and nongovernmental sources described in paragraph (2) into fisheries management decisions.

"(2) NONGOVERNMENTAL SOURCES.—Nongovernmental sources referred to in paragraph (1) include the following:

"(A) Fishermen.

"(B) Fishing communities.

"(C) Universities.

"(D) Research and philanthropic institutions.

"(3) CONTENT.—In developing the report under paragraph (1), the Secretary shall—

"(A) identify types of data and analysis, especially concerning recreational fishing, that can be reliably used for purposes of this Act as the basis for establishing conservation and management measures as required by section 303(a)(1), including setting standards for the collection and use of that data and analysis in stock assessments and surveys and for other purposes as determined by the Secretary;

"(B) provide specific recommendations for collecting data and performing analyses identified as necessary to reduce uncertainty in and improve the accuracy of future stock assessments, including whether such data and analysis could be provided by nongovernmental sources, including fishermen, fishing communities, universities, and research institutions;

"(C) consider the extent to which it is possible to establish a registry of persons collecting or submitting the data and performing the analyses identified under subparagraphs (A) and (B); and

"(D) consider the extent to which the acceptance and use of data and analyses identified in the report in fishery management decisions is practicable.".

(b) DEADLINE.—The Secretary of Commerce shall develop and publish guidelines under the amendment made by paragraph (a) by not later than 1 year after the date of enactment of this Act.

(c) NAS REPORT RECOMMENDATIONS.—The Secretary of Commerce shall take into consideration and, to the extent feasible, implement the recommendations of the National Academy of Sciences in the report entitled "Review of the Marine Recreational Information Program (2017)", including—

(1) prioritizing the evaluation of electronic data collection, including smartphone applications, electronic diaries for prospective data collection, and an Internet website option for panel members or for the public;

(2) evaluating whether the design of the Marine Recreational Information Program for the purposes of stock assessment and the determination of stock management reference points is compatible with the needs of in-season management of annual catch limits; and

(3) if the Marine Recreational Information Program is incompatible with the needs of in-season management of annual catch limits, determining an alternative method for in-season management.

SEC. 208. RECREATIONAL FISHING DATA.

Section 401(g) (16 U.S.C. 1881(g)) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following:

"(4) FEDERAL-STATE PARTNERSHIPS.—

"(A) ESTABLISHMENT.—The Secretary shall establish partnerships with States to develop best practices for implementation of State programs established pursuant to paragraph (2).

"(B) GUIDANCE.—The Secretary shall develop guidance, in cooperation with the States, that details best practices for administering State programs pursuant to paragraph (2), and provide such guidance to the State.".

SEC. 209. MISCELLANEOUS AMENDMENTS RELATING TO FISHERY MANAGEMENT COUNCILS.

(a) COUNCIL JURISDICTION FOR OVERLAPPING FISHERIES.—Section 302(a)(1) (16 U.S.C. 1852(a)) is amended—

(1) in subparagraph (A), in the second sentence—

(A) by striking "18" and inserting "19"; and

(B) by inserting before the period at the end "and a liaison who is a member of the Mid-Atlantic Fishery Management Council to represent the interests of fisheries under the jurisdiction of such Council"; and

(2) in subparagraph (B), in the second sentence—

(A) by striking "21" and inserting "22"; and

(B) by inserting before the period at the end "and a liaison who is a member of the New England Fishery Management Council to represent the interests of fisheries under the jurisdiction of such Council".

(b) COUNCIL SEAT.—Section 302(b)(2) (16 U.S.C. 1852(b)(2)) is amended—

(1) in subparagraph (A), by striking "or recreational" and inserting ", recreational, or subsistence fishing"; and

(2) in subparagraph (C), in the second sentence, by inserting ", and in the case of the Governor of Alaska with the subsistence fishing interests of the State," after "interests of the State".

(c) PURPOSE.—Section 2(b)(3) (16 U.S.C. 1801(b)(3)) is amended by striking "and recreational" and inserting ", recreational, and subsistence".

(d) PROHIBITION ON CONSIDERING RED SNAPPER KILLED DURING REMOVAL OF OIL RIGS.—Any red snapper that are killed during the removal of any offshore oil rig in the Gulf of Mexico shall not be considered in determining under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) whether the total allowable catch for red snapper has been reached.

(e) PROHIBITION ON CONSIDERING FISH SEIZED FROM FOREIGN FISHING.—Any fish that are seized from a foreign vessel engaged in illegal fishing activities in the exclusive economic zone shall not be considered in determining under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) the total allowable catch for that fishery.

TITLE III—HEALTHY FISHERIES THROUGH BETTER SCIENCE

SEC. 301. HEALTHY FISHERIES THROUGH BETTER SCIENCE.

(a) DEFINITION OF STOCK ASSESSMENT.—Section 3 (16 U.S.C. 1802), as amended by section 102(a) of this Act, is further amended by redesignating the paragraphs after paragraph (42) in order as paragraphs (44) through (53), and by inserting after paragraph (42) the following:

"(43) The term 'stock assessment' means an evaluation of the past, present, and future status of a stock of fish, that includes—

"(A) a range of life history characteristics for such stock, including—

"(i) the geographical boundaries of such stock; and

"(ii) information on age, growth, natural mortality, sexual maturity and reproduction, feeding habits, and habitat preferences of such stock; and

"(B) fishing for the stock.".

(b) STOCK ASSESSMENT PLAN.—

(1) IN GENERAL.—Section 404 (16 U.S.C. 1881c), as amended by section 207(a) of this Act, is further amended by adding at the end the following:

"(f) STOCK ASSESSMENT PLAN.—

"(1) IN GENERAL.—The Secretary shall develop and publish in the Federal Register, on the same schedule as required for the strategic plan required under subsection (b) of this section, a plan to conduct stock assessments for all stocks of fish for which a fishery management plan is in effect under this Act.

"(2) CONTENTS.—The plan shall—

"(A) for each stock of fish for which a stock assessment has previously been conducted—

"(i) establish a schedule for updating the stock assessment that is reasonable given the biology and characteristics of the stock; and

"(ii) subject to the availability of appropriations, require completion of a new stock assessment, or an update of the most recent stock assessment—

"(I) every 5 years; or

"(II) within such other time period specified and justified by the Secretary in the plan;

"(B) for each stock of fish for which a stock assessment has not previously been conducted—

"(i) establish a schedule for conducting an initial stock assessment that is reasonable given the biology and characteristics of the stock; and

"(ii) subject to the availability of appropriations, require completion of the initial stock assessment within 3 years after the plan is published in the Federal Register unless another time period is specified and justified by the Secretary in the plan; and

"(C) identify data and analysis, especially concerning recreational fishing, that, if available, would reduce uncertainty in and improve the accuracy of future stock assessments, including whether such data and analysis could be provided by fishermen, fishing communities, universities, and research institutions, to the extent that use of such data would be consistent with the requirements in section 301(a)(2) to base conservation and management measures on the best scientific information available.

"(3) WAIVER OF STOCK ASSESSMENT REQUIREMENT.—Notwithstanding subparagraphs (A)(ii) and (B)(ii), a stock assessment is not required for a stock of fish in the plan if the Secretary determines that such a stock assessment is not necessary and justifies such determination in the Federal Register notice required by this subsection.".

(2) DEADLINE.—Notwithstanding section 404(f)(1) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by this section, the Secretary of Commerce shall issue the first stock assessment plan under such section by not later than 2 years after the date of enactment of this Act.

SEC. 302. TRANSPARENCY AND PUBLIC PROCESS.

(a) ADVICE.—Section 302(g)(1)(B) (16 U.S.C. 1852(g)(1)(B)) is amended by adding at the end the following: "Each scientific and statistical committee shall develop such advice in a transparent manner and allow for public involvement in the process.".

(b) MEETINGS.—Section 302(i)(2) (16 U.S.C. 1852(i)(2)) is amended by adding at the end the following:

"(G) Each Council shall make available on the Internet Web site of the Council—

"(i) to the extent practicable, a Webcast, an audio recording, or a live broadcast of each meeting of the Council, and of the Council Coordination Committee established under subsection (l), that is not closed in accordance with paragraph (3); and

"(ii) audio, video (if the meeting was in person or by video conference), or a searchable audio or written transcript of each meeting of the Council and of the meetings of committees referred to in section (g)(1)(B) of the Council by not later than 30 days after the conclusion of the meeting.

"(H) The Secretary shall maintain and make available to the public an archive of Council and scientific and statistical committee meeting audios, videos, and transcripts made available under clauses (i) and (ii) of subparagraph (G).".

(c) FISHERY IMPACT STATEMENTS.—

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

(A) in subsection (a), by striking paragraph (9) and redesignating paragraphs (10) through (15) as paragraphs (9) through (14), respectively; and

(B) by adding at the end the following:

"(d) FISHERY IMPACT STATEMENT.—

"(1) Any fishery management plan (or fishery management plan amendment) prepared by any Council or by the Secretary pursuant to subsection (a) or (b), or proposed regulations deemed necessary pursuant to subsection (c), shall include a fishery impact statement which shall assess, specify and analyze the likely effects and impact of the proposed action on the quality of the human environment.

"(2) The fishery impact statement shall describe—

"(A) a purpose of the proposed action;

"(B) the environmental impact of the proposed action;

"(C) any adverse environmental effects which cannot be avoided should the proposed action be implemented;

"(D) a reasonable range of alternatives to the proposed action;

"(E) the relationship between short-term use of fishery resources and the enhancement of long-term productivity;

"(F) the cumulative conservation and management effects; and

"(G) economic, and social impacts of the proposed action on—

"(i) participants in the fisheries and fishing communities affected by the proposed action;

"(ii) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

"(iii) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery.

"(3) A substantially complete fishery impact statement, which may be in draft form, shall be available not less than 14 days before the beginning of the meeting at which a Council makes its final decision on the proposal (for plans, plan amendments, or proposed regulations prepared by a Council pursuant to subsection (a) or (c)). Availability of this fishery impact statement will be announced by the methods used by the Council to disseminate public information

and the public and relevant government agencies will be invited to comment on the fishery impact statement.

"(4) The completed fishery impact statement shall accompany the transmittal of a fishery management plan or plan amendment as specified in section 304(a), as well as the transmittal of proposed regulations as specified in section (b).

"(5) The Councils shall, subject to approval by the Secretary, establish criteria to determine actions or classes of action of minor significance regarding subparagraphs (A), (B), (D), (E), and (F) of paragraph (2), for which preparation of a fishery impact statement is unnecessary and categorically excluded from the requirements of this section, and the documentation required to establish the exclusion.

"(6) The Councils shall, subject to approval by the Secretary, prepare procedures for compliance with this section that provide for timely, clear, and concise analysis that is useful to decisionmakers and the public, reduce extraneous paperwork and effectively involve the public, including—

"(A) using Council meetings to determine the scope of issues to be addressed and identifying significant issues related to the proposed action;

"(B) integration of the fishery impact statement development process with preliminary and final Council decision making in a manner that provides opportunity for comment from the public and relevant government agencies prior to these decision points; and

"(C) providing scientific, technical, and legal advice at an early stage of the development of the fishery impact statement to ensure timely transmittal and Secretarial review of the proposed fishery management plan, plan amendment, or regulations to the Secretary.".

(2) EVALUATION OF ADEQUACY.—Section 304(a)(2) (16 U.S.C. 1854(a)(2)) is amended by striking "and" after the semicolon at the end of subparagraph (B), striking the period at the end of subparagraph (C) and inserting "; and", and by adding at the end the following:

"(D) evaluate the adequacy of the accompanying fishery impact statement as basis for fully considering the environmental impacts of implementing the fishery management plan or plan amendment.".

(3) REVIEW OF REGULATIONS.—Section 304(b) (16 U.S.C. 1854(b)) is amended by striking so much as precedes subparagraph (A) of paragraph (1) and inserting the following:

"(b) REVIEW OF REGULATIONS.—

"(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. The Secretary shall also immediately initiate an evaluation of the accompanying fishery impact statement as a basis for fully considering the environmental impacts of implementing the proposed regulations. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

".

(4) EFFECT ON TIME REQUIREMENTS.—Section 305(e) (16 U.S.C. 1855(e)) is amended by inserting "the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)," after "the Regulatory Flexibility Act (5 U.S.C. 601 et seq.),".

SEC. 303. FLEXIBILITY IN REBUILDING FISH STOCKS.

(a) GENERAL REQUIREMENTS.—Section 304(e) (16 U.S.C. 1854(e)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (A)(i), by striking "possible" and inserting "practicable";

(B) by amending subparagraph (A)(ii) to read as follows:

"(ii) may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation, except in a case in which—

"(I) the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

"(II) the Secretary determines that the cause of the stock being depleted is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities;

"(III) the Secretary determines that one or more components of a mixed- stock fishery is depleted but cannot be rebuilt within that time- frame without significant economic harm to the fishery, or cannot be rebuilt without causing another component of the mixed-stock fishery to approach a depleted status;

"(IV) the Secretary determines that recruitment, distribution, or life history of, or fishing activities for, the stock are affected by informal transboundary agreements under which management activities outside the exclusive economic zone by another country may hinder conservation and management efforts by United States fishermen; and

"(V) the Secretary determines that the stock has been affected by unusual events that make rebuilding within the specified time period improbable without significant economic harm to fishing communities;";

(C) by striking "and" after the semicolon at the end of subparagraph (B), by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), and by inserting after subparagraph (A) the following:

"(B) take into account environmental condition including predator/prey relationships;"; and

(D) by striking the period at the end of subparagraph (D) (as so redesignated) and inserting "; and", and by adding at the end the following:

"(E) specify a schedule for reviewing the rebuilding targets, evaluating environmental impacts on rebuilding progress, and evaluating progress being made toward reaching rebuilding targets."; and

(2) by adding at the end the following:

"(8) A fishery management plan, plan amendment, or proposed regulations may use alternative rebuilding strategies, including harvest control rules and fishing mortality-rate targets to the extent they are in compliance with the requirements of this Act.

"(9) A Council may terminate the application of paragraph (3) to a fishery if the Council's scientific and statistical committee determines and the Secretary concurs that the original determination that the fishery was depleted was erroneous, either—

"(A) within the 2-year period beginning on the effective date a fishery management plan, plan amendment, or proposed regulation for a fishery under this subsection takes effect; or

"(B) within 90 days after the completion of the next stock assessment after such determination.".

(b) EMERGENCY REGULATIONS AND INTERIM MEASURES.—Section 305(c)(3)(B) (16 U.S.C. 1855(c)(3)(B)) is amended by striking "180 days after" and all that follows through "provided" and inserting "1 year after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 1 year, if".

SEC. 304. EXEMPTED FISHING PERMITS.

(a) IN GENERAL.—Before the approval and issuance of an exempted fishing permit under section 600.745 of title 50, Code of Federal Regulations, or any successor regulation, the Secretary of Commerce shall—

(1) direct a joint peer review of the application for the exempted fishing permit by the appropriate regional fisheries science center and State marine fisheries commission; and

(2) certify that the Council or Federal agency with jurisdiction over the affected fishery has determined that—

(A) the fishing activity to be conducted under the proposed exempted fishing permit would not negatively impact any management measures or conservation objectives included within existing fishery management plans or plan amendments;

(B) the social and economic impacts in both dollar amounts and loss of fishing opportunities on all participants in each sector of the fishery expected to occur as a result of the proposed exempted fishing permit would be minimal;

(C) the information that would be collected through the fishing activity to be conducted under the proposed exempted fishing permit will have a positive and direct impact on the conservation, assessment, or management of the fishery; and

(D) the Governor of each coastal State potentially impacted by the proposed exempted fishing permit, as determined by the Secretary, has been consulted on the fishing activity to be conducted.

(b) CLARIFICATION.—The Secretary may not issue an exempted fishing permit under section 600.745 of title 50, Code of Federal Regulations, or any successor regulation that—

(1) establishes a limited access system as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802);

(2) is consistent with section 303A of such Act (16 U.S.C. 1853a); or

(3) establishes a catch share program as defined in section 206(a) of this Act.

(c) SAVINGS PROVISION.—Except for subsection (b)(2), nothing in this section may be construed to affect an exempted fishing permit approved under section 600.745 of title 50, Code of Federal Regulations, before the date of enactment of this Act.

SEC. 305. COOPERATIVE RESEARCH AND MANAGEMENT PROGRAM.

Section 318 (16 U.S.C. 1867) is amended—

(1) in subsection (a), by inserting "(1)" before the first sentence, and by adding at the end the following:

"(2) Within one year after the date of enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, and after consultation with the Councils, the Secretary shall publish a plan for implementing and conducting the program established in paragraph (1). Such plan shall identify and describe critical regional fishery management and research needs, possible projects that may address those needs, and estimated costs for such projects. The plan shall be revised and updated every 5 years, and updated plans shall include a brief description of projects that were funded in the prior 5-year period and the research and management needs that were addressed by those projects."; and

(2) in subsection (c)—

(A) in the heading, by striking "FUNDING" and inserting "PRIORITIES"; and

(B) in paragraph (1), by striking "including" and all that follows and inserting the following: "including—

"(A) the use of fishing vessels or acoustic or other marine technology;

"(B) expanding the use of electronic catch reporting programs and technology; and

"(C) improving monitoring and observer coverage through the expanded use of electronic monitoring devices.".

SEC. 306. GULF OF MEXICO FISHERIES COOPERATIVE RESEARCH AND RED SNAPPER MANAGEMENT.

(a) FEDERAL GULF OF MEXICO RED SNAPPER MANAGEMENT.—Section 407 (16 U.S.C. 1883) is amended by striking all after the section heading and inserting the following:

"(a) CERTIFICATION OF STATE SURVEYS.—

"(1) INCLUSION OF CERTIFIED STATE SURVEYS.—In establishing the acceptable biological catch and total allowable catch for red snapper in the Gulf of Mexico, the Secretary shall include—

"(A) Gulf State recreational fisheries surveys that are certified under subsection (b); and

"(B) data related to red snapper in the Gulf of Mexico collected by the Gulf States Marine Fisheries Commission, nongovernmental organizations, and other nongovernmental sources, including universities and research institutions.

"(b) STATE SURVEYS.—

"(1) SUBMISSION.—A Gulf State that conducts a recreational fisheries survey in the Gulf of Mexico to make catch estimates for red snapper landed in such State may submit such survey to the Secretary for certification.

"(2) CERTIFICATION.—

"(A) IN GENERAL.—The Secretary shall make a certification or a denial of certification for any survey submitted under paragraph (1) not later than the end of the 6-month period beginning on the date the survey is submitted.

"(B) DEEMED CERTIFIED.—A recreational fisheries survey is deemed to be certified effective upon the expiration of such period if the Secretary has not made a certification or denial of certification.

"(3) MODIFICATION OF SURVEYS DENIED CERTIFICATION.—

"(A) IN GENERAL.—If a survey of a Gulf State is denied certification under paragraph (2), the Secretary shall, not later than 60 days after the date of the denial, provide the Gulf State a proposal for modifications to the survey.

"(B) PROPOSAL.—A proposal provided to a Gulf State for a survey under subparagraph (A)—

"(i) shall be specific to the survey submitted by such Gulf State and may not be construed to apply to any other Gulf State;

"(ii) shall require revision to the fewest possible provisions of the survey; and

"(iii) may not unduly burden the ability of such Gulf State to revise the survey.

"(C) MODIFIED SURVEY.—

"(i) AUTHORITY TO SUBMIT.—If a survey of a Gulf State was denied certification under paragraph (2), the Gulf State may modify the survey and submit the modified survey to the Secretary for certification or denial of certification.

"(ii) SCHEDULE.—The Secretary shall make a certification or denial of certification for any modified survey not later than the end of the 30-day period beginning on the date the modified survey is submitted.

