

108TH CONGRESS
1ST SESSION

H. R. 2621

To amend the Magnuson-Stevens Fishery Conservation and Management Act
to establish requirements for fishing quota systems.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2003

Mr. ALLEN (for himself, Mr. SIMMONS, Mr. DELAHUNT, Mrs. CAPPS, Mr. CAPUANO, Mr. FARR, Mr. MARKEY, Mr. GEORGE MILLER of California, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Magnuson-Stevens Fishery Conservation and
Management Act to establish requirements for fishing
quota systems.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fishing Quota Stand-
5 ards Act of 2003”.

1 **SEC. 2. AMENDMENTS TO MAGNUSON-STEVENSON FISHERY**
2 **CONSERVATION AND MANAGEMENT ACT.**

3 (a) IN GENERAL.—Section 303 of the Magnuson-Ste-
4 venson Fishery Conservation and Management Act (16
5 U.S.C. 1853) is amended—

6 (1) by striking subsection (b)(6) and inserting
7 the following:

8 “(6) establish a limited access system for the
9 fishery in order to achieve optimum yield if, in devel-
10 oping such system, the Council and the Secretary
11 take into account—

12 “(A) the conservation requirements of this
13 Act with respect to the fishery;

14 “(B) the present and historic participation
15 in the fishery;

16 “(C) the economics of the fishery;

17 “(D) the cultural and social framework rel-
18 evant to the fishery and any affected fishing
19 communities;

20 “(E) the fair and equitable distribution of
21 a public resource; and

22 “(F) any other relevant considerations.”;
23 and

24 (2) in subsection (d)—

25 (A) by striking paragraph (5);

1 (B) by redesignating paragraphs (2)
2 through (4) as paragraphs (7) through (9);

3 (C) by striking so much as precedes para-
4 graph (7), as so redesignated, and inserting the
5 following:

6 “(d) FISHING QUOTA SYSTEMS.—

7 “(1) IN GENERAL.—A fishery management plan
8 or plan amendment that establishes a fishing quota
9 system for a fishery after the date of the enactment
10 of the Fishing Quota Standards Act of 2003 shall—

11 “(A) include management measures de-
12 signed to ensure the sustainability of the fishery
13 and provide additional and substantial con-
14 servation benefits to the fishery;

15 “(B) be effective for a period of a fixed du-
16 ration, not to exceed 7 years;

17 “(C) provide for administration of the sys-
18 tem by the Secretary in accordance with the
19 terms of the plan;

20 “(D) establish procedures—

21 “(i) for the Council having authority
22 over the fishery, or the Secretary in the
23 case of a fishery management plan devel-
24 oped by the Secretary, to review the quota

1 system at least 1 year prior to the end of
2 the effective period of the plan; and

3 “(ii) for a review by the Secretarial
4 Review Panel established under paragraph
5 (6) at least 6 months prior to the end of
6 the effective period;

7 “(E) allocate, review, and limit or termi-
8 nate quota shares in accordance with this sub-
9 section;

10 “(F) provide a fair and equitable process
11 to appeal to the Secretary decisions made by a
12 Council on—

13 “(i) eligibility to participate in all
14 referenda authorized under this subsection
15 and eligibility to receive an allocation of
16 quota shares; and

17 “(ii) limitations, restrictions, and rev-
18 ocations of quota shares;

19 “(G) minimize, to the maximum extent
20 practicable, negative social and economic im-
21 pacts of the system on local coastal commu-
22 nities;

23 “(H) ensure adequate enforcement, man-
24 agement, and data collection, including the use
25 of observers where appropriate at a level of cov-

1 erage that yields statistically significant results;
2 and

3 “(I) not require that quota shares be held
4 by a person engaged in personal-use fishing, in-
5 cluding any recreational or subsistence fishing,
6 if the fishery management plan designates a
7 separate portion of the total allowable catch for
8 personal-use fishing.

