S. 1106

To establish National Standards for Fishing Quota Systems.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2003

Ms. SNOWE (for herself and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish National Standards 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 Act of
5 2003”.
6 SEC. 2. FISHING QUOTA SYSTEMS.
7 (a) IN GENERAL.—Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (16
8 U.S.C. 1853) is amended—
9 (1) by striking subsection (b)(6) and inserting
10 the following:
“(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) the conservation requirements of this Act with respect to the fishery;

“(B) present participation in the fishery;

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

“(D) the economies of the fishery;

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

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

“(G) the fair and equitable distribution of a public resource; and

“(H) any other relevant considerations.”;

(2) by striking subsection (d) and inserting the following:

“(d) FISHING QUOTA SYSTEMS.—

“(1) ESTABLISHMENT.—Any fishery management plan or amendment that is prepared by any Council, or by the Secretary, with respect to any
fishery, may establish a fishing quota system consis-
tent with the provisions of subsection (b)(6).

“(2) IN GENERAL.—The Councils and Secretary
shall ensure that any such fishing quota system sub-
mitted and approved after September 30, 2002,
complies with the requirements of this Act and—

“(A) shall prevent any person from acquir-
ing an excessive share of the fishing quotas
issued, as appropriate for the fishery, and es-
establish any other limits or measures necessary
to prevent inequitable concentration of quota
share;

“(B) shall provide for the fair and equi-
table initial allocation of quota share and in
such allocation—

“(i) shall take into account present
and historic participation in the fishery;

“(ii) shall consider allocating a por-
tion of the annual harvest to entry-level
fishermen, small vessel owners, skippers,
crew members, and fishing communities;
and

“(iii) may allocate shares among cat-
egories of vessels or gear types;
“(C) shall contain provisions for the regular review and evaluation of the system, including timetables and criteria for evaluating performance, and actions to be taken for failure to meet the criteria;

“(D) shall contain criteria that would govern limitation, revocation, renewal, reallocation, or reissuance of fishing quota, including:

“(i) reallocation or reissuance of quota revoked pursuant to section 308 of this Act;

“(ii) revocation and reissuance of fishing quota if the owner of the quota cease to substantially participate in the fishery; and

“(iii) exceptions to revocation or limitation in cases of death, disablement, undue hardship, or in any case in which fishing is prohibited by the Secretary;

“(E) shall provide a process for appeals of decisions on—

“(i) eligibility of a person to receive or bid for an allocation of quota shares; and

“(ii) limitations, restrictions and revocations of quota held by a person;
“(F) shall promote management measures to improve the conservation and management of the fishery, including reduction of bycatch;

“(G) shall provide for effective enforcement, monitoring, management of such system, including adequate data collection and use of observers at least at a level of coverage that should yield statistically significant results;

“(H) may provide for the sale, lease or transfer of quota shares and limitations thereto;

“(I) shall provide a mechanism, such as fees as authorized by section 304(d)(2), including fees payable on quota transfers to recover costs related to administering and implementing the program, including enforcement, management and data collection (including adequate observer coverage), if the assessment of such fees is proportional to the amount of quota held and fished by each quota holder and if such fees are used only for that fishing quota system;

“(J) shall consider the use of community or area-based approaches and strategies in developing fishing quota systems and consider other management measures, including meas-
ures to facilitate formation of fishery cooperative arrangements, taking into account proximity to and dependence on the resource, contribution of fishing to the social and economic status of the community, and historic participation in the fishery; and

"(K) shall include procedures and requirements necessary to carry out subparagraphs (A) through (J).

"(3) NO CREATION OF RIGHT, TITLE, OR INTEREST.—A fishing quota or other limited access system authorization—

"(A) shall be considered a permit for the purposes of sections 307, 308, and 309;

"(B) may be revoked or limited at any time in accordance with this Act, including for failure to comply with the terms of the plan or if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

"(C) shall not confer any right of compensation to the holder of such fishing quota or other such limited access system authorization if it is revoked or limited;
“(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested; and

“(E) shall be considered a grant of permission to the holder of the fishing quota to engage in activities permitted by the fishing quota system.

“(4) ELIGIBILITY.—Persons eligible to hold fishing quota shares are persons who are United States citizens, or who are United States nationals or permanent resident aliens qualified by Federal law to participate in the fishery.

“(5) DURATION.—Any fishing quota system established under this section after the date of enactment of the Fishing Quota Act of 2003 shall expire at the end of a 10-year period beginning on the date the system is established, or at the end of successive 10 year periods thereafter, unless extended by a fishery management plan amendment in accordance with this Act, for successive periods not to exceed 10 years.

“(6) REFERENDUM PROCEDURES.—

“(A) Except as provided in subparagraph (C) for the Gulf of Mexico commercial red snapper fishery, a Council may not submit, and
the Secretary not approve or implement a fish-
ery management plan or amendment that cre-
ates a fishing quota system, including a secre-
tarial plan, unless such a system, as ultimately
developed, has been approved by more than
two-thirds of those voting in a referendum
among eligible permit holders. If a fishing
quota system fails to be approved by the req-
uisite number of those voting, it may be revised
and submitted for approval in a subsequent ref-
erendum.