"(iii) DEEMED CERTIFIED.—A modified survey is deemed to be certified effective upon the expiration of the period described in clause (ii) if the Secretary has not made a certification or denial of certification.

"(c) DEFINITIONS.—In this section:

"(1) GULF STATE.—The term 'Gulf State' means each of the States of Texas, Louisiana, Mississippi, Alabama, or Florida.

"(2) RED SNAPPER.—The term 'red snapper' means the species *Lutjanus campechanus*.".

(b) STOCK SURVEYS AND STOCK ASSESSMENTS.—The Secretary of Commerce, acting through the National Marine Fisheries Service Regional Administrator of the Southeast Regional Office, shall for purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)—

(1) develop a schedule of stock surveys and stock assessments for the Gulf of Mexico Region and the South Atlantic Region for the 5-year period beginning on the date of the enactment of this Act and for every 5-year period thereafter;

(2) direct the Southeast Science Center Director to implement such schedule; and

(3) in such development and implementation—

(A) give priority to those stocks that are commercially or recreationally important; and

(B) ensure that each such important stock is surveyed at least every 5 years.

(c) USE OF FISHERIES INFORMATION IN STOCK ASSESSMENTS.—The Southeast Science Center Director shall ensure that fisheries information made available through fisheries programs funded under Public Law 112–141 is incorporated as soon as possible into any fisheries stock asessments conducted after the date of the enactment of this Act.

(d) STATE FISHERIES MANAGEMENT IN THE GULF OF MEXICO WITH RESPECT TO RED SNAPPER.—Section 306(b) (16 U.S.C. 1856(b)) is amended by adding at the end the following:

"(4) Notwithstanding section 3(11), for the purposes of managing the recreational sector of the Gulf of Mexico red snapper fishery, the seaward boundary of a coastal State in the Gulf of Mexico is a line 9 miles seaward from the baseline from which the territorial sea of the United States is measured.".

SEC. 307. ENSURING CONSISTENT MANAGEMENT FOR FISHERIES THROUGHOUT THEIR RANGE.

(a) IN GENERAL.—The Act is amended by inserting after section 4 the following:

"SEC. 5. ENSURING CONSISTENT FISHERIES MANAGEMENT UNDER CERTAIN OTHER FEDERAL LAWS.

"(a) NATIONAL MARINE SANCTUARIES ACT AND ANTIQUITIES ACT OF.—In any case of a conflict between this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or the Antiquities Act of 1906 (54 U.S.C. 320301 et seq.), this Act shall control.

"(b) FISHERIES RESTRICTIONS UNDER ENDANGERED SPECIES ACT OF.—To ensure transparency and consistent management of fisheries throughout their range, any restriction on the management of fish in the exclusive economic zone that is necessary to implement a recovery plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be implemented—

"(1) using authority under this Act; and

"(2) in accordance with processes and time schedules required under this Act.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section is amended by inserting after the item relating to section 3 the following:

"Sec. 4. Authorization of appropriations.
"Sec. 5. Ensuring consistent fisheries management under certain other Federal laws.".

TITLE IV— STRENGTHENING FISHING COMMUNITIES

SEC. 401. ESTIMATION OF COST OF RECOVERY FROM FISHERY RESOURCE DISASTER.

Section 312(a)(1) (16 U.S.C. 1861a(a)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by redesignating existing subparagraphs (A) through (C) as clauses (i) through (iii), respectively, of subparagraph (A) (as designated by the amendment made by paragraph (1)); and

(3) by adding at the end the following:

"(B) The Secretary shall publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after the Secretary makes the determination under subparagraph (A) with respect to such disaster.".

SEC. 402. DEADLINE FOR ACTION ON REQUEST BY GOVERNOR FOR DETERMINATION REGARDING FISHERY RESOURCE DISASTER.

Section 312(a) (16 U.S.C. 1861a(a)) is amended by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), and by inserting after paragraph (1) the following:

"(2) The Secretary shall make a decision regarding a request from a Governor under paragraph (1) within 90 days after receiving an estimate of the economic impact of the fishery resource disaster from the entity requesting the relief.".

SEC. 403. NORTH PACIFIC FISHERY MANAGEMENT CLARIFICATION.

Section 306(a)(3)(C) (16 U.S.C. 1856(a)(3)(C)) is amended—

(1) by striking "was no" and inserting "is no"; and

(2) by striking "on August 1, 1996".

SEC. 404. LIMITATION ON HARVEST IN NORTH PACIFIC DIRECTED POLLOCK FISHERY.

Section 210(e)(1) of the American Fisheries Act (title II of division C of Public Law 105–277; 16 U.S.C. 1851 note) is amended to read as follows:

"(1) HARVESTING.—

"(A) LIMITATION.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a percentage of the pollock available to be harvested in the directed pollock fishery that exceeds the percentage established for purposes of this paragraph by the North Pacific Fishery Management Council.

"(B) MAXIMUM PERCENTAGE.—The percentage established by the North Pacific Fishery Management Council shall not exceed 24 percent of the pollock available to be harvested in the directed pollock fishery.".

SEC. 405. ARCTIC COMMUNITY DEVELOPMENT QUOTA.

Section 313 (16 U.S.C. 1862) is amended by adding at the end the following:

"(k) ARCTIC COMMUNITY DEVELOPMENT QUOTA.—If the North Pacific Fishery Management Council issues a fishery management plan for the exclusive economic zone in the Arctic Ocean, or an amendment to the Fishery Management Plan for Fish Resources of the Arctic Management Area issued by such Council, that makes available to commercial fishing, and establishes a sustainable harvest level, for any part of such zone, the Council shall set aside not less than 10 percent of the total allowable catch therein as a community development quota for coastal villages located north and east of the Bering Strait.".

SEC. 406. REALLOCATION OF CERTAIN UNUSED HARVEST ALLOCATION.

(a) REALLOCATION.—

(1) IN GENERAL.—Effective January 1, 2018, and thereafter annually, if the Regional Administrator receives receipt of written notice that the allocation holder named in section 803 of the Consolidated Appropriations Act, 2004 (Public Law 108–199, 16 U.S.C. 1851 note), will not harvest some or all of the Aleutian Islands directed pollock, the Regional Administrator, as soon as practicable, shall—

(A) if the allocation as designated in section 803 of the Consolidated Appropriations Act, 2004 does not exceed the total allowable catch for the Bering Sea subarea, reallocate the projected unused Aleutian Islands directed pollock to the Bering Sea subarea for harvest by the allocation holder named in section 803 of the Consolidated Appropriations Act, 2004; or

(B) if the allocation exceeds the total allowable catch for the Bering Sea subarea, reallocate a portion of the allocation, up to the total allowable catch for the Bering Sea Subarea.

(2) The allocation shall be provided to the Aleut Corporation for the purposes of economic development in Adak, Alaska, pursuant to the requirement of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(b) IMPLEMENTATION.—For the purposes of this section:

(1) the allocation holder described in subsection (a) shall retain control of the allocation referenced in such subsection, including such portions of the allocation that may be reallocated pursuant to this section; and

(2) the allocations in section 206(b) of the American Fisheries Act (16 U.S.C. 1851 note) apply to the Bering Sea portion of the directed pollock fishery and not to the allocation holder under section 803 of the Consolidated Appropriations Act, 2004.

(c) CONSENT REQUIREMENT.—The Aleut Corporation will provide written consent for other vessels to take or process the allocation, a physical copy of which must be present on the vessel.

(d) REVISION OF REGULATIONS AND MANAGEMENT PLANS.—

(1) IN GENERAL.—The North Pacific Fishery Management Council, in consultation with the National Marine Fisheries Service, shall modify all applicable regulations and management plans so that the allocation holder named in section 803 of the Consolidated Appropriations Act, 2004, may harvest the reallocated Aleutian Islands directed pollock fishery in the Bering Sea subarea as soon as practicable.

(2) MANAGEMENT OF ALLOCATION.—The National Marine Fisheries Service, in consultation with the North Pacific Fishery Management Council, shall manage the Aleutian Islands directed pollock fishery to ensure compliance with the implementing statute and with the annual harvest specifications.

(3) ENFORCEMENT.—Taking or processing any part of the allocation made by section 803 of the Consolidated Appropriations Act, 2004, and reallocated under this section without the consent required under subsection (c) shall be considered in violation of section 307 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857) and subject to the penalties and sanctions under section 308 of such Act (16 U.S.C. 1858), and any fish harvested or processed under such taking or possessing shall be subject to forfeiture.

SEC. 407. PROHIBITION ON SHARK FEEDING OFF COAST OF FLORIDA.

Section 307 (16 U.S.C. 1857) is amended—

(1) by striking "It is unlawful—" and inserting the following:

"(a) IN GENERAL.—It is unlawful—"; and

(2) by adding at the end the following:

"(b) PROHIBITION ON SHARK FEEDING OFF COAST OF FLORIDA.—

"(1) IN GENERAL.—It is unlawful—

"(A) for any diver to engage in shark feeding in covered waters; and

"(B) for any person to operate a vessel for hire for the purpose of carrying a passenger to a site if such person knew or should have known that the passenger intended, at that site, to be a diver—

"(i) engaged in shark feeding in covered waters; or

"(ii) engaged in observing shark feeding in covered waters.

"(2) DEFINITIONS.—For purposes of this subsection:

"(A) COVERED WATERS.—The term 'covered waters' means Federal waters off the coast of Florida.

"(B) DIVER.—The term 'diver' means a person who is wholly or partially submerged in covered water and is equipped with a face mask, face mask and snorkel, or underwater breathing apparatus.

"(C) SHARK FEEDING.—The term 'shark feeding' means—

"(i) the introduction of food or any other substance into covered water for the purpose of feeding or attracting sharks; or

"(ii) presenting food or any other substance to a shark for the purpose of feeding or attracting sharks.

"(3) EXCEPTION.—This subsection shall not apply to shark feeding conducted—

"(A) by a research institution, university, or government agency for research purposes; or

"(B) for the purpose of harvesting sharks.".

SEC. 408. RESTORATION OF HISTORICALLY FRESHWATER ENVIRONMENT.

Section 3(10) (16 U.S.C. 1802) is amended by inserting ", except that such term shall not include any area previously covered by land or a fresh water environment in a State where the average annual land loss of such State during the 20 years before the date of the enactment of the Strengthening Fishing Communities and In-

creasing Flexibility in Fisheries Management Act exceeds 10 square miles" after "maturity".

PURPOSE OF THE BILL

The purpose of H.R. 200 is to amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen.

BACKGROUND AND NEED FOR LEGISLATION

In 2015, commercial and recreational saltwater fisheries supported 1.6 million U.S. jobs.[1] Commercial and recreational fisheries combined generated upwards of $208 billion in sales impact, and nearly $97 billion in value-added impacts to the U.S. economy.[2]

The Magnuson-Stevens Fishery and Conservation Management Act of 1976 (MSA, 16 U.S.C. 1801 et seq.) is the primary law governing fisheries resources and fishing activities in federal waters. The Secretary of Commerce, working through the National Oceanic and Atmospheric Administration (NOAA), enforces the MSA.

The original MSA created eight Councils charged with implementing the goals of MSA, in coordination with NOAA.[3] This process of managing fisheries is accomplished through Council-based Fisheries Management Plans (FMPs) for each fishery. FMPs require scientific stock assessments of the fishery. Following the Council's development of an FMP, the Council forwards the plan to the Commerce Secretary for approval. If the plan is approved, the National Marine Fisheries Service (NMFS) within NOAA must then issue regulations to implement a plan.[4]

Congress reauthorized MSA in 1996[5] and 2006.[6] According to some, NOAA added layers of precaution in its implementation of the 2006 amendments with regard both to scientific and management uncertainty.[7] In a July 2017 hearing, the Subcommittee on Water, Power and Oceans explored the successes and challenges of implementing MSA since the 2006 amendments. Mr. Nick Wiley, Executive Director of the Florida Fish and Wildlife Conservation Commission, testified that "[t]he requirements to manage fisheries under strict annual catch limits, the overly prescriptive constraints for stock rebuilding plans, and general inflexibility within the current version of the law have hindered management of fish stocks in the South Atlantic and Gulf of Mexico. This inflexibility has fostered a serious erosion of public confidence, trust, and support for this fishery management system."[8]

H.R. 200 would improve the management process by affording regional fisheries managers the flexibility to manage stocks effectively and to better tailor management plans to the needs of their regions.

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[1] Department of Commerce: Fisheries Economics of the United States 2015, May 2017, p. 6.
[2] Id at 2.
[3] http://www.nmfs.noaa.gov/sfa/management/councils/.
[4] http://www.fisherycouncils.org/.
[5] P.L. 104–297.
[6] P.L. 109–479.
[7] Testimony of Mr. Richard Robins, Jr. before the House Committee on Natural Resources, September 11, 2013.
[8] Testimony of Mr. Nick Wiley before the House Committee on Natural Resources, July 19, 2017.

SECTION-BY-SECTION ANALYSIS OF H.R. 200, AS REPORTED

Section 1. Short title

This section provides the short title for the bill, the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.

Section 2. Table of contents

This section provides a table of contents for the bill.

Section 3. Definitions

This section indicates that defined terms under the MSA has the same meaning under this bill.

Section 4. References

This section indicates that generally an amendment or repeal under this Act shall be considered an amendment or repeal of a provision of the MSA.

Title I—MAGNUSON-STEVENS ACT AMENDMENTS AND REAUTHORIZATION

Sec. 101. Amendments to definitions

This section provides a definition of "depleted" and "subsistence fishing" and replaces "overfished" with "depleted".

Section 102. Authorization of appropriations

This section extends the most current authorization levels for MSA from fiscal year 2018 through 2022.

Title II—FISHERIES MANAGEMENT FLEXIBILITY AND MODERNIZATION

Section 201. Definitions

This section provides definitions of "appropriate committees of Congress", "limited access privilege program", and "mixed-use fishery".

Section 202. Process for allocating review for South Atlantic and Gulf of Mexico mixed-use fisheries

This section instructs the Secretary of Commerce to seek to enter into an agreement with the National Academy of Sciences (NAS) to conduct a study of the South Atlantic and Gulf of Mexico mixed-use fisheries. Specifically, this study would examine the allocation of harvestable quota for each sector of a given fishery. The Secretary and NAS would then provide guidance to the South Atlantic and Gulf of Mexico Fishery Management Councils on the findings of the study.

Section 203. Alternative fishery management measures

This section gives NOAA the authority to use alternative fishery management measures, such as factors applicable to the recreational fishermen (i.e. recreational fishermen don't have by-catch) when setting management plans for recreational fisheries, or recreational sectors of a mixed-use fishery.

Section 204. Modification to the Annual Catch Limit requirement

This section gives Councils the flexibility they need to develop fishery management plans that are tailored to regional needs by allowing Councils to consider changes in the ecosystem and the economic needs of the fishing communities when setting Annual Catch Limits (ACLs). This will allow flexibility but not allow Councils to set ACLs at a level that allows overfishing. This section also adds a new exception to the requirement that Councils set an ACL for "ecosystem component species"—those species of fish that are not targeted and are caught incidentally if that stock of fish is not subject to overfishing and is not likely to become subject to overfishing. It also provides an exemption for those short-lived stocks of fish for which a single year class will complete their lifecycle in less than eighteen months if fishing mortality will have little impact on the stock.

Section 205. Limitation on future catch share programs

This section aims to integrate stakeholders into fisheries management by creating a pilot project prohibiting the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Fishery Management Councils from implementing any new catch share program unless it has been approved by an industry referendum vote. Any federal permit holder who has fished in at least three of the five years preceding the referendum—unless sickness, injury or other unavoidable hardship prevented the permit holder from fishing—would be eligible to vote in the referendum. Prior to any such referendum vote, the Secretary of Commerce would be required to provide all eligible permit holders with a copy of the proposed program, an estimate of the costs of the program (including the costs to participants), and an estimate of the amount of fish or percentage of the quota each permit holder would be allocated. Outside of the four Councils referenced above, this section prevents the Secretary from implementing a catch share program for any federally managed fishery unless first petitioned by a majority of those eligible to participate in the fishery.

Section 206. Study of limited access privilege programs for mixed-use fisheries

Limited access privilege programs, while effective in many commercial fisheries, have created challenges in fisheries with heavy commercial and recreational components. This section commissions a study on the effectiveness of limited access privilege programs in managing mixed-use fisheries and recommending policies to address any challenges the report identifies with this management structure in mixed-use fisheries. This provision further places a moratorium on the establishment of new limited access privilege programs for mixed-use fisheries until the report is submitted to Congress.

Section 207. Cooperative data collection

This section requires the Secretary of Commerce, in consultation with the science and statistical committees of the Councils, to submit a report to Congress on facilitating greater incorporation of data, analysis, stock assessments, and surveys from State agencies and nongovernmental sources such as fishermen, fishing commu-

nities and research institutions. Cooperative data collection will help improve the accuracy of fish stock information and data collection and analysis by incorporating data collected by fishermen themselves into fisheries management decisions.

Section 208. Recreational fishing data

According to a recent NOAA report, roughly twelve million recreational anglers took saltwater fishing trips in the U.S. annually from 2003–2012.[9] An industry that supported 381,000 American jobs in 2012,[10] the recreational saltwater fishing industry is a significant economic player. To address the growth of this industry, H.R. 200 takes several steps to improve the collection of recreational fishing data to improve management and ensure maximum access to our marine resources by the recreational industry.

This section specifically: 1) requires the Secretary of Commerce to establish partnerships with States to develop best practices for implementing State recreational fisheries programs and to develop guidance that detail best practices for administering State programs; 2) requires a grant program to States to improve implementation of State recreational data collection programs and requires the Secretary to prioritize the grants based on the ability of the grant to improve the quality and accuracy of the data collection programs; and 3) requires the Secretary to enter into an agreement with the National Research Council (NRC) to study the implementation of the existing recreational data collection programs. The study must provide an updated assessment of recreational survey methods, an evaluation of the extent to which the 2006 NRC's recommendations have been implemented, and an examination of any limitations on the previous and current NOAA recreational data collection programs.

Section 209. Miscellaneous amendments relating to Fishery Management Councils

To address unique management hurdles for fisheries that occur within multiple Fishery Management Councils, this section establishes a "liaison" for each of the New England and Mid-Atlantic Councils to ensure continuity of management between the Councils on shared stocks. In addition, it requires the Governor of Alaska, when submitting nominations for the North Pacific Fishery Management Council, to consult with subsistence interests of the State. The section also adds the knowledge of subsistence fishing as a qualification that could be required of Council appointees.

This section works to ensure that fishermen are not adversely impacted by red snapper mortality outside of their control. This section prohibits the Secretary of Commerce from counting red snapper mortality that is a result of the removal of offshore oil rigs against the total allowable catch of that fish and from counting those fish toward the quota for U.S. fishermen for the purposes of closing the fishery when the quota has been reached.

Illegal, Unreported, and Unregulated fishing is an international problem with significant domestic impacts. This section also prohibits the Secretary of Commerce from counting any fish seized

[9] Fisheries Economics of the United States 2012—Department of Commerce, Feb. 2014, p. 10.
[10] Id, p. 8.

from a foreign vessel engaging in illegal fishing in the U.S. Exclusive Economic Zone against the total allowable catch for U.S. fishermen.

Title III—HEALTHY FISHERIES THROUGH BETTER SCIENCE

Section 301. Healthy fisheries through better science

This section requires the Secretary of Commerce to develop and publish a plan to conduct stock assessments for all stocks of fish for which a fishery management plan is in effect. Such plans must be developed and published on the same schedule as required for the fisheries research strategic plan. A stock assessment is not required for a stock of fish in the plan if the Secretary of Commerce determines that the assessment is not necessary and justifies the determination in the Federal Register notice.