9 “(2) ALLOCATION OF QUOTA SHARES.—

10 “(A) IN GENERAL.—The Council having
11 authority over the fishery shall make a fair and
12 equitable allocation of all, or only a portion, of
13 the total allowable catch limit as quota shares
14 among existing categories of vessels and among
15 fishing gear types or other appropriate quali-
16 fiers. In allocating quota shares for a fishery,
17 the Council shall—

18 “(i) take into account present and his-
19 toric participation in the fishery;

20 “(ii) ensure that each quota share is
21 held only by persons who—

22 “(I) except for allocations under
23 clause (iii), hold a permit to fish in
24 the fishery; and

1 “(II) are natural persons of the
2 United States or permanent resident
3 aliens qualified by Federal or State
4 law to participate in the fishery;

5 “(iii) establish procedures for allo-
6 cating a portion of the annual harvest to
7 allow new entrants into the fishery;

8 “(iv) prevent any person from control-
9 ling an excessive share of fishing quotas
10 issued for the fishery and establish any
11 other limits or measures necessary to pre-
12 vent inequitable concentration of quota
13 shares and to prevent significant impacts
14 on any person that holds a permit author-
15 izing fishing in the fishery or the fishing
16 community; and

17 “(v) create incentives in successive al-
18 locations for fishermen who increase their
19 gear selectivity and protection of essential
20 fish habitat by increasing the allocation for
21 those fishermen.

22 “(B) TRANSFER TO FAMILY MEMBERS.—
23 (i) The Secretary may allow the transfer of a
24 quota share allocated under subparagraph (A),
25 on a case-by-case basis, without regard to sub-

1 paragraph (A)(ii)(I), from the holder of the
2 quota share to a member of the holder's imme-
3 diate family, due to death or disablement of the
4 holder.

5 “(ii) The Secretary shall establish a simple
6 and expeditious process for such a transfer.

7 “(iii) The Secretary may allow such a
8 transfer only within the same category of vessel,
9 fishing gear type, or other appropriate qualifier
10 to maintain a fair and equitable allocation of
11 quota shares.

12 “(3) TERMINATION OR LIMITATION OF QUOTA
13 SYSTEM OR QUOTA SHARES.—

14 “(A) TERMINATION OR LIMITATION OF
15 QUOTA SYSTEM FOR CONSERVATION AND MAN-
16 AGEMENT OF THE FISHERY.—A fishing quota
17 system established for a fishery may be limited
18 or terminated at any time if necessary for the
19 conservation and management of the fishery,
20 including if the quota system has been found to
21 have jeopardized the sustainability of the stock
22 or the safety of fishermen, by—

23 “(i) the Council that has authority
24 over the fishery for which the system is es-

1 tablished, through a fishery management
2 plan or amendment;

3 “(ii) the Secretary, pursuant to sec-
4 tion 304(h);

5 “(iii) the Secretary, in the case of any
6 fishing quota system established by a fish-
7 ery management plan developed or ap-
8 proved by the Secretary; or

9 “(iv) the Secretary, if the Secretarial
10 Review Panel finds that the system is not
11 meeting or exceeding the requirements of
12 this Act, including, if applicable, the re-
13 quirement under paragraph (1)(A) to pro-
14 vide additional and substantial conserva-
15 tion benefits, and the Council or Secretary
16 does not make the changes recommended
17 by the Secretarial Review Panel to ensure
18 compliance with this subsection.

19 This subparagraph does not diminish the au-
20 thority of the Secretary under any other provi-
21 sion of this Act.

22 “(B) TERMINATION OR LIMITATION OF
23 QUOTA SHARES.—A quota share issued under a
24 fishing quota system established by a fishery
25 management plan—

1 “(i) shall expire not later than 7 years
2 after the date it is issued;

3 “(ii) shall be reviewed by the Council
4 committee established in paragraph (5) not
5 later than 6 months prior to expiration
6 under clause (i); and

7 “(iii) shall be revoked, limited, or re-
8 allocated in accordance with the terms of
9 the plan and regulations issued by the Sec-
10 retary or the Council having authority over
11 the fishery for which it is issued, if, based
12 on a review by the committee established
13 under paragraph (5), the quota share-
14 holder is not meeting or exceeding the re-
15 quirements of this Act or the conservation
16 and management requirements of the fish-
17 ery (including as a result of a violation of
18 this Act or any regulation prescribed under
19 this Act).

20 “(4) REFERENDUM PROCEDURE.—

21 “(A) IN GENERAL.—(i) A Council may
22 submit a fishery management plan or plan
23 amendment that establishes a fishing quota sys-
24 tem only if the development and submission of
25 such plan or plan amendment is approved in

1 referenda conducted in accordance with this
2 paragraph.

3 “(ii) The Secretary, in the case of a fishery
4 management plan developed by the Secretary,
5 may develop and approve a fishery management
6 plan or plan amendment that establishes a fish-
7 ing quota system only if the development and
8 approval of such plan or plan amendment is ap-
9 proved in referenda conducted in accordance
10 with this paragraph.

