

HR 1431 IH

109th CONGRESS

1st Session

H. R. 1431

To amend the Magnuson-Stevens Fishery Conservation and Management Act to modify requirements for the appointment and training of members of Regional Fishery Management Councils, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 17, 2005

Mr. RAHALL (for himself, Mr. FARR, Mr. KIND, Mr. LEACH, and Mr. SHAYS) 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 modify requirements for the appointment and training of members of Regional Fishery Management Councils, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Fisheries Science and Management Enhancement Act of 2005'.

SEC. 2. VOTING MEMBERS OF REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) Appointment of Members- Section 302(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(b)) is amended as follows:

(1) In paragraph (1)(A) by adding at the end the following: 'Such official shall represent the interests of the general public of such State.'

(2) In paragraph (2)--

(A) in subparagraph (A)--

(i) in the first sentence by inserting before the period 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 subparagraph (D), (E), (F), (H), (I), or (L) of section 307(1) or section 307(2).'; and

(ii) in the second sentence by striking 'Fishery Conservation Amendments of 1990' and inserting 'Fisheries Science and Management Enhancement Act of 2005';

(B) in subparagraph (B)--

(i) in the first sentence by striking 'of the active' and inserting 'among the active';

(ii) by striking the period at the end of the first sentence and inserting the following: 'and representatives of the public interest in marine fish conservation who are knowledgeable regarding the conservation and management of the fishery resources of the geographic area concerned. Such representatives of the public interest in marine conservation may not include individuals who derive any of their annual income from commercial or recreational fishing or who are employed by any person who derives any of their annual income from commercial or recreational fishing.'; and

(iii) by striking 'Merchant Marine and Fisheries' and inserting 'Resources'; and

(C) in subparagraph (C)--

(i) in the second sentence by inserting 'and representatives of conservation organizations' after 'commercial and recreational fishing interests';

(ii) 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, and shall consist solely of individuals who are knowledgeable regarding the conservation and management of the fishery resources of the geographical area concerned. Candidates from the marine fish conservation public interest sector may not derive any of their annual income from fishing and may not be employed by anyone who derives any of their annual income from commercial or recreational fishing.'; and

(iii) in the fifth sentence (after the amendment made by clause (ii) of this subparagraph) by striking 'such requirements' and inserting 'the requirements of subparagraph (A)'.

(3) In paragraph (3)--

(A) by striking '1986' and inserting '2005'; and

(B) by striking 'consecutive' each place it appears.

(4) In paragraph (6) by striking 'section 307(1)(O)' and inserting 'subparagraph (D), (E),

(F), (H), (I), (L), or (O) of section 307(1) or section 307(2)'

(b) Training of Appointed Members-

(1) IN GENERAL- Section 302(b) of the Magnuson-Stevens Fishery Conservation and Management Act (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 the member is first appointed, training in matters relating to the functions of the Council, including--

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

`(ii) basic instruction in ecological principles;

`(iii) social science and fishery economics;

`(iv) 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;

`(v) conflict of interest policies that apply to Council members; and

`(vi) 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.

`(C) TRAINING AVAILABLE TO THE PUBLIC- The Secretary may provide training offered under this paragraph, or comparable training, to interested members of the public.'

(2) APPLICATION TO CURRENT MEMBERS-

(A) REQUIREMENT TO PROVIDE TRAINING UPON REQUEST- The Secretary of Commerce is not required to provide training under the amendment made by paragraph (1) to a member of a Regional Fishery Management Council appointed before the date of the enactment of this Act, unless such member requests such training. Upon such a request, the Secretary shall provide such training within 6 months after the date of the request.

(B) RESTRICTION ON VOTING NOT APPLICABLE- Subparagraph (B) of paragraph (7) of section 307(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(b)), as amended by this subsection, shall not apply to a member of a Regional Fishery Management Council to whom the Secretary is required to provide training under subparagraph (A) of this paragraph.

SEC. 3. REGIONAL FISHERY MANAGEMENT COUNCIL COMMITTEES AND PANELS.

