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. PARR, 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”.


SEC. 2. AMENDMENTS TO MAGNUSON-STEVEN'S FISHERY

CONSERVATION AND MANAGEMENT ACT.

(a) In General.—Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853) is amended—

(1) by striking subsection (b)(6) and inserting 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) the present and historic participation in the fishery;

“(C) the economics of the fishery;

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

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

“(F) any other relevant considerations.”;

and

(2) in subsection (d)—

(A) by striking paragraph (5);
(B) by redesignating paragraphs (2) through (4) as paragraphs (7) through (9);

(C) by striking so much as precedes paragraph (7), as so redesignated, and inserting the following:

“(d) FISHING QUOTA SYSTEMS.—

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

“(A) include management measures designed to ensure the sustainability of the fishery and provide additional and substantial conservation benefits to the fishery;

“(B) be effective for a period of a fixed duration, not to exceed 7 years;

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

“(D) establish procedures—

“(i) for the Council having authority over the fishery, or the Secretary in the case of a fishery management plan developed by the Secretary, to review the quota
system at least 1 year prior to the end of 
the effective period of the plan; and 

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

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

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

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

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

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

“(H) ensure adequate enforcement, man-
agement, and data collection, including the use 
of observers where appropriate at a level of cov-
verage that yields statistically significant results; and

"(I) not require that quota shares be held by a person engaged in personal-use fishing, including any recreational or subsistence fishing, if the fishery management plan designates a separate portion of the total allowable catch for personal-use fishing.

"(2) ALLOCATION OF QUOTA SHARES.—

"(A) IN GENERAL.—The Council having authority over the fishery shall make a fair and equitable allocation of all, or only a portion, of the total allowable catch limit as quota shares among existing categories of vessels and among fishing gear types or other appropriate qualifiers. In allocating quota shares for a fishery, the Council shall—

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

"(ii) ensure that each quota share is held only by persons who—

"(I) except for allocations under clause (iii), hold a permit to fish in the fishery; and
“(II) are natural persons of the United States or permanent resident aliens qualified by Federal or State law to participate in the fishery;

“(iii) establish procedures for allocating a portion of the annual harvest to allow new entrants into the fishery;

“(iv) prevent any person from controlling an excessive share of fishing quotas issued for the fishery and establish any other limits or measures necessary to prevent inequitable concentration of quota shares and to prevent significant impacts on any person that holds a permit authorizing fishing in the fishery or the fishing community; and

“(v) create incentives in successive allocations for fishermen who increase their gear selectivity and protection of essential fish habitat by increasing the allocation for those fishermen.

“(B) TRANSFER TO FAMILY MEMBERS.—

(i) The Secretary may allow the transfer of a quota share allocated under subparagraph (A), on a case-by-case basis, without regard to sub-
paragraph (A)(ii)(I), from the holder of the quota share to a member of the holder’s immediate family, due to death or disablement of the holder.

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

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

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

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

“(i) the Council that has authority over the fishery for which the system is es-
tablished, through a fishery management plan or amendment;

“(ii) the Secretary, pursuant to section 304(h);

“(iii) the Secretary, in the case of any fishing quota system established by a fishery management plan developed or approved by the Secretary; or

“(iv) the Secretary, if the Secretarial Review Panel finds that the system is not meeting or exceeding the requirements of this Act, including, if applicable, the requirement under paragraph (1)(A) to provide additional and substantial conservation benefits, and the Council or Secretary does not make the changes recommended by the Secretarial Review Panel to ensure compliance with this subsection.

This subparagraph does not diminish the authority of the Secretary under any other provision of this Act.

“(B) TERMINATION OR LIMITATION OF QUOTA SHARES.—A quota share issued under a fishing quota system established by a fishery management plan—
“(i) shall expire not later than 7 years after the date it is issued;

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

“(iii) shall be revoked, limited, or reallocated in accordance with the terms of the plan and regulations issued by the Secretary or the Council having authority over the fishery for which it is issued, if, based on a review by the committee established under paragraph (5), the quota shareholder is not meeting or exceeding the requirements of this Act or the conservation and management requirements of the fishery (including as a result of a violation of this Act or any regulation prescribed under this Act).