11 “(B) CONDUCT.—The Secretary shall con-
12 duct the referenda required under subpara-
13 graph (A). The Secretary shall develop guide-
14 lines to determine procedures for the referenda
15 to conduct such referenda in a fair and equi-
16 table manner. Prior to the referenda, the Sec-
17 retary shall identify and notify all persons who
18 are eligible to vote in the referenda and make
19 available to all such persons information con-
20 cerning the schedule, procedures, and eligibility
21 requirements for the referendum process and
22 the proposed fishing quota system.

23 “(C) REQUIRED VOTE.—Each referendum
24 shall be decided by the affirmative vote of a
25 two-thirds majority of the votes cast by the per-

1 sons who the Secretary determines are eligible
2 to vote in the referendum.

3 “(D) INITIAL REFERENDUM.—The Sec-
4 retary shall conduct an initial referendum to de-
5 termine support for proceeding with the devel-
6 opment of a fishing quota system. Eligible vot-
7 ers shall be all persons who hold a permit to
8 fish in the fishery subject to the proposed quota
9 system.

10 “(E) SECOND REFERENDUM.—The Sec-
11 retary shall conduct a second referendum to de-
12 termine support for submitting a specific pro-
13 posed fishing quota system for approval and im-
14 plementation. Eligible voters shall be all persons
15 who hold a permit to fish in the fishery or crew
16 members who derive at least 75 percent of their
17 income from the fishery subject to the proposed
18 fishing quota system.

19 “(5) COUNCIL PROGRAM REVIEW COM-
20 MITTEE.—

21 “(A) IN GENERAL.—Each Council, upon
22 deciding to develop a fishing quota program for
23 a fishery, shall establish, maintain, and appoint
24 members of a review committee to make rec-
25 ommendations for development, evaluation, and

1 necessary changes to such programs to ensure
2 that they meet the requirements of this sub-
3 section.

4 “(B) GUIDELINES FOR MEMBERS.—The
5 Council, in consultation with the Secretary,
6 shall develop guidelines that will ensure that
7 committee members are qualified for appoint-
8 ment and are subject to conflict of interest
9 rules. A member shall not vote on any decision
10 pertaining to a fishing quota system under
11 which the member holds a quota share or will
12 hold a quota share in the subsequent 5-year pe-
13 riod.

14 “(C) APPOINTMENTS.—The members of a
15 review committee established by a Council
16 under subparagraph (A) shall be made by the
17 Council in such a manner as to provide fair rep-
18 resentation to all groups affected by such pro-
19 grams, including, but not limited to, commer-
20 cial, recreational, and subsistence fishing inter-
21 ests, fishing communities, scientists, and public
22 interest groups including conservation organiza-
23 tions.

24 “(D) REVIEWS AND RECOMMENDATIONS
25 REGARDING SYSTEMS.—Each review committee

1 shall, every 7 years, review fishing quota sys-
2 tems, determine whether such systems meet the
3 requirements of this Act, and evaluate whether
4 each such system has improved management,
5 conservation, and safety in the fishery. Pursu-
6 ant to such review, the committee shall rec-
7 ommend any changes to a system necessary to
8 ensure it meets those requirements and stand-
9 ards of improvement.

10 “(E) REVIEW OF FISHING QUOTA HOLD-
11 ERS.—(i) The review committee shall review
12 compliance of fishing quota holders under a
13 fishing quota system with the system and this
14 Act at least once every 7 years, and may rec-
15 ommend that a quota share be limited, reduced,
16 or revoked if the shareholder is not meeting
17 such requirements.

18 “(ii) Reduced and revoked quota shares
19 shall be reallocated through a mechanism ap-
20 proved by the Council. In the case of any such
21 reallocation, preference shall be given to those
22 quota shareholders that the review committee
23 determines are providing additional and sub-
24 stantial conservation benefits to the fishery, or
25 to new entrants in a fishing gear type or vessel

1 category that, as a group, are providing addi-
2 tional and substantial conservation benefits to
3 the fishery.

4 “(iii) Any recommendation for limitation,
5 reduction, revocation, or reallocation of quota
6 share is subject to appeal under the process es-
7 tablished under paragraph (1)(F).

8 “(F) REPORTS.—The Council shall trans-
9 mit to the Congress a report containing the re-
10 sults of each fishing quota system review within
11 90 days after the review is completed.

