

Union Calendar No. 466

107TH CONGRESS
2^D SESSION

H. R. 4749

[Report No. 107-746]

To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2002

Mr. GILCHREST introduced the following bill; which was referred to the Committee on Resources

OCTOBER 11, 2002

Additional sponsor: Mr. COOKSEY

OCTOBER 11, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on May 16, 2002]

A BILL

To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMEND-**
 2 **MENT REFERENCES.**

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

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

Sec. 1. Short title; table of contents; amendment references.

Sec. 2. Technical corrections to definitions.

Sec. 3. Report on over capitalization.

Sec. 4. Buyout provisions.

Sec. 5. Data collection.

Sec. 6. Ecosystem-based management.

Sec. 7. Observers.

Sec. 8. Overfishing.

Sec. 9. Bycatch and seabird interactions.

Sec. 10. Fish habitat research and protection.

Sec. 11. Demonstration program for oyster sanctuaries and reserves.

Sec. 12. Individual quota limited access programs.

Sec. 13. Cooperative education and research.

Sec. 14. Report on highly migratory species.

Sec. 15. Prohibited acts.

Sec. 16. Membership of fishery management councils.

Sec. 17. Miscellaneous amendments to purposes and policy.

Sec. 18. Foreign fishing.

Sec. 19. Driftnets.

Sec. 20. Sources for data in fisheries research.

Sec. 21. Miscellaneous fishery protections in fishery management plans.

Sec. 22. Cooperative marine education and research program.

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

Sec. 24. Regional stock assessments.

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

Sec. 26. National Academy of Sciences definition of maximum sustainable yield.

Sec. 27. Administration of Pacific Insular Area fishery agreements.

Sec. 28. Highly migratory species bycatch mortality reduction research program.

Sec. 29. Authorization of appropriations.

7 (c) *AMENDMENT OF MAGNUSON-STEVEN'S FISHERY*
 8 *CONSERVATION AND MANAGEMENT ACT.*—*Except as other-*
 9 *wise expressly provided, whenever in this Act an amend-*
 10 *ment or repeal is expressed in terms of an amendment to,*
 11 *or repeal of, a section or other provision, the reference shall*

1 *be considered to be made to a section or other provision*
 2 *of the Magnuson-Stevens Fishery Conservation and Man-*
 3 *agement Act (16 U.S.C. 1801 et seq.).*

4 **SEC. 2. TECHNICAL CORRECTIONS TO DEFINITIONS.**

5 *(a) EXECUTION OF PRIOR AMENDMENTS.—*

6 *(1) CONTINENTAL SHELF FISHERY RE-*
 7 *SOURCES.—Section 102(2) of the Sustainable Fish-*
 8 *eries Act (Public Law 104–297; 110 Stat. 3561) is*
 9 *amended—*

10 *(A) by striking “COELENTERATA” and*
 11 *inserting “COELENTERATA”;*

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

14 *(C) by striking “CRUSTACEA” and insert-*
 15 *ing “CRUSTACEA”.*

16 *(2) UNITED STATES HARVESTED FISH.—Section*
 17 *102(11) of the Sustainable Fisheries Act (Public Law*
 18 *104–297; 110 Stat. 3563) is amended by striking*
 19 *“(42)” and inserting “(43)”.*

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

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

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

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

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

7 (4) by adding at the end the following:

8 “(b) *TERMS RELATING TO AGREEMENT WITH THE*
 9 *FORMER SOVIET UNION.*—As used in this Act the term ‘spe-
 10 cial areas’ means the areas referred to as eastern special
 11 areas in Article 3(1) of the Agreement between the United
 12 States of America and the Union of Soviet Socialist Repub-
 13 lics on the Maritime Boundary, signed June 1, 1990. In
 14 particular, the term refers to those areas east of the mari-
 15 time boundary, as defined in that Agreement, that lie with-
 16 in 200 nautical miles of the baselines from which the
 17 breadth of the territorial sea of Russia is measured but be-
 18 yond 200 nautical miles of the baselines from which the
 19 breadth of the territorial sea of the United States is meas-
 20 ured.”.

21 **SEC. 3. REPORT ON OVER CAPITALIZATION.**

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

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

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

11 (3) *potential sources of funding for such meas-*
12 *ures.*

13 (b) *BASIS FOR RECOMMENDATIONS.—The Secretary*
14 *shall base the recommendations made with respect to a fish-*
15 *ery on—*

16 (1) *the most cost effective means of achieving vol-*
17 *untary reduction in capacity for the fishery using the*
18 *potential for industry financing; and*

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

1 **SEC. 4. BUYOUT PROVISIONS.**

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

5 (1) in paragraph (1) by striking “, at the request
 6 of the appropriate Council for fisheries under the au-
 7 thority of such Council, or the Governor of a State for
 8 fisheries under State authority,”;

9 (2) in paragraph (1), by inserting “that is man-
 10 aged under a limited access system authorized by sec-
 11 tion 303(b)(6),” after “in a fishery”; and

12 (3) by redesignating paragraph (4) as para-
 13 graph (5), and by inserting after paragraph (3) the
 14 following:

15 “(4) The Council, or the Governor of a State, having
 16 authority over a fishery may request the Secretary to con-
 17 duct a fishing capacity reduction program in the fishery
 18 under this subsection.”.

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

22 “(2)(A) The objective of the program shall be to obtain
 23 the maximum sustained reduction in fishing capacity at
 24 the least cost and in a minimum period of time.