(a) Science and Statistical Committees- Section 302(g)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(g)(1)) is amended to read as follows:

^(1) SCIENCE AND STATISTICAL COMMITTEES-

^(A) REQUIREMENT TO ESTABLISH- Each Council shall establish and maintain a science and statistical committee to assist the Council in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of any fishery management plan. The members of the science and statistical committee shall consist of qualified Federal, State, academic, or independent scientists, and shall be appointed and paid a stipend by the Secretary.

^(B) ESTABLISHMENT OF FISHERY AND MARINE SCIENCE SUBCOMMITTEE- Each science and statistical committee established by a Council under this paragraph shall include a fishery and marine science subcommittee that--

^(i) is composed of members of the science and statistical committee who have demonstrated scientific expertise in fishery biological science or marine ecology; and

^(ii) includes balanced representation of both such disciplines on the subcommittee.

^(C) FUNCTIONS OF FISHERY AND MARINE SCIENCE SUBCOMMITTEE- In the development by a Council of any fishery management plan or amendment to a fishery management plan, and in the taking by a Council of any other action that prescribes an authorized fishing mortality level or rate, the fishery and marine science subcommittee of the Council shall--

^(i) based on the best scientific information available, determine for the Council--

^(I) biological catch (including bycatch) limits, including annual limits, that will prevent overfishing, rebuild overfished stocks, achieve, on a continuing basis, the optimum yield for such fishery, and that consider predator-prey relationships and other ecological factors;

^(II) specific habitat types and areas in need of protection from the adverse effects of fishing identified pursuant to section 303(a)(7); and

^(III) any additional protections required for species under the Council's jurisdiction that are listed as threatened species or endangered under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533);

^(ii) allow an opportunity for public input on the development of the subcommittee's determinations and create a public record of such input and the

subcommittee's response to such input;

`(iii) publish its determinations in the Federal Register; and

`(iv) review all conservation and management measures developed by the Council to determine whether such measures are at least as stringent as the subcommittee's determinations made under clause (i).

`(D) RECOMMENDATIONS- Each fishery and marine science subcommittee may recommend to the associated Council conservation and management measures that are based on and consistent with the determinations made by the subcommittee under subparagraph (C)(i).'

(b) Effect of Decisions and Recommendations- Section 302(g)(5) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(g)(5)) is amended by inserting ` , except decisions and recommendations made by the fisheries and marine science subcommittees of the science and statistical committees pursuant to paragraph (1)(C)(i),' after `under this subsection'.

(c) Effect of Decisions and Recommendations- Section 302(g) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(g)) is amended by adding at the end the following:

`(6) For the purposes of this subsection, the term `qualified Federal, State, academic, or independent scientists' means individuals who--

`(A) through publication of peer-reviewed scientific literature and academic training, have--

`(i) demonstrated scientific expertise in fisheries science or marine ecology; or

`(ii) demonstrated expertise in economics or social science as it relates to fisheries management; and

`(B) have no direct financial interest, or are not employed by any person with a direct financial interest, in any fishery.'

(d) Disclosure of Financial Interest and Recusal- Section 302(j) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(j)) is amended by striking paragraphs (6) and (7) and inserting the following:

`(6) PROHIBITION ON VOTING-

`(A) PROHIBITION- 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).

`(B) DETERMINATION OF EFFECT ON FINANCIAL INTEREST- At the request of an affected individual or a member of the public, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have an effect on the financial interest

of an affected individual referred to in subparagraph (A).

`(C) REVIEW OF DETERMINATION- Any Council member or member of the public may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B), within 10 days after such determination. Such review shall be completed within 30 days after receipt of the request.

`(D) TREATMENT OF DECISION MADE PENDING REVIEW- If the Council makes a decision before the Secretary has completed a review under subparagraph (C), the eventual ruling by the Secretary in the review shall be treated as a cause for invalidation or reconsideration by the Secretary of such decision, 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.

`(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 2005, shall promulgate regulations that--

 `(i) prohibit an affected individual from voting in accordance with subparagraph (A); and

 `(ii) allow for the making of determinations under subparagraphs (B) and (C).

`(7) RELATIONSHIP TO OTHER LAW- Section 208 of title 18, United States Code, does not apply to an affected individual referred to in paragraph (1)(A)(ii) during any time during which the individual is in compliance with the regulations prescribed under paragraph (5).'