Additionally, this section instructs the Secretary of Commerce to develop and publish guidelines to incorporate data, analysis, and stock assessments from nongovernmental sources into fisheries management decisions and to establish a registry of information providers.

Section 302. Transparency and public process

Transparency and public oversight are key to ensuring that NMFS manages our nation's fisheries to the benefit of the stocks and our fishermen. This section works to improve transparency in NMFS science and management by requiring Scientific and Statistical Committees (SSCs) develop the scientific advice provided to the Councils in a transparent manner and to allow for public involvement in the process. This section also requires that each Council, to the extent practicable, provide a webcast, audio recording, or live broadcast of each Council meeting. This section also requires audio, video, searchable audio or written transcript for each Council and SSC meeting on the Council's website not more than 30 days after the conclusion of the meeting.

This section also includes a directive for Councils to create a fishery impact statement to coordinate the Council process with existing NEPA requirements.

Section 303. Flexibility in rebuilding fish stocks

This section would improve fisheries science by basing fish stock rebuilding timeframes on such stock's biology rather than on an arbitrary, one-size-fits-all deadline. This section specifically: 1) removes the language requiring a 10-year time frame for rebuilding overfished/depleted fisheries and replaces it with a requirement that the rebuilding timeframe be the time it would take for the fishery to rebuild without any fishing occurring plus one mean generation time; 2) allows Councils to phase in rebuilding plans for highly dynamic fisheries over a three-year period to lessen the economic harm to fishing communities; 3) replaces the term "possible" with "practicable" in the requirement that rebuilding period "be as short as possible"; and 4) allows Councils to take into account environmental conditions and predator/prey relationships when developing rebuilding plans.

Section 304. Exempted fishing permits

Exempted fishing permits (EFPs) can be used to facilitate fisheries science or to explore the possibility of opening a new fishery or reopening a closed fishery, but the process has been used to reduce access to fisheries. This provision directs the Secretary of Commerce to study an EFP application and certify that it won't negatively impact access to fisheries with existing fishery management plans, won't have negative socioeconomic impacts, and will have a positive impact on fishery management. This section further prohibits the establishment of a catch share program through an EFP.

Section 305. Cooperative research and management program

Cooperative research and management together have the benefits of building trust between fishermen and the government and lowering data collection costs. This section expedites the implementation of cooperative research and management program by requiring the Secretary of Commerce to publish a plan for implementing and conducting the program. The plan should identify and describe critical regional fishery management and research needs, possible projects to address the identified needs, and the estimated costs for such projects.

Section 306. Gulf of Mexico fisheries cooperative research and red snapper management

The Gulf of Mexico red snapper is a stock that has become the poster child for poor data and management by NMFS. H.R. 200 makes several revisions to the research and management of this species in the Gulf. This section requires the Secretary of Commerce—in conjunction with the Gulf States, the Gulf of Mexico Fishery Management Council, and the charter and recreational fishing sectors—to develop and implement a real-time reporting and data collection program for the Gulf of Mexico red snapper fishery using available technology and a cooperative research program for fisheries in the Gulf of Mexico and the South Atlantic regions, giving priority to those fisheries that are considered data poor.

The section further improves the data collection of stocks in the Gulf of Mexico by requiring the Secretary of Commerce to develop a schedule of stock surveys and stock assessments for the five-year period beginning on the date of enactment and for every five-year period thereafter, giving priority to those stocks that are commercially or recreationally important and ensuring that each important stock is surveyed at least once every five years. The section also corrects a discrepancy between management of red snapper by the Gulf States by extending State management out to nine nautical miles for the recreational sector of the Gulf of Mexico red snapper fishery.

Section 307. Ensuring consistent management for fisheries throughout their range

This section ensures consistent and transparent fisheries management by affirming that MSA is the ultimate authority in fisheries management in federal waters. Specifically, this section looks to minimize conflicts between different offices within NOAA by for-

mally stating that the open, transparent, stakeholder-driven fishery management Councils would set fisheries regulations within marine National Monuments and National Marine Sanctuaries. This section also states that any fishery restrictions necessary to implement a recovery plan under the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.) are done so through the authority of MSA. This section does nothing to rescind or adjust the boundaries of any marine National Monument or National Marine Sanctuary, nor does this section eliminate species protection under ESA.

Title IV—STRENGTHENING FISHING COMMUNITIES

Section 401. Estimation of cost of recovery from fishery resource disaster

This section instructs the Secretary of Commerce, within 30 days of declaring a fisheries disaster, to publish a cost estimation for recovery from such disaster. This provision is intended to assist Congress in appropriating fishery disaster funding should a disaster be declared by the Secretary.

Section 402. Deadline for action on request by Governor for determination regarding fishery resource disaster

This section mandates that the Secretary of Commerce make a determination regarding a fishery disaster request submitted by a Governor within 90 days of submission.

Section 403. North Pacific fishery management clarification

This section expands the existing authority for the State of Alaska, with the concurrence of the Secretary of Commerce, to regulate fishing vessels in federal waters off the coast of Alaska if it is operating in a fishery without a current Fishery Management Plan.

Section 404. Limitation on harvest in North Pacific directed pollock fishery

Many of the provisions in H.R. 200 result in greater flexibility for Councils to manage the needs of their region. This section allows the North Pacific Fishery Management Council to change the harvest limitation under the American Fisheries Act for entities engaged in the directed Pollock fishery if that percentage does not exceed 24 percent.

Section 405. Arctic community development quota

Specific to fisheries managed under the North Pacific Fishery Management Council, this provision instructs the Secretary of Commerce to set aside 10 percent of the total allowable catch within an Arctic fishery management plan to be used as a "community development quota." This quota would be available to small coastal villages located north and east of the Bering Strait.

Section 406. Reallocation of certain unused harvest allocation

The Aleut Corporation was granted a pollock allocation, but due to regulatory hurdles, is unable to harvest its allocation. This provision ensures that the Aleut Corporation retains control of the allocation irrespective of their ability to harvest it, and directs the

National Marine Fisheries Service to revise its regulation so that the Aleut Corporation may harvest its pollock allocation, keeping within the Total Allowable Catch for the fishery.

COMMITTEE ACTION

H.R. 200 was introduced on January 3, 2017, by Congressman Don Young (R–AK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On September 26, 2017, the Subcommittee held a hearing on the bill. On December 12, 2017, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Don Young (R–AK) offered an amendment in the nature of a substitute. Congresswoman Madeleine Z. Bordallo (D–GU) offered three amendments designated (033), (034), and (035) en bloc to the amendment in the nature of a substitute; they were adopted by voice vote. Congresswoman Madeleine Z. Bordallo offered an amendment designated (006) to the amendment in the nature of a substitute; it was not adopted by a roll call vote of 18 ayes and 22 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

12/13/2017

Meeting on / Amendment on: **FC Mark Up on Bordallo_006 to H.R. 200,** To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes. "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		**Mr. Cook, CA**		X	
Mr.Grijalva, AZ, Ranking Member	X			*Mr. Soto, FL*	X		
Mr. Young, AK, Chairman Emeritus		X		**Mr. Westerman, AR**		X	
Mrs. Napolitano, CA	X			*Mr. McEachin, VA*	X		
Mr. Gohmert, TX, Vice Chairman				**Mr. Graves, LA**		X	
Ms. Bordallo, Guam	X			*Mr. Brown, MD*	X		
Mr. Lamborn, CO		X		**Mr. Hice, GA**		X	
Mr. Costa, CA	X			*Mr. Clay, MO*	X		
Mr. Wittman, VA				**Mrs. Radewagen, AS**		X	
Mr. Sablan, CNMI	X			*Mr. Gomez, CA*	X		
Mr. McClintock, CA		X		**Mr. LaHood, IL**		X	
Ms. Tsongas, MA	X			**Mr. Webster, FL**		X	
Mr. Pearce, NM		X		**Mr. Bergman, MI**		X	
Mr. Huffman, CA	X			**Ms. Cheney, WY**		X	
Mr. Thompson, PA		X		**Mr. Johnson, LA**		X	
Mr. Lowenthal, CA	X			**Ms. González-Colón, PR**		X	
Mr. Gosar, AZ		X		**Mr. Gianforte, MT**		X	
Mr. Beyer, VA	X						
Mr. Labrador, ID		X					
Mrs. Torres, CA	X						
Mr. Tipton, CO		X					
Mr. Gallego, AZ	X						
Mr. LaMalfa, CA		X					
Ms. Hanabusa, HI	X						
Mr. Denham, CA							
Ms. Barragán, CA	X			**TOTAL:**	18	22	

Congressman Donald S. Beyer, Jr. (D–VA) offered an amendment designated (007) to the amendment in the nature of a substitute; it was not adopted by a bipartisan roll call vote of 15 ayes and 23 nays, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 12-13-17 Recorded Vote #: 3

Meeting on / Amendment on: **FC Mark Up on Beyer_007 to H.R. 200,** To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes. "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		**Mr. Cook, CA**		X	
Mr.Grijalva, AZ, Ranking Member	X			*Mr. Soto, FL*	X		
Mr. Young, AK, Chairman Emeritus		X		**Mr. Westerman, AR**		X	
Mrs. Napolitano, CA	X			*Mr. McEachin, VA*	X		
Mr. Gohmert, TX, Vice Chairman				**Mr. Graves, LA**			
Ms. Bordallo, Guam	X			*Mr. Brown, MD*	X		
Mr. Lamborn, CO		X		**Mr. Hice, GA**		X	
Mr. Costa, CA		X		*Mr. Clay, MO*	X		
Mr. Wittman, VA				**Mrs. Radewagen, AS**		X	
Mr. Sablan, CNMI	X			*Mr. Gomez, CA*	X		
Mr. McClintock, CA		X		**Mr. LaHood, IL**		X	
Ms. Tsongas, MA	X			**Mr. Webster, FL**		X	
Mr. Pearce, NM		X		**Mr. Bergman, MI**		X	
Mr. Huffman, CA	X			**Ms. Cheney, WY**		X	
Mr. Thompson, PA		X		**Mr. Johnson, LA**		X	
Mr. Lowenthal, CA				**Ms. González-Colón, PR**		X	
Mr. Gosar, AZ		X		**Mr. Gianforte, MT**		X	
Mr. Beyer, VA	X						
Mr. Labrador, ID		X					
Mrs. Torres, CA	X						
Mr. Tipton, CO		X					
Mr. Gallego, AZ	X						
Mr. LaMalfa, CA		X					
Ms. Hanabusa, HI	X						
Mr. Denham, CA		X					
Ms. Barragán, CA				**TOTAL:**	15	23	

Congressman A. Donald McEachin (D–VA) offered an amendment designated (028) to the amendment in the nature of a substitute; it was not adopted by a roll call vote of 17 ayes and 23 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 12-13-17 Recorded Vote #: 4

Meeting on / Amendment on: **FC Mark Up on McEachin_028 to H.R. 200,** To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes. "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act."

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		**Mr. Cook, CA**		X	
Mr.Grijalva, AZ, Ranking Member	X			*Mr. Soto, FL*	X		
Mr. Young, AK, Chairman Emeritus		X		**Mr. Westerman, AR**		X	
Mrs. Napolitano, CA	X			*Mr. McEachin, VA*	X		
Mr. Gohmert, TX, Vice Chairman				**Mr. Graves, LA**		X	
Ms. Bordallo, Guam	X			*Mr. Brown, MD*	X		
Mr. Lamborn, CO		X		**Mr. Hice, GA**		X	
Mr. Costa, CA	X			*Mr. Clay, MO*	X		
Mr. Wittman, VA				**Mrs. Radewagen, AS**		X	
Mr. Sablan, CNMI	X			*Mr. Gomez, CA*	X		
Mr. McClintock, CA		X		**Mr. LaHood, IL**		X	
Ms. Tsongas, MA	X			**Mr. Webster, FL**		X	
Mr. Pearce, NM		X		**Mr. Bergman, MI**		X	
Mr. Huffman, CA	X			**Ms. Cheney, WY**		X	
Mr. Thompson, PA		X		**Mr. Johnson, LA**		X	
Mr. Lowenthal, CA	X			**Ms. González-Colón, PR**		X	
Mr. Gosar, AZ		X		**Mr. Gianforte, MT**		X	
Mr. Beyer, VA	X						
Mr. Labrador, ID		X					
Mrs. Torres, CA	X						
Mr. Tipton, CO		X					
Mr. Gallego, AZ	X						
Mr. LaMalfa, CA		X					
Ms. Hanabusa, HI	X						
Mr. Denham, CA		X					
Ms. Barragán, CA				**TOTAL:**	17	23	

Congressman Raúl M. Grijalva (D–AZ) offered and withdrew an amendment designated (009) to the amendment in the nature of a substitute. Congressman Daniel Webster (R–FL) offered an amendment designated (011) to the amendment in the nature of a substitute; it was adopted by voice vote. Congressman Alan S. Lowenthal (D–CA) offered an amendment designated (005) to the amendment in the nature of a substitute; it was not adopted by a roll call vote of 17 ayes and 23 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 12.13.17 Recorded Vote #: 5
Meeting on / Amendment on: **FC Markup Up on Lowenthal_005 to H.R. 200,** To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fisherman, for other purposes. "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act."

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		**Mr. Cook, CA**		X	
Mr.Grijalva, AZ, Ranking Member	X			*Mr. Soto, FL*	X		
Mr. Young, AK, Chairman Emeritus		X		**Mr. Westerman, AR**		X	
Mrs. Napolitano, CA	X			*Mr. McEachin, VA*	X		
Mr. Gohmert, TX, Vice Chairman				**Mr. Graves, LA**		X	
Ms. Bordallo, Guam	X			*Mr. Brown, MD*	X		
Mr. Lamborn, CO		X		**Mr. Hice, GA**		X	
Mr. Costa, CA	X			*Mr. Clay, MO*	X		
Mr. Wittman, VA				**Mrs. Radewagen, AS**		X	
Mr. Sablan, CNMI	X			*Mr. Gomez, CA*	X		
Mr. McClintock, CA		X		**Mr. LaHood, IL**		X	
Ms. Tsongas, MA	X			**Mr. Webster, FL**		X	
Mr. Pearce, NM		X		**Mr. Bergman, MI**		X	
Mr. Huffman, CA	X			**Ms. Cheney, WY**		X	
Mr. Thompson, PA		X		**Mr. Johnson, LA**		X	
Mr. Lowenthal, CA	X			**Ms. González-Colón, PR**		X	
Mr. Gosar, AZ		X		**Mr. Gianforte, MT**		X	
Mr. Beyer, VA	X						
Mr. Labrador, ID		X					
Mrs. Torres, CA	X						
Mr. Tipton, CO		X					
Mr. Gallego, AZ	X						
Mr. LaMalfa, CA		X					
Ms. Hanabusa, HI	X						
Mr. Denham, CA		X					
Ms. Barragán, CA				**TOTAL:**	17	23	

Congressman Garret Graves (R–LA) offered an amendment designated (093) to the amendment in the nature of a substitute; it was adopted by a bipartisan roll call vote of 35 ayes and 4 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 12-13-17 Recorded Vote #: 6

Meeting on / Amendment on: **FC Mark Up on Graves_093 to H.R. 200,** To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes. "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			**Mr. Cook, CA**	X		
Mr.Grijalva, AZ, Ranking Member		X		*Mr. Soto, FL*	X		
Mr. Young, AK, Chairman Emeritus	X			**Mr. Westerman, AR**	X		
Mrs. Napolitano, CA		X		*Mr. McEachin, VA*	X		
Mr. Gohmert, TX, Vice Chairman				**Mr. Graves, LA**	X		
Ms. Bordallo, Guam				*Mr. Brown, MD*	X		
Mr. Lamborn, CO	X			**Mr. Hice, GA**	X		
Mr. Costa, CA	X			*Mr. Clay, MO*	X		
Mr. Wittman, VA				**Mrs. Radewagen, AS**	X		
Mr. Sablan, CNMI	X			*Mr. Gomez, CA*	X		
Mr. McClintock, CA	X			**Mr. LaHood, IL**	X		
Ms. Tsongas, MA		X		**Mr. Webster, FL**	X		
Mr. Pearce, NM	X			**Mr. Bergman, MI**	X		
Mr. Huffman, CA		X		**Ms. Cheney, WY**	X		
Mr. Thompson, PA	X			**Mr. Johnson, LA**	X		
Mr. Lowenthal, CA	X			**Ms. González-Colón, PR**	X		
Mr. Gosar, AZ	X			**Mr. Gianforte, MT**	X		
Mr. Beyer, VA	X						
Mr. Labrador, ID							
Mrs. Torres, CA	X						
Mr. Tipton, CO	X						
Mr. Gallego, AZ	X						
Mr. LaMalfa, CA	X						
Ms. Hanabusa, HI	X						
Mr. Denham, CA	X						
Ms. Barragán, CA	X			**TOTAL:**	35	4	

Congressman Garret Graves offered an amendment designated (094) to the amendment in the nature of a substitute; it was adopted by voice vote. Congressman Jared Huffman (D–CA) offered an amendment designated (118) to the amendment in the nature of a substitute. After a point of order was raised, the amendment was withdrawn. No other amendments were offered. The amendment in the nature of a substitute, as amended, was adopted by voice vote. The bill, as amended, was ordered favorably reported to the House of Representatives on December 13, 2017, by a roll call vote of 23 ayes to 17 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 12-13-17 Recorded Vote #: 7

Meeting on / Amendment on: **FC Mark Up on Favorably Reporting H.R. 200,** To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes. "Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act".

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			**Mr. Cook, CA**	X		
Mr.Grijalva, AZ, Ranking Member		X		*Mr. Soto, FL*		X	
Mr. Young, AK, Chairman Emeritus	X			**Mr. Westerman, AR**	X		
Mrs. Napolitano, CA		X		*Mr. McEachin, VA*		X	
Mr. Gohmert, TX, Vice Chairman				**Mr. Graves, LA**	X		
Ms. Bordallo, Guam				*Mr. Brown, MD*		X	
Mr. Lamborn, CO	X			**Mr. Hice, GA**	X		
Mr. Costa, CA		X		*Mr. Clay, MO*		X	
Mr. Wittman, VA				**Mrs. Radewagen, AS**	X		
Mr. Sablan, CNMI		X		*Mr. Gomez, CA*		X	
Mr. McClintock, CA	X			**Mr. LaHood, IL**	X		
Ms. Tsongas, MA		X		**Mr. Webster, FL**	X		
Mr. Pearce, NM	X			**Mr. Bergman, MI**	X		
Mr. Huffman, CA		X		**Ms. Cheney, WY**	X		
Mr. Thompson, PA	X			**Mr. Johnson, LA**	X		
Mr. Lowenthal, CA		X		**Ms. González-Colón, PR**	X		
Mr. Gosar, AZ	X			**Mr. Gianforte, MT**	X		
Mr. Beyer, VA		X					
Mr. Labrador, ID	X						
Mrs. Torres, CA		X					
Mr. Tipton, CO	X						
Mr. Gallego, AZ		X					
Mr. LaMalfa, CA	X						
Ms. Hanabusa, HI		X					
Mr. Denham, CA	X						
Ms. Barragán, CA		X		**TOTAL:**	23	17	

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 Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 24, 2018.

Hon. ROB BISHOP,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 200, the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 200—Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act

Summary: H.R. 200 would amend the Magnuson-Stevens Fishery Conservation and Management Act, which addresses U.S. fisheries management and would authorize the annual appropriation of $397 million through 2022 for those purposes. The bill also would require the Secretary of Commerce to request that the National Academy of Sciences study certain mixed-use fisheries.

