

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> 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.

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## 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. GUTIERREZ, 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

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## 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 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. AMENDMENT REFERENCES.**

2 Except as otherwise expressly provided, whenever in  
3 this Act an amendment or repeal is expressed in terms  
4 of an amendment to, or repeal of, a section or other provi-  
5 sion, the reference shall be considered to be made to such  
6 section or other provision of the Magnuson-Stevens Fish-  
7 ery Conservation and Management Act (16 U.S.C. 1801  
8 et seq.).

9 **SEC. 3. REPRESENTATION OF THE PUBLIC INTEREST ON**  
10 **REGIONAL FISHERY MANAGEMENT COUN-**  
11 **CILS.**

12 (a) APPOINTMENT OF MEMBERS BY ADMINIS-  
13 TRATOR.—

14 (1) APPOINTMENT OF MEMBERS.—Section 302  
15 (16 U.S.C. 1852) is amended—

16 (A) by striking “appointed by the Sec-  
17 retary” each place it appears and inserting “ap-  
18 pointed by the Administrator of the National  
19 Oceanic and Atmospheric Administration”;

20 (B) in paragraphs (2) and (6) of sub-  
21 section (b) by striking “The Secretary” each  
22 place it appears and inserting “The Adminis-  
23 trator of the National Oceanic and Atmospheric  
24 Administration”;

25 (C) in paragraph (5)(A) of subsection (b)  
26 by striking “The Secretary” the first and sec-

1           ond places it appears and inserting “The Ad-  
2           ministrators of the National Oceanic and Atmos-  
3           pheric Administration”;

4           (D) in subsection (b) by striking “the Sec-  
5           retary” each place it appears, other than in  
6           paragraph (6)(B), and inserting “the Adminis-  
7           trator”; and

8           (E) in subsection (b)(2)(B)(iii) by striking  
9           “the Secretary’s” and inserting “the Adminis-  
10          trator’s”.

11          (2) APPLICATION WITH RESPECT TO CURRENT  
12          MEMBERS OF COUNCILS.—

13           (A) APPOINTMENT NOT AFFECTED.—The  
14           amendment made by paragraph (1)(A) shall not  
15           affect any appointment by the Secretary of  
16           Commerce made before the date of the enact-  
17           ment of this Act.

18           (B) REMOVAL.—In applying section  
19           302(b)(6) of the Magnuson-Stevens Fishery  
20           Conservation and Management Act, as amended  
21           by this subsection, to a member of a Regional  
22           Fishery Management Council appointed before  
23           the date of the enactment of this Act, “by the  
24           Secretary” shall be substituted for “by the Ad-  
25           ministrator”.

1 (b) REPRESENTATION BY STATE OFFICIALS.—Sec-  
2 tion 302(b)(1)(A) (16 U.S.C. 1852(b)(1)(A)) is amended  
3 by adding at the end the following: “Such official shall  
4 represent the interests of the general public.”.

5 (c) ALLOCATION OF APPOINTMENTS.—Section  
6 302(b)(2)(B) (16 U.S.C. 1852(b)(2)(B)) is amended in  
7 the first sentence—

8 (1) by striking “of the active participants” and  
9 inserting “among the active participants”; and

10 (2) by inserting before the period the following:  
11 “and representatives of the public interest in marine  
12 fish conservation, including individuals who do not  
13 derive any of their annual income from commercial  
14 or recreational fishing and who are knowledgeable  
15 regarding the conservation and management of the  
16 fishery resources of the geographic area concerned”.

17 (d) CONSULTATION BY STATES IN SUBMITTING  
18 NOMINEES.—Section 302(b)(2)(C) (16 U.S.C.  
19 1852(b)(2)(C)) is amended—

20 (1) in the second sentence by inserting “and  
21 representatives of conservation organizations” after  
22 “commercial and recreational fishing interests”; and

23 (2) by striking the third sentence and inserting  
24 the following: “Each list shall consist of a broad  
25 slate of candidates for each vacancy, shall include at

1 least two representatives from each of the commer-  
2 cial fishing industry sector, the recreational fishing  
3 sector, and the marine fish conservation public inter-  
4 est sector who do not derive any of their annual in-  
5 come from commercial or recreational fishing, and  
6 shall consist solely of individuals who are knowledge-  
7 able regarding the conservation and management of  
8 the fishery resources of the geographic area con-  
9 cerned.”.