SEC. 4. REQUIRED PROVISIONS IN FISHERY MANAGEMENT PLANS.

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

(1) in paragraph (1)(A) by inserting 'and the associated ecosystem' before the semicolon at the end;

(2) in paragraph (1) by striking 'and' after the semicolon at the end of subparagraph (B), by adding 'and' after the semicolon at the end of subparagraph (C), and by adding at the end the following:

 `(D) in the case of a plan developed by a Council, at least as stringent as (or more stringent than) the matters determined under section 302(g)(1)(C)(i) by the fishery and marine science subcommittee of the Council;'; and

(3) by amending paragraph (14) to read as follows:

 `(14) allocate any quotas or other conservation and management measures 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 that are subject to the approval of the Council.'

SEC. 5. PEER REVIEW.

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

“(i) Peer Review-

“(1) REVIEW REQUIREMENTS- The Secretary, using qualified independent scientists, shall--

“(A) periodically conduct peer reviews of determinations made under section 302(g)(1)(C)(i) by each fishery and marine science subcommittee of a Council's science and statistical committee; and

“(B) upon request by a Council, conduct a peer review of a determination made under section 302(g)(1)(C)(i) by a fishery and marine science subcommittee of the Council's science and statistical committee.

“(2) IMPLEMENTATION OF DETERMINATION NOT AFFECTED- Paragraph (1)(B), and any request for review under that paragraph, shall not affect any requirement that a Council implement a determination that is the subject of such a request.”

SEC. 6. COOPERATIVE RESEARCH, DATA COLLECTION, AND GEAR MODIFICATION PROGRAM.

Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855) is amended by adding at the end the following:

“(j) Cooperative Research, Data Collection, and Gear Modification Program- In cooperation with the Councils, the fishing industry, the conservation community, and interested academics, the Secretary shall carry out a cooperative research, data collection, and gear modification program to--

“(1) conduct conservation engineering projects designed to avoid bycatch, minimize the mortality of unavoidable bycatch, or minimize fishery impacts on essential fish habitat through modifications of fishing gear and practices;

“(2) identify ecosystem effects of fishing, to monitor marine ecosystem trends and dynamics;

“(3) collect information on the status of stocks of fish and the life history of managed species of fish;

“(4) provide financial assistance to fishermen to offset the costs of modifying fishing practices and gear to meet the requirements of this Act;

“(5) provide financial assistance to States for programs to improve recreational fishing data; and

“(6) provide financial or other incentives for fishermen to develop and utilize fishing gear

and practices that avoid bycatch, the mortality of unavoidable bycatch, and adverse impacts on essential fish habitat.'

SEC. 7. AMENDMENTS TO SALTONSTALL-KENNEDY ACT.

(a) Use of Transferred Amounts- Section 2(b) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)), popularly known as the Saltonstall-Kennedy Act, is amended to read as follows:

`(b) Transfer of Funds- The Secretary of Agriculture shall transfer to the Secretary each fiscal year from moneys made available to carry out the provisions of section 32 of such Act of August 24, 1935, an amount equal to 30 percent of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which shall be maintained in a separate fund only for use by the Secretary--

`(1) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c);

`(2) to implement the national fisheries research and development program provided for under subsection (d);

`(3) to implement the Northwest Atlantic Ocean Fisheries Reinvestment Program established under section 314 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1863);

`(4) to fund the Federal share of a fishing capacity reduction program established under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a); and

`(5) to implement section 305(j) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(j)).'

(b) Allocation of Fund Moneys- Section 2(e)(1) of such Act (15 U.S.C. 713c-3(e)) is amended--

(1) in the first sentence by inserting `and such other purposes as are authorized by this Act' after `provisions of this section';

(2) by inserting after the first sentence the following:

`Amounts available for allocation under this subsection shall be in addition to amounts appropriated for National Marine Fisheries Service operations.';

(3) in paragraph (1)(A) by striking `no less than 60 per centum \$5,000,000 of such moneys' and inserting `\$5,000,000'; and

(4) by amending paragraph (1)(B) to read as follows:

`(B) The Secretary shall use the balance of the moneys in the fund to finance activities carried out under section 305(k) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(k)).'

END