CBO estimates that implementing H.R. 200 would cost about $1.4 billion over the 2019–2023 period, assuming appropriation of the authorized and necessary amounts. Enacting the bill could increase revenues and direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such changes would have a negligible net effect on the deficit.

CBO estimates that enacting H.R. 200 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 200 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

The bill would impose a private-sector mandate as defined in UMRA by prohibiting shark feeding off the coast of Florida. CBO estimates that the cost of the mandate would fall below the annual

threshold established in UMRA for private-sector mandates ($160 million in 2018, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 200 is shown in the following table. The costs of the legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Magnuson-Stevens Act:							
Authorization Level	397	397	397	397	397	0	1,588
Estimated Outlays	0	258	337	385	397	139	1,516
Studies of Mixed-Use Fisheries:							
Estimated Authorization Level	0	1	0	0	0	0	1
Estimated Outlays	0	1	0	0	0	0	1
Total Changes:							
Authorization Level	397	398	397	397	397	0	1,589
Estimated Outlays	0	259	337	385	397	139	1,517

H.R. 200 would authorize the appropriation of $397 million in 2018. CBO does not estimate any spending would result from that authorization because appropriations for 2018 have already been provided.

Basis of estimate: For this estimate, CBO assumes that H.R. 200 will be enacted near the end of fiscal year 2018 and that the authorized and estimated amounts will be appropriated for each year.

H.R. 200 would authorize the appropriation of $397 million a year through 2022 to carry out activities under the Magnuson-Stevens Fishery Conservation and Management Act. The Magnuson-Stevens Act is the primary law governing the management of marine fisheries in federal waters. That act requires the National Oceanic and Atmospheric Administration (NOAA) to preserve sustainable fish populations in waters off the coasts of the United States using various methods, including limiting annual fish harvests and enforcing laws that prohibit foreign fishing. In 2017, NOAA received appropriations totaling $538 million to carry out activities under the Magnuson-Stevens Act. (NOAA has not yet made a final allocation of funding to implement the act for 2018.)

H.R. 200 would amend the Magnuson-Stevens Act to give Regional Fishery Management Councils additional tools and flexibility to manage their fisheries. Amendments include proposed new guidelines for incorporating state data and stock assessments into fishery management decisions, updating the schedule and process of stock assessments, and updating allocation and quota requirements for certain fishing communities. Based on historical spending patterns, CBO estimates that implementing the Magnuson-Stevens Act would cost about $1.5 billion over the 2019–2023 period and $71 million after 2023.

The bill also would require the Secretary of Commerce to enter into an agreement with the National Academy of Sciences to conduct research on mixed-use fisheries in the South Atlantic and Gulf of Mexico regions and on limited-access-privilege programs for mixed-use fisheries. Based on the costs of similar projects, CBO estimates that staff time and travel needed to complete the studies would cost $1 million in 2019.

Pay-As-You-Go considerations: H.R. 200 would create new civil and criminal penalties for feeding sharks off the coast of Florida. Such penalties are recorded as revenues, deposited into the Crime

Victims Fund, and later spent without further appropriations action. CBO expects that any additional revenues would not be significant in any year and would be offset by subsequent direct spending; therefore, the net effect on the deficit would be negligible.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 200 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 200 contains no intergovernmental as defined in UMRA.

The bill would impose a private-sector mandate as defined in UMRA by prohibiting shark feeding off the coast of Florida. The cost of the mandate would be forgone business revenue by shark-diving operators who currently feed sharks as part of their services. Because not all shark-diving operations rely on shark feeding and many operations generate revenue from other activities, CBO estimates that the costs of the mandate would fall below the annual threshold established in UMRA for private-sector mandates ($160 million in 2018, adjusted annually for inflation).

Estimate prepared by: Federal costs: Robert Reese; Mandates: Zach Byrum.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. 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 amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

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, and existing law in which no change is proposed is shown in roman):

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.
Sec. 3. Definitions.
Sec. 4. Authorization of appropriations.
Sec. 5. Ensuring consistent fisheries management under certain other Federal laws.

* * * * * * *

SEC. 2. FINDINGS, PURPOSES AND POLICY.

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

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

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

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

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable

fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

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

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

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

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

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

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

(11) A number of the Fishery Management Councils have demonstrated significant progress in integrating ecosystem considerations in fisheries management using the existing authorities provided under this Act.

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

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

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

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to en-

courage the negotiation and implementation of additional such agreements as necessary;

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

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

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

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

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

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

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

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

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

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

(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources,

and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

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

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

SEC. 3. DEFINITIONS.

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

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

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

(2a) The term "catch share" means any fishery management program that allocates a specific percentage of the total allowable catch for a fishery, or a specific fishing area, to an individual, cooperative, community, processor, representative of a commercial sector, or regional fishery association established in accordance with section 303A(c)(4), or other entity.

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

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

(5) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

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

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

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

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

(7) The term "Continental Shelf fishery resources" means the following:

COLENTERATA

Bamboo Coral—Acanella spp.;
Black Coral—Antipathes spp.;
Gold Coral—Callogorgia spp.;
Precious Red Coral—Corallium spp.;
Bamboo Coral—Keratoisis spp.; and
Gold Coral—Parazoanthus spp.

CRUSTACEA

Tanner Crab—Chionoecetes tanneri;
Tanner Crab—Chionoecetes opilio;
Tanner Crab—Chionoecetes angulatus;
Tanner Crab—Chionoecetes bairdi;
King Crab—Paralithodes camtschatica;
King Crab—Paralithodes platypus;
King Crab—Paralithodes brevipes;
Lobster—Homarus americanus;
Dungeness Crab—Cancer magister;
California King Crab—Paralithodes californiensis;
California King Crab—Paralithodes rathbuni;
Golden King Crab—Lithodes aequispinus;
Northern Stone Crab—Lithodes maja;
Stone Crab—Menippe mercenaria; and
Deep-sea Red Crab—Chaceon quinquedens.

MOLLUSKS

Red Abalone—Haliotis rufescens;
Pink Abalone—Haliotis corrugata;
Japanese Abalone—Haliotis kamtschatkana;
Queen Conch—Strombus gigas;
Surf Clam—Spisula solidissima, and
Ocean Quahog—Arctica islandica.

SPONGES

Glove Sponge—Spongia cheiris
Sheepswool Sponge—Hippiospongia lachne;
Grass Sponge—Spongia graminea; and
Yellow Sponge—Spongia barbera.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(8) The term "Council" means any Regional Fishery Management Council established under section 302.

(8a) The term "depleted" means, with respect to a stock of fish or stock complex, that the stock or stock complex has a biomass that has declined below a level that jeopardizes the capacity of

the stock or stock complex to produce maximum sustainable yield on a continuing basis.

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

(10) The term "essential fish habitat" means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity*, except that such term shall not include any area previously covered by land or a fresh water environment in a State where the average annual land loss of such State during the 20 years before the date of the enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act exceeds 10 square miles*.

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

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

(13) The term "fishery" means—

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

(B) any fishing for such stocks.

(14) The term "regional fishery association" means an association formed for the mutual benefit of members—

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

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

(15) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(16) The term "fishing" means—

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

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

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

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

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

(18) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(19) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(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.

(21) The term "highly migratory species" means tuna species, marlin (Tetrapturus spp. and Makaira spp.), oceanic sharks, sailfishes (Istiophorus spp.), and swordfish (Xiphias gladius).

(22) The term "import"—

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

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

(23) 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).

(24) 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.

(25) 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.

(26) The term "limited access privilege"—

(A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and

(B) includes an individual fishing quota; but

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

(27) The term "limited access system" means a system that limits participation in a fishery to those satisfying certain eligi-

bility criteria or requirements contained in a fishery management plan or associated regulation.

(28) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

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

(30) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

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

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

(33) The term "optimum", with respect to the yield from a fishery, means the amount of fish which—

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

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

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

(34) [The terms "overfishing" and "overfished" mean] *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.

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

(36) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Fed-

eral, State, local, or foreign government or any entity of any such government.

(37) The term "recreational fishing" means fishing for sport or pleasure.

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

(39) The term "Secretary" means the Secretary of Commerce or his designee.

(40) 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.

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

(42) 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.

(43) The term "stock assessment" means an evaluation of the past, present, and future status of a stock of fish, that includes—

(A) a range of life history characteristics for such stock, including—

(i) the geographical boundaries of such stock; and

(ii) information on age, growth, natural mortality, sexual maturity and reproduction, feeding habits, and habitat preferences of such stock; and

(B) fishing for the stock.

[(43)**]** (44) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

***[**(43a)**]** (45)(A) The term "subsistence fishing" means fishing in which the fish harvested are intended for customary and traditional uses, including for direct personal or family consumption as food or clothing; for the making or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and for customary exchange or trade.*

(B) In this paragraph—

(i) the term "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(ii) the term "barter" means the exchange of a fish or fish part—

(I) for another fish or fish part; or

(II) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

[(44)**]** (46) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

[(45)**]** (47) 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.

[(46)**]** (48) The term "United States", when used in a geographical context, means all the States thereof.

[(47)**]** (49) 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.

[(48)**]** (50) 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.

[(49)**]** (51) 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)).

[(50)**]** (52) The term "vessel of the United States" means—

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

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

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

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

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

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

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

[(1) $337,844,000 for fiscal year 2007;

[(2) $347,684,000 for fiscal year 2008;

[(3) $357,524,000 for fiscal year 2009;

[(4) $367,364,000 for fiscal year 2010;
[(5) $377,204,000 for fiscal year 2011;
[(6) $387,044,000 for fiscal year 2012; and
[(7)] *this Act* $396,875,000 for [fiscal year 2013] *each of fiscal years 2018 through 2022*.

SEC. 5. ENSURING CONSISTENT FISHERIES MANAGEMENT UNDER CERTAIN OTHER FEDERAL LAWS.

(a) NATIONAL MARINE SANCTUARIES ACT AND ANTIQUITIES ACT OF.—In any case of a conflict between this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or the Antiquities Act of 1906 (54 U.S.C. 320301 et seq.), this Act shall control.

(b) FISHERIES RESTRICTIONS UNDER ENDANGERED SPECIES ACT OF.—To ensure transparency and consistent management of fisheries throughout their range, any restriction on the management of fish in the exclusive economic zone that is necessary to implement a recovery plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be implemented—

(1) using authority under this Act; and

(2) in accordance with processes and time schedules required under this Act.

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

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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) TRADITIONAL PARTICIPATION.—In managing any fisheries under an international fisheries agreement to which the United States is a party, the appropriate Council or Secretary shall take into account the traditional participation in the fishery, relative to other nations, by fishermen of the United States on fishing vessels of the United States.

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

* * * * * * *

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant

to this title shall be consistent with the following national standards for fishery conservation and management:

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

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

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

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

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

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

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

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of [overfished] *depleted* stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

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

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

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

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

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

(A) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean

seaward of such States (except as provided in paragraph (3)). The New England Council shall have [18] *19* voting members, including 12 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State) *and a liaison who is a member of the Mid-Atlantic Fishery Management Council to represent the interests of fisheries under the jurisdiction of such Council*.

(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 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State) *and a liaison who is a member of the New England Fishery Management Council to represent the interests of fisheries under the jurisdiction of such Council*.

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

(D) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States and of commonwealths, territories, and possessions of the United States in the Caribbean Sea (except as provided in paragraph (3)). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

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

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

fornia, Oregon, Washington, or Idaho in accordance with subsection (b)(5).

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

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

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

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

(b) VOTING MEMBERS.—(1) The voting members of each Council shall be:

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Notwithstanding the requirements of subparagraph (C), if the Secretary determines that the list of names submitted by the Governor does not meet the requirements of clause (i) the Secretary shall—

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

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

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

(iv) The requirements of this subparagraph shall expire at the end of fiscal year 2012.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) NONVOTING MEMBERS.—(1) The nonvoting members of each Council shall be:

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

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

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

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

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

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

(e) TRANSACTION OF BUSINESS.—

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

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

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

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

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

(f) STAFF AND ADMINISTRATION.—

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

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

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

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

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

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

(7) The Secretary shall pay—

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

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

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

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

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

(g) COMMITTEES AND ADVISORY PANELS.—

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

(B) Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. *Each scientific and statistical committee shall develop such advice in a transparent manner and allow for public involvement in the process.*

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

(D) Each member of a scientific and statistical committee shall be treated as an affected individual for purposes of paragraphs (2), (3)(B), (4), and (5)(A) of subsection (j). The Secretary shall keep disclosures made pursuant to this subparagraph on file.

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

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

(G) A science and statistical committee shall hold its meetings in conjunction with the meeting of the Council, to the extent practicable.

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

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

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

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

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

(B) other interested persons.

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

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

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

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

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

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

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allow-

able level of foreign fishing in, each fishery (except as provided in subsection (a)(3)) within its geographical area of authority; and

(6) develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g);

(7) develop, in conjunction with the scientific and statistical committee, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall—

(A) establish priorities for 5-year periods;

(B) be updated as necessary; and

(C) be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service for their consideration in developing research priorities and budgets for the region of the Council**[**; and**]***;*

(8) have the authority to use alternative fishery management measures in a recreational fishery (or the recreational component of a mixed-use fishery), including extraction rates, fishing mortality targets, and harvest control rules, in developing a fishery management plan, plan amendment, or proposed regulations; and

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

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

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

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

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

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

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

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

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

(G) Each Council shall make available on the Internet Web site of the Council—

(i) to the extent practicable, a Webcast, an audio recording, or a live broadcast of each meeting of the Council, and of the Council Coordination Committee established under subsection (l), that is not closed in accordance with paragraph (3); and

(ii) audio, video (if the meeting was in person or by video conference), or a searchable audio or written transcript of each meeting of the Council and of the meetings of committees referred to in section (g)(1)(B) of the Council by not later than 30 days after the conclusion of the meeting.

(H) The Secretary shall maintain and make available to the public an archive of Council and scientific and statistical committee meeting audios, videos, and transcripts made available under clauses (i) and (ii) of subparagraph (G).

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

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

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

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

(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that

notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

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

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

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

(j) DISCLOSURE OF FINANCIAL INTEREST.—

(1) For the purposes of this subsection—

(A) the term "affected individual" means an individual who—

(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or

(ii) is a voting member of a Council appointed—

(I) under subsection (b)(2); or

(II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

(B) the term "designated official" means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).

(2) Each affected individual must disclose any financial interest held by—

(A) that individual;

(B) the spouse, minor child, or partner of that individual; and

(C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee;

in any harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over

which the Council concerned has jurisdiction, or with respect to an individual or organization with a financial interest in such activity.

(3) The disclosure required under paragraph (2) shall be made—

(A) in the case of an affected individual referred to in paragraph (1)(A)(i), before appointment by the Secretary; and

(B) in the case of an affected individual referred to in paragraph (1)(A)(ii), within 45 days of taking office.

(4) An affected individual referred to in paragraph (1)(A)(ii) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C).

(5) The financial interest disclosures required by this subsection shall—

(A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe;

(B) be kept on file by the Council and made available on the Internet and for public inspection at the Council offices during reasonable hours; and

(C) be kept on file by the Secretary for use in reviewing determinations under paragraph (7)(B) and made available for public inspection at reasonable hours.

(6) The participation by an affected individual referred to in paragraph (1)(A)(ii) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.

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

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

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

(D) Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the

record how he or she would have voted on such decision if he or she had voted.

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

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

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

(9) On January 1, 2008, and annually thereafter, the Secretary shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements of this subsection, including identification of any conflict of interest problems with respect to the Councils and scientific and statistical committees and recommendations for addressing any such problems.

(k) COUNCIL TRAINING PROGRAM.—

(1) TRAINING COURSE.—Within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with the Councils and the National Sea Grant College Program, shall develop a training course for newly appointed Council members. The course may cover a variety of topics relevant to matters before the Councils, including—

(A) fishery science and basic stock assessment methods;

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

(C) social science and fishery economics;

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

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

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

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

(H) other topics suggested by the Council; and

(I) recreational and commercial fishing information, including fish harvesting techniques, gear types, fishing vessel types, and economics for the fisheries within each Council's jurisdiction.

(2) MEMBER TRAINING.—The training course shall be available to both new and existing Council members, staff from the

regional offices and regional science centers of the National Marine Fisheries Service, and may be made available to committee or advisory panel members as resources allow.

(3) REQUIRED TRAINING.—Council members appointed after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 shall complete a training course that meets the requirements of this section not later than 1 year after the date on which they were appointed. Any Council member who has completed a training course within 24 months before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 shall be considered to have met the training requirement of this paragraph.

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

(m) CONSIDERATIONS FOR MODIFICATIONS TO ANNUAL CATCH LIMIT REQUIREMENTS.—

(1) ANNUAL CATCH LIMIT REQUIREMENT FOR CERTAIN DATA-POOR FISHERIES.—Notwithstanding subsection (h)(6), in the case of a stock of fish for which the total annual catch limit is 25 percent or more below the overfishing limit, a peer-reviewed stock survey and stock assessment have not been performed during the preceding 5 fishing years, and the stock is not subject to overfishing, a Council may, after notifying the Secretary, maintain the current annual catch limit for the stock until a peer-reviewed stock survey and stock assessment are conducted and the results are considered by the Council and its scientific and statistical committee.

(2) CONSIDERATION OF ECOSYSTEM AND ECONOMIC IMPACTS.—In establishing annual catch limits a Council may, consistent with subsection (h)(6), consider changes in an ecosystem and the economic needs of the fishing communities.

(3) LIMITATIONS TO ANNUAL CATCH LIMIT REQUIREMENT FOR SPECIAL FISHERIES.—Notwithstanding subsection (h)(6), a Council is not required to develop an annual catch limit for—

(A) an ecosystem-component species;

(B) a fishery for a species that has a life cycle of approximately 1 year, unless the Secretary has determined the fishery is subject to overfishing; or

(C) a stock for which—

(i) more than half of a single-year class will complete their life cycle in less than 18 months; and

(ii) fishing mortality will have little impact on the stock.

(4) RELATIONSHIP TO INTERNATIONAL FISHERY EFFORTS.—

(A) IN GENERAL.—Each annual catch limit, consistent with subsection (h)(6)—

(i) may take into account management measures under international agreements in which the United States participates; and

(ii) in the case of an annual catch limit developed by a Council for a species, shall take into account fishing for the species outside the exclusive economic zone and the life-history characteristics of the species that are not subject to the jurisdiction of the Council.

(B) EXCEPTION TO ANNUAL CATCH LIMIT REQUIREMENT.—If fishery management activities by another country with respect to fishing outside the exclusive economic zone may hinder conservation efforts by United States fishermen for a fish species for which any of the recruitment, distribution, life history, or fishing activities are transboundary, and for which there is no informal transboundary agreement with that country in effect, then—

(i) notwithstanding subsection (h)(6), no annual catch limit is required to be developed for the species by a Council; and

(ii) if an annual catch limit is developed by a Council for the species, the catch limit shall take into account fishing for the species outside the exclusive economic zone that is not subject to the jurisdiction of the Council.

(5) AUTHORIZATION FOR MULTISPECIES COMPLEXES AND MULTIYEAR ANNUAL CATCH LIMITS.—For purposes of subsection (h)(6), a Council may establish—

(A) an annual catch limit for a stock complex; or

(B) annual catch limits for each year in any continuous period that is not more than three years in duration.

(6) ECOSYSTEM-COMPONENT SPECIES DEFINED.—In this subsection the term "ecosystem-component species" means a stock of fish that is a nontarget, incidentally harvested stock of fish in a fishery, or a nontarget, incidentally harvested stock of fish that a Council or the Secretary has determined—

(A) is not subject to overfishing, approaching a depleted condition or depleted; and

(B) is not likely to become subject to overfishing or depleted in the absence of conservation and management measures.