“(B) The Secretary shall conduct the ref-
erendum referred to in this paragraph, includ-
ing notifying all persons eligible to participate
in the referendum and making available to
them information concerning the schedule, pro-
cedures and eligibility requirements for the ref-
erendum process and the proposed fishing
quota system. The Secretary shall within one
year of enactment of the Fishing Quota Act of
2003 publish guidelines and procedures to de-
termine procedures and voting eligibility re-
quirements for referenda and to conduct such
referenda in a fair and equitable manner.
“(C) The provisions of section 407(c) shall apply in lieu of this paragraph for any fishing quota system for the Gulf of Mexico commercial red snapper fishery.

“(D) Chapter 35 of title 44, United States Code, (commonly known as the “Paperwork Reduction Act”) does not apply to the referenda conducted under this paragraph.

“(7)(A) No provision of law shall be construed to limit the authority of a Council to submit, or the Secretary to approve, the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an fishing quota system.

“(B) This subsection shall not apply to, or be construed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the North Pacific halibut and sablefish, South Atlantic wreckfish, or Mid-Atlantic surfclam and oceane (including mahogany) quahog individual fishing quota programs.

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

“(i) purchase of fishing quotas in that fishery by fishermen who fish from small vessels; and

“(ii) first-time purchase of fishing quotas in that fishery by entry level fishermen.

“(B) A Council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.”.

(b) INDEPENDENT REVIEW.—Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853) is further amended by adding at the end the following:

“(e)(1) Within 5 years after the date of enactment of the Fishing Quota Act of 2003, and every 5 years thereafter, the National Research Council shall provide an inde-
dependent review of the effectiveness of fishing quota systems conducted in Federal fisheries.

"(2) The review shall be conducted by an independent panel of individuals who have knowledge and experience in fisheries conservation and management, in the implementation of fishing quota systems, or in the social or economic characteristics of fisheries. The National Research Council shall ensure that members of the panel are qualified for appointment, are not active quota share holders, and provide fair representation to interests affected by such programs.

"(3) The independent review of fishing quota systems shall include—

"(A) a determination of how fishing quota systems affect fisheries management and contribute to improved management, conservation (including by-catch reduction) and safety in the fishery;

"(B) formal input in the form of testimony from quota holders relative to the effectiveness of the fishing quota system;

"(C) an evaluation of the social, economic and biological consequences of the quota system, including the economic effects of the system on fishing communities;
“(D) an evaluation of the costs of implementing, monitoring and enforcing the systems and the methods used to establish or allocate individual quota shares; and

“(E) recommendations to the Councils and the Secretary to ensure that quota systems meet the requirements of this Act and the goals of the plans, and recommendations to the Secretary for any changes to regulations issued under section 304(i).

“(4) The Secretary shall submit the report to the Congress and any appropriate Councils within 60 days after the review is completed.”.

(c) ACTION ON LIMITED ACCESS SYSTEMS.—Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1854) is amended by adding at the end the following:

“(i) ACTION ON LIMITED ACCESS SYSTEMS.—Within 1 year after the date of enactment of the Fishing Quota Act of 2003, the Secretary shall issue regulations which establish requirements for establishing a fishing quota system. Nothing in this paragraph prohibits a Council or the Secretary from initiating development of a fishing quota system consistent with the provisions of this Act pending publication of the final regulations.”.
(d) DEFINITIONS.—Section 3 of the Magnuson-Stevens Fishery Management and Conservation Act (16 U.S.C. 1802) is amended by—

(1) adding at the end the following:

"(46) The term ‘United States Citizen’ means an individual who is a citizen of the United States or a corporation, partnership, association, or other entity that qualifies to document a fishing vessel as a vessel of the United States under chapter 121 of title 46, United States Code.”; and

(2) striking “‘individual fishing quota’ ” in paragraph (21) and inserting “‘fishing quota system’ ”.

(e) CONFORMING AMENDMENTS.—

(1) The following provisions of that Act are amended by striking “individual fishing quota” and inserting “fishing quota”:

(A) Section 304(e)(3) (16 U.S.C.1854(e)(3)).


(C) Section 402(b)(1)(D) (16 U.S.C. 1881a(b)(1)(D)).
(D) Section 407(a)(1)(D), (e)(1), and (e)(2)(B) (16 U.S.C. 1883(a)(1)(D), (e)(1), and (e)(2)(B)).

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

SEC. 3. GULF OF MEXICO FISHING QUOTA SYSTEMS.

Section 407(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1883) is amended by adding at the end the following:

“(3) The initial referendum described in paragraph (1) shall be used to determine support for whether the sale, transfer, or lease of quota shares shall be allowed.”.