10 (e) TRAINING OF APPOINTED MEMBERS.—

11 (1) TRAINING REQUIREMENT.—Section 302(b)  
12 (16 U.S.C. 1852(b)) is amended by adding at the  
13 end the following:

14 “(7) TRAINING OF APPOINTED MEMBERS.—

15 “(A) IN GENERAL.—The Secretary shall  
16 provide to each member of a Council appointed  
17 by the Secretary under this subsection, by not  
18 later than 6 months after the date of the mem-  
19 ber’s appointment, training in matters relating  
20 to the functions of the Council, including—

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

23 “(ii) social science and fishery eco-  
24 nomics;

1 “(iii) the requirements of this Act, the  
2 National Environmental Policy Act of  
3 1969, chapter 5 of title 5, United States  
4 Code (popularly known as the Administra-  
5 tive Procedures Act), and other relevant  
6 statutes or regulations;

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

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

11 “(B) RESTRICTION ON VOTING.—A mem-  
12 ber of a Council to whom the Secretary is re-  
13 quired to provide training under this paragraph  
14 may not vote on any decision of the Council be-  
15 fore the date the member completes such train-  
16 ing.”.

17 (2) LIMITATION ON APPLICATION.—The amend-  
18 ment made by paragraph (1) shall not apply to a  
19 member of a Regional Fishery Management Council  
20 appointed before the date of the enactment of this  
21 Act.

22 (f) TECHNICAL CORRECTION.—Section 302(b)(2)(B)  
23 (16 U.S.C. 1852(b)(2)(B)) is amended in the second sen-  
24 tence by striking “Merchant Marine and Fisheries” and  
25 inserting “Resources”.

1 **SEC. 4. QUALIFICATION OF VOTING COUNCIL MEMBERS;**  
2 **DISCLOSURE OF FINANCIAL INTEREST AND**  
3 **RECUSAL.**

4 (a) QUALIFICATIONS OF VOTING COUNCIL MEM-  
5 BERS.—Section 302(b)(2)(A) (16 U.S.C. 1852(b)(2)(A))  
6 is amended by—

7 (1) inserting after “geographical area con-  
8 cerned” the following: “, and must not have been  
9 found by the Secretary, after notice and an oppor-  
10 tunity for a hearing in accordance with section 554  
11 of title 5, United States Code, to have committed an  
12 act prohibited by section 307(1)(D), (E), (F), (H),  
13 (I), or (L) or section 307(2)”; and

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

17 (b) DISCLOSURE OF FINANCIAL INTEREST AND  
18 RECUSAL.—

19 (1) AMENDMENTS RELATING TO DISCLOSURE  
20 AND RECUSAL.—Section 302(j) (16 U.S.C. 1852(j))  
21 is amended as follows:

22 (A) By striking the heading and inserting  
23 “DISCLOSURE OF FINANCIAL INTEREST AND  
24 RECUSAL.—”.

1           (B) By striking paragraph (6), and redesi-  
2           gnating paragraphs (7) and (8) in order as  
3           paragraphs (6) and (7).

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

7           “(6) PROHIBITION ON PARTICIPATION.—(A)(i)  
8           An affected individual shall not vote on a Council  
9           decision that would have an effect on a financial in-  
10          terest that the individual is required to disclose  
11          under paragraph (2).

12          “(ii) An affected individual who is prohibited  
13          from voting on a Council decision may not partici-  
14          pate in any Council deliberations relating to the de-  
15          cision.”.

16          (D) In paragraph (6)(B), as so redesi-  
17          gnated—

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

20                 (ii) by striking “would have a signifi-  
21                 cant and predictable effect on a financial  
22                 interest” and inserting “would have an ef-  
23                 fect on the financial interest of an affected  
24                 individual”.

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

4           (F) In paragraph (6), as so redesignated,  
5           by striking subparagraph (D) and redesignating  
6           subparagraphs (E) and (F) in order as sub-  
7           paragraphs (D) and (E).