(7) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as providing an exemption from the requirements of section 301(a) of this Act.

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) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery, to prevent overfishing and rebuild [overfished] *depleted* stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors,

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under

section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

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

[(A) participants in the fisheries and fishing communities affected by the plan or amendment;

[(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

[(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

[(10)] *(9)* specify objective and measurable criteria for identifying when the fishery to which the plan applies is [overfished] *depleted* (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an [overfished] *depleted* condition or is [overfished] *depleted*, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

[(11)] *(10)* establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

[(12)] *(11)* assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

[(13)] *(12)* include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

[(14)] *(13)* to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any

harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

[(15)] *(14)* establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

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

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishery resources beyond such zone;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

(i) is based on the best scientific information available;

(ii) includes criteria to assess the conservation benefit of the closed area;

(iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and

(iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

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

(A) present participation in the fishery;

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

(C) the economics of the fishery;

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

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

(F) the fair and equitable distribution of access privileges in the fishery; and

(G) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

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

(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

(d) FISHERY IMPACT STATEMENT.—

(1) Any fishery management plan (or fishery management plan amendment) prepared by any Council or by the Secretary pursuant to subsection (a) or (b), or proposed regulations deemed necessary pursuant to subsection (c), shall include a fishery impact statement which shall assess, specify and analyze the likely effects and impact of the proposed action on the quality of the human environment.

(2) The fishery impact statement shall describe—

(A) a purpose of the proposed action;

(B) the environmental impact of the proposed action;

(C) any adverse environmental effects which cannot be avoided should the proposed action be implemented;

(D) a reasonable range of alternatives to the proposed action;

(E) the relationship between short-term use of fishery resources and the enhancement of long-term productivity;

(F) the cumulative conservation and management effects; and

(G) economic, and social impacts of the proposed action on—

(i) participants in the fisheries and fishing communities affected by the proposed action;

(ii) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(iii) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery.

(3) A substantially complete fishery impact statement, which may be in draft form, shall be available not less than 14 days before the beginning of the meeting at which a Council makes its final decision on the proposal (for plans, plan amendments, or proposed regulations prepared by a Council pursuant to subsection (a) or (c)). Availability of this fishery impact statement will be announced by the methods used by the Council to disseminate public information and the public and relevant government agencies will be invited to comment on the fishery impact statement.

(4) The completed fishery impact statement shall accompany the transmittal of a fishery management plan or plan amendment as specified in section 304(a), as well as the transmittal of proposed regulations as specified in section (b).

(5) The Councils shall, subject to approval by the Secretary, establish criteria to determine actions or classes of action of

minor significance regarding subparagraphs (A), (B), (D), (E), and (F) of paragraph (2), for which preparation of a fishery impact statement is unnecessary and categorically excluded from the requirements of this section, and the documentation required to establish the exclusion.

(6) The Councils shall, subject to approval by the Secretary, prepare procedures for compliance with this section that provide for timely, clear, and concise analysis that is useful to decisionmakers and the public, reduce extraneous paperwork and effectively involve the public, including—

(A) using Council meetings to determine the scope of issues to be addressed and identifying significant issues related to the proposed action;

(B) integration of the fishery impact statement development process with preliminary and final Council decision making in a manner that provides opportunity for comment from the public and relevant government agencies prior to these decision points; and

(C) providing scientific, technical, and legal advice at an early stage of the development of the fishery impact statement to ensure timely transmittal and Secretarial review of the proposed fishery management plan, plan amendment, or regulations to the Secretary.

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

(a) IN GENERAL.—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) NO CREATION OF RIGHT, TITLE, OR INTEREST.—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is [overfished] *depleted* or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

(A) the fishery has historically processed the fish outside of the United States; and

(B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and

(vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

(i) be located within the management area of the relevant Council;

(ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(iii) be a voluntary association, among willing parties with established by-laws and operating procedures;

(iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;

(v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is members contribute; and

(vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the administrative and fiduciary soundness of the association; and

(vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

(i) current and historical harvests;

(ii) employment in the harvesting and processing sectors;

(iii) investments in, and dependence upon, the fishery; and

(iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

(i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and

(ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

(i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and

(ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery

to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

[(D) NEW ENGLAND AND GULF REFERENDUM.—

[(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than ⅔ of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

[(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

[(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

[(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

[(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

[(vi) In this subparagraph, the term "individual fishing quota" does not include a sector allocation.]

(D) CATCH SHARE REFERENDUM PILOT PROGRAM.—

(i) The New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils may not submit a fishery management plan or amendment that creates a catch share program for a fishery, and the Secretary may not approve or implement such a plan or amendment submitted by such a Council or a Secretarial plan or amendment under section 304(c) that creates such a program, unless the final program has been approved, in a referendum in accordance with this subparagraph, by a majority of the permit holders eligible to participate in the fishery. For multispecies permits in the Gulf of Mexico, any permit holder with landings from within the sector of the fishery being considered for the catch share program within the 5-year period preceding the date of the referendum and still active in fishing in the fishery shall be eligible to participate in such a referendum. If a catch share program is not approved by the requisite number of permit holders, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary may, at the request of the New England Fishery Management Council, allow participation in such a referendum for a fishery under the Council's authority, by fishing vessel crewmembers who derive a significant portion of their livelihood from such fishing.

(iii) The Secretary shall conduct a referendum under this subparagraph, including notifying all permit holders eligible to participate in the referendum and making available to them—

(I) a copy of the proposed program;

(II) an estimate of the costs of the program, including costs to participants;

(III) an estimate of the amount of fish or percentage of quota each permit holder would be allocated; and

(IV) information concerning the schedule, procedures, and eligibility requirements for the referendum process.

(iv) For the purposes of this subparagraph, the term "permit holder eligible to participate" only includes the

holder of a permit for a fishery under which fishing has occurred in 3 of the 5 years preceding a referendum for the fishery, unless sickness, injury, or other unavoidable hardship prevented the permit holder from engaging in such fishing.

(v) The Secretary may not implement any catch share program for any fishery managed exclusively by the Secretary unless first petitioned by a majority of those permit holders eligible to participate in the fishery.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term "antitrust laws" has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(1) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(2) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(3) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

SEC. 304. ACTION BY THE SECRETARY.

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

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

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; [and]

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6)[.]*; and*

(D) evaluate the adequacy of the accompanying fishery impact statement as basis for fully considering the environmental impacts of implementing the fishery management plan or plan amendment.

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

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

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the "term immediately" means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery

management plan, plan amendment, or proposed regulation that the Council characterizes as final.

(b) REVIEW OF REGULATIONS.—

(1) [Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—] *Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. The Secretary shall also immediately initiate an evaluation of the accompanying fishery impact statement as a basis for fully considering the environmental impacts of implementing the proposed regulations. Within 15 days of initiating such evaluation the Secretary shall make a determination and—*

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.—(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

(2) In preparing any plan or amendment under this subsection, the Secretary shall—

(A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and

(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any limited access privilege program, unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately—

(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

(B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with

the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.

(d) ESTABLISHMENT OF FEES.—(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any—

(i) limited access privilege program; and

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

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

(e) REBUILDING [OVERFISHED] *DEPLETED* 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] *depleted* or are approaching a condition of being [overfished] *depleted*. 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] *depleted* if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become [overfished] *depleted* within two years. *The report shall distinguish between fisheries that are depleted (or approaching that condition) as a result of fishing and fisheries that are depleted (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as depleted or approaching that condition, whether the fishery is the target of directed fishing.*

(2) If the Secretary determines at any time that a fishery is [overfished] *depleted*, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within 2 years after an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

(A) to end overfishing immediately in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an [overfished] *depleted* condition.

(4) For a fishery that is [overfished] *depleted*, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

(A) specify a time period for rebuilding the fishery that shall—

(i) be as short as [possible] *practicable*, taking into account the status and biology of any [overfished] *depleted* stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the [overfished] *depleted* stock of fish within the marine ecosystem; and

[(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;]

(ii) may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation, except in a case in which—

(I) the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(II) the Secretary determines that the cause of the stock being depleted is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities;

(III) the Secretary determines that one or more components of a mixed- stock fishery is depleted but cannot be rebuilt within that time- frame without significant economic harm to the fishery, or cannot be rebuilt without causing another component of the mixed- stock fishery to approach a depleted status;

(IV) the Secretary determines that recruitment, distribution, or life history of, or fishing activities for, the stock are affected by informal transboundary agreements under which management activities outside the exclusive economic zone by another country may hinder conservation and management efforts by United States fishermen; and

(V) the Secretary determines that the stock has been affected by unusual events that make rebuilding within the specified time period improbable without significant economic harm to fishing communities;

(B) take into account environmental condition including predator/prey relationships;

[(B)] *(C)* allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; [and]

[(C)] *(D)* for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States[.]*; and*

(E) specify a schedule for reviewing the rebuilding targets, evaluating environmental impacts on rebuilding progress, and evaluating progress being made toward reaching rebuilding targets.

(5) If, within the 2-year period beginning on the date of identification or notification that a fishery is [overfished] *depleted*, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Coun-

cil should consider under paragraph (3) to achieve adequate progress.

(8) A fishery management plan, plan amendment, or proposed regulations may use alternative rebuilding strategies, including harvest control rules and fishing mortality-rate targets to the extent they are in compliance with the requirements of this Act.

(9) A Council may terminate the application of paragraph (3) to a fishery if the Council's scientific and statistical committee determines and the Secretary concurs that the original determination that the fishery was depleted was erroneous, either—

(A) within the 2-year period beginning on the effective date a fishery management plan, plan amendment, or proposed regulation for a fishery under this subsection takes effect; or

(B) within 90 days after the completion of the next stock assessment after such determination.

(f) MISCELLANEOUS DUTIES.—(1) Except as provided in paragraph (3), if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—(1) PREPARATION AND IMPLEMENTATION OF PLAN OR PLAN AMENDMENT.—The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall—

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory spe-

cies has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection—

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

(2) CERTAIN FISH EXCLUDED FROM "BYCATCH" DEFINITION.—Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d), or highly migratory species harvested in a commercial fishery managed by a Council under this Act or the Western and Central Pacific Fisheries Convention Implementation Act, that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.

(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

(i) ENVIRONMENTAL REVIEW PROCESS.—

(1) PROCEDURES.—The Secretary shall, in consultation with the Councils and the Council on Environmental Quality, revise and update agency procedures for compliance with the National Environmental Policy Act (42 U.S.C. 4231 et seq.). The procedures shall—

(A) conform to the time lines for review and approval of fishery management plans and plan amendments under this section; and

(B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.

(2) USAGE.—The updated agency procedures promulgated in accordance with this section used by the Councils or the Secretary shall be the sole environmental impact assessment pro-

cedure for fishery management plans, amendments, regulations, or other actions taken or approved pursuant to this Act.

(3) SCHEDULE FOR PROMULGATION OF FINAL PROCEDURES.—The Secretary shall—

(A) propose revised procedures within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006;

(B) provide 90 days for public review and comments; and

(C) promulgate final procedures no later than 12 months after the date of enactment of that Act.

(4) PUBLIC PARTICIPATION.—The Secretary is authorized and directed, in cooperation with the Council on Environmental Quality and the Councils, to involve the affected public in the development of revised procedures, including workshops or other appropriate means of public involvement.

[(i)**]** *(j)* INTERNATIONAL OVERFISHING.—The provisions of this subsection shall apply in lieu of subsection (e) to a fishery that the Secretary determines is **[**overfished**]** *depleted* or approaching a condition of being **[**overfished**]** *depleted* due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. For such fisheries—

(1) the Secretary, in cooperation with the Secretary of State, *shall* immediately take appropriate action at the international level to end the overfishing; and

(2) within 1 year after the Secretary's determination, the appropriate Council, or Secretary, for fisheries under section 302(a)(3) shall—

(A) develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States on the stock and, if developed by a Council, the Council shall submit such recommendations to the Secretary; and

(B) develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock.

(k) STOCK SURVEYS AND ASSESSMENTS.—Not later than 2 years after the date that the Secretary receives notice from a Council under section 302(m), the Secretary shall complete a peer-reviewed stock survey and stock assessment of the applicable stock of fish and transmit the results of the survey and assessment to the Council.

SEC. 305. OTHER REQUIREMENTS AND AUTHORITY.

(a) GEAR EVALUATION AND NOTIFICATION OF ENTRY.—

(1) Not later than 18 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries—

(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 303(a); and

(B) to which section 302(a)(3) applies and all fishing gear used in such fisheries.

(2) The Secretary shall include with such list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).

(3) Effective 180 days after the publication of such list, no person or vessel may employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council, or the Secretary with respect to a fishery to which section 302(a)(3) applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.

(4) A Council may submit to the Secretary any proposed changes to such list or such guidelines the Council deems appropriate. The Secretary shall publish a revised list, after notice and an opportunity for public comment, upon receiving any such proposed changes from a Council.

(5) A Council may request the Secretary to promulgate emergency regulations under subsection (c) to prohibit any persons or vessels from using an unlisted fishing gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary for fisheries to which section 302(a)(3) applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this Act.

(6) Nothing in this subsection shall be construed to permit a person or vessel to engage in fishing or employ fishing gear when such fishing or gear is prohibited or restricted by regulation under a fishery management plan or plan amendment, or under other applicable law.

(b) FISH HABITAT.—(1)(A) The Secretary shall, within 6 months of the date of enactment of the Sustainable Fisheries Act, establish by regulation guidelines to assist the Councils in the description and identification of essential fish habitat in fishery management plans (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat. The Secretary shall set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat and for the review and updating of such identifications based on new scientific evidence or other relevant information.

(B) The Secretary, in consultation with participants in the fishery, shall provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.

(C) The Secretary shall review programs administered by the Department of Commerce and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.

(D) The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.

(2) Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed

to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.

(3) Each Council—

(A) may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and

(B) shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority.

(4)(A) If the Secretary receives information from a Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.

(B) Within 30 days after receiving a recommendation under subparagraph (A), a Federal agency shall provide a detailed response in writing to any Council commenting under paragraph (3) and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.

(c) EMERGENCY ACTIONS AND INTERIM MEASURES.—(1) If the Secretary finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency or overfishing regulations or interim measures necessary to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery.

(2) If a Council finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery—

(A) the Secretary shall promulgate emergency or overfishing regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members who are voting members, requests the taking of such action; and

(B) the Secretary may promulgate emergency or overfishing regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by less than a unanimous vote, requests the taking of such action.

(3) Any emergency regulation or interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation or interim measure promulgated under this subsection—

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

(B) shall, except as provided in subparagraph (C), remain in effect for not more than [180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 186 days, provided] *1 year after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 1 year, if* the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;

(C) that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist,*Provided,* That the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action; and

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations or interim measures promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

(d) RESPONSIBILITY OF THE SECRETARY.—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

(e) EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.—The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), *the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),* and Executive Order Numbered 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsections (a), (b), and (c) of section 304 as they apply to the functions of the Secretary under such provisions.

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

(A) section 705 of such title is not applicable, and

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

(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fish-

ery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing.

(3)(A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1), not later than 45 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

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

(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.

(g) NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES.—

(1)(A) In accordance with regulations promulgated by the Secretary pursuant to this paragraph, a Council may establish a fishery negotiation panel to assist in the development of specific conservation and management measures for a fishery under its authority. The Secretary may establish a fishery negotiation panel to assist in the development of specific conservation and management measures required for a fishery under section 304(e)(5), for a fishery for which the Secretary has authority under section 304(g), or for any other fishery with the approval of the appropriate Council.

(B) No later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations establishing procedures, developed in cooperation with the Administrative Conference of the United States, for the establishment and operation of fishery negotiation panels. Such procedures shall be comparable to the procedures for negotiated rulemaking established by subchapter III of chapter 5 of title 5, United States Code.

(2) If a negotiation panel submits a report, such report shall specify all the areas where consensus was reached by the panel, including, if appropriate, proposed conservation and management measures, as well as any other information submitted by members of the negotiation panel. Upon receipt, the Secretary shall publish such report in the Federal Register for public comment.

(3) Nothing in this subsection shall be construed to require either a Council or the Secretary, whichever is appropriate, to use all or any portion of a report from a negotiation panel established under this subsection in the development of specific conservation and management measures for the fishery for which the panel was established.

(h) CENTRAL REGISTRY SYSTEM FOR LIMITED ACCESS SYSTEM PERMITS.—

(1) Within 6 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits established under section 303(b)(6) or other Federal law, including limited

access privileges, which shall provide for the registration of title to, and interests in, such permits, as well as for procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial or nonjudicial foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate by the Secretary. Such registry system shall—

(A) provide a mechanism for filing notice of a nonjudicial foreclosure or enforcement of a judgment by which the holder of a senior security interest acquires or conveys ownership of a permit, and in the event of a nonjudicial foreclosure, by which the interests of the holders of junior security interests are released when the permit is transferred;

(B) provide for public access to the information filed under such system, notwithstanding section 402(b); and

(C) provide such notice and other requirements of applicable law that the Secretary deems necessary for an effective registry system.

(2) The Secretary shall promulgate such regulations as may be necessary to carry out this subsection, after consulting with the Councils and providing an opportunity for public comment. The Secretary is authorized to contract with non-Federal entities to administer the central registry system.

(3) To be effective and perfected against any person except the transferor, its heirs and devisees, and persons having actual notice thereof, all security interests, and all sales and other transfers of permits described in paragraph (1), shall be registered in compliance with the regulations promulgated under paragraph (2). Such registration shall constitute the exclusive means of perfection of title to, and security interests in, such permits, except for Federal tax liens thereon, which shall be perfected exclusively in accordance with the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.). The Secretary shall notify both the buyer and seller of a permit if a lien has been filed by the Secretary of the Treasury against the permit before collecting any transfer fee under paragraph (5) of this subsection.

(4) The priority of security interests shall be determined in order of filing, the first filed having the highest priority. A validly-filed security interest shall remain valid and perfected notwithstanding a change in residence or place of business of the owner of record. For the purposes of this subsection, "security interest" shall include security interests, assignments, liens and other encumbrances of whatever kind.

(5)(A) Notwithstanding section 304(d)(1), the Secretary shall collect a reasonable fee of not more than one-half of one percent of the value of a limited access system permit upon registration of the title to such permit with the central registry system and upon the transfer of such registered title. Any such fee collected shall be deposited in the Limited Access System Administration Fund established under subparagraph (B).

(B) There is established in the Treasury a Limited Access System Administration Fund. The Fund shall be available,

without appropriation or fiscal year limitation, only to the Secretary for the purposes of—

(i) administering the central registry system; and

(ii) administering and implementing this Act in the fishery in which the fees were collected. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(i) ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS.—

(1) WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM.—

(A) IN GENERAL.—There is established the western Alaska community development quota program in order—

(i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area;

(ii) to support economic development in western Alaska;

(iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and

(iv) to achieve sustainable and diversified local economies in western Alaska.

(B) PROGRAM ALLOCATION.—

(i) IN GENERAL.—Except as provided in clause (ii), the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006, for the program. The percentage for each fishery shall be either a directed fishing allowance or include both directed fishing and nontarget needs based on existing practice with respect to the program as of March 1, 2006, for each fishery.

(ii) EXCEPTIONS.—Notwithstanding clause (i)—

(I) the allocation under the program for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a total allocation (directed and nontarget combined) of 10.7 percent effective January 1, 2008; and

(II) the allocation under the program in any directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) established after the date of enactment of this subclause shall be a total allocation (directed and nontarget combined) of 10.7 percent.

The total allocation (directed and nontarget combined) for a fishery to which subclause (I) or (II) applies may not be exceeded.