25 “(B) To achieve that objective, the Secretary is author-
 26 ized to pay an amount to the owner of a fishing vessel, if—

1 “(i) such vessel is scrapped, or through the Sec-
2 retary of the department in which the Coast Guard
3 is operating, subjected to title restrictions that perma-
4 nently prohibit and effectively prevent its use in fish-
5 ing;

6 “(ii) all permits authorizing the participation of
7 the vessel in any fishery under the jurisdiction of the
8 United States are surrendered for permanent revoca-
9 tion; and

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

15 (c) *ENSURING VESSELS DO NOT ENTER FOREIGN OR*
16 *HIGH SEAS FISHERIES.*—Section 312(b) (16 U.S.C.
17 1861a(b)) is further amended by adding at the end the fol-
18 lowing:

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

1 **SEC. 5. DATA COLLECTION.**

2 (a) *COLLECTION OF RECREATIONAL CATCH DATA.*—

3 *Section 402 (16 U.S.C. 1881a) is amended by adding at*
4 *the end the following:*

5 “(f) *COLLECTION OF RECREATIONAL CATCH DATA.*—

6 (1) *The Secretary shall develop and implement a program*
7 *for the sharing of recreational catch data for all federally*
8 *managed fisheries through the use of information gathered*
9 *from State-licensed recreational fishermen.*

10 “(2) *The Secretary shall conduct the program in con-*
11 *sultation with the principal State officials having marine*
12 *fishery management responsibility and expertise.*

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

15 “(A) *the progress made in developing such a pro-*
16 *gram; and*

17 “(B) *whether the program has resulted in sig-*
18 *nificantly better data collection for the recreational*
19 *fishing sector.”.*

20 (b) *REPORT.*—*Not later than 6 months after the date*
21 *of the enactment of this Act, the Secretary of Commerce*
22 *shall submit to the Congress a report describing the fol-*
23 *lowing:*

24 (1) *Economic data from United States processors*
25 *that is necessary to conduct fishing community and*
26 *economic analysis determinations required under*

1 *chapter 6 of title 5, United States Code, popularly*
 2 *known as the Regulatory Flexibility Act.*

3 *(2) The reasons why such information is not*
 4 *available through other sources such as tax returns,*
 5 *the Bureau of Labor Statistics, and State labor de-*
 6 *partments.*

7 *(3) The steps the Secretary would take under sec-*
 8 *tion 402 of the Magnuson-Stevens Fishery Conserva-*
 9 *tion and Management Act (16 U.S.C. 1881a) to en-*
 10 *sure the confidentiality of such information (espe-*
 11 *cially proprietary information), if the information*
 12 *were obtained by the Secretary.*

13 **SEC. 6. ECOSYSTEM-BASED MANAGEMENT.**

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

18 *“(8) to support and encourage efforts to under-*
 19 *stand the interactions of species in the marine envi-*
 20 *ronment and the development of ecosystem-based ap-*
 21 *proaches to fisheries conservation and management*
 22 *that will lead to better stewardship and sustainability*
 23 *of the Nation’s coastal fishery resources and fishing*
 24 *communities.”.*

1 (b) *AUTHORIZATION OF RESEARCH.*—Section 404(c)
2 (16 U.S.C. 1881c(c)) is amended by adding at the end the
3 following:

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

9 (c) *DEFINITIONS AND CRITERIA FOR MANAGEMENT*
10 *PLANS.*—

11 (1) *IN GENERAL.*—*The Secretary shall, in con-*
12 *junction with the Councils—*

13 (A) *create a definition for “ecosystem” and*
14 *for “marine ecosystem”; and*

15 (B) *establish criteria for the development of*
16 *ecosystem-based management plans by each re-*
17 *gional fishery management council based on the*
18 *recommendations of the Ecosystems Principles*
19 *Advisory Panel.*

20 (2) *REPORT.*—*The Secretary shall report to the*
21 *Congress within 2 years after the date of the enact-*
22 *ment of this Act on the criteria, including an identi-*
23 *fication and description of those criteria for which*
24 *sufficient data is not available.*

1 (d) *IDENTIFICATION OF MARINE ECOSYSTEMS; RE-*
 2 *SEARCH PLAN.*—

3 (1) *IN GENERAL.*—*Within one year after the date*
 4 *of the submission of the report under subsection (c)(2)*
 5 *to the Congress, the Secretary, in conjunction with the*
 6 *regional science centers and the regional fishery man-*
 7 *agement councils, shall—*

8 (A) *identify specific marine ecosystems*
 9 *within each region; and*

10 (B) *also develop and begin to implement re-*
 11 *gional research plans to meet the information*
 12 *deficit identified in the report.*

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

16 (3) *REPORTS.*—*The Secretary shall report to the*
 17 *Congress annually on the progress of the regional re-*
 18 *search plans.*

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

21 (1) *IN GENERAL.*—*Upon the completion of devel-*
 22 *opment of regional research plans under subsection*
 23 *(d)(1), the Secretary of Commerce shall establish and*
 24 *begin implementing a pilot program for the manage-*
 25 *ment of one fishery on the east coast of the United*

1 *States and one fishery on the west coast of the United*
 2 *States under an ecosystem-based fishery management*
 3 *plan under the Magnuson-Stevens Fishery Conserva-*
 4 *tion and Management Act.*

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

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

13 **SEC. 7. OBSERVERS.**

14 (a) *IN GENERAL.*—*Not later than one year after the*
 15 *date of the enactment of this Act, the Secretary shall report*
 16 *to the Congress on the needs for a national observer pro-*
 17 *gram.*

18 (b) *RECOMMENDATIONS.*—*The report shall make rec-*
 19 *ommendations on observation options, including electronic*
 20 *data collection technologies and on-board observers.*

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

23 (1) *A determination of whether the data collec-*
 24 *tion needs are for management or enforcement pur-*
 25 *poses.*

1 (2) *A statement of the level of observer coverage*
2 *necessary in various types of fisheries to provide sta-*
3 *tistically reliable information.*

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

6 (4) *Options for the funding of observer coverage.*

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

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

12 (7) *Recommendations for the confidentiality of*
13 *proprietary information collected through the pro-*
14 *gram.*

15 **SEC. 8. OVERFISHING.**

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

19 “(29)(A) *The term ‘overfished’ means, with re-*
20 *spect to a stock of fish, that the stock is of a size that*
21 *is below the natural range of fluctuation associated*
22 *with the production of maximum sustainable yield.*

23 “(B) *The term ‘overfishing’ means a rate or level*
24 *of fishing mortality that jeopardizes the capacity of a*

1 *fishery to produce the maximum sustainable yield on*
 2 *a continuing basis.”.*

3 (b) *DISTINGUISHING IN REPORTS.*—Section 304(e)(1)
 4 (16 U.S.C. 1854(e)(1)) is amended by adding at the end
 5 the following: “The report shall distinguish between fisheries
 6 that are overfished (or approaching that condition) as a
 7 result of fishing and fisheries that are overfished (or ap-
 8 proaching that condition) as a result of factors other than
 9 fishing. The report shall state, for each fishery identified
 10 as overfished or approaching that condition, whether the
 11 fishery is the target of directed fishing.”.

