108TH CONGRESS  
2D SESSION  

H. R. 4706

To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide for stewardship of fishery resources for the American public, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2004

Mr. RAHALL (for himself, Mr. FARR, Mr. JACKSON of Illinois, Ms. LEE, Ms. McCOLLUM, Mrs. CAPPs, Mr. GEORGE MILLER of California, Mr. WEXLER, Mr. GRIJALVA, Mr. GutiérREz, Mr. CASE, Mr. MORAN of Virginia, Mr. HONDA, Mr. KUCINICH, Mr. VAN HOLLEN, and Mr. SCHIFF) 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 provide for stewardship of fishery resources for the American public, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3  
4 SECTION 1. SHORT TITLE.

This Act may be cited as the “Fisheries Management
5 Reform Act of 2004”.

Agendum B.5.a  
Attachment 1  
September 2004
SEC. 2. AMENDMENT REFERENCES.

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 such section or other provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 3. REPRESENTATION OF THE PUBLIC INTEREST ON REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) APPOINTMENT OF MEMBERS BY ADMINISTRATOR.—

(1) APPOINTMENT OF MEMBERS.—Section 302 (16 U.S.C. 1852) is amended—

(A) by striking “appointed by the Secretary” each place it appears and inserting “appointed by the Administrator of the National Oceanic and Atmospheric Administration”;

(B) in paragraphs (2) and (6) of subsection (b) by striking “The Secretary” each place it appears and inserting “The Administrator of the National Oceanic and Atmospheric Administration”; and

(C) in paragraph (5)(A) of subsection (b) by striking “The Secretary” the first and sec-
ond places it appears and inserting “The Administrator of the National Oceanic and Atmospheric Administration”;

(D) in subsection (b) by striking “the Secretary” each place it appears, other than in paragraph (6)(B), and inserting “the Administrator”; and

(E) in subsection (b)(2)(B)(iii) by striking “the Secretary’s” and inserting “the Administrator’s”.

(2) Application with respect to current members of councils.—

(A) Appointment not affected.—The amendment made by paragraph (1)(A) shall not affect any appointment by the Secretary of Commerce made before the date of the enactment of this Act.

(B) Removal.—In applying section 302(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by this subsection, to a member of a Regional Fishery Management Council appointed before the date of the enactment of this Act, “by the Secretary” shall be substituted for “by the Administrator”.

•HR 4706 IH
(b) **Representation by State Officials.**—Section 302(b)(1)(A) (16 U.S.C. 1852(b)(1)(A)) is amended by adding at the end the following: “Such official shall represent the interests of the general public.”

(c) **Allocation of Appointments.**—Section 302(b)(2)(B) (16 U.S.C. 1852(b)(2)(B)) is amended in the first sentence—

1. by striking “of the active participants” and inserting “among the active participants”; and
2. by inserting before the period the following: “and representatives of the public interest in marine fish conservation, including individuals who do not derive any of their annual income from commercial or recreational fishing and who are knowledgeable regarding the conservation and management of the fishery resources of the geographic area concerned”.

(d) **Consultation by States in Submitting Nominees.**—Section 302(b)(2)(C) (16 U.S.C. 1852(b)(2)(C)) is amended—

1. in the second sentence by inserting “and representatives of conservation organizations” after “commercial and recreational fishing interests”; and
2. by striking the third sentence and inserting the following: “Each list shall consist of a broad slate of candidates for each vacancy, shall include at
least two representatives from each of the commercial fishing industry sector, the recreational fishing sector, and the marine fish conservation public interest sector who do not derive any of their annual income from commercial or recreational fishing, and shall consist solely of individuals who are knowledgeable regarding the conservation and management of the fishery resources of the geographic area concerned.”.

(c) Training of Appointed Members.—

(1) Training Requirement.—Section 302(b) (16 U.S.C. 1852(b)) is amended by adding at the end the following:

“(7) Training of Appointed Members.—

“(A) In general.—The Secretary shall provide to each member of a Council appointed by the Secretary under this subsection, by not later than 6 months after the date of the member’s appointment, training in matters relating to the functions of the Council, including—

“(i) fishery science and basic fish stock assessment;

“(ii) social science and fishery economics;
“(iii) the requirements of this Act, the National Environmental Policy Act of 1969, chapter 5 of title 5, United States Code (popularly known as the Administrative Procedures Act), and other relevant statutes or regulations;

“(iv) conflict of interest policies that apply to Council members; and

“(v) the public process for developing fishery management plans.

“(B) Restriction on Voting.—A member of a Council to whom the Secretary is required to provide training under this paragraph may not vote on any decision of the Council before the date the member completes such training.”.

(2) Limitation on Application.—The amendment made by paragraph (1) shall not apply to a member of a Regional Fishery Management Council appointed before the date of the enactment of this Act.

(f) Technical Correction.—Section 302(b)(2)(B) (16 U.S.C. 1852(b)(2)(B)) is amended in the second sentence by striking “Merchant Marine and Fisheries” and inserting “Resources”.

•HR 4706 IH
SEC. 4. QUALIFICATION OF VOTING COUNCIL MEMBERS;

DISCLOSURE OF FINANCIAL INTEREST AND

RECUSAL.

(a) Qualifications of Voting Council Members.—Section 302(b)(2)(A) (16 U.S.C. 1852(b)(2)(A)) is amended by—

(1) inserting after “geographical area concerned” the following: “, and must not have been found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307(1)(D), (E), (F), (H), (I), or (L) or section 307(2)”; and

(2) striking “of the Fishery Conservation Amendments of 1990” and replacing with “of the Fisheries Management Reform Act of 2004”.

