

109th CONGRESS

1st Session

H. R. 3278

To amend the Magnuson-Stevens Fishery Conservation and Management Act to establish requirements for fishing quota systems, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES****July 14, 2005**

Mr. ALLEN (for himself, Mr. SIMMONS, and Mr. DELAHUNT) 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 establish requirements for fishing quota systems, 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 'Fishing Quota Standards Act of 2005'.

**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. DEFINITIONS.**

Section 3 (16 U.S.C. 1802) is amended by adding at the end the following:

(48) The term 'fishing quota system'--

(A) means any limited access system that requires a person to acquire a permit under this Act to harvest fish in a fishery, that specifies a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by the person or a definable group of persons, during each fishing season for which the permission is granted; and

(B) includes any area or community quota program, sector quota program, fishing cooperative program, or individual fishing quota program.

(49) The term 'quota share' means a permit under a fishing quota system to harvest a quantity of fish, expressed as a percentage of the total allowable catch of a fishery that may be received or held for

exclusive use by a person, during each fishing season for which the permission is granted.'.

#### SEC. 4. GENERAL REQUIREMENTS FOR LIMITED ACCESS SYSTEMS FOR FISHERIES.

(a) Conditions for Authority to Establish Limited Access Systems- Section 303(b)(6) (16 U.S.C. 1853(b)(6)) is amended by striking subparagraphs (A) through (F) and inserting the following:

- `(A) the conservation requirements of this Act with respect to the fishery;
- `(B) the breadth of the present and historic participation in the fishery;
- `(C) the economics of the fishery;
- `(D) the cultural and social framework relevant to the fishery and any affected fishing communities;
- `(E) the fair and equitable distribution of a fishery as a public trust resource; and
- `(F) any other relevant considerations.'.

(b) Requirements for the Fishery- Section 303(d) (16 U.S.C. 1853(d)) is amended--

- (1) by striking paragraph (5);
- (2) by redesignating paragraphs (2), (3), and (4) as paragraphs (7), (8), and (9), respectively;
- (3) by striking so much as precedes paragraph (7), as so redesignated, and inserting the following:

`(d) Fishing Quota Systems-

`(1) IN GENERAL- A fishery management plan or plan amendment that establishes a fishing quota system for a fishery after the date of the enactment of the Fishing Quota Standards Act of 2005 shall--

- `(A) include management measures designed to ensure the sustainability of the fishery and provide additional and substantial conservation benefits, social benefits, and economic benefits to the fishery and fishing communities;
- `(B) be effective for a period of a fixed duration, not to exceed 7 years;
- `(C) provide for administration of the system by the Secretary in accordance with the terms of the plan;
- `(D) establish procedures for the Council having authority over the fishery, or the Secretary in the case of a fishery management plan developed by the Secretary, to review the quota system at least 1 year prior to the end of the effective period of the plan;
- `(E) allocate, review, and limit or terminate quota shares in accordance with this subsection;
- `(F) provide a fair and equitable process to appeal to the Secretary decisions made by a Council on--
  - `(i) eligibility to participate in the referendum required under this subsection and eligibility to receive an allocation of quota shares; and
  - `(ii) limitations, restrictions, and revocations of quota shares;

(G) minimize, to the maximum extent practicable, negative social and economic impacts of the system on local coastal communities including historic fishing communities;

(H) minimize geographic consolidation of the fishery, including processing facilities;

(I) ensure adequate enforcement, management, and data collection, including the use of observers where appropriate at a level of coverage that yields statistically significant results; and

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

(2) ALLOCATION OF QUOTA SHARES-

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

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

(ii) ensure that each quota share is held only by individuals who are citizens of the United States or permanent resident aliens;

(iii) to the maximum extent practicable, preserve the percentage of the total quota shares available at the inception of the program to vessels for which the quota share holder is onboard during fishing operations;

(iv) establish a mechanism to allow new entrants into the fishery;

(v) prevent any person from controlling an excessive share of quota shares under a fishing quota system and establish any other limits, measures, or financial reporting requirements necessary to prevent inequitable concentration of quota shares and to prevent significant adverse impacts on any person that holds a permit authorizing fishing in the fishery or fishing community; and

(vi) create incentives in successive allocations for fishermen who increase their use of gear that more selectively captures target species or increase protection of essential fish habitat, by increasing the allocation for those fishermen.

(B) TRANSFER TO FAMILY MEMBERS- (i) The Secretary may allow the transfer of a quota share allocated under subparagraph (A), on a case-by-case basis, from the holder of the quota share to a member of the holder's immediate family who would otherwise not be eligible for quota share under the program, due to death or disablement of the holder.