12 (c) *NATIONAL ACADEMY OF SCIENCES DEFINITION OF*
 13 *OVERFISHED.*—

14 (1) *IN GENERAL.*—The Secretary of Commerce
 15 shall enter into an arrangement with the National
 16 Academy of Sciences under which the Academy shall
 17 develop a definition of “overfished” for purposes of the
 18 Magnuson-Stevens Fishery Conservation and Manage-
 19 ment Act (16 U.S.C. 1801 et seq.). The Academy shall
 20 consider the definition of the term in that Act (as
 21 amended by this Act) and the National Marine Fish-
 22 eries Service operational definition of the term. The
 23 Academy shall also consider environmental varia-
 24 bility and other factors that contribute to low abun-
 25 dance of fish stocks.

1 (2) *PUBLICATION AND OPPORTUNITY FOR COM-*
 2 *MENT.—The Secretary shall publish the results of the*
 3 *activities of the Academy under paragraph (1) and*
 4 *provide an opportunity for the submission of com-*
 5 *ments regarding the definition developed under para-*
 6 *graph (1).*

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

8 (a) *BYCATCH REPORTING.—*

9 (1) *REPEAL OF STANDARDIZED BYCATCH RE-*
 10 *PORTING METHODOLOGY REQUIREMENT.—Section*
 11 *303(a)(11) (16 U.S.C. 1853(a)(11)) is amended in the*
 12 *matter preceding subparagraph (A) by striking “es-*
 13 *tablish” and all that follows through “fishery, and”.*

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

17 “(i) *DEVELOPMENT OF BYCATCH REPORTING METH-*
 18 *ODOLOGIES.—The Secretary shall, in cooperation with the*
 19 *Councils, develop bycatch reporting methodologies to assess*
 20 *the amount and type of bycatch occurring in United States*
 21 *fisheries.”.*

22 (3) *REPORT.—The Secretary of Commerce shall*
 23 *report to the Congress within one year after the date*
 24 *of the enactment of this Act on progress the Secretary*
 25 *has made in developing bycatch reporting methodolo-*

1 *gies pursuant to the amendment made by paragraph*
 2 *(2).*

3 *(b) CHARITABLE DONATION OF BYCATCH.—Section*
 4 *303(b) (16 U.S.C. 1853(b)) is amended by striking “and”*
 5 *after the semicolon at the end of paragraph (11), by striking*
 6 *the period at the end of paragraph (12) and inserting a*
 7 *semicolon, and by adding at the end the following:*

8 *“(13) allow the retention and donation for chari-*
 9 *table purposes of all dead bycatch that cannot other-*
 10 *wise be avoided under terms that ensure, through the*
 11 *use of onboard fishery observers or other equally effec-*
 12 *tive means, that such retention and donation do not*
 13 *allow the evasion of vessel trip limits, total allowable*
 14 *catch levels, or other conservation and management*
 15 *measures;”.*

16 *(c) BYCATCH REDUCTION GEAR DEVELOPMENT.—*

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

19 **“SEC. 408. GEAR DEVELOPMENT.**

20 *“(a) IDENTIFICATION OF FISHERIES WITH SIGNIFI-*
 21 *CANT BYCATCH AND SEABIRD INTERACTION PROBLEMS.—*

22 *(1) The Secretary, in conjunction with the Councils, shall*
 23 *identify and publish in the Federal Register a list of fish-*
 24 *eries with significant bycatch problems or seabird inter-*

1 *action problems, as determined under criteria developed by*
2 *the Secretary.*

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

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

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

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

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

11 “(E) *any other relevant information.*

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

14 “(b) *IDENTIFICATION OF FISHERIES WITH MOST UR-*
15 *GENT PROBLEMS.—The Secretary shall—*

16 “(1) *identify those fisheries included in a list*
17 *under paragraph (1) that have the most urgent by-*
18 *catch problems or seabird interaction problems, based*
19 *on comments received regarding the list; and*

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

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

5 “(1) *minimize bycatch and seabird interactions;*
 6 *and*

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

9 “(d) *REPORT.*—*The Secretary shall report to the Con-*
 10 *gress annually on—*

11 “(1) *the amount expended to implement this sec-*
 12 *tion in the preceding year;*

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

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

17 “(4) *any other relevant information.*

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

22 (2) *CLERICAL AMENDMENT.*—*The table of con-*
 23 *tents in the first section is amended by adding at the*
 24 *end of the items relating to title IV the following:*

“Sec. 408. *Gear development.*”.

1 (d) *REPORT.*—*The Secretary of Commerce shall report*
2 *to the Congress within one year after the date of the enact-*
3 *ment of this Act on—*

4 (1) *the extent of the problem of seabird inter-*
5 *action with fisheries of the United States;*

6 (2) *efforts by the fishing industry and Regional*
7 *Fishery Management Councils to address that prob-*
8 *lem; and*

9 (3) *the extent of the problem of seabird inter-*
10 *action with fisheries other than the fisheries of the*
11 *United States.*

12 (e) *INTERNATIONAL ACTION.*—*The Secretary of Com-*
13 *merce shall take appropriate action at appropriate inter-*
14 *national fisheries management bodies to reduce seabird*
15 *interactions in fisheries.*

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

17 (a) *PRIORITY RESEARCH.*—*Section 404 (16 U.S.C.*
18 *1881c) is amended by adding at the end the following:*

19 “(e) *PRIORITY FOR RESEARCH REGARDING OVER-*
20 *FISHED FISHERIES.*—*In carrying out or funding fisheries*
21 *research under this and other laws regarding essential fish*
22 *habitat, the Secretary shall give priority to research to iden-*
23 *tify such habitat for fisheries that are overfished or ap-*
24 *proaching an overfished condition.”.*