(iii) PROCESSING AND OTHER RIGHTS.—Allocations to the program include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006.

(iv) REGULATION OF HARVEST.—The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.

(C) ALLOCATIONS TO ENTITIES.—Each entity eligible to participate in the program shall be authorized under the program to harvest annually the same percentage of each species allocated to the program under subparagraph (B) that it was authorized by the Secretary to harvest of such species annually as of March 1, 2006, except to the extent that its allocation is adjusted under subparagraph (H). Such allocation shall include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006. Voluntary transfers by and among eligible entities shall be allowed, whether before or after harvesting. Notwithstanding the first sentence of this subparagraph, seven-tenths of one percent of the total allowable catch, guideline harvest level, or other annual catch limit, within the amount allocated to the program by subclause (I) or subclause (II) of subparagraph (B)(ii), shall be allocated among the eligible entities by the panel established in subparagraph (G), or allocated by the Secretary based on the nontarget needs of eligible entities in the absence of a panel decision.

(D) ELIGIBLE VILLAGES.—The following villages shall be eligible to participate in the program through the following entities:

(i) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

(ii) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

(iii) The village of Saint Paul through the Central Bering Sea Fishermen's Association.

(iv) The villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

(v) The villages of Brevig Mission, Diomede, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet,

Wales, and White Mountain through the Norton Sound Economic Development Corporation.

(vi) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

(E) ELIGIBILITY REQUIREMENTS FOR PARTICIPATING ENTITIES.—To be eligible to participate in the program, an entity referred to in subparagraph (D) shall meet the following requirements:

(i) BOARD OF DIRECTORS.—The entity shall be governed by a board of directors. At least 75 percent of the members of the board shall be resident fishermen from the entity's member villages. The board shall include at least one director selected by each such member village.

(ii) PANEL REPRESENTATIVE.—The entity shall elect a representative to serve on the panel established by subparagraph (G).

(iii) OTHER INVESTMENTS.—The entity may make up to 20 percent of its annual investments in any combination of the following:

(I) For projects that are not fishery-related and that are located in its region.

(II) On a pooled or joint investment basis with one or more other entities participating in the program for projects that are not fishery-related and that are located in one or more of their regions.

(III) For matching Federal or State grants for projects or programs in its member villages without regard to any limitation on the Federal or State share, or restriction on the source of any non-Federal or non-State matching funds, of any grant program under any other provision of law.

(iv) FISHERY-RELATED INVESTMENTS.—The entity shall make the remainder percent of its annual investments in fisheries-related projects or for other purposes consistent with the practices of the entity prior to March 1, 2006.

(v) ANNUAL STATEMENT OF COMPLIANCE.—Each year the entity, following approval by its board of directors and signed by its chief executive officer, shall submit a written statement to the Secretary and the State of Alaska that summarizes the purposes for which it made investments under clauses (iii) and (iv) during the preceding year.

(vi) OTHER PANEL REQUIREMENTS.—The entity shall comply with any other requirements established by the panel under subparagraph (G).

(F) ENTITY STATUS, LIMITATIONS, AND REGULATION.—The entity—

(i) shall be subject to any excessive share ownership, harvesting, or processing limitations in the fisheries of the Bering Sea and Aleutian Islands Management Area only to the extent of the entity's proportional

ownership, excluding any program allocations, and notwithstanding any other provision of law;

(ii) shall comply with State of Alaska law requiring annual reports to the entity's member villages summarizing financial operations for the previous calendar year, including general and administrative costs and compensation levels of the top 5 highest paid personnel;

(iii) shall comply with State of Alaska laws to prevent fraud that are administered by the Alaska Division of Banking and Securities, except that the entity and the State shall keep confidential from public disclosure any information if the disclosure would be harmful to the entity or its investments; and

(iv) is exempt from compliance with any State law requiring approval of financial transactions, community development plans, or amendments thereto, except as required by subparagraph (H).

(G) ADMINISTRATIVE PANEL.—

(i) ESTABLISHMENT.—There is established a community development quota program panel.

(ii) MEMBERSHIP.—The panel shall consist of 6 members. Each entity participating in the program shall select one member of the panel.

(iii) FUNCTIONS.—The panel shall—

(I) administer those aspects of the program not otherwise addressed in this paragraph, either through private contractual arrangement or through recommendations to the North Pacific Council, the Secretary, or the State of Alaska, as the case may be; and

(II) coordinate and facilitate activities of the entities under the program.

(iv) UNANIMITY REQUIRED.—The panel may act only by unanimous vote of all 6 members of the panel and may not act if there is a vacancy in the membership of the panel.

(H) DECENNIAL REVIEW AND ADJUSTMENT OF ENTITY ALLOCATIONS.—

(i) IN GENERAL.—During calendar year 2012 and every 10 years thereafter, the State of Alaska shall evaluate the performance of each entity participating in the program based on the criteria described in clause (ii).

(ii) CRITERIA.—The panel shall establish a system to be applied under this subparagraph that allows each entity participating in the program to assign relative values to the following criteria to reflect the particular needs of its villages:

(I) Changes during the preceding 10-year period in population, poverty level, and economic development in the entity's member villages.

(II) The overall financial performance of the entity, including fishery and nonfishery investments by the entity.

(III) Employment, scholarships, and training supported by the entity.

(IV) Achieving of the goals of the entity's community development plan.

(iii) ADJUSTMENT OF ALLOCATIONS.—After the evaluation required by clause (i), the State of Alaska shall make a determination, on the record and after an opportunity for a hearing, with respect to the performance of each entity participating in the program for the criteria described in clause (ii). If the State determines that the entity has maintained or improved its overall performance with respect to the criteria, the allocation to such entity under the program shall be extended by the State for the next 10-year period. If the State determines that the entity has not maintained or improved its overall performance with respect to the criteria—

(I) at least 90 percent of the entity's allocation for each species under subparagraph (C) shall be extended by the State for the next 10-year period; and

(II) the State may determine, or the Secretary may determine (if State law prevents the State from making the determination), and implement an appropriate reduction of up to 10 percent of the entity's allocation for each species under subparagraph (C) for all or part of such 10-year period.

(iv) REALLOCATION OF REDUCED AMOUNT.—If the State or the Secretary reduces an entity's allocation under clause (iii), the reduction shall be reallocated among other entities participating in the program whose allocations are not reduced during the same period in proportion to each such entity's allocation of the applicable species under subparagraph (C).

(I) SECRETARIAL APPROVAL NOT REQUIRED.—Notwithstanding any other provision of law or regulation thereunder, the approval by the Secretary of a community development plan, or an amendment thereof, under the program is not required.

(J) COMMUNITY DEVELOPMENT PLAN DEFINED.—In this paragraph, the term "community development plan" means a plan, prepared by an entity referred to in subparagraph (D), for the program that describes how the entity intends—

(i) to harvest its share of fishery resources allocated to the program, or

(ii) to use its share of fishery resources allocated to the program, and any revenue derived from such use, to assist its member villages with projects to advance economic development,

but does not include a plan that allocates fishery resources to the program.

(2)(A) The Western Pacific Council and the Secretary may establish a western Pacific community development program for any fishery under the authority of such Council in order to pro-

vide access to such fishery for western Pacific communities that participate in the program.

(B) To be eligible to participate in the western Pacific community development program, a community shall—

(i) be located within the Western Pacific Regional Fishery Management Area;

(ii) meet criteria developed by the Western Pacific Council, approved by the Secretary and published in the Federal Register;

(iii) consist of community residents who are descended from the aboriginal people indigenous to the area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the Western Pacific region;

(iv) not have previously developed harvesting or processing capability sufficient to support substantial participation in fisheries in the Western Pacific Regional Fishery Management Area; and

(v) develop and submit a Community Development Plan to the Western Pacific Council and the Secretary.

(C) In developing the criteria for eligible communities under subparagraph (B)(ii), the Western Pacific Council shall base such criteria on traditional fishing practices in or dependence on the fishery, the cultural and social framework relevant to the fishery, and economic barriers to access to the fishery.

(D) For the purposes of this subsection "Western Pacific Regional Fishery Management Area" means the area under the jurisdiction of the Western Pacific Council, or an island within such area.

(E) Notwithstanding any other provision of this Act, the Western Pacific Council shall take into account traditional indigenous fishing practices in preparing any fishery management plan.

(3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

(4) After the date of enactment of the Sustainable Fisheries Act, the North Pacific Council and Western Pacific Council may not submit to the Secretary a community development quota program that is not in compliance with this subsection.

(j) WESTERN PACIFIC AND NORTHERN PACIFIC REGIONAL MARINE EDUCATION AND TRAINING.—

(1) IN GENERAL.—The Secretary shall establish a pilot program for regionally-based marine education and training programs in the Western Pacific and the Northern Pacific to foster understanding, practical use of knowledge (including native Hawaiian, Alaskan Native, and other Pacific Islander-based knowledge), and technical expertise relevant to stewardship of living marine resources. The Secretary shall, in cooperation with the Western Pacific and the North Pacific Regional Fishery Management Councils, regional educational institutions,

and local Western Pacific and Northern Pacific community training entities, establish programs or projects that will improve communication, education, and training on marine resource issues throughout the region and increase scientific education for marine-related professions among coastal community residents, including indigenous Pacific islanders, Native Hawaiians, Alaskan Natives, and other underrepresented groups in the region.

(2) PROGRAM COMPONENTS.—The program shall—

(A) include marine science and technology education and training programs focused on preparing community residents for employment in marine related professions, including marine resource conservation and management, marine science, marine technology, and maritime operations;

(B) include fisheries and seafood-related training programs, including programs for fishery observers, seafood safety and seafood marketing, focused on increasing the involvement of coastal community residents in fishing, fishery management, and seafood-related operations;

(C) include outreach programs and materials to educate and inform consumers about the quality and sustainability of wild fish or fish products farmed through responsible aquaculture, particularly in Hawaii, Alaska, the Western Pacific, the Northern Pacific, and the Central Pacific;

(D) include programs to identify, with the fishing industry, methods and technologies that will improve the data collection, quality, and reporting and increase the sustainability of fishing practices, and to transfer such methods and technologies among fisheries sectors and to other nations in the Western, Northern, and Central Pacific;

(E) develop means by which local and traditional knowledge (including Pacific islander, Native Hawaiian, and Alaskan Native knowledge) can enhance science-based management of fishery resources of the region; and

(F) develop partnerships with other Western Pacific Island and Alaskan agencies, academic institutions, and other entities to meet the purposes of this section.

(k) MULTISPECIES GROUNDFISH.—

(1) IN GENERAL.—Within 60 days after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary of Commerce shall determine whether fishing in State waters—

(A) without a New England multispecies groundfish fishery permit on regulated species within the multispecies complex is not consistent with the applicable Federal fishery management plan; or

(B) without a Federal bottomfish and seamount groundfish permit in the Hawaiian archipelago on regulated species within the complex is not consistent with the applicable Federal fishery management plan or State data are not sufficient to make such a determination.

(2) CURE.—If the Secretary makes a determination that such actions are not consistent with the plan, the Secretary shall, in consultation with the Council, and after notifying the af-

fected State, develop and implement measures to cure the inconsistency pursuant to section 306(b).

SEC. 306. STATE JURISDICTION.

(a) IN GENERAL.—

(1) Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this Act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend—

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are—

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not

apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there [was no] *is no* fishery management plan in place [on August 1, 1996], and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this Act is approved and implemented for such fishery.

(b) EXCEPTION.—(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—

(A) the fishing is a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the exclusive economic zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).

(4) Notwithstanding section 3(11), for the purposes of managing the recreational sector of the Gulf of Mexico red snapper fishery, the seaward boundary of a coastal State in the Gulf of Mexico is a line 9 miles seaward from the baseline from which the territorial sea of the United States is measured.

(c) EXCEPTION REGARDING FOREIGN FISH PROCESSING IN INTERNAL WATERS.—(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if—

(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C) or has received a permit under section 204(d);

(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing and the application specifies the species to be processed; and

(C) the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.

(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—

(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—

(i) consulting with the appropriate Council and Marine Fisheries Commission, and

(ii) considering any comments received from the Governor of any other State where the fishery occurs; and

(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

(3) Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the internal waters of a State incident to permission obtained under paragraph (1)(B).

(4) For purposes of this subsection—

(A) The term "fish processing" includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.

(B) The phrase "internal waters of a State" means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured.

(C) A foreign fishing vessel shall be treated as qualified for purposes of paragraph (1) if the foreign nation under which it is flagged will be a party to (i) a governing international fishery agreement or (ii) a treaty described in section 201(b) of this Act (16 U.S.C. 1821(b)) during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).

SEC. 307. PROHIBITED ACTS.

[It is unlawful—] *(a) IN GENERAL.—It is unlawful—*

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control

for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(H) to interfere, with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act;

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species Homarus americanus, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan implemented under this title, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.);

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(K) to knowingly steal, or without authorization, to remove, damage, or tamper with—

(i) fishing gear owned by another person, which is located in the exclusive economic zone, or

(ii) fish contained in such fishing gear;

(L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by

the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act;

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation;

(N) to strip pollock of its roe and discard the flesh of the pollock;

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A);

(P)(i) to remove any of the fins of a shark (including the tail) at sea;

(ii) to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

(iii) to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

(iv) to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached;

(Q) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party; or

(R) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or in the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).

For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term "naturally attached", with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

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

(i) recreational fishing permitted under section 201(i);

(ii) fish processing permitted under section 306(c); or

(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);

(B) in fishing, except recreational fishing permitted under section 201(i), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone or areas, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b), (c), or (d); or

(C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(d) or section 306(c) to receive such fish;

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

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any 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.

(b) PROHIBITION ON SHARK FEEDING OFF COAST OF FLORIDA.—

(1) IN GENERAL.—It is unlawful—

(A) for any diver to engage in shark feeding in covered waters; and

(B) for any person to operate a vessel for hire for the purpose of carrying a passenger to a site if such person knew or should have known that the passenger intended, at that site, to be a diver—

(i) engaged in shark feeding in covered waters; or

(ii) engaged in observing shark feeding in covered waters.

(2) DEFINITIONS.—For purposes of this subsection:

(A) COVERED WATERS.—The term "covered waters" means Federal waters off the coast of Florida.

(B) DIVER.—The term "diver" means a person who is wholly or partially submerged in covered water and is equipped with a face mask, face mask and snorkel, or underwater breathing apparatus.

(C) SHARK FEEDING.—The term "shark feeding" means—

(i) the introduction of food or any other substance into covered water for the purpose of feeding or attracting sharks; or

(ii) presenting food or any other substance to a shark for the purpose of feeding or attracting sharks.

(3) EXCEPTION.—This subsection shall not apply to shark feeding conducted—

(A) by a research institution, university, or government agency for research purposes; or

(B) for the purpose of harvesting sharks.

* * * * * * *

SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.

(a) FISHERIES DISASTER RELIEF.—(1)*(A)* At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

[(A)**]** *(i)* natural causes;

[(B)**]** *(ii)* man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or

[(C)**]** *(iii)* undetermined causes.

(B) The Secretary shall publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after the Secretary makes the determination under subparagraph (A) with respect to such disaster.

(2) The Secretary shall make a decision regarding a request from a Governor under paragraph (1) within 90 days after receiving an estimate of the economic impact of the fishery resource disaster from the entity requesting the relief.

[(2)**]** *(3)* Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commer-

cial fishery failure in that fishery or into other fisheries or other geographic regions.

[(3)] *(4)* The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

[(4)] *(5)* There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 2007 through 2013.

(b) FISHING CAPACITY REDUCTION PROGRAM.—(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing capacity reduction program (referred to in this section as the "program") in a fishery if the Secretary determines that the program—

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, practicable restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(C) is cost-effective and, in the instance of a program involving an industry fee system, prospectively capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

(A) the owner of a fishing vessel, if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the vessel owner and permit holder relinquish any claim associated with the vessel or permit that could qualify such owner or holder for any present or future limited access system permit in the fishery for which the program is established or in any other fishery and such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions (including loss of the vessel's fisheries endorsement) that permanently prohibit and effectively prevent its use in fishing in federal or state waters, or fishing on the high seas or in the waters of a foreign nation; or

(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or fu-

ture limited access system permit in the fishery for which the program was established.

(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

(4) The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

(5) PAYMENT CONDITION.—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 fishing in the waters of a foreign nation or fishing on the high seas.

(6) REPORT.—

(A) IN GENERAL.—Subject to the availability of funds, the Secretary shall, within 12 months after the date of the enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 submit to the Congress a report—

(i) 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;

(ii) 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

(iii) potential sources of funding for such measures.

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

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

(ii) 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 on the high seas.

(c) PROGRAM FUNDING.—(1) The program may be funded by any combination of amounts—

(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c–3(b)(1)(A); the Saltonstall-Kennedy Act);

(B) appropriated for the purposes of this section;

(C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

(D) provided from any State or other public sources or private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

(d) INDUSTRY FEE SYSTEM.—(1)(A) If an industry fee system is necessary to fund the program, the Secretary may conduct a referendum on such system. Prior to the referendum, the Secretary shall—

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.

(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees for a program established under this section shall—

(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish, unless the Secretary determines that such fees should be collected from the seller; and

(D) be in effect only until such time as the debt obligation has been fully paid.

(e) IMPLEMENTATION PLAN.—

(1) FRAMEWORK REGULATIONS.—The Secretary shall propose and adopt framework regulations applicable to the implementation of all programs under this section.

(2) PROGRAM REGULATIONS.—The Secretary shall implement each program under this section by promulgating regulations that, together with the framework regulations, establish each program and control its implementation.

(3) HARVESTER PROPONENTS' IMPLEMENTATION PLAN.—The Secretary may not propose implementation regulations for a program to be paid for by an industry fee system until the harvester proponents of the program provide to the Secretary a proposed implementation plan that, among other matters—

(A) proposes the types and numbers of vessels or permits that are eligible to participate in the program and the manner in which the program shall proceed, taking into account—

(i) the requirements of this section;

(ii) the requirements of the framework regulations;

(iii) the characteristics of the fishery and affected fishing communities;

(iv) the requirements of the applicable fishery management plan and any amendment that such plan may require to support the proposed program;

(v) the general needs and desires of harvesters in the fishery;

(vi) the need to minimize program costs; and

(vii) other matters, including the manner in which such proponents propose to fund the program to ensure its cost effectiveness, as well as any relevant factors demonstrating the potential for, or necessary to obtain, the support and general cooperation of a substantial number of affected harvesters in the fishery (or portion of the fishery) for which the program is intended; and

(B) proposes procedures for program participation (such as submission of owner bids under an auction system or fair market-value assessment), including any terms and conditions for participation, that the harvester proponents deem to be reasonably necessary to meet the program's proposed objectives.

(4) PARTICIPATION CONTRACTS.—The Secretary shall contract with each person participating in a program, and each such contract shall, in addition to including such other matters as the Secretary deems necessary and appropriate to effectively implement each program (including penalties for contract nonperformance) be consistent with the framework and implementing regulations and all other applicable law.

(5) REDUCTION AUCTIONS.—Each program not involving fair market assessment shall involve a reduction auction that scores the reduction price of each bid offer by the data relevant to each bidder under an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary shall accept responsive bids in the rank order of their bid scores, starting with the bid whose reduction price is the lowest percentage of the productivity factor, and successively accepting each additional responsive bid in rank order until either there are no more responsive bids or acceptance of the next bid would cause the total value of bids accepted to exceed the amount of funds available for the program.

(6) BID INVITATIONS.—Each program shall proceed by the Secretary issuing invitations to bid setting out the terms and conditions for participation consistent with the framework and implementing regulations. Each bid that the Secretary receives in response to the invitation to bid shall constitute an irrevocable offer from the bidder.