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

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

(C) COMMUNITIES HOLDING QUOTAS- The Council having authority over the fishery may authorize geographically discrete communities to hold quota shares.

(3) TERMINATION OR LIMITATION OF FISHING QUOTA SYSTEM-

(A) IN GENERAL- A fishing quota system established for a fishery may be limited or terminated at any time in accordance with this paragraph if necessary for the conservation and management of the fishery, including if the quota system has been found to have jeopardized the sustainability of the stock.

(B) PROCEDURE- A fishing quota system may be limited or terminated under this paragraph by--

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

(ii) the Secretary, through repeal or revocation in accordance with section 304(h) of the fishery management plan that established the system;

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

(iv) the Secretary, if--

(I) the Secretary finds that the system is not meeting or exceeding the requirements of the Act, including the requirement under paragraph (1)(A) to provide additional and substantial conservation benefits; and

(II) the Council or Secretary does not make the changes necessary to ensure compliance with this subsection.

(C) OTHER AUTHORITY OF SECRETARY NOT DIMINISHED- This paragraph does not diminish the authority of the Secretary under any other provision of this Act.

(4) TERMINATION, RENEWAL, OR LIMITATION OF QUOTA SHARES- A quota share issued under a fishing quota system--

(A) shall expire not later than 7 years after the date it is issued;

(B) may be renewed in accordance with the terms of the plan and regulations issued by the Secretary or the Council having authority over the fishery for which it is issued, if, based on a review by the committee established under paragraph (6), the fishing quota system is meeting or exceeding the requirements of this Act and the conservation and management requirements of the fishery; and

(C) may be modified, revoked, limited, or reallocated if necessary for the fishing quota system to meet or exceed the requirements of this Act and the conservation and management requirements of the fishery.

(5) REFERENDUM PROCEDURE-

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

(ii) The Secretary may prepare a fishery management plan or plan amendment that establishes a fishing quota system only if the development and approval of such plan or plan amendment is approved in a referendum conducted in accordance with this paragraph.

(B) CONDUCT- The Secretary shall conduct the referendum required under subparagraph (A). The Secretary shall develop guidelines to determine procedures to conduct such referendum in a fair and equitable manner. Prior to the referendum, the Secretary shall identify and notify all persons who are

eligible to vote in the referendum, and make available to all such persons information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed fishing quota system.

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

`(D) ELIGIBILITY TO PARTICIPATE- A person shall be eligible to participate in a referendum under this paragraph with respect to a fishery only if the person--

    `(i) holds a permit to fish in the fishery; or

    `(ii) is a crew member on a fishing vessel who derives at least 30 percent of their annual income from the fishery that would be subject to the proposed fishing quota system and at least 60 percent of their total annual income from fishing.

`(6) COUNCIL PROGRAM REVIEW COMMITTEE-

    `(A) IN GENERAL- Each Council, upon deciding to develop a fishing quota system for a fishery, shall establish, maintain, and appoint members of a review committee to make recommendations to the Council and the Secretary for development, evaluation, and necessary changes to such system to ensure that it meets the requirements of this subsection.

    `(B) GUIDELINES FOR MEMBERS- The Council, in consultation with the Secretary, shall develop guidelines that will ensure that review committee members are qualified for appointment and are subject to conflict of interest rules.

    `(C) SELECTION OF MEMBERS- The Council shall select the members of each review committee from a list of individuals submitted by the Secretary. The Secretary may not submit the names of individuals to the Council for appointment unless the Secretary has determined that each such individual is qualified under the guidelines developed under with subparagraph (B).

    `(D) APPOINTMENTS- The members of a review committee established by a Council under this paragraph shall be appointed by the Council in such a manner as to provide fair representation to all groups that would be affected by a fishing quota system for a fishery, including commercial, recreational, and subsistence fishing interests, fishing communities, scientists, and conservation organizations and other public interest groups.

    `(E) RESTRICTION ON VOTING- A member of a review committee established under this paragraph shall not vote on any decision pertaining to a fishing quota system under which the member holds a quota share or will hold a quota share in the subsequent 5-year period.

    `(F) REVIEWS AND RECOMMENDATIONS REGARDING SYSTEMS- Each review committee shall, every 7 years, review fishing quota systems, determine whether such systems meet the requirements of this Act, and evaluate whether each such system has improved management, conservation, and safety in the fishery to which it applies. Pursuant to such review, the committee shall recommend to the Secretary and the Council any changes to a fishing quota system necessary to ensure it meets those requirements and standards of improvement including revoking, limiting, or reallocating quota shares.