1 (b) *REQUIRED PROVISION IN FISHERY MANAGEMENT*

2 *PLANS.—Section 303(a)(7) (16 U.S.C. 1853(a)(7)) is*
 3 *amended to read as follows:*

4 “(7)(A) *describe and identify essential fish habi-*
 5 *tat for the fishery based on the guidelines established*
 6 *by the Secretary under section 305(b)(1)(A);*

7 “(B) *minimize to the extent practicable adverse*
 8 *effects on such habitat caused by fishing for those fish-*
 9 *eries identified by the Council as having available in-*
 10 *formation on the growth, reproduction, or survival*
 11 *rates within habitats or production rates by habitat,*
 12 *or for those fisheries that the Council determines the*
 13 *specific fishing activity effects on the essential fish*
 14 *habitat jeopardize the ability of the fishery to produce*
 15 *maximum sustained yield on a continuing basis;*

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

19 “(D) *identify other actions to encourage the con-*
 20 *servation and enhancement of such habitat;”.*

21 (c) *DISCRETIONARY PROVISION IN FISHERY MANAGE-*
 22 *MENT PLANS.—Section 303(b) (16 U.S.C. 1853(b)) is fur-*
 23 *ther amended by adding after paragraph (13) the following:*

1 “(14) minimize to the extent practicable adverse
2 effects caused by fishing, on essential fish habitat de-
3 scribed and identified under section 303(a)(7)(A);”.

4 (d) *HABITAT AREA OF PARTICULAR CONCERN DE-*
5 *FINED.*—Section 3 (16 U.S.C. 1802) is further amended in
6 subsection (a) by redesignating paragraphs (19) through
7 (44) in order as paragraphs (20) through (45), and by in-
8 serting after paragraph (18) the following:

9 “(19) The term ‘habitat area of particular con-
10 cern’ means a discrete habitat area that is essential
11 fish habitat and that—

12 “(A) provides important ecological func-
13 tions;

14 “(B) is sensitive to human-induced environ-
15 mental degradation; or

16 “(C) is a rare habitat type.”.

17 **SEC. 11. DEMONSTRATION PROGRAM FOR OYSTER SANC-**
18 **TUARIES AND RESERVES.**

19 (a) *IN GENERAL.*—The Secretary of Commerce,
20 through the National Oceanic and Atmospheric Adminis-
21 tration Chesapeake Bay Office, shall develop a program for
22 the design, construction, and placement of oyster sanc-
23 tuaries or reserves consistent with the agreement known as
24 the Chesapeake 2000 Agreement. The program shall be de-
25 veloped in conjunction with the Corps of Engineers, the

1 *Coast Guard, the Environmental Protection Agency, the*
2 *United States Fish and Wildlife Service, the State of Mary-*
3 *land, the Commonwealth of Virginia, the Oyster Recovery*
4 *Partnership, the Chesapeake Bay Foundation, the Oyster*
5 *Heritage Foundation, local commercial and recreational*
6 *fishing organizations, the Port of Baltimore, the Port of*
7 *Hampton Roads, the University of Maryland, the Virginia*
8 *Institute of Marine Sciences, and other users of the waters*
9 *of the Chesapeake Bay, as appropriate.*

10 **(b) STRUCTURES.**—*The program shall include the de-*
11 *sign, construction, placement, and restoration of structures,*
12 *including reefs and bars, to act as beds for oyster produc-*
13 *tion. The structures should be designed to maximize the pro-*
14 *duction of oysters while minimizing conflicts with existing*
15 *uses such as fishing or navigation. The structures shall be*
16 *placed in areas in which they will not be hazards to naviga-*
17 *tion. The Secretary shall work with interested parties to*
18 *ensure that all sites are adequately marked on navigation*
19 *charts as appropriate.*

20 **(c) RESEARCH PLAN.**—*The Secretary shall develop a*
21 *research plan, consistent with efforts to implement the*
22 *Chesapeake 2000 Agreement, for the placement of structures*
23 *under the program, including measurable goals and a mon-*
24 *itoring program to determine the effectiveness of the struc-*
25 *tures in recovering native oyster populations.*

1 (d) *FISHING REGULATIONS.*—*The Secretary shall rec-*
 2 *ommend State regulations restricting fishing in the waters*
 3 *surrounding structures placed under this section as nec-*
 4 *essary to ensure the reproduction of oysters on the struc-*
 5 *tures. The restrictions may be seasonal in nature, and shall*
 6 *not apply in any area that is located more than 100 meters*
 7 *from such a structure.*

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

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

13 (g) *AUTHORIZATION OF APPROPRIATIONS.*—

14 (1) *IN GENERAL.*—*To carry out this section there*
 15 *is authorized to be appropriated to the Secretary*
 16 *\$5,000,000 for each of fiscal years 2004 through 2009.*

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

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

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

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

1 “(A) in developing such system, the Coun-
2 cils and the Secretary take into account—

3 “(i) the need to promote conservation,

4 “(ii) present participation in the fish-
5 ery,

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

8 “(iv) the economics of the fishery,

9 “(v) the capability of fishing vessels
10 used in the fishery to engage in other fish-
11 eries,

12 “(vi) the cultural and social framework
13 relevant to the fishery and fishing commu-
14 nities, and

15 “(vii) any other relevant consider-
16 ations; and

17 “(B) in the case of such a system that pro-
18 vides for the allocation and issuance of indi-
19 vidual quotas (as that term is defined in sub-
20 section (d)), the system complies with subsection
21 (d).”.