(b) Disclosure of Financial Interest and Recusal.—

(1) Amendments relating to disclosure and recusal.—Section 302(j) (16 U.S.C. 1852(j)) is amended as follows:

(A) By striking the heading and inserting “Disclosure of Financial Interest and Recusal.”.
(B) By striking paragraph (6), and redesignating paragraphs (7) and (8) in order as paragraphs (6) and (7).

(C) In paragraph (6), as so redesignated, by striking so much as precedes subparagraph (B) and inserting the following:

“(6) PROHIBITION ON PARTICIPATION.—(A)(i)

An affected individual shall not vote on a Council decision that would have an effect on a financial interest that the individual is required to disclose under paragraph (2).

“(ii) An affected individual who is prohibited from voting on a Council decision may not participate in any Council deliberations relating to the decision.”.

(D) In paragraph (6)(B), as so redesignated—

(i) by inserting “or a member of the public” after “an affected individual”; and

(ii) by striking “would have a significant and predictable effect on a financial interest” and inserting “would have an effect on the financial interest of an affected individual”.

(E) In paragraph (6)(C), as so redesignated, by inserting “, or member of the public,” after “Any Council member”.

(F) In paragraph (6), as so redesignated, by striking subparagraph (D) and redesignating subparagraphs (E) and (F) in order as subparagraphs (D) and (E).

(G) In paragraph (6)(D), as so redesignated—

(i) by striking “may not” and inserting “shall”; and

(ii) by inserting before the period the following: “, if the Secretary determines that the Council decision had an effect on the financial interest of an affected individual and the affected individual’s vote decided the Council action”.

(H) By amending paragraph (6)(E), as so redesignated, to read as follows:

“(E) The Secretary, in consultation with the Councils and by not later than one year after the date of enactment of the Fisheries Management Reform Act of 2004, shall promulgate regulations that allow for the making of determinations under subparagraphs (B) and (C).”.

SEC. 5. REGIONAL SCIENCE AND TECHNICAL TEAMS.

Section 302(g) (16 U.S.C. 1852(g)) is amended—

(1) by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following:

“(5) REGIONAL SCIENCE AND TECHNICAL TEAMS.—(A) The Secretary shall establish regional science and technical teams to provide the Secretary with recommendations to carry out section 303(e).

“(B) Each science and technical team established under this paragraph shall consist of Federal, State, and academic qualified independent scientists.

“(C) Each science and technical team established under this paragraph shall—

“(i) based on the best scientific information available, recommend to the Secretary—

“(I) acceptable biological catch and bycatch limits, including annual limits, that are consistent with the national standard set forth in section 301(a)(1) and that
consider predator-prey relationships and other ecological factors;

“(II) specific habitat and area protections necessary to protect essential fish habitats; and

“(III) specific requirements necessary to protect species listed as threatened species or endangered species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533);

“(ii) allow an opportunity for public input, including with respect to catch and bycatch limits and habitat protection measures recommended by the team, consider such input in developing its recommendations, and create a public record of such input and the team’s response to such input; and

“(iii) publish its recommendations in the Federal Register.

“(D) Recommendations of a regional science and technical team submitted to the Secretary under this paragraph must be subjected to peer review by qualified independent scientists.”; and

(2) by adding at the end the following:
“(7) For the purposes of this subsection, the term ‘qualified independent scientists’ means individuals who—

“(A) through publication of peer-reviewed scientific literature and academic training, have demonstrated scientific expertise in fisheries science or marine ecology; and

“(B) have no direct financial interest, and are not employed by any person with a direct financial interest, in any fishery.”.

SEC. 6. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) REQUIRED PROVISIONS REGARDING PROTECTION, RESTORATION, AND PROMOTION OF ECOSYSTEMS.—Section 303(a)(1) (16 U.S.C. 1853(a)(1)) is amended—

(1) in subparagraph (A) by inserting before the semicolon the following: “and the associated ecosystem”;

(2) by striking “and” after the semicolon at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting “; and”, and by adding at the end the following:

“(D) consistent with the conservation and management measures developed by the Secretary pursuant to subsection (e), except a Council may modify any conservation and man-
agement measure to provide greater conserva-

tion in order to achieve plan objectives, includ-
ing to protect and maintain the ecological role
of forage fish.”; and

(3) by amending paragraph (14) to read as fol-
lows:

“(14) allocate any quotas or other conservation
and management measures established by the Sec-
retary under subsection (e) fairly and equitably
among the commercial, recreational, and charter
fishing sectors in the fishery, and allow individual
sectors of the fishery to develop allocation plans sub-
ject to the approval of the Council.”.

(b) DEVELOPMENT OF CONSERVATION AND MAN-
AGEMENT MEASURES BY SECRETARY.—Section 303 (16
U.S.C. 1853) is amended by adding at the end the fol-
lowing:

“(e) DEVELOPMENT OF CONSERVATION AND MAN-
AGEMENT MEASURES BY SECRETARY.—The Secretary
shall, based on recommendations of the regional science
and technical teams established under section 302(g)(5),
provide Councils conservation and management measures
for incorporation into fishery management plans, plan
amendments, or annual specifications, that establish—
“(1) catch and bycatch limits that do not exceed acceptable biological catch limits, including annual limits, that are consistent with the national standard set forth in section 301(a)(1) and that consider predator-prey relationships and other ecological factors;

“(2) specific habitat and area protections necessary to protect essential fish habitats; and

“(3) specific requirements necessary to protect species listed as endangered species or threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).”.