    `(G) REPORTS- The Council shall transmit to the Congress a report containing the results of each review under subparagraph (F) within 90 days after the review is completed.;

(4) in paragraph (7)(A) (as so redesignated) by striking 'individual fishing quota programs' and inserting 'a

fishing quota system';

(5) in paragraph (7)(B) by striking 'individual fishing quota programs' and inserting 'fishing quota systems'; and

(6) by adding at the end the following:

(11) DEFINITIONS- For the purposes of this subsection--

(A) the term 'additional and substantial conservation benefits to the fishery'--

(i) except as provided in clause (ii), means scientifically measurable conservation benefits to the fishery at the time of establishment of a fishing quota system, that substantially--

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

(II) prevent highgrading;

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

(IV) protect essential fish habitat; or

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

(B) the term 'control' means owns, leases, or otherwise directs fishing operations under a fishing quota system;

(C) the term 'excessive share' means more than 1 percent of the total allowable catch in a fishery, except that a Council may increase such percentage--

(i) to no more than 5 percent, if the Council can demonstrate that such an increase will not be detrimental to other individual holders of quota shares under a fishing quota system;

(ii) to no more than 15 percent, if there are an average of 20 or fewer participants in the fishery during the 3-year period prior to the implementation of the control date for the fishing quota system or, if there is no control date, from the date of implementation of the fishing quota system, and the Council can demonstrate that such an increase will not be detrimental to other individual holders of quota shares under the system; or

(iii) to greater than 15 percent, if there are an average of less than 7 participants in the fishery during the 3-year period prior to the implementation of the control date for the fishing quota system or, if there is no control date, from the date of implementation of the fishing quota system, and the Council can demonstrate that such an increase will not be detrimental to other individual holders of quota shares under the system; and

(D) the term 'fair and equitable allocation' means initial and subsequent allocation of quota shares based on multiple criteria that provide for consideration of--

(i) conservation performance, including the use of selective fishing practices that have minimal bycatch, prevent highgrading, and have minimal adverse impacts on essential fish habitat;

(ii) owner-operators of fishing vessels; and

(iii) long-term participation in the fishery.'.

## SEC. 5. ACTION BY SECRETARY.

(a) Establishment of Fees- Section 304 (16 U.S.C. 1854) is amended--

(1) in subsection (c)(3) by striking 'individual fishing quota program' and inserting 'fishing quota system';

(2) in subsection (d)(2)--

(A) by striking '(A)';

(B) by striking 'of any--' and all that follows through 'community' and inserting 'of any community';  
and

(C) by striking subparagraph (B);

(3) by adding at the end of subsection (d) the following:

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

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

(i) With respect to any initial allocation under a limited access system established after the date of the enactment of the Fishing Quota Standards Act of 2005, an initial allocation fee that shall be collected from the person to whom the quota share is first issued.

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

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

(C) In determining the amount of a fee under subparagraph (B), the Secretary shall ensure that the total amount collected from all holders of quota shares in a fishery subject to a fishing quota system is sufficient to recover direct costs related to administering and implementing the fishing quota system, including enforcement, management, and collection of ecological and socio-economic data (including adequate observer coverage).

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

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

(b) 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-

(1) REQUIREMENT FOR APPROVAL OF PLAN- The Secretary may not approve a fishery management plan that establishes a fishing quota system unless the plan complies with section 303(d).

(2) REGULATIONS- The Secretary shall issue regulations that establish requirements for establishing a fishing quota system. The regulations shall--

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

(B) ensure that any fishing quota system is consistent with the requirements of section 303(d);

(C) require the collection of fees in accordance with subsection (d)(3) of this section;

(D) provide for appropriate penalties for violations of regulations governing fishing quota systems, including the revocation of quota shares for such violations; and

(E) establish a central lien registry system for the identification, perfection, and determination of lien priorities, and nonjudicial foreclosure of encumbrances, on fishing quotas.'

## SEC. 6. MISCELLANEOUS CONFORMING AMENDMENTS.

(a) Section 305- Section 305(h)(1) (16 U.S.C. 1855(h)(1)) is amended by striking 'individual'.

(b) Section 402- Section 402(b)(1)(D) (16 U.S.C. 1881a(b)(1)(D)) is amended by striking 'individual fishing quota program' and inserting 'fishing quota system'.

(c) Section 407- Section 407 (16 U.S.C. 1883) is amended--

(1) in subsection (a)(1)(D) by striking 'individual fishing quota program' and inserting 'fishing quota system'; and

(2) in subsection (c)(1) by striking 'individual fishing quota program' and inserting 'fishing quota system'.

END