22 (b) *REQUIREMENTS.*—Section 303(d) (16 U.S.C.
23 1853(d)) is amended—

24 (1) by redesignating paragraphs (2), (3), (4),

25 and (5) in order as paragraphs (10), (11), (12), and

1 (13), and by moving such paragraphs 2 ems to the
2 left;

3 (2) in paragraph (11)(B), as so redesignated, by
4 inserting “, including as a result of a violation of this
5 Act or any regulation prescribed under this Act” be-
6 fore the semicolon;

7 (3) by adding at the end the following:

8 “(14) As used in this subsection:

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

13 “(B) The term ‘individual quota’ means a grant
14 of permission to harvest a quantity of fish in a fish-
15 ery or process such fish which are under the jurisdic-
16 tion of the North Pacific Management Council, dur-
17 ing each fishing season for which the permission is
18 granted, equal to a stated percentage of the total al-
19 lowable catch for the fishery.”; and

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

22 “(d) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA
23 SYSTEMS.—(1) A fishery management plan for a fishery
24 that is managed under a limited access system authorized

1 *by subsection (b)(6) may establish an individual quota sys-*
2 *tem for the fishery in accordance with this subsection.*

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

5 “(A) *shall provide for administration of the sys-*
6 *tem by the Secretary in accordance with the terms of*
7 *the plan;*

8 “(B) *shall include provisions that establish pro-*
9 *cedures and requirements for each Council having au-*
10 *thority over the fishery, for—*

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

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

16 “(C) *shall include provisions to—*

17 “(i) *provide for fair and equitable alloca-*
18 *tion of individual quotas under the system, and*
19 *minimize negative social and economic impacts*
20 *of the system on fishing communities;*

21 “(ii) *ensure adequate enforcement of the sys-*
22 *tem, including the use of observers where appro-*
23 *priate; and*

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

4 “(D) shall include provisions that prevent any
5 person from acquiring an excessive share of indi-
6 vidual quotas issued for a fishery; and

7 “(E) shall include measurable conservation goals.

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

12 “(4)(A) Except as otherwise provided in this para-
13 graph, any fishery management plan that establishes an in-
14 dividual quota system for a fishery may authorize indi-
15 vidual quotas to be held by or issued under the system to
16 fishing vessel owners, fishermen, crew members, fishing
17 communities, other persons as specified by the Council and
18 United States fish processors under the jurisdiction of the
19 North Pacific Fishery Management Council.

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

23 “(C) A Federal agency or official may not hold, ad-
24 minister, or reallocate an individual quota issued under a
25 fishery management plan, other than the Secretary and the

1 *Council having authority over the fishery for which the in-*
2 *dividual quota is issued.*

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

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

9 “(II) *a percentage of such total authorized har-*
10 *vest established by the Council having jurisdiction*
11 *over the fishery.*

12 “(ii) *This subparagraph does not apply to a commu-*
13 *nity that is eligible to participate in the western Alaska*
14 *community development program or the western Pacific*
15 *community development program, under section 305(i).*

16 “(5) *Any fishery management plan that establishes an*
17 *individual quota system for a fishery may include provi-*
18 *sions that—*

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

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

1 “(6) *An individual quota system established for a fish-*
2 *ery may be limited or terminated at any time by the Sec-*
3 *retary or through a fishery management plan or amend-*
4 *ment developed by the Council having authority over the*
5 *fishery for which it is established, if necessary for the con-*
6 *servation and management of the fishery.*

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

9 “(i) *must include measurable conservation goals;*
10 *and*

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

15 “(B) *Not later than 5 years after the date of the estab-*
16 *lishment of an individual quota system for a fishery under*
17 *this section by a Council or the Secretary, and every 5 years*
18 *thereafter, the Council or Secretary, respectively, shall re-*
19 *view the effectiveness of the system in achieving the con-*
20 *servation goals required under this paragraph.*

21 “(8)(A) *The Secretary or a Council—*

22 “(i) *may not develop a proposal to establish an*
23 *individual quota system for a fishery, unless develop-*
24 *ment of the proposal has been approved by a ref-*

1 *erendum conducted in accordance with this para-*
2 *graph; and*

3 *“(ii) may not issue a proposed fishery manage-*
4 *ment plan or amendment to such a plan to establish*
5 *such a system unless the proposed plan or amend-*
6 *ment, respectively, has been approved by a ref-*
7 *erendum conducted in accordance with this para-*
8 *graph.*

9 *“(B) The Secretary, at the request of a Council, shall*
10 *conduct the referenda required by subparagraph (A). Each*
11 *referendum with respect to a fishery shall be decided by a*
12 *60-percent majority of the votes cast by persons who are*
13 *determined by the Council, based on guidelines developed*
14 *by the Secretary, to be eligible to vote in the referendum.*

15 *“(C) The Secretary shall develop guidelines to deter-*
16 *mine procedures and voting eligibility requirements for*
17 *referenda and to conduct such referenda in a fair and equi-*
18 *table manner.*

19 *“(9) Any individual quota system established under*
20 *section 303(b)(6) after the date of enactment of the Magnu-*
21 *son-Stevens Act Amendments of 2002, and any individual*
22 *quota issued under such a system, shall not apply after the*
23 *end of the 10-year period beginning on the date the system*
24 *is established, or after the end of any 10-year period there-*
25 *after, unless the Council has reviewed and taken affirmative*

1 *action to continue the system before the end of each such*
 2 *10-year period.”.*

3 *(c) FEES.—Section 304(d) is amended—*

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

7 *(2) by adding at the end the following:*

8 *“(3)(A) Notwithstanding paragraph (1), the Secretary*
 9 *shall collect from a person that holds or transfers an indi-*
 10 *vidual quota issued under a limited access system estab-*
 11 *lished under section 303(b)(6) fees established by the Sec-*
 12 *retary in accordance with this section and section 9701(b)*
 13 *of title 31, United States Code.*

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

16 *“(i) With respect to any initial allocation under*
 17 *a limited access system established after the date of*
 18 *the enactment of the Magnuson-Stevens Act Amend-*
 19 *ments of 2002, an initial allocation fee in an amount,*
 20 *determined by the Secretary, equal to 1 percent of the*
 21 *ex-vessel value of fish authorized in one year under an*
 22 *individual quota, that shall be collected from the per-*
 23 *son to whom the individual quota is first issued.*

24 *“(ii) An annual fee in an amount, determined*
 25 *by the Secretary, not to exceed 3 percent of the ex-ves-*

1 *sel value of fish authorized each year under an indi-*
2 *vidual quota share, that shall be collected from the*
3 *holder of the individual quota share.*