12 “(6) SECRETARIAL REVIEW PANEL.—

13 “(A) IN GENERAL.—Not later than 6
14 months after the date of the enactment of the
15 Fishing Quota Standards Act of 2003, the Sec-
16 retary shall establish a review panel—

17 “(i) to conduct reviews of fishing
18 quota systems to determine whether such
19 systems are meeting the requirements of
20 this subsection;

21 “(ii) to provide the appropriate Coun-
22 cil with recommendations on whether a
23 fishing quota system should be renewed if
24 it is meeting or exceeding the requirements
25 of this Act, including, if applicable, the re-

1 requirement under paragraph (1)(A) to pro-
2 vide additional and substantial conserva-
3 tion benefits, and if not, what modifica-
4 tions must be made to the system in order
5 for it to be renewed; and

6 “(iii) to develop standards for the re-
7 view of fishing quota shareholders by fish-
8 ing quota review committees established
9 under paragraph (5) by Councils.

10 “(B) MEMBERSHIP.—The review panel
11 shall consist of—

12 “(i) the Secretary or a designee of the
13 Secretary;

14 “(ii) the Commandant of the Coast
15 Guard or a designee of the Commandant;

16 “(iii) a representative of each Council,
17 selected by the Council from among its
18 members; and

19 “(iv) 5 individuals with knowledge and
20 experience in fisheries management.

21 “(C) VOTING.—(i) A member of the review
22 panel that is a representative of a Council shall
23 not vote on any decision pertaining to a fishing
24 quota system for a fishery that is under the ju-
25 risdiction of the Council.

1 “(ii) A member of the review panel shall
2 not vote on a decision pertaining to any fishing
3 quota system under which the member holds a
4 quota share or will hold a quota share in the
5 subsequent 5-year period.

6 “(D) RECOMMENDATIONS.—Within 6
7 months after the date of its establishment, the
8 review panel shall also, based on an evaluation
9 of the fishing quota systems that were estab-
10 lished prior to June 1, 1995, submit rec-
11 ommendations to the Secretary for the develop-
12 ment of the regulations required under section
13 304(i). The review panel shall pay particular at-
14 tention to—

15 “(i) the success of the systems in con-
16 serving and managing fisheries;

17 “(ii) the costs of implementing and
18 enforcing the systems;

19 “(iii) the economic effects of the sys-
20 tems on local communities; and

21 “(iv) the methods used to establish or
22 allocate quota shares.”; and

23 (D) by adding at the end the following:

24 “(10) DEFINITIONS.—For the purposes of this
25 subsection—

1 “(A) the term ‘additional and substantial
2 conservation benefits to the fishery’—

3 “(i) means scientifically measurable
4 benefits to the fishery at the time of estab-
5 lishment of the system, that substan-
6 tially—

7 “(I) avoid bycatch and minimize
8 the mortality of unavoidable bycatch;

9 “(II) prevent highgrading;

10 “(III) reduce overfishing (includ-
11 ing localized depletions) and rebuild
12 overfished stocks; and

13 “(IV) protect essential fish habi-
14 tat; or

15 “(ii) if it is not possible to directly
16 measure conservation benefits, means ac-
17 tions taken by a fishing quota shareholder
18 that are considered necessary to provide
19 such benefits;

20 “(B) the term ‘excessive share’ means
21 more than 1 percent of the total allowable catch
22 in a fishery, except that a Council may increase
23 such percentage—

24 “(i) to no more than 5 percent, if the
25 Council can demonstrate that such an in-

crease will not be detrimental to other individual fishing quota shareholders in the program; or

“(ii) to no more than 15 percent, if there are 20 or fewer participants in the fishery and the Council can demonstrate that such an increase will not be detrimental to other individual quota shareholders in the program; and

“(C) the term ‘fair and equitable allocation’ means initial or subsequent allocation of fishing quota shares based on multiple criteria that provide consideration for—

“(i) conservation performance, including the use of selective fishing practices that have minimal bycatch, prevent highgrading, and have minimal adverse impacts on essential fish habitat;

“(ii) owner-operators of fishing vessels; and

“(iii) long-term participation in the fishery.”.