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

10           (i) by striking “may not” and insert-  
11           ing “shall”; and

12           (ii) by inserting before the period the  
13           following: “, if the Secretary determines  
14           that the Council decision had an effect on  
15           the financial interest of an affected indi-  
16           vidual and the affected individual’s vote  
17           decided the Council action”.

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

20           “(E) The Secretary, in consultation with the  
21           Councils and by not later than one year after the  
22           date of enactment of the Fisheries Management Re-  
23           form Act of 2004, shall promulgate regulations that  
24           allow for the making of determinations under sub-  
25           paragraphs (B) and (C).”.

1           (2)    CONFORMING    AMENDMENT.—Section  
2    307(1)(O) (16 U.S.C. 1857(1)(O)) is amended by  
3    striking    “302(j)(7)(A)”    and    inserting  
4    “307(j)(6)(A)”.

5    **SEC. 5. REGIONAL SCIENCE AND TECHNICAL TEAMS.**

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

7           (1) by redesignating paragraph (5) as para-  
8    graph (6), and by inserting after paragraph (4) the  
9    following:

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

14           “(B) Each science and technical team estab-  
15    lished under this paragraph shall consist of Federal,  
16    State, and academic qualified independent scientists.

17           “(C) Each science and technical team estab-  
18    lished under this paragraph shall—

19                   “(i) based on the best scientific informa-  
20    tion available, recommend to the Secretary—

21                           “(I) acceptable biological catch and  
22    bycatch limits, including annual limits,  
23    that are consistent with the national stand-  
24    ard set forth in section 301(a)(1) and that

1 consider predator-prey relationships and  
2 other ecological factors;

3 “(II) specific habitat and area protec-  
4 tions necessary to protect essential fish  
5 habitats; and

6 “(III) specific requirements necessary  
7 to protect species listed as threatened spe-  
8 cies or endangered species under section 4  
9 of the Endangered Species Act of 1973 (16  
10 U.S.C. 1533);

11 “(ii) allow an opportunity for public input,  
12 including with respect to catch and bycatch lim-  
13 its and habitat protection measures rec-  
14 ommended by the team, consider such input in  
15 developing its recommendations, and create a  
16 public record of such input and the team’s re-  
17 sponse to such input; and

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

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

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

1 “(7) For the purposes of this subsection, the term  
2 ‘qualified independent scientists’ means individuals who—

3 “(A) through publication of peer-reviewed sci-  
4 entific literature and academic training, have dem-  
5 onstrated scientific expertise in fisheries science or  
6 marine ecology; and

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

10 **SEC. 6. CONTENTS OF FISHERY MANAGEMENT PLANS.**

11 (a) REQUIRED PROVISIONS REGARDING PROTEC-  
12 TION, RESTORATION, AND PROMOTION OF ECO-  
13 SYSTEMS.—Section 303(a)(1) (16 U.S.C. 1853(a)(1)) is  
14 amended—

15 (1) in subparagraph (A) by inserting before the  
16 semicolon the following: “and the associated eco-  
17 system”;

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

22 “(D) consistent with the conservation and  
23 management measures developed by the Sec-  
24 retary pursuant to subsection (e), except a  
25 Council may modify any conservation and man-

1           agement measure to provide greater conserva-  
2           tion in order to achieve plan objectives, includ-  
3           ing to protect and maintain the ecological role  
4           of forage fish.”; and

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

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

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

18          “(e) DEVELOPMENT OF CONSERVATION AND MAN-  
19          AGEMENT MEASURES BY SECRETARY.—The Secretary  
20          shall, based on recommendations of the regional science  
21          and technical teams established under section 302(g)(5),  
22          provide Councils conservation and management measures  
23          for incorporation into fishery management plans, plan  
24          amendments, or annual specifications, that establish—

1           “(1) catch and bycatch limits that do not ex-  
2           ceed acceptable biological catch limits, including an-  
3           nual limits, that are consistent with the national  
4           standard set forth in section 301(a)(1) and that con-  
5           sider predator-prey relationships and other ecological  
6           factors;

7           “(2) specific habitat and area protections nec-  
8           essary to protect essential fish habitats; and

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

○