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

10 *“(C) In determining the amount of a fee under this*
11 *paragraph, the Secretary shall ensure that the amount is*
12 *commensurate with the cost of managing the fishery with*
13 *respect to which the fee is collected, including reasonable*
14 *costs for salaries, data analysis, and other costs directly re-*
15 *lated to fishery management and enforcement.*

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

21 *“(E) Fees collected under this paragraph from holders*
22 *of individual quotas in a fishery shall be an offsetting col-*
23 *lection and shall be available to the Secretary only for the*
24 *purposes of administering and implementing this Act with*
25 *respect to that fishery.”.*

1 *(d) APPROVAL OF FISHERY MANAGEMENT PLANS ES-*
 2 *TABLISHING INDIVIDUAL QUOTA SYSTEMS.—Section 304*
 3 *(16 U.S.C. 1854) is further amended by adding at the end*
 4 *the following:*

5 *“(j) ACTION ON LIMITED ACCESS SYSTEMS.—(1) In*
 6 *addition to the other requirements of this Act, after the date*
 7 *of the enactment of the Magnuson-Stevens Act Amendments*
 8 *of 2002 the Secretary may not approve a fishery manage-*
 9 *ment plan that establishes a limited access system that pro-*
 10 *vides for the allocation of individual quotas (in this sub-*
 11 *section referred to as an ‘individual quota system’) unless*
 12 *the plan complies with section 303(d).*

13 *“(2) The Secretary shall issue regulations that estab-*
 14 *lish requirements for establishing an individual quota sys-*
 15 *tem. The regulations shall—*

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

19 *“(B) ensure that any individual quota system is*
 20 *consistent with the requirements of sections 303(a)*
 21 *and 303(d), and require the collection of fees in ac-*
 22 *cordance with subsection (d)(3) of this section;*

23 *“(C) provide for appropriate penalties for viola-*
 24 *tions of individual quotas systems, including the sus-*

1 *pension or revocation of individual quotas for such*
 2 *violations;*

3 *“(D) include recommendations for potential*
 4 *management options related to individual quotas, in-*
 5 *cluding the authorization of individual quotas that*
 6 *may not be transferred by the holder, and the use of*
 7 *leases or auctions by the Federal Government in the*
 8 *establishment or allocation of individual quotas; and*

9 *“(E) establish a central lien registry system for*
 10 *the identification, perfection, and determination of*
 11 *lien priorities, and nonjudicial foreclosure of encum-*
 12 *brances, on individual quotas.”.*

13 *(e) RESTRICTION ON NEW INDIVIDUAL QUOTA SYS-*
 14 *TEMS PENDING REGULATIONS.—*

15 *(1) RESTRICTION.—The Secretary of Commerce*
 16 *may not approve any covered quota system plan, and*
 17 *no covered quota system plan shall take effect, under*
 18 *title III of the Magnuson-Stevens Fishery Conserva-*
 19 *tion and Management Act, before the effective date of*
 20 *regulations issued by the Secretary under section*
 21 *304(j) of that Act, as added by subsection (d) of this*
 22 *section.*

23 *(2) COVERED QUOTA SYSTEM PLAN DEFINED.—*
 24 *In this subsection, the term “covered quota system*

1 *plan” means a fishery management plan or amend-*
 2 *ment to a fishery management plan, that—*

3 *(A) proposes establishment of an individual*
 4 *quota system (as that term is used in section*
 5 *303(d) of the Magnuson-Stevens Fishery Con-*
 6 *servation and Management Act, as amended by*
 7 *this section); and*

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

10 *(f) EXISTING QUOTA PLANS.—Nothing in this Act or*
 11 *the amendments made by this Act shall be construed to re-*
 12 *quire a reallocation of individual fishing quotas under any*
 13 *individual fishing quota program approved by the Sec-*
 14 *retary of Commerce before May 1, 2002.*

15 **SEC. 13. COOPERATIVE EDUCATION AND RESEARCH.**

16 *(a) DISCRETIONARY PROVISIONS IN FISHERY MAN-*
 17 *AGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b)) is*
 18 *further amended by adding after paragraph (14) the fol-*
 19 *lowing:*

20 *“(15) include provisions to create a cooperative*
 21 *research component including the use of commercial*
 22 *or charter vessels for the gathering of data on stock*
 23 *abundance, composition, distribution, or other rel-*
 24 *evant information important for the implementation*
 25 *of the plan; and”.*

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

3 “(f) *BLACK SEA BASS COOPERATIVE RESEARCH PRO-*
 4 *GRAM*.—The Secretary, through the New England Fisheries
 5 Science Center, shall develop and implement a cooperative
 6 stock assessment program, using vessels from the commer-
 7 cial black sea bass fishing industry if appropriate and
 8 available. This cooperative program shall include research
 9 on the range of the stock, a determination as to whether
 10 there is more than one stock, and a black sea bass genetic
 11 study to determine whether there is more than one stock
 12 of such species requiring different management regimes.”.

13 **SEC. 14. REPORT ON HIGHLY MIGRATORY SPECIES.**

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

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

18 (2) by adding at the end the following:

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

22 “(1) any nation that is fishing for Atlantic high-
 23 ly migratory species and is not in compliance with
 24 the fishery conservation and management provisions
 25 or any rebuilding recommendations or provisions en-

acted by the international body charged with developing such measures; and

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

(b) NATIONAL ACADEMY OF SCIENCES REVIEW.—

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

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

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

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

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

1 **SEC. 15. PROHIBITED ACTS.**

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

6 “(6) to sell or purchase any fish caught in rec-
7 reational fishing.”.

8 **SEC. 16. MEMBERSHIP OF FISHERY MANAGEMENT COUN-**
9 **CILS.**

10 (a) *NEW ENGLAND COUNCIL*.—Section 302(a)(1)(A)
11 (16 U.S.C. 1852(a)(1)(A)) is amended by—

12 (1) inserting “New York,” after “Massachu-
13 setts,”; and

14 (2) striking “18” and inserting “19”.