SEC. 313. NORTH PACIFIC FISHERIES CONSERVATION.

(a) IN GENERAL.—The North Pacific Council may prepare, in consultation with the Secretary, a fisheries research plan for any fishery under the Council's jurisdiction except a salmon fishery which—

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species

under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system, or system, of fees, which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing the plan.

(b) STANDARDS.—(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

(A) gather reliable data, by stationing observers, or electronic monitoring systems, on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall—

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers, or electronic monitoring systems, on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

(E) be expressed as a fixed amount reflecting actual observer costs as described in subparagraph (A) or a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against some or all fishing vessels and United States fish processors, including those not required to carry an observer or an electronic monitoring system under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section;

(I) provide that fees collected will be credited against any fee for stationing observers or electronic monitoring systems on board fishing vessels and United States fish processors and the

actual cost of inputting collected data to which a fishing vessel or fish processor is subject under section 304(d) of this Act; and

(J) meet the requirements of section 9701(b) of title 31, United States Code.

(c) ACTION BY SECRETARY.—(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) FISHERY OBSERVER FUND.—There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) SPECIAL PROVISIONS REGARDING OBSERVERS.—(1) The Secretary shall review—

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

(f) BYCATCH REDUCTION.—In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for

a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

(g) BYCATCH REDUCTION INCENTIVES.—(1) Notwithstanding section 304(d), the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this Act, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed $25,000 per vessel per season. Any fines collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.

(2)(A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery,*Provided,* That—

(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

(ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.

(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

(h) CATCH MEASUREMENT.—(1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.

(2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

(i) FULL RETENTION AND UTILIZATION.—(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such require-

ments on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, "processing waste" means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.

(j) BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION.—

(1) By not later than January 1, 2005, the Secretary shall approve and hereafter implement by regulation the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003. This section shall not preclude the Secretary from approving by January 1, 2005, and implementing any subsequent program amendments approved by the Council.

(2) Notwithstanding any other provision of this Act, in carrying out paragraph (1) the Secretary shall approve all parts of the Program referred to in such paragraph. Further, no part of such Program may be implemented if, as approved by the North Pacific Fishery Management Council, individual fishing quotas, processing quotas, community development quota allocation, voluntary cooperatives, binding arbitration, regional landing and processing requirements, community protections, economic data collection, or the loan program for crab fishing vessel captains and crew members, is invalidated subject to a judicial determination not subject to judicial appeal. If the Secretary determines that a processor has leveraged its Individual Processor Quota shares to acquire a harvesters open-delivery "B shares", the processor's Individual Processor Quota shares shall be forfeited.

(3) Subsequent to implementation pursuant to paragraph (1), the Council may submit and the Secretary may implement changes to or repeal of conservation and management measures, including measures authorized in this section, for crab fisheries of the Bering Sea and Aleutian Islands in accordance with applicable law, including this Act as amended by this subsection, to achieve on a continuing basis the purposes identified by the Council.

(4) The loan program referred to in paragraph (2) shall be carried out pursuant to the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g).

(5) For purposes of implementing this section $1,000,000 shall be made available each year until fully implemented from funds otherwise made available to the National Marine Fisheries Service for Alaska fisheries activities.

(6) Nothing in this Act shall constitute a waiver, either express or implied, of the antitrust laws of the United States. The Secretary, in consultation with the Department of Justice and the Federal Trade Commission, shall develop and implement a mandatory information collection and review process to

provide any and all information necessary for the Department of Justice and the Federal Trade Commission to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quotas under the Program. The Secretary may revoke any individual processing quota held by any person found to have violated a provision of the antitrust laws of the United States.

(7) An individual processing quota issued under the Program shall be considered a permit for the purposes of sections 307, 308, and 309, and may be revoked or limited at any time in accordance with this Act. Issuance of an individual processing quota under the program shall not confer any right of compensation to the holder of such individual processing quota 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 purchased from an individual fishing quota holder.

(8) The restriction on the collection of economic data in section 303 shall not apply with respect to any fish processor who is eligible for, or who has received, individual processing quota under the Program. The restriction on the disclosure of information in section 402(b)(1) shall not apply when the information is used to determine eligibility for or compliance with an individual processing quota program.

(9) The provisions of sections 308, 310, and 311 shall apply to the processing facilities and fish products of any person holding individual processing quota, and the provisions of subparagraphs (D), (E), and (L) of section 307(l) shall apply to any facility owned or controlled by a person holding individual processing quota.

(k) ARCTIC COMMUNITY DEVELOPMENT QUOTA.—If the North Pacific Fishery Management Council issues a fishery management plan for the exclusive economic zone in the Arctic Ocean, or an amendment to the Fishery Management Plan for Fish Resources of the Arctic Management Area issued by such Council, that makes available to commercial fishing, and establishes a sustainable harvest level, for any part of such zone, the Council shall set aside not less than 10 percent of the total allowable catch therein as a community development quota for coastal villages located north and east of the Bering Strait.

SEC. 314. NORTHWEST ATLANTIC OCEAN FISHERIES REINVESTMENT PROGRAM.

(a) PROGRAM.—(1) Not later than October 1, 1993, the Secretary shall establish a Northwest Atlantic Ocean Fisheries Reinvestment Program for the purposes of—

(A) promoting development of commercial fisheries and markets for underutilized species of the northwest Atlantic Ocean;

(B) developing alternative fishing opportunities for participants in the New England groundfish fishery;

(C) providing technical support and assistance to United States fishermen and fish processors to improve the value-added processing of underutilized species and to make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable;

(D) creating new economic opportunities through the improved processing and expanded use of fish waste; and

(E) helping to restore [overfished] *depleted* New England groundfish stocks through aquaculture or hatchery programs.

(2) CONSULTATION.—In establishing and implementing the Northwest Fisheries Reinvestment Program, the Secretary shall consult with representatives of the commercial fishing industry, the seafood processing industry, and the academic community (including the National Sea Grant Program).

(3) ACTIVITIES UNDER PROGRAM.—Subject to the availability of appropriations, the Secretary shall award contracts, grants and other financial assistance to United States citizens to carry out the purposes of subsection (1), under the terms and conditions provided in section 2(c) of the Act of August 11, 1939 (15 U.S.C. 713c–3(c); commonly referred to as the "Saltonstall-Kennedy Act"), except that, in making awards under this section for projects involving participation in fisheries for underutilized species, the Secretary shall give the highest priority to a person who owns or operates a fishing vessel permitted under this Act to participate in the New England groundfish fishery who agrees to surrender that permit to the Secretary during the duration of the contract, grant or other assistance.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 1993 through 1999 to carry out the purposes of this section. For fiscal year 1993 no more than $1,000,000, and for fiscal year 1994 no more than $2,000,000, of such funds may be provided from monies made available under section 2(b) of the Act of August 11, 1939 (15 U.S.C. 713c–3(b)).

(b) ASSISTANCE OF OTHER AGENCIES.—The Secretary shall actively seek the assistance of other Federal agencies in the development of fisheries for underutilized species of the northwest Atlantic Ocean, including, to the extent permitted by other applicable laws, assistance from the Secretary of Agriculture in including such underutilized species as agricultural commodities in the programs of the Foreign Agricultural Service for which amounts are authorized under the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 104 Stat. 3359).

(c) MANAGEMENT PLANS FOR UNDERUTILIZED SPECIES.—The New England Fishery Management Council, in consultation with other appropriate Councils, shall develop fishery management plans as soon as possible for any underutilized species of the northwest Atlantic Ocean that is not covered under such a plan, in order to prevent overfishing of that species.

(d) UNDERUTILIZED SPECIES DEFINED.—For purposes of this section, the term "underutilized species of the northwest Atlantic Ocean" means any fish species of the northwest Atlantic Ocean that is identified, by the Director of the Northeast Fisheries Center of the National Marine Fisheries Service, as an underutilized species.

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SEC. 318. COOPERATIVE RESEARCH AND MANAGEMENT PROGRAM.

(a) IN GENERAL.—*(1)* The Secretary of Commerce, in consultation with the Councils, shall establish a cooperative research and man-

agement program to address needs identified under this Act and under any other marine resource laws enforced by the Secretary. The program shall be implemented on a regional basis and shall be developed and conducted through partnerships among Federal, State, and Tribal managers and scientists (including interstate fishery commissions), fishing industry participants (including use of commercial charter or recreational vessels for gathering data), and educational institutions.

(2) Within one year after the date of enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, and after consultation with the Councils, the Secretary shall publish a plan for implementing and conducting the program established in paragraph (1). Such plan shall identify and describe critical regional fishery management and research needs, possible projects that may address those needs, and estimated costs for such projects. The plan shall be revised and updated every 5 years, and updated plans shall include a brief description of projects that were funded in the prior 5-year period and the research and management needs that were addressed by those projects.

(b) ELIGIBLE PROJECTS.—The Secretary shall make funds available under the program for the support of projects to address critical needs identified by the Councils in consultation with the Secretary. The program shall promote and encourage efforts to utilize sources of data maintained by other Federal agencies, State agencies, or academia for use in such projects.

(c) [FUNDING] *PRIORITIES*.—In making funds available the Secretary shall award funding on a competitive basis and based on regional fishery management needs, select programs that form part of a coherent program of research focused on solving priority issues identified by the Councils, and shall give priority to the following projects:

(1) Projects to collect data to improve, supplement, or enhance stock assessments, [including the use of fishing vessels or acoustic or other marine technology.] *including.—*

(A) the use of fishing vessels or acoustic or other marine technology;

(B) expanding the use of electronic catch reporting programs and technology; and

(C) improving monitoring and observer coverage through the expanded use of electronic monitoring devices.

(2) Projects to assess the amount and type of bycatch or post-release mortality occurring in a fishery.

(3) Conservation engineering projects designed to reduce bycatch, including avoidance of post-release mortality, reduction of bycatch in high seas fisheries, and transfer of such fishing technologies to other nations.

(4) Projects for the identification of habitat areas of particular concern and for habitat conservation.

(5) Projects designed to collect and compile economic and social data.

(d) EXPERIMENTAL PERMITTING PROCESS.—Not later than 180 days after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with the Councils, shall promulgate reg-

ulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits.

(e) GUIDELINES.—The Secretary, in consultation with the Councils, shall establish guidelines to ensure that participation in a research project funded under this section does not result in loss of a participant's catch history or unexpended days-at-sea as part of a limited entry system.

(f) EXEMPTED PROJECTS.—The procedures of this section shall not apply to research funded by quota set-asides in a fishery.

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TITLE IV—FISHERY MONITORING AND RESEARCH

SEC. 401. REGISTRATION AND INFORMATION MANAGEMENT.

(a) STANDARDIZED FISHING VESSEL REGISTRATION AND INFORMATION MANAGEMENT SYSTEM.—The Secretary shall, in cooperation with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, develop recommendations for implementation of a standardized fishing vessel registration and information management system on a regional basis. The recommendations shall be developed after consultation with interested governmental and nongovernmental parties and shall—

(1) be designed to standardize the requirements of vessel registration and information collection systems required by this Act, the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), and any other marine resource law implemented by the Secretary, and, with the permission of a State, any marine resource law implemented by such State;

(2) integrate information collection programs under existing fishery management plans into a non-duplicative information collection and management system;

(3) avoid duplication of existing State, tribal, or Federal systems and shall utilize, to the maximum extent practicable, information collected from existing systems;

(4) provide for implementation of the system through cooperative agreements with appropriate State, regional, or tribal entities and Marine Fisheries Commissions;

(5) provide for funding (subject to appropriations) to assist appropriate State, regional, or tribal entities and Marine Fisheries Commissions in implementation;

(6) establish standardized units of measurement, nomenclature, and formats for the collection and submission of information;

(7) minimize the paperwork required for vessels registered under the system;

(8) include all species of fish within the geographic areas of authority of the Councils and all fishing vessels including charter fishing vessels, but excluding recreational fishing vessels;

(9) require United States fish processors, and fish dealers and other first ex-vessel purchasers of fish that are subject to the proposed system, to submit information (other than eco-

nomic information) which may be necessary to meet the goals of the proposed system; and

(10) include procedures necessary to ensure—

(A) the confidentiality of information collected under this section in accordance with section 402(b); and

(B) the timely release or availability to the public of information collected under this section consistent with section 402(b).

(b) FISHING VESSEL REGISTRATION.—The proposed registration system should, at a minimum, obtain the following information for each fishing vessel—

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

(2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation (catcher, catcher processor, or other), and such other pertinent information with respect to vessel characteristics as the Secretary may require; and

(3) identification (by species, gear type, geographic area of operations, and season) of the fisheries in which the fishing vessel participates.

(c) FISHERY INFORMATION.—The proposed information management system should, at a minimum, provide basic fisheries performance information for each fishery, including—

(1) the number of vessels participating in the fishery including charter fishing vessels;

(2) the time period in which the fishery occurs;

(3) the approximate geographic location or official reporting area where the fishery occurs;

(4) a description of fishing gear used in the fishery, including the amount and type of such gear and the appropriate unit of fishing effort; and

(5) other information required under subsection 303(a)(5) or requested by the Council under section 402.

(d) USE OF REGISTRATION.—Any registration recommended under this section shall not be considered a permit for the purposes of this Act, and the Secretary may not propose to revoke, suspend, deny, or impose any other conditions or restrictions on any such registration or the use of such registration under this Act.

(e) PUBLIC COMMENT.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register for a 60-day public comment period a proposal that would provide for implementation of a standardized fishing vessel registration and information collection system that meets the requirements of subsections (a) through (c). The proposal shall include—

(1) a description of the arrangements of the Secretary for consultation and cooperation with the department in which the Coast Guard is operating, the States, the Councils, Marine Fisheries Commissions, the fishing industry and other interested parties; and

(2) any proposed regulations or legislation necessary to implement the proposal.

(f) CONGRESSIONAL TRANSMITTAL.—Within 60 days after the end of the comment period and after consideration of comments re-

ceived under subsection (e), the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a recommended proposal for implementation of a national fishing vessel registration system that includes—

(1) any modifications made after comment and consultation;

(2) a proposed implementation schedule, including a schedule for the proposed cooperative agreements required under subsection (a)(4); and

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

(g) RECREATIONAL FISHERIES.—

(1) FEDERAL PROGRAM.—The Secretary shall establish and implement a regionally based registry program for recreational fishermen in each of the 8 fishery management regions. The program, which shall not require a fee before January 1, 2011, shall provide for—

(A) the registration (including identification and contact information) of individuals who engage in recreational fishing—

(i) in the Exclusive Economic Zone;

(ii) for anadromous species; or

(iii) for Continental Shelf fishery resources beyond the Exclusive Economic Zone; and

(B) if appropriate, the registration (including the ownership, operator, and identification of the vessel) of vessels used in such fishing.

(2) STATE PROGRAMS.—The Secretary shall exempt from registration under the program recreational fishermen and charter fishing vessels licensed, permitted, or registered under the laws of a State if the Secretary determines that information from the State program is suitable for the Secretary's use or is used to assist in completing marine recreational fisheries statistical surveys, or evaluating the effects of proposed conservation and management measures for marine recreational fisheries.

(3) DATA COLLECTION.—

(A) IMPROVEMENT OF THE MARINE RECREATIONAL FISHERY STATISTICS SURVEY.—Within 24 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with representatives of the recreational fishing industry and experts in statistics, technology, and other appropriate fields, shall establish a program to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey, with a goal of achieving acceptable accuracy and utility for each individual fishery.

(B) NRC REPORT RECOMMENDATIONS.—The program shall take into consideration and, to the extent feasible, implement the recommendations of the National Research Council in its report Review of Recreational Fisheries Survey Methods (2006), including—

(i) redesigning the Survey to improve the effectiveness and appropriateness of sampling and estimation procedures, its applicability to various kinds of management decisions, and its usefulness for social and economic analyses; and

(ii) providing for ongoing technical evaluation and modification as needed to meet emerging management needs.

(C) METHODOLOGY.—Unless the Secretary determines that alternate methods will achieve this goal more efficiently and effectively, the program shall, to the extent possible, include—

(i) an adequate number of intercepts to accurately estimate recreational catch and effort;

(ii) use of surveys that target anglers registered or licensed at the State or Federal level to collect participation and effort data;

(iii) collection and analysis of vessel trip report data from charter fishing vessels;

(iv) development of a weather corrective factor that can be applied to recreational catch and effort estimates; and

(v) an independent committee composed of recreational fishermen, academics, persons with expertise in stock assessments and survey design, and appropriate personnel from the National Marine Fisheries Service to review the collection estimates, geographic, and other variables related to dockside intercepts and to identify deficiencies in recreational data collection, and possible correction measures.

(D) DEADLINE.—The Secretary shall complete the program under this paragraph and implement the improved Marine Recreational Fishery Statistics Survey not later than January 1, 2009.

(4) FEDERAL-STATE PARTNERSHIPS.—

(A) ESTABLISHMENT.—The Secretary shall establish partnerships with States to develop best practices for implementation of State programs established pursuant to paragraph (2).

(B) GUIDANCE.—The Secretary shall develop guidance, in cooperation with the States, that details best practices for administering State programs pursuant to paragraph (2), and provide such guidance to the State.

[(4)**]** *(5)* REPORT.—Within 24 months after establishment of the program, the Secretary shall submit a report to Congress that describes the progress made toward achieving the goals and objectives of the program.

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SEC. 404. FISHERIES RESEARCH.

(a) IN GENERAL.—The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation

and management and on the economics and social characteristics of the fisheries.

(b) STRATEGIC PLAN.—Within one year after the date of enactment of the Sustainable Fisheries Act, and at least every 3 years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the 5 years immediately following such publication. The plan shall—

(1) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in subsection (c);

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

(3) provide a role for commercial fishermen in such research, including involvement in field testing;

(4) provide for collection and dissemination, in a timely manner, of complete and accurate information concerning fishing activities, catch, effort, stock assessments, and other research conducted under this section; and

(5) be developed in cooperation with the Councils and affected States, and provide for coordination with the Councils, affected States, and other research entities.

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

(1) Research to support fishery conservation and management, including but not limited to, biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish, the identification of essential fish habitat, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other factors affecting the abundance and availability of fish.

(2) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species.

(3) Research on the fisheries, including the social, cultural, and economic relationships among fishing vessel owners, crew, United States fish processors, associated shoreside labor, seafood markets and fishing communities.

(4) Information management research, including the development of a fishery information base and an information management system that will permit the full use of information in the support of effective fishery conservation and management.

(d) PUBLIC NOTICE.—In developing the plan required under subsection (a), the Secretary shall consult with relevant Federal, State, and international agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

(e) IMPROVING DATA COLLECTION AND ANALYSIS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop, in consultation with the science and statistical committees of the Councils established under section 302(g) and the Marine Fisheries Commissions, and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on facilitating greater incorporation of data, analysis, stock assessments, and surveys from State agencies and nongovernmental sources described in paragraph (2) into fisheries management decisions.

(2) NONGOVERNMENTAL SOURCES.—Nongovernmental sources referred to in paragraph (1) include the following:

(A) Fishermen.

(B) Fishing communities.

(C) Universities.

(D) Research and philanthropic institutions.

(3) CONTENT.—In developing the report under paragraph (1), the Secretary shall—

(A) identify types of data and analysis, especially concerning recreational fishing, that can be reliably used for purposes of this Act as the basis for establishing conservation and management measures as required by section 303(a)(1), including setting standards for the collection and use of that data and analysis in stock assessments and surveys and for other purposes as determined by the Secretary;

(B) provide specific recommendations for collecting data and performing analyses identified as necessary to reduce uncertainty in and improve the accuracy of future stock assessments, including whether such data and analysis could be provided by nongovernmental sources, including fishermen, fishing communities, universities, and research institutions;

(C) consider the extent to which it is possible to establish a registry of persons collecting or submitting the data and performing the analyses identified under subparagraphs (A) and (B); and

(D) consider the extent to which the acceptance and use of data and analyses identified in the report in fishery management decisions is practicable.