“(4) REFERENDUM PROCEDURE.—

“(A) IN GENERAL.—(i) A Council may submit a fishery management plan or plan amendment that establishes a fishing quota system only if the development and submission of such plan or plan amendment is approved in
referenda conducted in accordance with this paragraph.

"(ii) The Secretary, in the case of a fishery management plan developed by the Secretary, may develop and approve a fishery management plan or plan amendment that establishes a fishing quota system only if the development and approval of such plan or plan amendment is approved in referenda conducted in accordance with this paragraph.

"(B) CONDUCT.—The Secretary shall conduct the referenda required under subparagraph (A). The Secretary shall develop guidelines to determine procedures for the referenda to conduct such referenda in a fair and equitable manner. Prior to the referenda, the Secretary shall identify and notify all persons who are eligible to vote in the referenda and make available to all such persons information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed fishing quota system.

"(C) REQUIRED VOTE.—Each referendum shall be decided by the affirmative vote of a two-thirds majority of the votes cast by the per-
sons who the Secretary determines are eligible to vote in the referendum.

“(D) INITIAL REFERENDUM.—The Secretary shall conduct an initial referendum to determine support for proceeding with the development of a fishing quota system. Eligible voters shall be all persons who hold a permit to fish in the fishery subject to the proposed quota system.

“(E) SECOND REFERENDUM.—The Secretary shall conduct a second referendum to determine support for submitting a specific proposed fishing quota system for approval and implementation. Eligible voters shall be all persons who hold a permit to fish in the fishery or crew members who derive at least 75 percent of their income from the fishery subject to the proposed fishing quota system.

“(5) COUNCIL PROGRAM REVIEW COMMITTEE.—

“(A) IN GENERAL.—Each Council, upon deciding to develop a fishing quota program for a fishery, shall establish, maintain, and appoint members of a review committee to make recommendations for development, evaluation, and
necessary changes to such programs to ensure that they meet the requirements of this subsection.

“(B) GUIDELINES FOR MEMBERS.—The Council, in consultation with the Secretary, shall develop guidelines that will ensure that committee members are qualified for appointment and are subject to conflict of interest rules. A member shall not vote on any decision pertaining to a fishing quota system under which the member holds a quota share or will hold a quota share in the subsequent 5-year period.

“(C) APPOINTMENTS.—The members of a review committee established by a Council under subparagraph (A) shall be made by the Council in such a manner as to provide fair representation to all groups affected by such programs, including, but not limited to, commercial, recreational, and subsistence fishing interests, fishing communities, scientists, and public interest groups including conservation organizations.

“(D) REVIEWS AND RECOMMENDATIONS REGARDING SYSTEMS.—Each review committee
shall, every 7 years, review fishing quota systems, determine whether such systems meet the requirements of this Act, and evaluate whether each such system has improved management, conservation, and safety in the fishery. Pursuant to such review, the committee shall recommend any changes to a system necessary to ensure it meets those requirements and standards of improvement.

"(E) REVIEW OF FISHING QUOTA HOLDERS.—(i) The review committee shall review compliance of fishing quota holders under a fishing quota system with the system and this Act at least once every 7 years, and may recommend that a quota share be limited, reduced, or revoked if the shareholder is not meeting such requirements.

"(ii) Reduced and revoked quota shares shall be reallocated through a mechanism approved by the Council. In the case of any such reallocation, preference shall be given to those quota shareholders that the review committee determines are providing additional and substantial conservation benefits to the fishery, or to new entrants in a fishing gear type or vessel
category that, as a group, are providing additional and substantial conservation benefits to the fishery.

“(iii) Any recommendation for limitation, reduction, revocation, or reallocation of quota share is subject to appeal under the process established under paragraph (1)(F).

“(F) REPORTS.—The Council shall transmit to the Congress a report containing the results of each fishing quota system review within 90 days after the review is completed.

“(6) SECRETARIAL REVIEW PANEL.—

“(A) IN GENERAL.—Not later than 6 months after the date of the enactment of the Fishing Quota Standards Act of 2003, the Secretary shall establish a review panel—

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

“(ii) to provide the appropriate Council with recommendations on whether a fishing quota system should be renewed if it is meeting or exceeding the requirements of this Act, including, if applicable, the re-
quirement under paragraph (1)(A) to provide additional and substantial conservation benefits, and if not, what modifications must be made to the system in order for it to be renewed; and

"(iii) to develop standards for the review of fishing quota shareholders by fishing quota review committees established under paragraph (5) by Councils.

"(B) MEMBERSHIP.—The review panel shall consist of—

"(i) the Secretary or a designee of the Secretary;

"(ii) the Commandant of the Coast Guard or a designee of the Commandant;

"(iii) a representative of each Council, selected by the Council from among its members; and

"(iv) 5 individuals with knowledge and experience in fisheries management.

"(C) VOTING.—(i) A member of the review panel that is a representative of a Council shall not vote on any decision pertaining to a fishing quota system for a fishery that is under the jurisdiction of the Council.
“(ii) A member of the review panel shall not vote on a decision pertaining to any fishing quota system under which the member holds a quota share or will hold a quota share in the subsequent 5-year period.

“(D) RECOMMENDATIONS.—Within 6 months after the date of its establishment, the review panel shall also, based on an evaluation of the fishing quota systems that were established prior to June 1, 1995, submit recommendations to the Secretary for the development of the regulations required under section 304(i). The review panel shall pay particular attention to—

“(i) the success of the systems in conserving and managing fisheries;

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

“(iii) the economic effects of the systems on local communities; and

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

(D) by adding at the end the following:

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

•HR 2621 IH
"(A) the term ‘additional and substantial conservation benefits to the fishery’—

"(i) means scientifically measurable benefits to the fishery at the time of establishment of the system, that substantially—

"(I) avoid bycatch and minimize the mortality of unavoidable bycatch;

"(II) prevent highgrading;

"(III) reduce overfishing (including localized depletions) and rebuild overfished stocks; and

"(IV) protect essential fish habitat; or

"(ii) if it is not possible to directly measure conservation benefits, means actions taken by a fishing quota shareholder that are considered necessary to provide such benefits;

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

"(i) to no more than 5 percent, if the 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
subsection (d)(2)(B), and by adding at the end the fol-
lowing:

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

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

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

“(3) provide for appropriate penalties for viola-
tions of regulations governing fishing quota systems,
including the revocation of quota shares for such
violations; and

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

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

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

“(49) The term ‘quota share’ means a Federal
permit under a fishing quota system to harvest a
quantity of fish, expressed by a unit or units rep-
resenting a percentage of the total allowable catch of
a fishery that may be received or held for exclusive
use by a person or a definable group of persons, dur-
ing each fishing season for which the permission is
granted.”.

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

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

(2) by adding at the end the following:

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

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

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

“(ii) An annual fee that shall be collected
from the holder of the quota share, and that is
a percentage of the ex-vessel value of fish landed in one year under the quota share.

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

“(C) In determining the amount of a fee under subparagraph (B), the Secretary shall ensure that the total amount collected from all quota shareholders in the fishery is sufficient to recover direct costs related to administering and implementing the program, including enforcement, management, data collection (including adequate observer coverage), and scientific research, and to recover a fair resource rent.

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

“(E) Fees collected under subparagraph (B)(ii) from holders of quota shares in a fishery shall be an offsetting collection and shall be available to the Secretary only for the purposes of administering and implementing this Act with respect to that fishery.”.
(e) CONFORMING AMENDMENTS.—

(1) The following provisions of the Magnuson-Stevens Fishery Conservation and Management Act are each amended by striking "individual fishing quota" each place it appears and inserting "quota share":

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

(B) Section 304(c)(3) (16 U.S.C. 211854(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) of such Act (16 U.S.C. 1855(h)(1)) is amended by striking "individual".