15 (b) *ADDITIONAL MEMBER OF EACH COUNCIL*.—Sec-
16 tion 302 (16 U.S.C. 1852) is further amended as follows:

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

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

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

20 and

21 (C) by inserting before the period the fol-
22 lowing: “and including one appointed by the
23 Secretary in accordance with subsection (b)(6)”.

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

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

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

2 and

3 (C) by inserting before the period the fol-
4 lowing: “and including one appointed by the
5 Secretary in accordance with subsection (b)(6)”.

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

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

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

9 (C) by inserting before the period the fol-
10 lowing: “and including one appointed by the
11 Secretary in accordance with subsection (b)(6)”.

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

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

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

15 (C) by inserting before the period the fol-
16 lowing: “and including one appointed by the
17 Secretary in accordance with subsection (b)(6)”.

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

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

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

21 and

22 (C) by inserting before the period the fol-
23 lowing: “and including one appointed by the
24 Secretary in accordance with subsection (b)(6)”.

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

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

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

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

5 (D) by inserting before the period the fol-
6 lowing: “and one appointed by the Secretary in
7 accordance with subsection (b)(6)”.

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

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

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

11 (C) by inserting before the period the fol-
12 lowing: “and including one appointed by the
13 Secretary in accordance with subsection (b)(6)”.

14 (8) In subsection (b)—

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

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

20 (C) by inserting after paragraph (5) the fol-
21 lowing:

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

24 “(A) shall not be an individual who is directly
25 employed by, or receives a majority of his or her live-

1 *lihood from, the commercial, charter, or recreational*
 2 *fishing community; and*

3 *“(B) shall be appointed without regard to sub-*
 4 *paragraphs (B) and (C) of paragraph (2).”.*

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

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

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

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

12 **SEC. 18. FOREIGN FISHING.**

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

15 *(1) in clause (iii) by inserting “and compliance*
 16 *with and enforcement of international fishing agree-*
 17 *ments and treaties” after “fishing regulations”; and*

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

20 **SEC. 19. DRIFTNETS.**

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

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

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

6 **SEC. 21. MISCELLANEOUS FISHERY PROTECTIONS IN FISH-**
7 **ERY MANAGEMENT PLANS.**

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

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

15 **SEC. 22. COOPERATIVE MARINE EDUCATION AND RE-**
16 **SEARCH PROGRAM.**

17 (a) *PROGRAM.*—The Secretary of Commerce may enter
18 into cooperative agreements with universities and institu-
19 tions of higher learning in order to conduct research in
20 areas that support conservation and management of living
21 marine resources.

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

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

- 1 (2) *the interdependence of fisheries or stocks of*
 2 *fish and other ecosystem components; and*
- 3 (3) *the linkages between fish habitat and fish*
 4 *production and abundance.*

5 **SEC. 23. ASSESSMENT OF CUMULATIVE IMPACTS OF CON-**
 6 **SERVATION AND MANAGEMENT MEASURES**
 7 **FOR A FISHERY.**

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

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

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

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

18 “(a) *IN GENERAL.*—The Secretary shall conduct peri-
 19 odic regional assessments of stocks of fish.

20 “(b) *INDEPENDENT REVIEW.*—The Secretary shall en-
 21 sure that each periodic assessment under this section is
 22 independently reviewed in a manner that—

- 23 “(1) *will not delay the process of providing to*
 24 *Regional Fishery Management Councils current as-*
 25 *sessments for use in managing fisheries; and*

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

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

 “Sec. 409. *Regional stock assessments.*”.

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

10 (a) *IN GENERAL.*—The Secretary of Commerce shall
11 enter into an arrangement with the National Academy of
12 Sciences under which the Academy shall by not later than
13 1 year after the date of the enactment of this Act, develop
14 guidance and standards for determining what should be
15 considered the best scientific information available for pur-
16 poses of sections 2(c)(3) and 301(a)(2) of the Magnuson-
17 Stevens Fishery Conservation and Management Act (16
18 U.S.C. 1801(c)(3), 1851(a)(2)).

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

22 (1) the need for relevance and timeliness of infor-
23 mation; and

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

1 (c) *PUBLICATION AND OPPORTUNITY FOR COMMENT.*—
 2 *The Secretary shall publish the results of the activities of*
 3 *the Academy under subsection (a) and provide an oppor-*
 4 *tunity for the submission of comments regarding the defini-*
 5 *tion developed under subsection (a)(1).*

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

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

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

16 (2) *examine the use of alternatives for calcu-*
 17 *lating sustainable harvest levels in cases in which*
 18 *maximum sustainable yield cannot be calculated or is*
 19 *not appropriate.*

20 (b) *PUBLICATION AND OPPORTUNITY FOR COMMENT.*—
 21 *The Secretary shall publish the results of the activities of*
 22 *the Academy under subsection (a) and provide an oppor-*
 23 *tunity for the submission of comments regarding the defini-*
 24 *tion developed under subsection (a)(1).*

1 **SEC. 27. ADMINISTRATION OF PACIFIC INSULAR AREA FISH-**
2 **ERY AGREEMENTS.**

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

7 **SEC. 28. HIGHLY MIGRATORY SPECIES BYCATCH MOR-**
8 **TALITY REDUCTION RESEARCH PROGRAM.**

9 *(a) ESTABLISHMENT OF A PROGRAM.—(1) There is es-*
10 *tablished within the National Marine Fisheries Service a*
11 *pelagic longline highly migratory species bycatch and mor-*
12 *tality reduction research program. The Program shall be*
13 *developed by a design team established by the Secretary of*
14 *Commerce. The Program design shall be submitted to the*
15 *Secretary no later than 120 days after the first meeting of*
16 *the design team and shall include a statistically significant*
17 *recommendation for the level of observer coverage on pelagic*
18 *longline fishing vessels that is necessary to monitor the fish-*
19 *ery effectively and participate in the research program. The*
20 *design team shall be available as a resource to the Secretary*
21 *throughout the research and the development of the rec-*
22 *ommendations.*

23 *(2) The program shall identify and test a variety of*
24 *pelagic longline fishing gear configurations and uses and*
25 *determine which of those configurations and uses are the*
26 *most effective in reducing highly migratory species mor-*