(f) STOCK ASSESSMENT PLAN.—

(1) IN GENERAL.—The Secretary shall develop and publish in the Federal Register, on the same schedule as required for the strategic plan required under subsection (b) of this section, a plan to conduct stock assessments for all stocks of fish for which a fishery management plan is in effect under this Act.

(2) CONTENTS.—The plan shall—

(A) for each stock of fish for which a stock assessment has previously been conducted—

(i) establish a schedule for updating the stock assessment that is reasonable given the biology and characteristics of the stock; and

(ii) subject to the availability of appropriations, require completion of a new stock assessment, or an update of the most recent stock assessment—

(I) every 5 years; or

(II) within such other time period specified and justified by the Secretary in the plan;

(B) for each stock of fish for which a stock assessment has not previously been conducted—

(i) establish a schedule for conducting an initial stock assessment that is reasonable given the biology and characteristics of the stock; and

(ii) subject to the availability of appropriations, require completion of the initial stock assessment within 3 years after the plan is published in the Federal Register unless another time period is specified and justified by the Secretary in the plan; and

(C) identify data and analysis, especially concerning recreational fishing, that, if available, would reduce uncertainty in and improve the accuracy of future stock assessments, including whether such data and analysis could be provided by fishermen, fishing communities, universities, and research institutions, to the extent that use of such data would be consistent with the requirements in section 301(a)(2) to base conservation and management measures on the best scientific information available.

(3) WAIVER OF STOCK ASSESSMENT REQUIREMENT.—Notwithstanding subparagraphs (A)(ii) and (B)(ii), a stock assessment is not required for a stock of fish in the plan if the Secretary determines that such a stock assessment is not necessary and justifies such determination in the Federal Register notice required by this subsection.

SEC. 405. INCIDENTAL HARVEST RESEARCH.

(a) COLLECTION OF INFORMATION.—Within nine months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall, after consultation with the Gulf Council and South Atlantic Council, conclude the collection of information in the program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils. Within the same time period, the Secretary shall make available to the public aggregated summaries of information collected prior to June 30, 1994 under such program.

(b) IDENTIFICATION OF STOCK.—The program concluded pursuant to subsection (a) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

(c) COLLECTION AND ASSESSMENT OF SPECIFIC STOCK INFORMATION.—For stocks of fish identified pursuant to subsection (b), with priority given to stocks which (based upon the best available scientific information) are considered to be [overfished] *depleted*, the Secretary shall conduct—

(1) a program to collect and evaluate information on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

(2) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

(3) a program of information collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

(d) BYCATCH REDUCTION PROGRAM.—Not later than 12 months after the enactment of the Sustainable Fisheries Act, the Secretary shall, in cooperation with affected interests, and based upon the best scientific information available, complete a program to—

(1) develop technological devices and other changes in fishing operations necessary and appropriate to minimize the incidental mortality of bycatch in the course of shrimp trawl activity to the extent practicable, taking into account the level of bycatch mortality in the fishery on November 28, 1990;

(2) evaluate the ecological impacts and the benefits and costs of such devices and changes in fishing operations; and

(3) assess whether it is practicable to utilize bycatch which is not avoidable.

(e) REPORT TO CONGRESS.—The Secretary shall, within one year of completing the programs required by this section, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

(f) IMPLEMENTATION CRITERIA.—To the extent practicable, any conservation and management measure implemented under this Act to reduce the incidental mortality of bycatch in the course of shrimp trawl fishing shall be consistent with—

(1) measures applicable to fishing throughout the range in United States waters of the bycatch species concerned; and

(2) the need to avoid any serious adverse environmental impacts on such bycatch species or the ecology of the affected area.

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SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.

[(a) INDEPENDENT PEER REVIEW.—(1) Within 30 days of the date of enactment of the Sustainable Fisheries Act, the Secretary shall initiate an independent peer review to evaluate—

[(A) the accuracy and adequacy of fishery statistics used by the Secretary for the red snapper fishery in the Gulf of Mexico to account for all commercial, recreational, and charter fishing harvests and fishing effort on the stock;

[(B) the appropriateness of the scientific methods, information, and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock and as the basis for the fishery management plan for the Gulf of Mexico red snapper fishery;

[(C) the appropriateness and adequacy of the management measures in the fishery management plan for red snapper in

the Gulf of Mexico for conserving and managing the red snapper fishery under this Act; and

[(D) the costs and benefits of all reasonable alternatives to a limited access privilege program for the red snapper fishery in the Gulf of Mexico.

[(2) The Secretary shall ensure that commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—

[(A) participate in the peer review under this subsection; and

[(B) provide information to the Secretary concerning the review of fishery statistics under this subsection without being subject to penalty under this Act or other applicable law for any past violation of a requirement to report such information to the Secretary.

[(3) The Secretary shall submit a detailed written report on the findings of the peer review conducted under this subsection to the Gulf Council no later than one year after the date of enactment of the Sustainable Fisheries Act.

[(b) PROHIBITION.—In addition to the restrictions under section 303(d)(1)(A), the Gulf Council may not, prior to October 1, 2002, undertake or continue the preparation of any fishery management plan, plan amendment or regulation under this Act for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class.

[(c) REFERENDUM.—

[(1) On or after October 1, 2002, the Gulf Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates a limited access privilege program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class, only if the preparation of such plan, amendment, or regulation is approved in a referendum conducted under paragraph (2) and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum conducted under paragraph (2).

[(2) The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996. Prior to each referendum, the Secretary, in consultation with the Council, shall—

[(A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and

[(B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.

[(d) CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—

[(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and

[(2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.]

(a) CERTIFICATION OF STATE SURVEYS.—

(1) INCLUSION OF CERTIFIED STATE SURVEYS.—In establishing the acceptable biological catch and total allowable catch for red snapper in the Gulf of Mexico, the Secretary shall include—

(A) Gulf State recreational fisheries surveys that are certified under subsection (b); and

(B) data related to red snapper in the Gulf of Mexico collected by the Gulf States Marine Fisheries Commission, nongovernmental organizations, and other nongovernmental sources, including universities and research institutions.

(b) STATE SURVEYS.—

(1) SUBMISSION.—A Gulf State that conducts a recreational fisheries survey in the Gulf of Mexico to make catch estimates for red snapper landed in such State may submit such survey to the Secretary for certification.

(2) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall make a certification or a denial of certification for any survey submitted under paragraph (1) not later than the end of the 6-month period beginning on the date the survey is submitted.

(B) DEEMED CERTIFIED.—A recreational fisheries survey is deemed to be certified effective upon the expiration of such period if the Secretary has not made a certification or denial of certification.

(3) MODIFICATION OF SURVEYS DENIED CERTIFICATION.—

(A) IN GENERAL.—If a survey of a Gulf State is denied certification under paragraph (2), the Secretary shall, not later than 60 days after the date of the denial, provide the Gulf State a proposal for modifications to the survey.

(B) PROPOSAL.—A proposal provided to a Gulf State for a survey under subparagraph (A)—

(i) shall be specific to the survey submitted by such Gulf State and may not be construed to apply to any other Gulf State;

(ii) shall require revision to the fewest possible provisions of the survey; and

(iii) may not unduly burden the ability of such Gulf State to revise the survey.

(C) MODIFIED SURVEY.—

(i) AUTHORITY TO SUBMIT.—If a survey of a Gulf State was denied certification under paragraph (2), the Gulf State may modify the survey and submit the modified survey to the Secretary for certification or denial of certification.

(ii) SCHEDULE.—The Secretary shall make a certification or denial of certification for any modified survey not later than the end of the 30-day period beginning on the date the modified survey is submitted.

(iii) DEEMED CERTIFIED A modified survey is deemed to be certified effective upon the expiration of the period described in clause (ii) if the Secretary has not made a certification or denial of certification.

(c) DEFINITIONS.—In this section:

(1) GULF STATE.—The term "Gulf State" means each of the States of Texas, Louisiana, Mississippi, Alabama, or Florida.

(2) RED SNAPPER.—The term "red snapper" means the species Lutjanus campechanus.

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AMERICAN FISHERIES ACT

DIVISION C—OTHER MATTERS

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TITLE II—FISHERIES

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Subtitle II—Bering Sea Pollock Fishery

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SEC. 210. FISHERY COOPERATIVE LIMITATIONS.

(a) PUBLIC NOTICE.—(1) Any contract implementing a fishery cooperative under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) in the directed pollock fishery and any material modifications to any such contract shall be filed not less than 30 days prior to the start of fishing under the contract with the North Pacific Council and with the Secretary, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a) or any other provision of law, but taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information, the North Pacific Council and Secretary shall—

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such contract; and

(B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.

(b) CATCHER VESSELS ONSHORE.—

(1) CATCHER VESSEL COOPERATIVES.—Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which—

(A) is signed by the owners of 80 percent or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock,

the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

(2) VOLUNTARY PARTICIPATION.—Any contract implementing a fishery cooperative under paragraph (1) must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calender year in which fishing will begin under the same terms and conditions as the owners of the qualified catcher vessels who entered into such contract upon filing.

(3) QUALIFIED CATCHER VESSEL.—For the purposes of this subsection, a catcher vessel shall be considered a "qualified catcher vessel" if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock

under the fishery cooperative in paragraph (1) than to any other shoreside processor.

(4) CONSIDERATION OF CERTAIN VESSELS.—Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

(5) OPEN ACCESS.—A catcher vessel eligible under section 208(a) the catch history of which has not been attributed to a fishery cooperative under paragraph (1) may be used to deliver pollock harvested by such vessel from the directed fishing allowance under section 206(b)(1) (other than pollock reserved under paragraph (1) for a fishery cooperative) to any of the shoreside processors eligible under section 208(f). A catcher vessel eligible under section 208(a) the catch history of which has been attributed to a fishery cooperative under paragraph (1) during any calendar year may not harvest any pollock apportioned under section 206(b)(1) in such calendar year other than the pollock reserved under paragraph (1) for such fishery cooperative.

(6) TRANSFER OF COOPERATIVE HARVEST.—A contract implementing a fishery cooperative under paragraph (1) may, notwithstanding the other provisions of this subsection, provide for up to 10 percent of the pollock harvested under such cooperative to be processed by a shoreside processor eligible under section 208(f) other than the shoreside processor to which pollock will be delivered under paragraph (1).

(7) FISHERY COOPERATIVE EXIT PROVISIONS.—

(A) FISHING ALLOWANCE DETERMINATION.—For purposes of determining the aggregate percentage of directed fishing allowances under paragraph (1), when a catcher vessel is removed from the directed pollock fishery, the fishery allowance for pollock for the vessel being removed—

(i) shall be based on the catch history determination for the vessel made pursuant to section 679.62 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010; and

(ii) shall be assigned, for all purposes under this title, in the manner specified by the owner of the vessel being removed to any other catcher vessel or among other catcher vessels participating in the fishery cooperative if such vessel or vessels remain in the fishery cooperative for at least one year after the date on which the vessel being removed leaves the directed pollock fishery.

(B) ELIGIBILITY FOR FISHERY ENDORSEMENT.—Except as provided in subparagraph (C), a vessel that is removed pursuant to this paragraph shall be permanently ineligible for a fishery endorsement, and any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any permit to partici-

pate in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such removed vessel is thereafter designated to replace a vessel to be removed pursuant to this paragraph.

(C) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this paragraph shall be construed—

(i) to make the vessels AJ (United States official number 905625), DONA MARTITA (United States official number 651751), NORDIC EXPLORER (United States official number 678234), and PROVIDIAN (United States official number 1062183) ineligible for a fishery endorsement or any permit necessary to participate in any fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Act; or

(ii) to allow the vessels referred to in clause (i) to participate in any fishery under the authority of the Councils referred to in clause (i) in any manner that is not consistent with the fishery management plan for the fishery developed by the Councils under section 303 of the Magnuson-Stevens Act.

(c) CATCHER VESSELS TO CATCHER/PROCESSORS.—Effective January 1, 1999, not less than 8.5 percent of the directed fishing allowance under section 206(b)(2) shall be available for harvest only by the catcher vessels eligible under section 208(b). The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of the section 208(e). The owners of such catcher vessels may participate in a fishery cooperative that will be in effect during 1999 only if the contract implementing such cooperative establishes penalties to prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

(d) CATCHER VESSELS TO MOTHERSHIPS.—

(1) PROCESSING.—Effective January 1, 2000, the authority in section 1 of the Act of June 25, 1934 (48 Stat. 1213 and 1214; 15 U.S.C. 521 et seq.) shall extend to processing by motherships eligible under section 208(d) solely for the purposes of forming or participating in a fishery cooperative in the directed pollock fishery upon the filing of a contract to implement a fishery cooperative under subsection (a) which has been entered into by the owners of 80 percent or more of the catcher vessels eligible under section 208(c) for the duration of such contract, provided that such owners agree to the terms of the fishery cooperative involving processing by the motherships.

(2) VOLUNTARY PARTICIPATION.—Any contract implementing a fishery cooperative described in paragraph (1) must allow the owners of any other catcher vessels eligible under section 208(c) to enter such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the catcher vessels who entered into such contract upon filing.

(e) EXCESSIVE SHARES.—

[(1) HARVESTING.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.]

(1) HARVESTING.—

(A) LIMITATION.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a percentage of the pollock available to be harvested in the directed pollock fishery that exceeds the percentage established for purposes of this paragraph by the North Pacific Fishery Management Council.

(B) MAXIMUM PERCENTAGE.—The percentage established by the North Pacific Fishery Management Council shall not exceed 24 percent of the pollock available to be harvested in the directed pollock fishery.

(2) PROCESSING.—Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) REVIEW BY MARITIME ADMINISTRATION.—At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

(f) LANDING TAX JURISDICTION.—Any contract filed under subsection (a) shall include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject

to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid shall result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 et seq.).

(g) PENALTIES.—The violation of any of the requirements of this subtitle or any regulation or permit issued pursuant to this subtitle shall be considered the commission of an act prohibited by section 307 of the Magnuson-Stevens Act (16 U.S.C. 1857), and sections 308, 309, 310, and 311 of such Act (16 U.S.C. 1858, 1859, 1860, and 1861) shall apply to any such violation in the same manner as to the commission of an act prohibited by section 307 of such Act (16 U.S.C. 1857). In addition to the civil penalties and permit sanctions applicable to prohibited acts under section 308 of such Act (16 U.S.C. 1858), any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated a requirement of this section shall be subject to the forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

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DISSENTING VIEWS

H.R. 200 would reauthorize and amend the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the law that governs fishing in the U.S. Exclusive Economic Zone (EEZ). We oppose this legislation because it would roll back important elements of the law which are critical to making fisheries and the fishing industry in the United States economically and environmentally sustainable.

Congress first enacted the Fishery Conservation and Management Act in 1976 with two main goals in mind: put an end to unregulated fishing by foreign fleets in U.S. waters, and develop domestic fleets that could reap the economic benefit of our considerable fishery resources. The law worked very well; foreign fishing was phased out, and investments in the domestic fleet were increased. Unfortunately, this capitalization worked so well that domestic fishing soon replaced foreign fleets in overexploiting U.S. fisheries.

In 1996 and 2007, two MSA reauthorizations were enacted to end overfishing, promote rebuilding of overfished stocks, protect fish habitat, improve fisheries science, and minimize bycatch. But it was only in 2007 that Congress first required all eight Regional Fishery Management Councils to set science-based annual catch limits (ACLs) to prevent overfishing, and to put in place accountability measures ensuring that exceeding an ACL meant a reduction in harvest the following year. In addition, in cases where a fishery may still become overfished, Councils are now required to end overfishing immediately. These changes, coupled with the 1996 reforms, have succeeded in ending overfishing in nearly all fisheries, and putting overfished stocks on a path to rebuilding. Most important, they have helped insulate the Councils from pressure to make politically-driven management decisions that hurt fishing communities in the long run.

It is important to note that the 1996 and 2007 reauthorizations were bipartisan bills worked on, and voted for, by Republicans and Democrats alike, because everybody recognized the need to address the number of declining and collapsed fish stocks. While the current MSA may not be perfect, members in both parties recognize the incredible sustainability and economic gains made since 2007. What is needed now are updates to the MSA that address specific issues and keep the law current, not a weakening of the law and roll-back of conservation measures as is found in H.R. 200. Contrary to the two previous reauthorizations, H.R. 200 was developed with very little input.

It did not have to be this way. Water, Power, and Oceans Subcommittee Ranking Member Jared Huffman (D–CA) developed a discussion draft of an MSA reauthorization bill that included a number of Democratic and Republican priorities. That draft was in-

cluded on the same hearing docket as H.R. 200, and Chairman Don Young (R–AK) agreed to work with Democratic Members and staff to develop a bipartisan bill. Unfortunately, Chairman Bishop pulled the plug on promising negotiations and rushed to markup with a half-baked mashup of bad ideas that we feel deserves to be called the Empty Oceans Act.

The fishery-related provisions of H.R. 200 are an overreaction to the complaints of a very few in the industry who need the requirements of the law the most. Under the guise of providing "flexibility" for fishery managers, H.R. 200 would undermine the rebuilding requirements in current law. These rollbacks in particular are job-killers. NOAA estimates that fully rebuilt fisheries would add an estimated $31 billion to the economy and create 500,000 new jobs. Rebuilding overfished stocks is the key to improving fishing economies, and we must not delay that process; once fish stocks are gone, they cannot be rebuilt. Of further concern, the bill would eliminate the requirement to set ACLs for dozens of vulnerable stocks, and allow recreational anglers to overfish stocks with impunity by incorporating poorly thought out provisions of the Modernizing Recreational Fisheries Act (S. 1520).

Because weakening fisheries policy is apparently not enough, H.R. 200 also attacks bedrock environmental laws such as the Endangered Species Act, the Antiquities Act, and the National Marine Sanctuaries Act by making them subservient to the Councils under the MSA. The inclusion of these provisions shows clearly that Republicans are only concerned with advancing an extreme agenda to undermine our core conservation statutes and not with improving the management of our fisheries.

Republicans also rejected a number of Democratic amendments at Committee markup. These included Representative Beyer's (D–VA) amendment to remove the damaging ESA, Antiquities Act, and National Marine Sanctuaries Act language, Representative Lowenthal's (D–CA) amendment to ensure catch limits are based on sound science, Representative McEachin's amendment to integrate climate change considerations in fishery management decisions, and Representative Bordallo's amendment to prevent politically-driven delays in rebuilding overfished stocks. At the same time, two Republican amendments offered by Representative Graves (R–LA) were adopted. One would eliminate the requirement to protect essential fish habitat in Louisiana state waters and possibly elsewhere. The other changes language related to recreational catch-and-release fishing and may have unintended consequences for stocks that receive heavy recreational fishing pressure.

While we have many healthy fisheries in the United States, we also have many that remain in dangerously depleted states or are only beginning their recovery. We have heard consistently from commercial and recreational fishermen, fishery managers, and the conservation community that the Magnuson-Stevens Act is working, and that the massive overhaul envisioned by this bill is not warranted. Without keeping strong conservation measures in place and continuing to improve management through better science, we will never realize the full potential of our fishery resources for sustainable economic development. For these reasons, we oppose H.R. 200 as reported.

RAÚL M. GRIJALVA,
Ranking Member, Committee on Natural Resources.
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DONALD S. BEYER, JR.
A. DONALD MCEACHIN.
GRACE F. NAPOLITANO.
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