(b) ACTION ON LIMITED ACCESS SYSTEMS.—Section 304 of such Act (16 U.S.C. 1854) is amended by striking

1 subsection (d)(2)(B), and by adding at the end the fol-
2 lowing:

3 “(i) ACTION ON LIMITED ACCESS SYSTEMS.—In ad-
4 dition to the other requirements of this Act, the Secretary
5 may not approve a fishery management plan that estab-
6 lishes a limited access system that provides for the alloca-
7 tion of fishing quotas (in this subsection referred to as
8 a ‘fishing quota system’) unless the plan complies with
9 section 303(d). Within 1 year after receipt of rec-
10 ommendations from the review panel established under
11 section 303(d)(6), the Secretary shall issue regulations
12 that establish requirements for establishing a fishing
13 quota system. The regulations shall be developed in ac-
14 cordance with the recommendations of the review panel.
15 The regulations shall—

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

19 “(2) ensure that any fishing quota system is
20 consistent with the requirements of section 303(d),
21 and require the collection of fees in accordance with
22 subsection (d)(1) of this section;

23 “(3) provide for appropriate penalties for viola-
24 tions of regulations governing fishing quota systems,

1 including the revocation of quota shares for such
2 violations; and

3 “(4) establish a central lien registry system for
4 the identification, perfection, and determination of
5 lien priorities, and nonjudicial foreclosure of encum-
6 brances, on fishing quotas.”.

7 (c) DEFINITIONS.—Section 3 of such Act (16 U.S.C.
8 1802) is amended by adding at the end the following:

9 “(48) The term ‘fishing quota system’ means
10 any system that requires a user to acquire a Federal
11 permit, which specifies by a unit or units a percent-
12 age of the total allowable catch of a fishery that may
13 be received or held for exclusive use by a person or
14 a definable group of persons, to harvest fish in a
15 fishery, during each fishing season for which the
16 permission is granted, including area or community
17 quotas, sector quotas, fishing cooperatives, and fish-
18 ing quota programs.

19 “(49) The term ‘quota share’ means a Federal
20 permit under a fishing quota system to harvest a
21 quantity of fish, expressed by a unit or units rep-
22 resenting a percentage of the total allowable catch of
23 a fishery that may be received or held for exclusive
24 use by a person or a definable group of persons, dur-

1 ing each fishing season for which the permission is
2 granted.”.

3 (d) FEES.—Section 304(d) of such Act (16 U.S.C.
4 1854(d)) is amended—

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

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

9 “(3)(A) Notwithstanding paragraph (1), the
10 Secretary shall collect from a person that holds or
11 transfers a quota share issued under section
12 303(d)(2) fees established by the Secretary in ac-
13 cordance with this section and section 9701(b) of
14 title 31, United States Code.

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

18 “(i) With respect to any initial allocation
19 under a limited access system established after
20 the date of the enactment of the Fishing Quota
21 Standards Act of 2003, an initial allocation fee
22 that shall be collected from the person to whom
23 the quota share is first issued.

24 “(ii) An annual fee that shall be collected
25 from the holder of the quota share, and that is

1 a percentage of the ex-vessel value of fish land-
2 ed in one year under the quota share.

3 “(iii) A transfer fee that shall be collected
4 from a person who transfers the quota share to
5 another person.

6 “(C) In determining the amount of a fee under
7 subparagraph (B), the Secretary shall ensure that
8 the total amount collected from all quota share-
9 holders in the fishery is sufficient to recover direct
10 costs related to administering and implementing the
11 program, including enforcement, management, data
12 collection (including adequate observer coverage),
13 and scientific research, and to recover a fair re-
14 source rent.

15 “(D) The Secretary, in consultation with the
16 Councils, shall promulgate regulations prescribing
17 the method of determining under this paragraph the
18 ex-vessel value of fish authorized under a quota
19 share, the amount of fees, and the method of col-
20 lecting fees.

21 “(E) Fees collected under subparagraph (B)(ii)
22 from holders of quota shares in a fishery shall be an
23 offsetting collection and shall be available to the Sec-
24 retary only for the purposes of administering and
25 implementing this Act with respect to that fishery.”.

1 (e) CONFORMING AMENDMENTS.—

2 (1) The following provisions of the Magnuson-
3 Stevens Fishery Conservation and Management Act
4 are each amended by striking “individual fishing
5 quota” each place it appears and inserting “quota
6 share”:

7 (A) Section 303(d)(7), as redesignated by
8 subsection (a)(2) of this section.

9 (B) Section 304(c)(3) (16 U.S.C.
10 211854(c)(3)).

11 (C) Section 402(b)(1)(D) (16 U.S.C.
12 1881a(b)(1)(D)).

13 (D) Section 407(a)(1)(D), (c)(1), and
14 (c)(2)(B) (16 U.S.C. 1883(a)(1)(D), (c)(1), and
15 (c)(2)(B)).

16 (2) Section 305(h)(1) of such Act (16 U.S.C.
17 1855(h)(1)) is amended by striking “individual”.

○