1 *tality. The program shall place an emphasis on deter-*
2 *mining the gear configurations and uses that are the most*
3 *effective in reducing blue and white marlin mortality in*
4 *the exclusive economic zone of the United States in the At-*
5 *lantic Ocean. The program shall also include a provision*
6 *for observers to be placed on pelagic longline fishing vessels*
7 *for the purposes of monitoring the fishery and participating*
8 *in the research program.*

9 (3) *The highly migratory species program shall con-*
10 *duct research to determine the impact of existing time and*
11 *area closures designed to reduce the bycatch of longline ves-*
12 *sels. The program shall focus on whether existing closures*
13 *should be modified to decrease bycatch by longline vessels*
14 *and shall determine what adjustments to the existing*
15 *boundaries and temporal constraints should be made as a*
16 *result of any research. Any vessel participating in the pro-*
17 *gram shall be provided an observer by the National Marine*
18 *Fisheries Service. The full cost of the observer and any inci-*
19 *dental costs to the vessel as a result of being included in*
20 *the research program shall be paid for by the National Ma-*
21 *rine Fisheries Service. The National Marine Fisheries Serv-*
22 *ice may authorize, without notice and comment, scientific*
23 *research permits authorizing a vessel to enter and fish in*
24 *any closed area in the Atlantic Ocean so long as there is*
25 *100 percent observer coverage and the activities of the vessel*

1 *are in furtherance of the research program. Access to any*
2 *closed area may be granted only after consideration of the*
3 *scientific need for access.*

4 **(b) DESIGN TEAM.**—(1) *Knowledgeable members of the*
5 *pelagic longline fishing sector, the recreational billfish and*
6 *tuna sector, and the conservation community, along with*
7 *scientists associated with each such entity, shall be ap-*
8 *pointed by the Secretary to the program design team. Each*
9 *of the sectors shall to the extent practicable be fairly rep-*
10 *resented on the design team. The design team shall not ex-*
11 *ceed nine members only one of which may be an employee*
12 *of the Federal Government. The design team shall select a*
13 *chairman and establish its own rules of operation. Each*
14 *member of the design team who is not employed by the Fed-*
15 *eral Government shall be compensated in the manner pro-*
16 *vided for members of a Fishery Management Council under*
17 *section 302(d) of the Magnuson-Stevens Fishery Conserva-*
18 *tion and Management Act (16 U.S.C. 1852(d)).*

19 (2) *The design team shall not be considered to be an*
20 *advisory committee for the purposes of the Federal Advisory*
21 *Committee Act (5 U.S.C. App.), but shall hold its delibera-*
22 *tions in meetings for which prior noticed is published in*
23 *the Federal Register and that are open to the public.*

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

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

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

8 “(i) *in the lower mid-Atlantic Con-*
 9 *servation Zone in the period beginning Au-*
 10 *gust 15 and ending October 1 each year; or*

11 “(ii) *in the upper mid-Atlantic Con-*
 12 *servation Zone in the period beginning July*
 13 *15 and ending September 1 each year.*

14 “(B) *In this paragraph the term ‘lower*
 15 *mid-Atlantic Conservation Zone’ means the area*
 16 *that is enclosed by a series of geodesics con-*
 17 *necting in succession the points at the following*
 18 *coordinates:*

19 “(i) *36 degrees 30 minutes north lati-*
 20 *tude, 75 degrees 0 minutes west longitude.*

21 “(ii) *37 degrees 0 minutes north lati-*
 22 *tude, 75 degrees 0 minutes west longitude.*

23 “(iii) *38 degrees 0 minutes north lati-*
 24 *tude, 74 degrees 0 minutes west longitude.*

1 “(iv) 38 degrees 0 minutes north lati-
2 tude, 73 degrees 0 minutes west longitude.

3 “(v) 37 degrees 0 minutes north lati-
4 tude, 74 degrees 0 minutes west longitude.

5 “(vi) 36 degrees 30 minutes north lati-
6 tude, 75 degrees 0 minutes west longitude.

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

12 “(i) 38 degrees 0 minutes north lati-
13 tude, 74 degrees 0 minutes west longitude.

14 “(ii) 40 degrees 0 minutes north lati-
15 tude, 72 degrees 0 minutes west longitude.

16 “(iii) 39 degrees 0 minutes north lati-
17 tude, 72 degrees 0 minutes west longitude.

18 “(iv) 38 degrees 0 minutes north lati-
19 tude, 73 degrees 0 minutes west longitude.

20 “(v) 38 degrees 0 minutes north lati-
21 tude, 74 degrees 0 minutes west longitude.

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

1 (d) *REPORT TO CONGRESS.*—*The Secretary of Com-*
 2 *merce shall submit to the Committee on Resources of the*
 3 *House of Representatives and the Committee on Commerce,*
 4 *Science, and Transportation of the Senate—*

5 (1) *an interim report of the findings of the re-*
 6 *search conducted under this section within two years*
 7 *after the date of enactment of this Act; and*

8 (2) *a final report with the necessary regulatory*
 9 *documents to initiate implementation of any adjust-*
 10 *ments to time and area closures, gear configurations,*
 11 *or fishing techniques warranted as a result of the re-*
 12 *search.*

13 (e) *AUTHORIZATION OF APPROPRIATIONS.*—*For re-*
 14 *search under this section there is authorized to be appro-*
 15 *priated to the Secretary of Commerce \$5,000,000 for fiscal*
 16 *years 2003 through 2007.*

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

18 *Section 4 (16 U.S.C. 1893) is amended to read as fol-*
 19 *lows:*

20 **“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

21 *“There are authorized to be appropriated to the Sec-*
 22 *retary for the purposes of carrying out the provisions of*
 23 *this Act, not to exceed the following:*

24 “(1) \$200,500,000 for fiscal year 2003;

25 “(2) \$214,000,000 for fiscal year 2004;

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

Union Calendar No. 466

107TH CONGRESS
2^D SESSION

H. R. 4749

[Report No. 107-746]

A BILL

To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.

OCTOBER 11, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed