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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the
“Fishery Conservation and Management Amendments Act
of 2004”.

(b) Table of Contents.—The table of contents for
this Act is as follows:
Sec. 1. Short title.
Sec. 2. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.
Sec. 3. Definitions.
Sec. 4. Authorization of appropriations.
Sec. 5. Treaty on Pacific Coast albacore tuna.
Sec. 6. Monitoring of Pacific insular area fisheries.
Sec. 7. Caribbean Council jurisdiction.
Sec. 8. Notice of council meetings.
Sec. 9. Fishery management plan requirements.
Sec. 10. Submission of economic data.
Sec. 11. Individual fishing quotas.
Sec. 12. Gulf of Mexico fishing quota systems.
Sec. 13. Action by the secretary.
Sec. 14. Rebuilding depleted fisheries.
Sec. 15. Steaming time.
Sec. 16. Emergency regulations.
Sec. 17. Fishing capacity reduction program.
Sec. 18. Collection of information.
Sec. 19. Access to certain information.
Sec. 20. Maine pocket waters.
Sec. 21. Western Pacific fishery demonstration projects.
Sec. 22. Cooperative research and management.
Sec. 23. Independent peer review of data collection procedures.
Sec. 24. Advisory committee reform and peer review.
Sec. 25. Cumulative impacts.
Sec. 26. Essential fish habitat.
Sec. 27. Cooperative enforcement agreements.
Sec. 28. Scientific and statistical committees report on ecosystem research priorities; pilot program for fishery ecosystem plans.

SEC. 2. AMENDMENT OF MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).
SEC. 3. DEFINITIONS.

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

(1) by inserting after paragraph (8), the following:

“(8A) The term ‘depleted’ when used with respect to a stock of fish, means that the stock is of a size that is below the natural range of fluctuation associated with the production of maximum sustainable yield.”;

(2) by inserting after paragraph (18) the following:

“(18A) The term ‘habitat area of particular concern’ means those waters and submerged substrate that form a discrete vulnerable subunit of essential fish habitat that is required for a stock to sustain itself and which is designated through a specified set of national criteria which includes, at a minimum, a requirement that designation be based on the best scientific information available regarding habitat-specific density of that fish stock, growth, reproduction, and survival rates of that stock within the designated area.”;

(3) by inserting “and” after the semicolon in paragraph (28)(A);
(4) by striking “factor; and” in paragraph (28)(B) and inserting “factor.”;
(5) by striking subparagraph (C) of paragraph (28); and
(6) by striking paragraph (29) and inserting the following:
“(29) The term ‘overfishing’ means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.”.

(b) CONFORMING AMENDMENTS.—
(1) The Act is amended by striking “overfished” each place it appears and inserting “depleted”.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.
Section 4 (16 U.S.C. 1803) is amended to read as follows:
“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.
“There are authorized to be appropriated to the Secretary for the purposes of carrying out this Act—
“(1) $400,000,000 for fiscal year 2004;
“(2) $415,000,000 for fiscal year 2005;
“(3) $430,000,000 for fiscal year 2006;
“(4) $445,000,000 for fiscal year 2007; and
“(5) $460,000,000 for fiscal year 2008.”.
SEC. 5. TREATY ON PACIFIC COAST ALBACORE TUNA.

(a) FOREIGN FISHING UNDER TREATY; IMPLEMENTATION.—Section 202(e) (16 U.S.C. 1822(e)) is amended by adding at the end the following:

“(6) TREATY ON PACIFIC COAST ALBACORE TUNA VESSELS.—

“(A) Notwithstanding section 201, foreign fishing may be conducted pursuant to the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington May 26, 1981, including its Annexes and any amendments thereto.

“(B) The Secretary of Commerce, with the concurrence of the Secretary of State, may promulgate regulations necessary to discharge the obligations of the United States of America under the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington May 26, 1981, including its Annexes and any amendments thereto.”.

(b) CONFORMING AMENDMENTS.—
(1) Paragraph (1) of section 201(a)(1) (16 U.S.C. 1821(a)) is amended by striking “or (e)” and inserting “or (e), section 202(e)(6),”.

(2) Section 204(a) (16 U.S.C. 1824 (a)) is amended by striking “vessel.” and inserting “vessel or the fishing is authorized under section 202(e)(6).”.

(3) Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is amended by striking “section 201(i),” and inserting “section 201(i) and foreign fishing permitted under section 202(e)(6),”.

SEC. 6. MONITORING OF PACIFIC INSULAR AREA FISHERIES.

(a) WAIVER AUTHORITY.—Section 201(h)(2)(B) (16 U.S.C. 1821(h)(2)(B)) is amended by striking “that is at least equal in effectiveness to the program established by the Secretary;” and inserting “or other monitoring program that the Secretary determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement;”.

(b) MARINE CONSERVATION PLANS.—Section 204(e)(4)(A)(i) (16 U.S.C. 1824(e)(4)(A)(i)) is amended to read as follows:

“(i) Pacific Insular Area observer programs, or other monitoring programs, that the Secretary deter-
mines are adequate to monitor the harvest, bycatch, and compliance with the laws of the United States by foreign fishing vessels that fish under Pacific Insular Area fishing agreements;’’.

SEC. 7. CARIBBEAN COUNCIL JURISDICTION.

Section 302(a)(1)(D) (16 U.S.C. 1852(a)(1)(D)) is amended by inserting ‘‘and of commonwealths, territories, and possessions of the United States in the Caribbean Sea’’ after ‘‘seaward of such States’’.

SEC. 8. NOTICE OF COUNCIL MEETINGS.

(a) REGULAR AND EMERGENCY MEETINGS.—The first sentence of section 302(i)(2)(C) (16 U.S.C. 1852(i)(2)(C)) is amended to read as follows: ‘‘Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting shall be provided by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery).’’

(b) CLOSED MEETINGS.—Section 302(i)(3)(B) (16 U.S.C. 1852(i)(3)(B)) is amended by striking ‘‘notify local newspapers’’ and inserting ‘‘provide notice by any means that will result in wide publicity’’.
SEC. 9. FISHERY MANAGEMENT PLAN REQUIREMENTS.

Section 303(a)(5) (16 U.S.C. 1853(a)(5)) is amended by inserting “harvest and processing revenues (by species), production costs, capital expenditures, and other fishing or processing expenses”, after “number of hauls,”.

SEC. 10. SUBMISSION OF ECONOMIC DATA.

Section 303(b)(7) (16 U.S.C. 1853(b)(7)) is amended by striking “(other than economic data)”.

SEC. 11. INDIVIDUAL FISHING QUOTAS

(a) IN GENERAL.—Section 303 (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) present participation in the fishery;

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

“(D) the economics 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 consistent with the provisions of subsection (b)(6).

“(2) IN GENERAL.—The Councils and Secretary shall ensure that any such fishing quota system submitted and approved after September 30, 2004, complies with the requirements of this section and—

“(A) shall prevent any person from acquiring an excessive share of the fishing quotas issued, as appropriate for the fishery, and establish any other limits or measures necessary to prevent inequitable concentration of quota share;
“(B) shall provide for the fair and equitable 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 portion of the annual harvest to entry-level fishermen, small vessel owners, skippers, crew members, and fishing communities; and

“(iii) may allocate shares among categories 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, manage-
ment 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 sys-
tem;

“(J) shall consider the use of community
or area-based approaches and strategies in de-
veloping fishing quota systems and consider
other management measures, including meas-
ures to facilitate formation of fishery coopera-
tive arrangements, taking into account prox-
imity to and dependence on the resource, con-
tribution of fishing to the social and economic
status of the community, and historic participa-
tion in the fishery; and

“(K) shall include procedures and require-
ments necessary to carry out subparagraphs
(A) through (J).

“(3) NO CREATION OF RIGHT, TITLE, OR IN-
TEREST.—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 Fishery Conservation and Management Amendments Act of 2004 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 fishery management plan or amendment that creates a fishing quota system, including a secretarial 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 requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.
“(B) The Secretary shall conduct the referendum referred to in this paragraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures and eligibility requirements for the referendum process and the proposed fishing quota system. The Secretary shall within one year of enactment of the Fishing Quota Act of 2003 publish guidelines and procedures to determine procedures and voting eligibility requirements 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 ac-
cess system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including a 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 surf clam and ocean (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, con-
sistent with the provisions of this Act, that a fisher-
man must meet to qualify for guarantees under
clauses (i) and (ii) of subparagraph (A) and the por-
tion of funds to be allocated for guarantees under
each clause.”.

(b) INDEPENDENT REVIEW.—Section 303 (16 U.S.C.
1853) is further amended by adding at the end the fol-
lowing:

“(e) INDEPENDENT REVIEW OF EFFECTIVENESS.—

“(1) Within 5 years after the date of enactment
of the Fishery Conservation and Management
Amendments Act of 2004, and every 5 years there-
after, the National Research Council shall provide
an independent review of the effectiveness of fishing
quota systems conducted in Federal fisheries.

“(2) The review shall be conducted by an inde-
pendent panel of individuals who have knowledge
and experience in fisheries conservation and manage-
ment, in the implementation of fishing quota sys-
tems, or in the social or economic characteristics of
fisheries. The National Research Council shall en-
sure that members of the panel are qualified for ap-
pointment, 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 bycatch 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 (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 Fishery Conservation and Management Amendments Act of 2004, 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 (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’”.

(c) CONFORMING AMENDMENTS.—

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

(A) Section 304(c)(3) (16 U.S.C. 1854(c)(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. 12. GULF OF MEXICO FISHING QUOTA SYSTEMS.

Section 407(c) (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.”.
SEC. 13. ACTION BY THE SECRETARY.

(a) Review of Plans and Initial Regulations.—Section 304(a)(1) (16 U.S.C. 1854(a)(1)) is amended—

(1) by striking “amendment,” before subparagraph (A) and inserting “amendment and any proposed implementing regulations prepared under section 303(c)(1),”;

(2) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(3) by inserting before subparagraph (B), as so redesignated, the following:

“(A)(i) immediately make a preliminary evaluation of the management plan or amendment for purposes of deciding whether it is—

“(I) consistent with the national standards, the other provisions of this Act, and other applicable law; and

“(II) sufficient in scope and substance to warrant review under this subsection;

“(ii) if that decision is affirmative with respect to both subclauses (I) and (II) of clause (i), implement subparagraphs (B) and (C) with respect to the plan or amendment; and

“(iii) if that decision is negative with respect to either subclause (I) or (II) of clause
(i), disapprove the plan or amendment and notify the Council in writing of the disapproval and of those matters specified under paragraph (3)(A), (B), and (C) with respect to the plan or amendment;” and

(4) by amending subparagraph (C), as so redesignated, to read as follows:

“(C) by the 15th day following transmittal of the plan or amendment, and proposed implementing regulations, publish in the Federal Register—

“(i) a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 50-day period beginning on the date the notice is published; and

“(ii) any proposed implementing regulations that are consistent with the fishery management plan or amendment, this Act, and any other applicable law, for a comment period of 50 days, except that the Secretary may include such technical changes to the Council’s proposed regula-
tions as may be necessary for clarity, along
with an explanation of those changes.”

(b) REVIEW OF PROPOSED MODIFICATIONS.—

(1) Paragraph (1) of section 304(b) (16 U.S.C.
1854(b)) is amended to read as follows:

“(1)(A) Upon transmittal by the Council to the
Secretary of regulations proposed under section
303(c)(2), the Secretary shall immediately initiate
an evaluation of the proposed regulations to deter-
mine whether they are consistent with the fishery
management plan, plan amendment, this Act, and
other applicable law.

“(B) If the Secretary determines that the regu-
lations are consistent, the Secretary shall, within 15
days of transmittal, publish such regulations in the
Federal Register, with such technical changes as
may be necessary for clarity and an explanation of
those changes, for a public comment period of 15 to
60 days, unless the Secretary finds good cause not
to publish a notice of proposed rulemaking in ac-
cordance with section 553 of title 5, United States
Code.

“(C) If the Secretary determines that the regu-
lations are not consistent, the Secretary shall, within
15 days of transmittal, notify the Council in writing
of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.”.

(2) Section 304(b)(2) (16 U.S.C. 1854(b)(2)) is amended by striking “paragraph (1)(B),” and inserting “paragraph (1)(C),”.

(3) Section 304(b)(3) (16 U.S.C. 1854(b)(3)) is amended by striking “paragraph (1)(A),” and inserting “paragraph (1)(B), and within 45 days after the end of the comment period under subsection (a)(1)(C).”.

(4) Section 304(b)(16 U.S.C. 1854(b)) is amended by adding at the end the following:

“(4) For regulatory actions, other than those proposed by a Council under section 303(e), that are taken in accordance with a fishery management plan, the Secretary shall process the actions in accordance with the plan. If the Secretary determines that the actions are consistent with the plan, this Act, and other applicable law, the Secretary shall publish in the Federal Register a notice of the actions. The Secretary may find good cause not to publish a notice of proposed rulemaking in accord-
SEC. 14. REBUILDING DEPLETED FISHERIES.

(a) In General.—Section 304(e)(4) (16 U.S.C. 1854) is amended to read as follows:

“(4) The Secretary shall promulgate regulations to govern fishing after January 1, 2008, that—

“(A) limit fishing mortality to a rate not greater than the rate that would be expected to produce maximum sustainable yield, except—

“(i) in cases where management measures under an international agreement in which the United States participates dictate otherwise; and

“(ii) as provided in subparagraph (B);

“(B) for stocks that are depleted, limit fishing mortality to 80 percent of the fishing mortality rate that would be expected to produce maximum sustainable yield, except in cases where management measures under an international agreement in which the United States participates dictate otherwise; and

“(C) allocate both fishing restrictions and recovery benefits fairly and equitably among gear sectors and communities in the fishery, taking into ac-
count long term historical participation in the fish-
ery.’’.

(b) Section 304(e)(3) (16 U.S.C. 1854(e)(3)) is
amended by striking “Within one year of an identification
under paragraph (1)” and inserting “Within 1 year after
a fishery is identified as depleted or approaching a condi-
tion of being depleted,”.

(c) Section 303(a) (16 U.S.C. 1853(a)) is amended—

(1) by redesignating paragraphs (2) through

(14) as paragraphs (3) through (15), respectively;
and

(2) by inserting after paragraph (1) the fol-

lowing:

“(2) specify a biomass limit below which the
stock should not be allowed to fall and a threshold
below which the fishing mortality rate must be re-
duced;”.

SEC. 15. STEAMING TIME.

Section 301(a)(4) (16 U.S.C. 1851(a)(4)) is amended
by striking “privileges.” and inserting “privileges, and
shall take into account the differences in distances to fish-
ing grounds from different States.”.

SEC. 16. EMERGENCY REGULATIONS.

(a) LENGTHENING OF SECOND EMERGENCY PE-
is amended by striking “180 days,” and inserting “186
days,”.

(b) TECHNICAL AMENDMENT.—Section 305(c)(3)(D)
(16 U.S.C. 1855(c)(3)(D)) is amended by inserting “or
interim measures” after “emergency regulations”.

SEC. 17. FISHING CAPACITY REDUCTION PROGRAM.

Section 312 (16 U.S.C. 1861(a)) is amended by strik-
ing subsections (b) through (e) and inserting the following:

“(b) FISHING CAPACITY REDUCTION PROGRAM.—

“(1) The Secretary may conduct a fishing ca-
pacity reduction program in a fishery under the au-
thority of the Secretary, a Council or a State if the
Secretary determines that the program—

“(A) is necessary to improve either the
fishery’s conservation and management or the
fishery’s economic efficiency, stability, safety,
well being, organizational effectiveness, or sub-
sequent rationalization;

“(B) is consistent with the Federal or
State fishery management plan or program in
effect for such fishery, as appropriate, and that
the fishery management plan—

“(i) will prevent replacement of the
fishing capacity that the program removes
through a moratorium on new entrants,
practicable restrictions on vessel upgrades, and measures that take into account any latent fishing capacity in the fishery’s fleet; and

“(ii) establishes a specified or target total allowable catch or other measures that trigger fishery closure or adjustments;

“(C) is cost-effective and, in the instance of a program involving an industry-fee system, prospectively capable of repaying any debt obligation incurred under section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279d); and

“(D) all participants in the capacity reduction program participate on a voluntary basis, but the Secretary is authorized to ensure compliance with the program by those who choose to participate.

“(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

“(A) the owner of a fishing vessel, if the permit authorizing the participation of the ves-
sel in the fishery is surrendered for permanent revocation and the vessel owner and permit holder relinquish any claim associated with the vessel or permit that could qualify such owner or holder for any present or future limited access system permit in the fishery for which the program is established and such vessel is—

“(i) scrapped; or

“(ii) subjected to title restrictions (including, but not limited to, loss of the vessel’s fisheries endorsement) by the Secretary of the department in which the Coast Guard is operating, that permanently prohibit and effectively prevent its use in domestic fishing; or

“(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program is established.
“(3) The Secretary shall consult, as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of the program under this section.

“(c) PROGRAM FUNDING.—

“(1) The program may be funded by any combination of amounts—

“(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c–3(b)(1)(A); the Saltonstall-Kennedy Act);

“(B) appropriated for the purposes of this section;

“(C) provided under an industry fee system established under subsection (d) and in accordance with section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279d); or

“(D) provided by any State or other public or private or non-profit organization.

“(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction funds established

“(d) INDUSTRY FEE SYSTEM.—

“(1)(A) If an industry fee system is necessary to fund the program, the Secretary shall conduct a referendum on such system. Prior to the referendum, the Secretary shall—

“(i) identify, to the extent, practicable, and notify all permit or vessel owners who would be affected by the program; and

“(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum; the proposed program; and the amount and duration and any other terms and conditions of the proposed fee system.

“(B) The industry fee system shall be approved if the referendum votes which are cast in favor of the proposed system constitute a two-thirds majority of the participants voting.

“(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations in-
curred pursuant to section 1111 of the Merchant
for a program established under this section shall—

“(A) be determined by the Secretary and
adjusted from time to time as the Secretary
considers necessary to ensure the availability of
sufficient funds to repay such debt obligations;

“(B) not exceed 5 percent of the ex-vessel
value of all fish involved in the program har-
vested from the fishery for which the program
is established;

“(C) be deducted by the first ex-vessel pur-
chaser from the proceeds otherwise payable to
the seller and accounted for and forwarded by
such fish purchasers to the Secretary in such a
manner as the Secretary may establish unless
the Secretary determines that such fees should
be collected from the seller; and

“(D) be in effect only until such time as
the debt obligation has been fully paid.

“(e) PROGRAM IMPLEMENTATION.—

“(1) The Secretary shall propose and adopt
framework regulations applicable to implementing all
programs under this section.
“(2) The Secretary shall implement each program under this section by proposing and adopting regulations that shall, together with the framework regulations, establish each program and control its implementation.

“(3) The harvester proponents of each program shall, before the Secretary proposes such regulation, provide to the Secretary a proposed implementation plan that—

“(A) proposes the types and numbers of vessels or permits that are eligible to participate in the program and the manner in which the program shall proceed, taking into account—

“(i) the requirements of this section;

“(ii) the requirements of the framework regulations;

“(iii) the characteristics of the fishery;

“(iv) the requirements of the applicable fishery management plan and any amendment that such plan may require to support the proposed program;

“(v) the general needs and desires of harvesters in the fishery;

“(vi) the need to minimize program costs; and
“(vii) other matters, including the manner in which such proponents propose to fund the program to ensure its cost effectiveness, as well as any relevant factors demonstrating the potential for, or necessary to obtain, the support and general cooperation of a substantial number of affected harvesters in the fishery (or portion of the fishery) for which the program is intended; and

“(B) suggests proposed procedures for program participation (such as submission of owner bids under an auction system or fair market-value assessment), including any terms and condition for participation, that the harvester proponents deem to be reasonably necessary to meet the program’s proposed objectives.

“(4) The Secretary shall contract with each person participating in a program, and each such contract shall, in addition to including such other matters as the Secretary deems necessary and appropriate to effectively implement each program (including penalties for contract non-performance) be
consistent with the framework and implementing
regulations and all other applicable law.

“(5) Each program not involving fair market
assessment shall involve a reduction auction that
scores the reduction price of each bid offer by the
data relevant to each bidder under an appropriate
fisheries productivity factor. If the Secretary accepts
bids, the Secretary shall accept each bid in the rank
order of its bid score, with each bid whose reduction
price is the lowest percentage of the productivity fac-
tor being first accepted over each bid whose reduc-
tion factor is the next lowest percentage of the pro-
ductivity factor.

“(6) Each program shall proceed by the Sec-
retary issuing invitations to bid setting out the
terms and conditions for participation consistent
with the framework and implementing regulations.
Each bid that the Secretary receives in response to
the invitation to bid shall constitute an irrevocable
offer from the bidder.”.

SEC. 18. COLLECTION OF INFORMATION.

(a) Programs Initiated by Secretary.—Section
402 (16 U.S.C. 1881a) is amended—
(1) by redesignating subsection (a) as para-
graph (1) and moving the left margin 2 ems to the
right;

(2) by inserting “(a) COLLECTION PRO-
GRAMS.—” before paragraph (1), as redesignated;

(3) by striking “subsection” in the last sentence
of paragraph (1), as redesignated, and inserting
“paragraph”; and

(4) by adding inserting after paragraph (1), as
redesignated, the following:

“(2) SECRETARIAL INITIATION.—If the Sec-
retary determines that additional information is nec-
essary for developing, implementing, revising, or
monitoring a fishery management plan, or for deter-
mining whether a fishery is in need of management,
the Secretary may, by regulation, implement an in-
formation collection or observer program requiring
submission of such additional information for the
fishery.”.

(5) by striking “under this Act shall be con-
fidential and shall not be disclosed,” in subsection
(b)(1) and inserting “under this Act, and that would
disclose proprietary or confidential commercial or fi-
nancial information regarding fishing operations or
fish processing operations, shall be kept confidential
and not disclosed for a period of 20 years following the year of submission to the Secretary,”; and

(6) by striking “under this Act,” in subsection (b)(2) and inserting “under this Act, and that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations,”.

(b) Collection of Certain Information Regarding Business Operations.—Paragraph (1) of section 402(a) (16 U.S.C. 1881a(a)), as redesignated by subsection (a) of this section, is amended by striking “(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)” each place it appears.

SEC. 19. ACCESS TO CERTAIN INFORMATION.

(a) Certain State Employees.—Section 402(b)(1) (16 U.S.C. 1881a(b)(1)) is amended—

(1) by redesignating subparagraphs (B) through (F) as subparagraphs (C) through (G), respectively; and

(2) by inserting after subparagraph (A) the following:

“(B) to State employees who are responsible for fishery management plan monitoring, if the States
employing those employees have entered into a fish-
ery enforcement agreement with the Secretary and
the agreement is in effect;”.

(b) DETERMINATIONS UNDER LIMITED ACCESS SYS-
TEM.—Section 402(b)(1) (16 U.S.C. 1881a(b)(1)) is
amended—

(1) by striking “or” after the semicolon in sub-
paragraph (F), as redesignated by subsection (a) of
this section;

(2) by striking “Act.” in subparagraph (G), as
redesignated by subsection (a), and inserting “Act;
or”; and

(3) by adding at the end the following:

“(H) when such information is required by the
Secretary for any determination under a limited ac-
cess system.”.

SEC. 20. MAINE POCKET WATERS.

Section 808(a) of the Atlantic Coastal Fisheries Co-
operative Management Act (16 U.S.C. 5107a(a)) is
amended by striking paragraphs (1) through (4) and in-
serting the following:

“(1) west of Monhegan Island in the area north
of the line 43 degrees 42’10.0”N, 69 degrees
34’16.0”W and 43 degrees 42’15.0”N, 69 degrees
19’18.0”W;
“(2) east of Monhegan Island in the area located north of the line 43 degrees 44′0.0″N, 69 degrees 15′05.0″W and 43 degrees 48′10.0″N, 69 degrees 08′01.0″W;

“(3) southeast of Matinic Island in the area located north of the line 43 degrees 48′10.0″N, 69 degrees 08′01.0″W and 43 degrees 44′08.0″N, 69 degrees 53′01.0″W;

“(4) south of Vinalhaven Island in the area located west of the line 43 degrees 52′18.5″N, 68 degrees 40′0.0″W, and 43 degrees 58′10.5″N, 68 degrees 32′57.0″W;

“(5) south of Bois Bubert Island in the area located northwest of the line 44 degrees 19′16.5″N, 67 degrees 49′30.0″W, and 44 degrees 23′40.0″N and 67 degrees 40′30.0″W.”.

SEC. 21. WESTERN PACIFIC FISHERY DEMONSTRATION PROJECTS.

Section 111(b)(6) of the Sustainable Fisheries Act (16 U.S.C. 1855 note) is amended to read as follows:

“(6) For purposes of this subsection, ‘Western Pacific community’ shall mean a community eligible to participate under section 305(i)(2)(B)(i) through (iv) of the Magnuson-Stevens Fishery Conservation
and Management Act (16 U.S.C. 1855(i)(2)(B)(i) through (iv)).”.

SEC. 22. COOPERATIVE RESEARCH AND MANAGEMENT.

The Act is amended by adding at the end the following:

“TITLE V—COOPERATIVE RESEARCH AND MANAGEMENT

“SEC. 501. ESTABLISHMENT OF PROGRAM.

“(a) IN GENERAL.—The Secretary shall establish a national cooperative research and management program to be administered by the National Marine Fisheries Service, based on recommendations by the Councils. The program shall consist of cooperative research and management activities between fishing industry participants, the affected States, and the Service.

“(b) RESEARCH AWARDS.—Each research project under this program shall be awarded on a standard competitive basis established by the Service, in consultation with the Councils. Each Council shall establish a research steering committee to carry out this subsection.

“(c) GUIDELINES.—The Secretary, in consultation with the appropriate Council and the fishing industry, shall create guidelines so that participants in this program are not penalized for loss of catch history or unexpended days-at-sea as part of a limited entry system.
“(d) Authorization of Appropriations.—There are authorized to be appropriated to the National Marine Fisheries Service, in addition to amounts otherwise authorized by this Act, the following amounts, to remain available until expended, for the conduct of this program:

“(1) $25,000,000 for fiscal year 2004.
“(2) $30,000,000 for fiscal year 2005.
“(3) $35,000,000 for fiscal year 2006.
“(4) $40,000,000 for fiscal year 2007.
“(5) $45,000,000 for fiscal year 2008.

“(e) New England Trawl Survey.—Of the funds authorized in subsection (d) $3,000,000 shall be authorized for the purpose of cooperative comparative trawl research between the National Marine Fisheries Service and fishing industry participants for the Northeast multispecies groundfish fishery, which the Secretary shall design and administer with input from fishing industry participants and other interested stakeholders.”.

SEC. 23. INDEPENDENT PEER REVIEW OF DATA COLLECTION PROCEDURES.

The Act is amended by adding at the end of title IV (16 U.S.C. 1881 et seq.) the following:

“SEC. 408. PEER REVIEW.

“(a) In General.—The National Academy of Sciences shall review and recommend measures for im-
proving National Marine Fisheries Service’s procedures
for ensuring data quality in the data collection phase of
the stock assessment program.

“(b) SUBJECT MATTER.—The review shall address—

“(1) the quality control protocols through which
stock assessment equipment is calibrated, operated,
inspected, and maintained;

“(2) the frequency and financial cost of these
quality control checks;

“(3) how the accuracy and validity of data col-
lected with sampling equipment is verified; and

“(4) how measurement error is accounted for in
stock assessment modeling and analysis based on
these data.

“(c) SCOPE.—The review shall apply to all activities
that affect stock assessment data quality, whether con-
ducted by the National Marine Fisheries Service or by Na-
tional Marine Fisheries Service contractors.”.

SEC. 24. ADVISORY COMMITTEE REFORM AND PEER RE-
VIEW.

(a) COMMITTEE AND COUNCIL PROCEDURE RE-
FORMS.—Section 302(g) (16 U.S.C. 1852(g)) is amend-
ed—

(1) by adding at the end of paragraph (3) the
following:
“(C) For each committee established under subparagraph (A), each Council shall establish standard operating procedures relating to time, place, public participation, and frequency of meetings, a description of the type and format of information to be provided under subparagraph (A), a description of how recommendations under subparagraph (A) will be used, and other relevant factors.”;

(2) by redesignating paragraph (5) as paragraph (6); and

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

“(5) Each Council shall establish standard operating procedures relating to the relevant scientific review committee or committees that are responsible for conducting peer reviews of all stock assessments and economic and social analyses prepared for fisheries under the Council’s jurisdiction. Committees under this paragraph shall consist of members from the committee established under paragraph (1) of this subsection and, to the extent practicable, independent scientists qualified to peer review such assessments and analyses.”.

(b) Peer Review.—Section 302(h) (16 U.S.C. 1852(h)) is amended—
(1) by striking “and” at the end of paragraph (5);

(2) by redesignating paragraph (6) as paragraph (7); and

(3) by inserting after paragraph (5) the following:

“(6) to the extent practicable conduct a peer review of any stock assessments and economic and social analyses prepared for a fishery under its jurisdiction, utilizing the procedures established under subsection (g)(5); and”.

SEC. 25. CUMULATIVE IMPACTS.

(a) NATIONAL STANDARDS.—Section 301(a)(8) (16 U.S.C. 1851(a)(8)) is amended to read as follows:

“(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), Utilize economic and social data and assessment methods of the highest analytical standards when taking into account the importance of fishery resources to fishing communities, and the individual and cumulative economic and social impacts of fishery conservation and management measures on such communities, in order to—
“(A) provide for the sustained participation of such communities; and

“(B) to the extent practicable, minimize adverse social and economic impacts on such communities.”.

(b) CONTENTS OF PLANS.—Section 303(a)(9) (16 U.S.C. 1853(a)(9)) is amended by striking “describe the likely effects, if any, of the conservation and management measures on—” and inserting “describe in detail the likely effects, including the individual and cumulative economic and social impacts, of the conservation and management measures on and possible mitigation measures for—”.

SEC. 26. ESSENTIAL FISH HABITAT.

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

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

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(b) Fish Habitat Requirement.—Section 305(b)(1) (16 U.S.C. 1855(b)(1)) is amended by inserting “and habitat areas of particular concern” after “essential fish habitat” each place it appears in subparagraphs (A) and (B).

SEC. 27. COOPERATIVE ENFORCEMENT AGREEMENTS.

Title III (16 U.S.C. 1851 et seq.) is amended by adding at the end thereof the following:

“SEC. 315. COOPERATIVE ENFORCEMENT USES.

“(a) In General.—The Governor of a State represented on an Interstate Fisheries Commission may apply to the Secretary for execution of a cooperative enforcement agreement with the Secretary that will authorize the deputization of State law enforcement officers with marine law enforcement responsibilities to perform duties of the Secretary relating to law enforcement provisions under this Act or any other marine resource laws enforced by the Secretary. Upon receiving an application meeting the requirements of this section, the Secretary shall enter into the cooperative enforcement agreement with the requesting State.

“(b) Requirements.—Cooperative enforcement agreements executed under subsection (a)—
“(1) shall be consistent with the purposes and intent of section 311(a) of this Act, to the extent applicable to the regulated activities; and

“(2) may include specifications for joint management responsibilities as provided by the first section of Public Law 91–412 (15 U.S.C. 1525).

“(c) Authorization and Allocation of Funds.—There are authorized to be appropriated to the Secretary for the purposes of carrying out this section $10,000,000 in each of fiscal years 2004 through 2008. The Secretary shall include in each cooperative enforcement agreement an allocation of funds to assist in management of the agreement. The allocation shall be equitably distributed among all States participating in cooperative enforcement agreements under this subsection, based upon consideration of the specific marine conservation enforcement needs of each participating State. Such agreement may provide for amounts to be withheld by the Secretary for the cost of any technical or other assistance provided to the State by the Secretary under the agreement.”.
SEC. 28. SCIENTIFIC AND STATISTICAL COMMITTEES REPORT ON ECOSYSTEM RESEARCH PRIORITIES; PILOT PROGRAM FOR FISHERY ECOSYSTEM PLANS.

Section 406 (16 U.S.C. 1882) is amended by adding at the end thereof the following:

“(f) RESEARCH.—

“(1) REPORT REQUIRED.—Within 12 months after the date of enactment of the Fishery Conservation and Management Amendments Act of 2004 the Scientific and Statistical Committees of each regional fishery management council shall identify and submit a report to the Secretary outlining prioritized information or research needs to support ecosystem based management of the fisheries within its jurisdiction. In determining what factors to consider, the Committees may consider the recommendations outlined in the report under section (d).

“(2) ASSISTANCE.—The Secretary shall provide assistance to the regional councils to obtain the prioritized information and conduct research identified in the reports under paragraph (1). These efforts shall not displace existing research efforts and priorities identified by the regional councils or the Secretary.

“(g) PILOT PROGRAM.—
“(1) IN GENERAL.—Within 18 months after the date of enactment of the Fishery Conservation and Management Amendments Act of 2004 the Secretary, in consultation with the 8 regional fishery management council Chairs and affected stakeholders, shall identify at least one fishery or complex of interacting fisheries suitable for the development of a pilot Fishery Ecosystem Plan. The Secretary shall consider the reports submitted under subsection (f) when selecting the pilot program.

“(2) COORDINATION WITH APPROPRIATE COUNCIL.—After identifying the pilot Fishery Ecosystem Plan, the Secretary shall coordinate with the appropriate regional fishery management council to identify any information or conduct any research that may be needed to complete such a plan including a model of the food web, habitat needs of organisms identified in the food web, rates of mortality, identification of indicator species, and any other relevant data and monitoring needs.

“(3) FISHERY ECOSYSTEM PLAN.—Within 30 months after identification of the pilot fishery or complex of interacting fisheries, the appropriate regional fishery management council shall submit to the Secretary for approval a Fishery Ecosystem
Plan. In creating such plan, the council may consider the recommendations outlined in the report under section (d).”.