

LEGISLATIVE MATTERS

The Legislative Committee (LC) will meet on Thursday, September 11, 2014 to discuss the status of Magnuson-Stevens Act (MSA) reauthorization, review current legislation, and draft a report to the Council (Agenda Item I.1.b).

MSA Reauthorization Status

Currently there are two bills that propose to reauthorize the MSA. The first, HR 4742, was introduced in May and has been discussed by the Legislative Committee and Council. A new draft of the Senate's bill was released for discussion on July 18 (Agenda Item I.1.a, Attachment 1). An updated, marked-up and footnoted version of the MSA that shows proposed changes by both House and Senate is provided as Agenda Item I.1.a, Attachment 2; a brief summary of differences between the versions is provided as Agenda Item I.1.a, Attachment 3; and a letter from the Gulf of Mexico Fishery Management Council providing their perspective is provided as Agenda Item I.1.a, Attachment 4.

In June, the Council directed staff to send a letter to principals in the House of Representatives and Senate regarding proposed MSA reauthorization legislation and draft legislation (Agenda Item I.1.a, Attachment 5). In addition, the Council directed the Legislative Committee to review comments made by the Highly Migratory Species Advisory Subpanel, Coastal Pelagic Species Advisory Subpanel, and Groundfish Advisory Subpanel regarding MSA reauthorization. A summary of those comments is attached (Agenda Item I.1.a, Attachment 6).

Other Legislation

Council staff has provided a summary of legislation introduced in the 113th U.S. Congress (Agenda Item I.1.a, Attachment 7). Among other legislation, Senator Lisa Murkowski has introduced a bill calling for Congressional approval and NEPA analysis of National Monument designations (S 2608, Agenda Item I.1.a, Attachments 8, 9), and the Council was asked to comment on the bill (Agenda Item I.1.a, Attachment 10).

Council Action:

Consider the LC Report and recommendations.

Reference Materials:

1. Agenda Item I.1.a, Attachment 1: Second Senate Draft MSA Reauthorization Bill (*Electronic only*).
2. Agenda Item I.1.a, Attachment 2: Footnoted Version of MSA with House and Senate Changes (*Electronic only*).
3. Agenda Item I.1.a, Attachment 3: Staff Summary of Differences between House and Senate Draft Versions of MSA.
4. Agenda Item I.1.a, Attachment 4: Gulf Fishery Management Council letter commenting on House discussion draft.
5. Agenda Item I.1.a, Attachment 5: Letter to Chairman Hastings and Senator Begich.

6. Agenda Item I.1.a, Attachment 6: Summary of Advisory Body Comments on MSA Reauthorization.
7. Agenda Item I.1.a, Attachment 7: Staff Summary of Federal legislation.
8. Agenda Item I.1.a, Attachment 8: S 2608, Improved National Monument Designation Process Act.
9. Agenda Item I.1.a, Attachment 9: Summary of Murkowski Bill.
10. Agenda Item I.1.a, Attachment 10: Request for Council Comment on Murkowski Bill.
11. Agenda Item I.1.b: Supplemental Legislative Committee Report.

Agenda Order:

- a. Agenda Item Overview
- b. Report of the Legislative Committee
- c. Reports and Comments of Advisory Bodies and Management Entities
- d. Public Comment
- e. **Council Action:** Consider the Report and Recommendations of the Legislative Committee

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PFMC
08/13/14

[STAFF WORKING DRAFT]

JULY 18, 2014

113TH CONGRESS
2D SESSION

S. _____

To amend the Magnuson-Stevens Fishery Conservation and Management Act to promote sustainable conservation and management for the Nation's fisheries and the communities that rely on them, and for other purposes.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to promote sustainable conservation and management for the Nation's fisheries and the communities that rely on them, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Magnuson-Stevens Fishery Conservation and Manage-
6 ment Reauthorization Act of 2014”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References to the Magnuson-Stevens Fishery Conservation and Management Act.
- Sec. 3. Changes in findings, purposes, and policy.
- Sec. 4. Definitions.
- Sec. 5. Authorization of appropriations.

TITLE I—CONSERVATION AND MANAGEMENT

- Sec. 101. Regional fishery management councils.
- Sec. 102. Contents of fishery management plans.
- Sec. 103. Action by the Secretary.
- Sec. 104. Other requirements and authority.
- Sec. 105. Prohibited acts.
- Sec. 106. Penalties.
- Sec. 107. Enforcement.
- Sec. 108. Transition to sustainable fisheries.
- Sec. 109. North Pacific fisheries conservation.
- Sec. 110. Regional fishery conservation and management authorities.
- Sec. 111. Summer flounder management.
- Sec. 112. Study of allocations in mixed-use fisheries.

TITLE II—FISHERY INFORMATION, RESEARCH, AND
DEVELOPMENT

- Sec. 201. Integrated data collection program and electronic technologies.
- Sec. 202. Capital construction.
- Sec. 203. Fisheries research.
- Sec. 204. Improving science.
- Sec. 205. Focusing assets for improved fisheries outcomes.
- Sec. 206. Seafood marketing.

TITLE III—REAUTHORIZATION OF OTHER FISHERY STATUTES

- Sec. 301. Anadromous Fish Conservation Act.
- Sec. 302. Interjurisdictional Fisheries Act of 1986.
- Sec. 303. Atlantic Coastal Fisheries Cooperative Management Act.
- Sec. 304. Atlantic Striped Bass Conservation Act.
- Sec. 305. Yukon River Salmon Act of 2000.
- Sec. 306. State authority for Dungeness crab fishery management.

TITLE IV—INTERNATIONAL

- Sec. 401. Secretarial representative for international fisheries.
- Sec. 402. Amendment to Pacific Salmon Treaty Act of 1985.
- Sec. 403. Reauthorization of Atlantic Tunas Convention Act of 1975.
- Sec. 404. Reauthorization of South Pacific Tuna Act of 1988.
- Sec. 405. High Seas Driftnet Fishing Moratorium Protection Act.
- Sec. 406. Reauthorization of Northwest Atlantic Fisheries Convention Act of 1995.

TITLE V—MISCELLANEOUS

Sec. 501. Technical amendments.

Sec. 502. Pacific insular areas; marine conservation plans.

Sec. 503. Gulf of Mexico red snapper catch limits; repeal.

1 **SEC. 2. REFERENCES TO THE MAGNUSON-STEVENSON FISH-**
2 **ERY CONSERVATION AND MANAGEMENT ACT.**

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

10 **SEC. 3. CHANGES IN FINDINGS, PURPOSES, AND POLICY.**

11 (a) FINDINGS.—Section 2(a) (16 U.S.C. 1801(a)) is
12 amended—

13 (1) in paragraph (3) by striking “at an ever-in-
14 creasing rate over the past decade”;

15 (2) in paragraph (6), by inserting “and marine
16 ecosystems” after “essential fish habitats”;

17 (3) in paragraph (11), by striking “have dem-
18 onstrated” and inserting “are demonstrating”;

19 (4) by redesignating paragraphs (7) through
20 (12) as paragraphs (10) through (15), respectively;

21 (5) by inserting before paragraph (10), as re-
22 designated, the following:

23 “(8) By establishing mechanisms, under au-
24 thority of this Act, for specifying science-based an-

1 nual catch limits in fishery management plans at
2 levels such that overfishing does not occur in fish-
3 eries, including measures to ensure accountability,
4 the Nation’s fishery resources are now being man-
5 aged sustainably to prevent overfishing and respond
6 quickly if overfishing occurs.

7 “(9) It is of critical importance to the health of
8 the Nation’s fishery resources and the coastal com-
9 munities that depend on them that the United
10 States maintain its progress in preventing over-
11 fishing and rebuilding overfished stocks.”;

12 (6) by redesignating paragraphs (4) through
13 (6) as paragraphs (5) through (7), respectively; and

14 (7) by inserting after paragraph (3) the fol-
15 lowing:

16 “(4) Subsistence fishing is an integral part of
17 life in many communities throughout the United
18 States, and the Nation’s marine and anadromous
19 fish are important sources of nutrition, sustenance,
20 and the cultural heritage of those communities.”.

21 (b) PURPOSES.—Section 2(b) (16 U.S.C. 1801(b)) is
22 amended—

23 (1) in paragraph (3), by striking “and rec-
24 reational” and inserting “, recreational, and subsist-
25 ence”;

1 (2) in paragraph (5), by striking “the State”
2 and inserting “the States, tribal governments,”; and

3 (3) in paragraph (7), by striking “the review of
4 projects” and inserting “projects and activities”;

5 (c) POLICY.—Section 2(c)(3) (16 U.S.C. 1801(c)(3))
6 is amended—

7 (1) by inserting “, tribes,” after “affected
8 States”; and

9 (2) by inserting “tribal,” after “State,”.

10 **SEC. 4. DEFINITIONS.**

11 (a) IN GENERAL.—Section 3 (16 U.S.C. 1802) is
12 amended—

13 (1) by inserting after paragraph (8) the fol-
14 lowing:

15 “(8A) The terms ‘depleted’ and ‘depletion’
16 mean, with respect to a stock of fish in a fishery,
17 that the stock is of a size that jeopardizes the capac-
18 ity of the fishery to produce the maximum sustain-
19 able yield on a continuing basis.”;

20 (2) in paragraph (33)(C), by inserting “or oth-
21 erwise depleted” after “overfished”;

22 (3) in paragraph (36), by inserting “, tribal,”
23 after “State,”;

24 (4) by inserting after paragraph (42) the fol-
25 lowing:

1 “(42A) The term ‘subsistence fishing’ means
2 fishing in which the fish harvested are intended for
3 customary and traditional uses, including for direct
4 personal or family consumption as food or clothing;
5 for the making or selling of handicraft articles out
6 of nonedible byproducts taken for personal or family
7 consumption, for barter, or sharing for personal or
8 family consumption; and for customary exchange or
9 trade. In this paragraph, the term—

10 “(A) ‘family’ means all persons related by
11 blood, marriage, or adoption, or any person liv-
12 ing within the household on a permanent basis;
13 and

14 “(B) ‘barter’ means the exchange of a fish
15 or fish part—

16 “(i) for another fish or fish part; or

17 “(ii) for other food or for nonedible
18 items other than money if the exchange is
19 of a limited and noncommercial nature.”;
20 and

21 (5) by inserting after paragraph (43) the fol-
22 lowing:

23 “(43A) The terms ‘tribal’ and ‘tribe’ mean an
24 Indian tribe as defined in section 102 of the Feder-

1 ally Recognized Indian Tribe List Act of 1994 (25
2 U.S.C. 479a).”.

3 (b) REDESIGNATION.—Paragraphs (1) through (50)
4 of section 3 (16 U.S.C. 1802), as amended by subsection
5 (a) of this section, are redesignated as paragraphs (1)
6 through (53), respectively.

7 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

8 (1) Section 7306b(b) of title 10, United States
9 Code, is amended by striking “defined in section
10 3(14)” and inserting “defined in section 3”.

11 (2) Section 3 of the Whale Conservation and
12 Protection Study Act (16 U.S.C. 917a) is amended
13 by striking “including the fishery conservation zone
14 as defined in section 3(8)” and inserting “including
15 the exclusive economic zone as defined in section 3”.

16 (3) Section 114(o) of the Marine Mammal Pro-
17 tection Act of 1972 (16 U.S.C. 1383a(o)) is amend-
18 ed—

19 (A) in paragraph (1), by striking “section
20 3(8)” and inserting “section 3”; and

21 (B) in paragraph (4), by striking “section
22 3(27)” and inserting “section 3”.

23 (4) Section 8(b)(2) of the Lacey Act Amend-
24 ments of 1981 (16 U.S.C. 3377(b)(2)) is amended—

1 (A) by striking “as defined in paragraph
2 (14) of section 3” and inserting “as defined in
3 section 3”; and

4 (B) by striking “as defined in paragraph
5 (13) of such section 3” and inserting “as de-
6 fined in such section 3”.

7 (5) Section 302 of the Atlantic Salmon Conven-
8 tion Act of 1982 (16 U.S.C. 3601) is amended—

9 (A) in paragraph (6), by striking “in sec-
10 tion 3(10)” and inserting “in section 3” and

11 (B) in paragraph (8), by striking “in sec-
12 tion 3(19)” and inserting “in section 3”.

13 (6) Section 3(6) of the Atlantic Striped Bass
14 Conservation Act (16 U.S.C. 5152(6)) is amended
15 by striking “in section 3(6)” and inserting “in sec-
16 tion 3”.

17 (7) Section 104(f)(4)(B) of the Compact of
18 Free Association Act of 1985 (48 U.S.C.
19 1904(f)(4)(B)) is amended by striking “have the
20 same meanings as provided in paragraphs (10) and
21 (14), respectively, of section 3” and inserting “have
22 the same meanings as provided in section 3”.

23 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

24 Section 4 (16 U.S.C. 1803) is amended to read as
25 follows:

1 **“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated to the Sec-
3 retary to carry out the provisions of this Act—

4 “(1) **【\$XXX,XXX,XXX】** for fiscal year 2015;

5 “(2) **【\$XXX,XXX,XXX】** for fiscal year 2016;

6 “(3) **【\$XXX,XXX,XXX】** for fiscal year 2017;

7 “(4) **【\$XXX,XXX,XXX】** for fiscal year 2018;

8 “(5) **【\$XXX,XXX,XXX】** for fiscal year 2019;

9 “(6) **【\$XXX,XXX,XXX】** for fiscal year 2020;

10 and

11 “(7) **【\$XXX,XXX,XXX】** for fiscal year
12 2021.”.

13 **TITLE I—CONSERVATION AND**
14 **MANAGEMENT**

15 **SEC. 101. REGIONAL FISHERY MANAGEMENT COUNCILS.**

16 (a) VOTING MEMBERS.—Section 302(b)(2) (16
17 U.S.C. 1852(b)(2)) is amended—

18 (1) in subparagraph (A), by striking “or the
19 commercial or recreational harvest” and inserting
20 “or the commercial, recreational, or subsistence fish-
21 ing harvest”;

22 (2) in subparagraph (B), by striking “in the
23 commercial and recreational facilities” and inserting
24 “in the commercial, recreational, and subsistence
25 fisheries”;

1 (3) in subparagraph (C), by striking “commer-
2 cial and recreational fishing interests” and inserting
3 “commercial, recreational, and subsistence fishing
4 interests”; and

5 (4) in subparagraph (D)—

6 (A) in clause (i)—

7 (i) by striking “Fisheries” and insert-
8 ing “Fishery”; and

9 (ii) by inserting “or the South Atlan-
10 tic Fishery Management Council” after
11 “Council”; and

12 (B) by striking clause (iv).

13 (b) ADDITION OF RHODE ISLAND TO THE MID-AT-
14 LANTIC FISHERY MANAGEMENT COUNCIL.—Section
15 302(a)(1)(B) (16 U.S.C. 1852(a)(1)(B)) is amended—

16 (1) by inserting “Rhode Island,” after “States
17 of”;

18 (2) by inserting “Rhode Island,” after “except
19 North Carolina,”;

20 (3) by striking “21” and inserting “23”; and

21 (4) by striking “13” and inserting “14”.

22 (c) COMMITTEES AND ADVISORY PANELS.—Section
23 302(g)(1)(B) (16 U.S.C. 1852(g)(1)(B)) is amended to
24 read as follows:

1 “(B) Each scientific and statistical com-
2 mittee shall—

3 “(i) provide its Council ongoing sci-
4 entific advice for fishery management deci-
5 sions, including recommendations for ac-
6 ceptable biological catch, preventing over-
7 fishing, maximum sustainable yield, achiev-
8 ing rebuilding targets, and reports on
9 stock status and health, bycatch, habitat
10 status, social and economic impacts of
11 management measures, and sustainability
12 of fishing practices; and

13 “(ii) carry out the requirements of
14 this subparagraph in a transparent man-
15 ner, allowing for public involvement in the
16 process.”.

17 (d) FUNCTIONS.—Section 302(h) (16 U.S.C.
18 1852(h)) is amended—

19 (1) in paragraph (7)(C), by striking “; and”
20 and inserting a semicolon;

21 (2) by redesignating paragraph (8) as para-
22 graph (9); and

23 (3) by inserting after paragraph (7) the fol-
24 lowing:

1 “(8) have the authority to use alternative fish-
2 ery management measures in a recreational fishery
3 (or the recreational component of a mixed-use fish-
4 ery), including extraction rates, fishing mortality,
5 and harvest control rules, to the extent they are in
6 accordance with the requirements of this Act; and”.

7 (e) **WEBCASTS OF COUNCIL MEETINGS.**—Section
8 302(i)(2) (16 U.S.C. 1852(i)(2)) is amended by adding
9 at the end the following:

10 “(G) Unless closed in accordance with
11 paragraph (3), each Council shall, where prac-
12 ticable, make available on the Internet website
13 of the Council a video or audio webcast of each
14 meeting of the Council and each meeting of the
15 scientific and statistical committee of the Coun-
16 cil not later than 30 days after the date of the
17 conclusion of such meeting.”.

18 (f) **REGIONAL FISHERY MANAGEMENT COUNCILS;**
19 **PROCEDURAL MATTERS.**—Section 302(i) (16 U.S.C.
20 1852(i)) is amended—

21 (1) in paragraph (4), by striking “or State au-
22 thorities” and inserting “, State, or tribal authori-
23 ties”; and

1 (2) in paragraph (6), by striking “Federal
2 agency or from a” and inserting “Federal agency,
3 tribal government, or”.

4 (g) COUNCIL TRAINING PROGRAM; TRAINING
5 COURSE.—Section 302(k)(1) (16 U.S.C. 1852(k)(1)) is
6 amended—

7 (1) by striking “Within 6 months after the date
8 of enactment of the Magnuson-Stevens Fishery Con-
9 servation and Management Reauthorization Act of
10 2006, the” and inserting “The”;

11 (2) in subparagraph (H), by striking “; and”
12 and inserting a semicolon;

13 (3) in subparagraph (I), by striking the period
14 at the end and inserting “; and”; and

15 (4) by adding at the end the following:

16 “(J) ecosystem-based fishery manage-
17 ment.”.

18 **SEC. 102. CONTENTS OF FISHERY MANAGEMENT PLANS.**

19 (a) REQUIRED PROVISIONS.—Section 303 (16 U.S.C.
20 1853) is amended—

21 (1) in subsection (a)—

22 (A) in paragraph (5), by inserting “, and
23 subsistence” after “charter”;

24 (B) in paragraph (13), by striking “and
25 charter fishing sectors” each place it appears

1 and inserting “charter, and subsistence fishing
2 components”;

3 (C) in paragraph (14)—

4 (i) by striking “each sector” and in-
5 serting “each component in the fishery”;
6 and

7 (ii) by striking “and charter fishing
8 sectors in the fishery and;” and inserting
9 “charter, and subsistence fishing compo-
10 nents in the fishery; and”; and

11 (D) in paragraph (15), by striking “estab-
12 lish a mechanism” and inserting “subject to
13 subsection (d), establish a mechanism”; and

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

15 “(d) LIMITATIONS.—

16 “(1) IN GENERAL.—The requirements under
17 subsection (a)(16) shall not—

18 “(A) apply to a species in a fishery that
19 has a mean life cycle of 18 months or less, or
20 to a species in a fishery with respect to which
21 all spawning and recruitment occurs beyond
22 State waters and the exclusive economic zone,
23 unless the Secretary has determined the fishery
24 is subject to overfishing of that species; and

1 “(B) limit or otherwise affect the require-
2 ments of section 301(a)(1) or 304(e) of this
3 Act.

4 “(2) CONSTRUCTION.—Nothing in this sub-
5 section shall be construed to affect any effective date
6 regarding the requirements under subsection (a)(16)
7 otherwise provided for under an international agree-
8 ment in which the United States participates.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
10 (1) Section 104 of the Magnuson-Stevens Fish-
11 ery Conservation and Management Reauthorization
12 Act of 2006 (120 Stat. 3584; 16 U.S.C. 1853 note)
13 is amended—

14 (A) by striking subsection (b); and

15 (B) by redesignating subsection (c) as sub-
16 section (b).

17 (2) Section 313(g)(2) (16 U.S.C. 1862(g)(2)) is
18 amended by striking “Notwithstanding section
19 303(d)” and inserting “Notwithstanding section
20 303A”.

21 (3) Section 407(b) (16 U.S.C. 1883(b)) is
22 amended by inserting “as in effect on the day before
23 the date of enactment of Magnuson-Stevens Fishery
24 Conservation and Management Reauthorization Act

1 of 2006 (120 Stat. 3575),” after “In addition to the
2 restrictions under section 303(d)(1)(A)”.

3 (4) Section 53706(a)(7) of title 46, United
4 States Code, is amended by striking “section
5 303(d)(4)” and inserting “section 303A”.

6 **SEC. 103. ACTION BY THE SECRETARY.**

7 (a) UPDATED AGENCY PROCEDURES.—Not later
8 than 90 days after the date of enactment of this Act, the
9 Secretary of Commerce shall issue a notice of proposed
10 rulemaking to revise and update agency procedures under
11 the mandate of section 304(i) of the Magnuson-Stevens
12 Fishery Conservation and Management Act (16 U.S.C.
13 1854(i)), as added by section 107 of the Magnuson-Stevens
14 Fishery Conservation and Management Reauthoriza-
15 tion Act of 2006 (120 Stat. 3594).

16 (b) ESTABLISHMENT OF FEES.—Section 304(d) (16
17 U.S.C. 1854(d)) is amended—

18 (1) in paragraph (2)(A)—

19 (A) by striking “actual costs directly re-
20 lated to” and inserting “net incremental costs
21 attributable to”;

22 (B) in clause (i), by striking “; and” and
23 inserting a semicolon;

24 (C) in clause (ii), by striking the period at
25 the end and inserting “; and”; and

1 (D) by adding at the end the following:

2 “(iii) management program that allo-
3 cates a percentage of the total allowable
4 catch to individuals who have formed a
5 sector (for purposes of this subparagraph,
6 as defined in section 648.2 of title 50,
7 Code of Federal Regulations).”; and

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

9 “(3) The Secretary shall not collect any fee
10 under this section or section 313(a) before preparing
11 an analysis that identifies the costs that will be re-
12 covered by the fee and the costs that will not be re-
13 covered by the fee. The analysis shall be included in
14 the applicable fishery management plan.”.

15 (c) REBUILDING OVERFISHED AND DEPLETED FISH-
16 ERIES.—Section 304(e) (16 U.S.C. 1854(e)) is amend-
17 ed—

18 (1) by amending the heading to read as follows:

19 “(e) REBUILDING OVERFISHED AND OTHERWISE
20 DEPLETED FISHERIES.—”;

21 (2) by amending paragraph (1) to read as fol-
22 lows:

23 “(1) The Secretary shall report annually to the
24 Congress and the Councils on the status of fisheries
25 within each Council’s geographical area of authority

1 and identify those fisheries that are overfished or
2 otherwise depleted, or are approaching a condition of
3 being overfished or otherwise depleted. For those
4 fisheries managed under a fishery management plan
5 or international agreement, the status shall be deter-
6 mined using the criteria for overfishing (or deple-
7 tion, where applicable) specified in the plan or agree-
8 ment. A fishery shall be classified as approaching a
9 condition of being overfished or otherwise depleted
10 if, based on trends in fishing effort, fishery resource
11 size, and other appropriate factors, the Secretary es-
12 timates that the fishery will become overfished or
13 otherwise depleted within 2 years.”;

14 (3) in paragraph (2), by inserting “or otherwise
15 depleted” after “overfished”;

16 (4) in paragraph (3)(B), by inserting “or other-
17 wise depleted” after “overfished”;

18 (5) by amending paragraph (4)(A) to read as
19 follows:

20 “(A) specify a time period for rebuilding
21 the fishery that—

22 “(i) shall be as short as possible, tak-
23 ing into account the status and biology of
24 any overfished stocks of fish, the needs of
25 fishing communities, recommendations by

1 international organizations in which the
2 United States participates, and the inter-
3 action of the overfished stock of fish within
4 the marine ecosystem; and

5 “(ii) except where management meas-
6 ures under an international agreement
7 with the United States participates dictate
8 otherwise, shall not exceed—

9 “(I) 10 years, except in cases
10 where the biology of the stock of fish
11 or other environmental conditions dic-
12 tate otherwise; or

13 “(II) the sum of the time in
14 which the affected stock of fish is ex-
15 pected to rebuild to its maximum sus-
16 tainable yield biomass level in the ab-
17 sence of any fishing mortality, and the
18 mean generation of time of the af-
19 fected stock of fish, if those time val-
20 ues are the best scientific information
21 available;”; and

22 (6) in paragraph (5), by striking “that a fishery
23 is overfished” and inserting “that a fishery is over-
24 fished or otherwise depleted”.

1 (d) INTERNATIONAL OVERFISHING.—Section 304
2 (16 U.S.C. 1854) is amended—

3 (1) by striking “(i) INTERNATIONAL OVER-
4 FISHING.—” and inserting “(j) INTERNATIONAL
5 OVERFISHING.—”; and

6 (2) in subsection (j)(1), as redesignated by
7 paragraph (1) of this subsection, by inserting
8 “shall” after “State,”.

9 (e) ANNUAL REPORT ON SPECIAL FUNDS.—Section
10 304 (16 U.S.C. 1854), as amended by subsection (d) of
11 this section, is further amended by inserting at the end
12 the following:

13 “(k) ANNUAL REPORT ON SPECIAL FUNDS.—

14 “(1) ANNUAL REPORT.—Not later than 30 days
15 after the last day of each fiscal year, the Secretary
16 shall submit to the Committee on Commerce,
17 Science, and Transportation of the Senate and the
18 Committee on Natural Resources of the House of
19 Representatives a report for that fiscal year on—

20 “(A) the Western Pacific Sustainable Fish-
21 eries Fund established under section 204(e)(7);

22 “(B) the Limited Access System Adminis-
23 tration Fund established under section
24 305(h)(5)(B);

1 “(C) the North Pacific Fishery Observer
2 Fund established under section 313(d); and

3 “(D) the Fisheries Conservation and Man-
4 agement Fund established under section 208(a)
5 of the Magnuson-Stevens Fishery Conservation
6 and Management Reauthorization Act of 2006
7 (16 U.S.C. 1891b(a)).

8 “(2) REQUIRED INFORMATION.—The annual re-
9 port required under paragraph (1) shall include a
10 detailed accounting of—

11 “(A) all moneys in each fund at the start
12 of the fiscal year;

13 “(B) all moneys deposited in each fund
14 during the fiscal year;

15 “(C) all moneys paid out of each fund dur-
16 ing the fiscal year; and

17 “(D) all projects, programs, and activities
18 funded by each fund during the fiscal year.”.

19 **SEC. 104. OTHER REQUIREMENTS AND AUTHORITY.**

20 (a) FISH HABITAT.—Section 305(b) (16 U.S.C.
21 1855(b)) is amended—

22 (1) in paragraph (3), by inserting “or tribal
23 government” after “or State agency” each place it
24 appears; and

25 (2) in paragraph (4)—

1 (A) by striking “from a Council or Federal
2 or State agency” and inserting “from a Coun-
3 cil, Federal or State agency, or tribal govern-
4 ment”; and

5 (B) by inserting “or tribal government”
6 after “by any State or Federal agency”.

7 (b) JUDICIAL REVIEW.—Section 305(f)(2) (16
8 U.S.C. 1855(f)(2)) is amended by striking “including, but
9 not limited to, actions that establish the date of closure
10 of a fishery to commercial or recreational fishing” and in-
11 serting “including but not limited to actions that establish
12 the date of closure of a fishery to commercial, recreational,
13 or subsistence fishing”.

14 (c) CONSUMER INFORMATION REGARDING
15 SUSTAINABLY CAUGHT FISH.—Section 305 (16 U.S.C.
16 1855) is amended by adding at the end the following:

17 “(l) SUSTAINABILITY STANDARD.—

18 “(1) IN GENERAL.—For the purpose of this
19 Act, fish is sustainability caught if—

20 “(A) the fish is harvested in accordance
21 with—

22 “(i) a fishery management plan pre-
23 pared and approved under this Act; or

24 “(ii) equivalent conservation and man-
25 agement measures of a State or tribe, or

1 under an international agreement to which
2 the United States is a party, as determined
3 by the Secretary;

4 “(B) the fishery from which the fish is
5 harvested is not overfished or otherwise de-
6 pleted; and

7 “(C) the overfishing or other depletion is
8 not occurring in the fishery from which the fish
9 is harvested.

10 “(2) REBUILDING FISHERIES.—A fishery that
11 is subject to a rebuilding plan under this Act, or
12 equivalent conservation and management measures
13 as determined by the Secretary, meets the criteria
14 specified in subparagraphs (B) and (C) of paragraph
15 (1) if the Secretary determines that the plan is ef-
16 fectively rebuilding the fishery.”.

17 **SEC. 105. PROHIBITED ACTS.**

18 Section 307(1) (16 U.S.C. 1857(1)) is amended—

19 (1) in subparagraph (Q), by striking “; or” and
20 inserting a semicolon;

21 (2) by redesignating subparagraph (R) as sub-
22 paragraph (S); and

23 (3) by inserting after paragraph (Q) the fol-
24 lowing:

1 “(R) to knowingly and willfully make or
2 submit any incomplete, invalid, or false record,
3 account, or label for, or any false identification
4 of, any fish or fish product (including false
5 identification of the species, harvesting vessel or
6 nation, or the date or location where harvested)
7 that has been or is intended to be imported, ex-
8 ported, transported, sold, offered for sale, pur-
9 chased, or received in interstate or foreign com-
10 merce, except where such making or submission
11 is prohibited under subparagraph (I); or”.

12 **SEC. 106. PENALTIES.**

13 (a) CIVIL PENALTIES AND PERMIT SANCTIONS.—
14 Section 308 (16 U.S.C. 1858) is amended—

15 (1) in subsection (a), by striking
16 “\$100,000” and inserting “\$180,000”; and

17 (2) in subsection (f), by inserting “or investiga-
18 tion of a violation of this Act” after “under this sec-
19 tion”.

20 (b) CRIMINAL PENALTIES.—Section 309(b) (16
21 U.S.C. 1859) is amended—

22 (1) by striking “\$100,000” and inserting
23 “\$180,000”; and

24 (2) by striking “\$200,000” each place it ap-
25 pears and inserting “\$360,000”.

1 **SEC. 107. ENFORCEMENT.**

2 (a) JURISDICTION OF THE COURTS.—

3 (1) IN GENERAL.—Section 311(d) (16 U.S.C.
4 1861(d)) is amended to read as follows:

5 “(d) JURISDICTION OF THE COURTS.—

6 “(1) IN GENERAL.—The district courts of the
7 United States shall have exclusive jurisdiction over
8 any case or controversy arising under the provisions
9 of this Act. Any such court may, at any time—

10 “(A) enter restraining orders or prohibi-
11 tions;

12 “(B) issue warrants, process in rem, or
13 other process;

14 “(C) prescribe and accept satisfactory
15 bonds or other security; and

16 “(D) take such other actions as are in the
17 interest of justice.

18 “(2) HAWAII AND PACIFIC INSULAR AREAS.—In
19 the case of Hawaii or any possession of the United
20 States in the Pacific Ocean, the appropriate court is
21 the United States District Court for the District of
22 Hawaii, except that—

23 “(A) in the case of Guam and Wake Is-
24 land, the appropriate court is the United States
25 District Court for the District of Guam; and

1 “(B) in the case of the Northern Mariana
2 Islands, the appropriate court is the United
3 States District Court for the District of the
4 Northern Mariana Islands.”.

5 (2) CONSTRUCTION.—Nothing in this section,
6 or the amendments made by subsection (a), shall be
7 construed to affect any case or controversy com-
8 menced, or any case or controversy pending before
9 a district court of the United States, prior to the
10 date of enactment of this Act.

11 (b) PAYMENT OF STORAGE, CARE, AND OTHER
12 COSTS.—Section 311(e) (16 U.S.C. 1861(e)) is amend-
13 ed—

14 (1) in paragraph (1)—

15 (A) by striking “Notwithstanding any
16 other provision of law” and inserting “IN GEN-
17 ERAL.—Except as otherwise required under sec-
18 tion 204(e)(8)”;

19 (B) in subparagraph (E), by striking “;
20 and” and inserting a semicolon;

21 (C) in subparagraph (F), by striking the
22 period at the end and inserting “; and”; and

23 (D) by inserting after subparagraph (F),
24 the following:

1 “(G) the costs of stock assessments, sur-
2 veys, and data collection in fisheries managed
3 under this Act.”.

4 (2) by redesignating paragraph (2) as para-
5 graph (3);

6 (3) in paragraph (3), as redesignated, by strik-
7 ing “Any person” and inserting “LIABILITY FOR
8 COSTS INCURRED.—Any person”; and

9 (4) by inserting after paragraph (1) the fol-
10 lowing:

11 “(2) FISHERIES ENFORCEMENT FUND.—There
12 is established in the Treasury a non-interest bearing
13 fund to be known as the Fisheries Enforcement
14 Fund, into which shall be deposited all sums re-
15 ceived as described in paragraph (1), which shall re-
16 main available to the Secretary of Commerce until
17 expended as authorized in paragraph (1), without
18 appropriation or fiscal year limitation.”.

19 (c) ADMINISTRATIVE ADJUDICATION.—Section 311
20 (16 U.S.C. 1861) is amended—

21 (1) by redesignating subsections (d) through (j)
22 as subsections (e) through (k), respectively; and

23 (2) by inserting after subsection (c) the fol-
24 lowing:

25 “(d) ADMINISTRATIVE ADJUDICATION.—

1 “(1) IN GENERAL.—Notwithstanding section
2 559 of title 5, United States Code, with respect to
3 any marine resource conservation law or regulation
4 administered by the Secretary acting through the
5 National Oceanic and Atmospheric Administration,
6 all adjudicatory functions that are required by chap-
7 ter 5 of title 5, United States Code to be performed
8 by an administrative law judge may be performed by
9 another Federal agency on a reimbursable basis.

10 “(2) DETAILS.—If another Federal agency per-
11 forming adjudicatory functions under paragraph (1)
12 requires the detail of an administrative law judge to
13 perform any of these functions, it may request tem-
14 porary or occasional assistance from the Office of
15 Personnel Management under section 3344 of title
16 5, United States Code.”.

17 (d) REPEALS.—Sections 110 and 111 of title I of Di-
18 vision B of the Consolidated and Further Continuing Ap-
19 propriations Act, 2012 (Public Law 112—55; 16 U.S.C.
20 1861 note), and the items relating to those sections in the
21 table of contents for that Act, are repealed.

22 (e) ANNUAL REPORT ON SPECIAL FUNDS.—Section
23 304(k), as added by section 103(e) of this Act, is amend-
24 ed—

1 (1) in paragraph (1)(C), by striking “; and”
2 and inserting a semicolon;

3 (2) in paragraph (1)(D), by striking
4 “2006.” and inserting “2006; and”; and

5 (3) by inserting at the end the following:

6 “(E) the Fisheries Enforcement Fund es-
7 tablished under section 311(f)(2).”.

8 (f) CONFORMING AMENDMENTS.—

9 (1) CIVIL FORFEITURES.—Section 310 (16
10 U.S.C. 1860) is amended—

11 (A) in subsection (b), by striking “section
12 311(d)” and inserting “subsection 311(e)”; and

13 (B) in subsection (d), by striking “section
14 311(d)” each place it appears and inserting
15 “subsection 311(e)”.

16 (2) ENFORCEMENT; NORTH ATLANTIC SALMON
17 FISHING.—Section 308 of the Atlantic Salmon Con-
18 vention Act of 1982 (16 U.S.C. 3607) is amended
19 by striking “and (d)” each place it appears and in-
20 serting “and (e)”.

21 **SEC. 108. TRANSITION TO SUSTAINABLE FISHERIES.**

22 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
23 312(a)(4) (16 U.S.C. 1861a(a)(4)) is amended—

24 (1) by inserting “to carry out this subsection”
25 after “necessary”; and

1 (2) by striking “2007 through 2013” and in-
2 serting “2015 through 2021”.

3 (b) FISHERIES DISASTER RELIEF.—Section 312(a)
4 (16 U.S.C. 1861a(a)) is amended—

5 (1) in paragraph (1), by inserting “, a tribe,”
6 after “affected State”;

7 (2) by redesignating paragraphs (2) through
8 (4) as paragraphs (3) through (5), respectively;

9 (3) by inserting after paragraph (1) the fol-
10 lowing:

11 “(2) The Secretary shall make a decision re-
12 garding a request under paragraph (1) not later
13 than 90 days after the date the Secretary receives
14 a complete estimate of the economic impact of the
15 fishery resource disaster from the affected State,
16 tribal government, or fishing community.”; and

17 (4) in paragraph (3), as redesignated—

18 (A) by inserting “tribe, or” after “by the
19 affected State,”;

20 (B) by inserting “, tribe,” after “with the
21 affected State”; and

22 (C) by striking “to assist a fishing commu-
23 nity” and inserting “to assist a State, tribe, or
24 fishing community”.

1 **SEC. 109. NORTH PACIFIC FISHERIES CONSERVATION.**

2 (a) ELECTRONIC TECHNOLOGIES.—Section 313 (16
3 U.S.C. 1862) is amended—

4 (1) in subsection (a)—

5 (A) in the sentence preceding paragraph
6 (1), by striking “jurisdiction except a salmon
7 fishery which” and inserting “jurisdiction, ex-
8 cept a salmon fishery, that”;

9 (B) in paragraph (1), by striking “that ob-
10 servers be stationed” and inserting “electronic
11 technologies or observers”; and

12 (C) by amending paragraph (2) to read as
13 follows:

14 “(2) establish a system of fees to pay for the
15 cost of implementing the plan and any integrated
16 data collection program, including electronic tech-
17 nology requirements, established by the Council;”;
18 and

19 (2) in subsection (b)—

20 (A) in paragraph (1)(A), by inserting
21 “placing electronic technologies or” before “sta-
22 tioning observers on”;

23 (B) in paragraph (2)(E), by inserting “ac-
24 tual electronic technology costs or” before “ac-
25 tual observer costs”; and

26 (C) by adding at the end the following:

1 “(3) Any system of fees established under this
2 section may vary by fishery, management area, elec-
3 tronic technology, or observer coverage level.”.

4 (b) ARCTIC COMMUNITY DEVELOPMENT QUOTA.—
5 Section 313 (16 U.S.C. 1862) is amended by adding at
6 the end the following:

7 “(k) ARCTIC COMMUNITY DEVELOPMENT QUOTA.—
8 If the North Pacific Fishery Management Council issues
9 a fishery management plan for the exclusive economic zone
10 in the Arctic Ocean, or an amendment to its current Fish-
11 ery Management Plan for Fish Resources of the Arctic
12 Management Area, that makes available to commercial
13 fishing and establishes a sustainable harvest level for any
14 part of such zone, the North Pacific Fishery Management
15 Council shall set aside not less than 10 percent of the total
16 allowable catch therein as a community development quota
17 for coastal villages north and east of the Bering Strait.”.

18 (c) NORTH PACIFIC BYCATCH REPORT.—Section
19 313 (16 U.S.C. 1862), as amended by subsection (b), is
20 further amended by adding after subsection (k) the fol-
21 lowing:

22 “(l) Not later than 1 year after the date of enactment
23 of the Magnuson-Stevens Fishery Conservation and Man-
24 agement Reauthorization Act of 2014, the Secretary shall
25 submit a report to the Committee on Commerce, Science,

1 and Transportation of the Senate and the Committee on
2 Natural Resources of the House or Representatives which
3 examines agency actions since 2007 to reduce bycatch in
4 fisheries of the North Pacific managed under this Act, in-
5 cluding a review of regulatory actions that create incen-
6 tives for individual vessels to avoid bycatch.”.

7 **SEC. 110. REGIONAL FISHERY CONSERVATION AND MAN-**
8 **AGEMENT AUTHORITIES.**

9 (a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.)
10 is amended—

11 (1) in section 313 (16 U.S.C. 1862), by amend-
12 ing the section heading to read as follows:

13 **“SEC. 313. NORTH PACIFIC FISHERY CONSERVATION AND**
14 **MANAGEMENT.”; and**

15 (2) by inserting after section 313, the following:

16 **“SEC. 313A. GULF OF MEXICO FISHERIES CONSERVATION**
17 **AND MANAGEMENT.**

18 “At least once every 5 years, the Gulf Council shall
19 review, in accordance with the provisions of this Act, any
20 allocation of fishing privileges among the commercial, rec-
21 reational, and charter components of a fishery managed
22 under a fishery management plan prepared by the Council,
23 except that the Council may delay action for not more
24 than 3 additional 1 year periods if necessary.

1 **“SEC. 313B. SOUTH ATLANTIC FISHERIES CONSERVATION**
2 **AND MANAGEMENT.**

3 “At least once every 5 years, the South Atlantic
4 Council shall review, in accordance with the provisions of
5 this Act, any allocation of fishing privileges among the
6 commercial, recreational, and charter components of a
7 fishery managed under a fishery management plan pre-
8 pared by the Council, except that the Council may delay
9 action for not more than 3 additional 1 year periods if
10 necessary.”.

11 (b) TABLE OF CONTENTS.—The table of contents is
12 amended—

13 (1) by amending the item relating to section
14 313 to read as follows:

“313. North Pacific fishery conservation and management.”; and

15 (2) by inserting after the item relating to sec-
16 tion 313, the following:

“313A. Gulf of Mexico fisheries conservation and management.

“313B. South Atlantic fisheries conservation and management.”.

17 **SEC. 111. SUMMER FLOUNDER MANAGEMENT.**

18 (a) IN GENERAL.—Not later than 1 year after the
19 date of the enactment of this Act, the Mid-Atlantic Fish-
20 ery Management Council shall submit to the Secretary of
21 Commerce, and the Secretary of Commerce may approve,
22 a modified fishery management plan or plan amendment
23 for the commercial and recreational management of sum-

1 mer flounder (*Paralichthys dentatus*) under the Magnu-
2 son-Stevens Fishery Conservation and Management Act
3 (16 U.S.C. 1801 et seq.). The modified fishery manage-
4 ment plan or plan amendment shall—

5 (1) be based on the best scientific information
6 available;

7 (2) reflect changes in the distribution, abun-
8 dance, and location of summer flounder in estab-
9 lishing distribution of the commercial and rec-
10 reational catch quotas;

11 (3) consider regional, coast-wide, or other man-
12 agement measures for summer flounder that comply
13 with the National Standards under section 301(a) of
14 the Magnuson-Stevens Fishery Conservation and
15 Management Act (16 U.S.C. 1851(a)); and

16 (4) prohibit the allocation of commercial or rec-
17 reational catch quotas for summer flounder on a
18 State-by-State basis using historical landings data
19 that does not reflect the status of the summer floun-
20 der stock, based on the most recent scientific infor-
21 mation.

22 (b) CONSULTATION WITH THE COMMISSION.—In
23 preparing the modified fishery management plan or plan
24 amendment as described in subsection (a), the Council
25 shall consult with the Atlantic States Marine Fisheries

1 Commission to ensure consistent management throughout
2 the range of the fishery.

3 (c) FAILURE TO SUBMIT PLAN.—If the Council fails
4 to submit a modified fishery management plan or plan
5 amendment as described in subsection (a) that may be ap-
6 proved by the Secretary, the Secretary shall prepare and
7 approve such a modified plan or plan amendment.

8 (d) REPORT.—Not later than 1 year after the date
9 of the approval of a modified fishery management plan
10 or plan amendment as described in subsection (a), the
11 Comptroller General of the United States shall submit to
12 the Committee on Commerce, Science, and Transportation
13 of the Senate and the Committee on Natural Resources
14 of the House of Representatives a report on the implemen-
15 tation of the modified plan or plan amendment that in-
16 cludes an assessment of whether the implementation com-
17 plies with the national standards for fishery conservation
18 and management under section 301(a) of the Magnuson-
19 Stevens Fishery Conservation and Management Act (16
20 U.S.C. 1851(a)).

21 **SEC. 112. STUDY OF ALLOCATIONS IN MIXED-USE FISH-**
22 **ERIES.**

23 (a) STUDY REQUIREMENTS.—Not later than 60 days
24 of the date of enactment of this Act, the Secretary shall

1 enter into an arrangement with the National Academy of
2 Sciences to conduct a study—

3 (1) to provide guidance on criteria that could be
4 used for allocating fishing privileges, including con-
5 sideration of the conservation and socioeconomic
6 benefits of the commercial, recreational, and charter
7 components of a fishery, to a Regional Fishery Man-
8 agement Council established under section 302 of
9 the Magnuson-Stevens Fishery Conservation and
10 Management Act (16 U.S.C. 1852) in the prepara-
11 tion of a fishery management plan under that Act;
12 and

13 (2) to identify sources of information that could
14 reasonably support the use of such criteria in alloca-
15 tion decisions.

16 (b) REPORT.—Not later than 1 year after the date
17 a contract is awarded under subsection (a), the National
18 Academy of Sciences shall submit a report on the study
19 conducted under subsection (a) to the Committee on Com-
20 merce, Science, and Transportation of the Senate and the
21 Committee on Natural Resources of the House of Rep-
22 resentatives.

1 **TITLE II—FISHERY INFORMA-**
2 **TION, RESEARCH, AND DE-**
3 **VELOPMENT**

4 **SEC. 201. INTEGRATED DATA COLLECTION PROGRAM AND**
5 **ELECTRONIC TECHNOLOGIES.**

6 (a) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that the use of electronic technologies such as digital
8 video cameras and monitors, digital recording systems,
9 and other forms of electronic technology as a complement
10 to, and in some cases a replacement for, observers can
11 maintain, increase, or improve the amount and accuracy
12 of observer and fishery dependent information collected
13 from fisheries while reducing the need for observers and
14 the financial costs and logistical difficulties associated
15 with such observers and paper reporting requirements.

16 (b) INTEGRATED DATA COLLECTION PROGRAM AS-
17 SESSMENTS.—

18 (1) IN GENERAL.—Not later than 2 years after
19 the date of enactment of this Act, the Regional
20 Fishery Management Councils, in consultation with
21 the Secretary of Commerce, shall assess the fishery
22 dependent data needs of the fisheries in the regions
23 and, if necessary to meet those needs, develop rec-
24 ommendations for an integrated data collection pro-
25 gram, including appropriate electronic technologies,

1 to gather and analyze data required for fisheries
2 management.

3 (2) ELEMENTS OF ASSESSMENTS.—Each as-
4 sessment required by this subsection shall—

5 (A) identify the fisheries with respect to
6 which the incorporation of electronic technology,
7 as a complement to or replacement for observ-
8 ers, and electronic reporting can decrease costs,
9 improve efficiencies and data accuracy, or ease
10 the logistic constraints posed by observers in
11 the fisheries while continuing to meet the stand-
12 ards and requirements of the Magnuson-Ste-
13 vens Fishery Conservation and Management
14 Act (16 U.S.C. 1801 et seq.); and

15 (B) specify for each fishery identified
16 which type or types of electronic technology can
17 achieve such cost and efficiency improvements;
18 and (C) shall outline the system or systems of
19 fees required in (c)(3) to support the integrated
20 data collection program.

21 (c) REGIONAL INTEGRATED DATA COLLECTION PRO-
22 GRAM ADOPTION PLANS.—

23 (1) IN GENERAL.—Not later than 1 year after
24 receiving the results of the assessments required
25 under subsection (b), the Secretary of Commerce, in

1 consultation with the relevant Regional Fishery
2 Management Council, shall review the relevant as-
3 sessment for compliance with provisions of this sec-
4 tion and shall develop a plan to adopt and imple-
5 ment, with any changes needed based on the compli-
6 ance review, an integrated data collection program,
7 including the use of electronic technologies, in each
8 of the fisheries identified in the assessment.

9 (2) ELEMENTS OF PLANS.—Each plan under
10 this subsection—

11 (A) shall have fishery dependent data col-
12 lection as its principal purpose;

13 (B) shall include electronic technologies
14 consistent with the assessment required under
15 subsection (b) and the review in paragraph (1);

16 (C) shall include an estimate of anticipated
17 improvements in cost effectiveness, accuracy of
18 information, and management efficiency for
19 each fishery in the plan;

20 (D) shall include an explanation of why the
21 most-cost-effective approach is not being used,
22 if applicable;

23 (E) shall prioritize fishery management
24 plans in each region, to guide development,

1 adoption, and implementation of integrated
2 data collection amendments to such plans;

3 (F) shall set forth an implementation
4 schedule, consistent with the implementation
5 deadline specified in subsection (d), for the de-
6 velopment, review, adoption, and implementa-
7 tion of integrated data collection program
8 amendments to fishery management plans; and

9 (G) may be reviewed or amended annually
10 to address changing circumstances or improve-
11 ments in technology.

12 (3) INTEGRATED DATA COLLECTION PROGRAM
13 FEES.—The Secretary of Commerce shall establish a
14 system, or systems, of fees, which may vary by fish-
15 ery, management area, or observer coverage level, to
16 pay for the cost of implementing each relevant inte-
17 grated data collection program implemented under
18 this subsection.

19 (4) COUNCIL ACTION.—Not later than 4 years
20 after the date of enactment of this Act, each Re-
21 gional Fishery Management Council shall amend its
22 fishery management plans as necessary to comply
23 with this subsection.

24 (d) DEADLINE FOR IMPLEMENTATION.—Not later
25 than 5 years after the date of enactment of this Act, the

1 Regional Fishery Management Councils and the Secretary
2 of Commerce shall complete implementation of the plans
3 developed under subsection (c), subject to available appro-
4 priations.

5 (e) REVIEWS.—The relevant Regional Fishery Man-
6 agement Council shall determine a time period for regular
7 review of the integrated data collection program.

8 **SEC. 202. CAPITAL CONSTRUCTION.**

9 (a) DEFINITIONS; ELIGIBLE AND QUALIFIED FISH-
10 ERY FACILITIES.—Section 53501 of title 46, United
11 States Code, is amended—

12 (1) by striking “(7) UNITED STATES FOREIGN
13 TRADE.—” and inserting “(11) UNITED STATES
14 FOREIGN TRADE.—”;

15 (2) by striking “(8) VESSEL.—” and inserting
16 “(12) VESSEL.—”;

17 (3) by redesignating paragraphs (5), (6), and
18 (7) as paragraphs (8), (9), and (10), respectively;

19 (4) by redesignating paragraphs (2), (3), and
20 (4) as paragraphs (4), (5), and (6), respectively;

21 (5) by redesignating paragraph (1) as para-
22 graph (2);

23 (6) by inserting before paragraph (2), as redес-
24 igned, the following:

1 “(1) AGREEMENT FISHERY FACILITY.—The
2 term ‘agreement fishery facility’ means an eligible
3 fishery facility or a qualified fishery facility that is
4 subject to an agreement under this chapter.”;

5 (7) by inserting after paragraph (2), as redesign-
6 nated, the following:

7 “(3) ELIGIBLE FISHERY FACILITY.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graph (B), the term “eligible fishery facility”
10 means—

11 “(i) for operations on land—

12 “(I) a structure or an appur-
13 tenance thereto designed for unload-
14 ing and receiving from a vessel, proc-
15 essing, holding pending processing,
16 distribution after processing, or hold-
17 ing pending distribution, of fish from
18 a fishery;

19 “(II) the land necessary for the
20 structure or appurtenance described
21 in subclause (I); and

22 “(III) equipment that is for use
23 with the structure or appurtenance
24 that is necessary to perform a func-
25 tion described in subclause (I);

1 “(ii) for operations not on land, a ves-
2 sel built in the United States and used for,
3 equipped to be used for, or of a type nor-
4 mally used for, processing fish; or

5 “(iii) for aquaculture, including oper-
6 ations on land or elsewhere—

7 “(I) a structure or an appur-
8 tenance thereto designed for aqua-
9 culture;

10 “(II) the land necessary for the
11 structure or appurtenance;

12 “(III) equipment that is for use
13 with the structure or appurtenance
14 and that is necessary to perform a
15 function described in subclause (I);
16 and

17 “(IV) a vessel built in the United
18 States and used for, equipped to be
19 used for, or of a type normally used
20 for, aquaculture.

21 “(B) OWNERSHIP REQUIREMENT.—Under
22 subparagraph (A), the structure, appurtenance,
23 land, equipment, or vessel shall be owned by—

24 “(i) an individual who is a citizen of
25 the United States; or

1 “(ii) an entity that is—

2 “(I) a citizen of the United
3 States under section 50501 of this
4 title; and

5 “(II) at least 75 percent owned
6 by citizens of the United States, as
7 determined under section 50501 of
8 this title.”; and

9 (8) by inserting after paragraph (6), as redesign-
10 nated, the following:

11 “(7) QUALIFIED FISHERY FACILITY.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (B), the term ‘qualified fishery facility’
14 means—

15 “(i) for operations on land—

16 “(I) a structure or an appur-
17 tenance thereto designed for unload-
18 ing and receiving from a vessel, proc-
19 essing, holding pending processing,
20 distribution after processing, or hold-
21 ing pending distribution, of fish from
22 a fishery;

23 “(II) the land necessary for the
24 structure or appurtenance; and

1 “(III) equipment that is for use
2 with the structure or appurtenance
3 and necessary to perform a function
4 described in subclause (I);

5 “(ii) for operations not on land, a ves-
6 sel built in the United States and used for,
7 equipped to be used for, or of a type nor-
8 mally used for, processing fish; or

9 “(iii) for aquaculture, including oper-
10 ations on land or elsewhere—

11 “(I) a structure or an appur-
12 tenance thereto designed for aqua-
13 culture;

14 “(II) the land necessary for the
15 structure or appurtenance;

16 “(III) equipment that is for use
17 with the structure or appurtenance
18 and necessary for performing a func-
19 tion described in subclause (I); and

20 “(IV) a vessel built in the United
21 States.

22 “(B) OWNERSHIP REQUIREMENT.—Under
23 subparagraph (A), the structure, appurtenance,
24 land, equipment, or vessel shall be owned by—

1 “(i) an individual who is a citizen of
2 the United States; or

3 “(ii) an entity that is—

4 “(I) a citizen of the United
5 States under section 50501 of this
6 title; and

7 “(II) at least 75 percent owned
8 by citizens of the United States, as
9 determined under section 50501 of
10 this title.”.

11 (b) ELIGIBLE FISHERY FACILITIES.—

12 (1) DEFINITION OF SECRETARY.—Section
13 53501 of title 46, United States Code, as amended
14 by subsection (a) of this section is further amended
15 in paragraph (9)(A), by inserting “, and an eligible
16 fishery facility or a qualified fishery facility” after
17 “United States”.

18 (2) ESTABLISHING A CAPITAL CONSTRUCTION
19 FUND.—Section 53503 of title 46, United States
20 Code, is amended—

21 (A) in subsection (a)—

22 (i) by inserting “or eligible fishery fa-
23 cility” after “eligible vessel”; and

24 (ii) by inserting “or fishery facility”
25 after “the vessel”; and

1 (B) in subsection (b)—

2 (i) by designating the text that follows
3 after “The purpose of the agreement shall
4 be” as paragraph (1) and indenting appro-
5 priately;

6 (ii) in paragraph (1), as designated,
7 by striking “United States.” and inserting
8 “United States; or”; and

9 (iii) by inserting after paragraph (1),
10 as designated, the following:

11 “(2) to provide for the acquisition, construction,
12 or reconstruction of a fishery facility owned by—

13 “(A) an individual who is a citizen of the
14 United States; or

15 “(B) an entity that is—

16 “(i) a citizen of the United States
17 under section 50501; and

18 “(ii) at least 75 percent owned by citi-
19 zens of the United States, as determined
20 under section 50501.”.

21 (c) AGREEMENT FISHERY FACILITIES.—

22 (1) DEPOSITS AND WITHDRAWALS.—Section
23 53504(b) of title 46, United States Code, is amend-
24 ed by inserting “or an agreement fishery facility”
25 after “agreement vessel”.

1 (2) CEILING ON DEPOSITS.—Section 53505 of
2 title 46, United States Code, is amended—

3 (A) in paragraphs (1) and (2) of sub-
4 section (a), by inserting “or agreement fishery
5 facilities” after “agreement vessels”;

6 (B) in subsection (a)(3) by inserting “or
7 agreement fishery facility” after “agreement
8 vessel” each place it appears; and

9 (C) in subsection (b)—

10 (i) by inserting “or agreement fishery
11 facility” after “an agreement vessel”; and

12 (ii) by inserting “or fishery facility”
13 after “the vessel”.

14 (d) QUALIFIED FISHERY FACILITIES.—

15 (1) QUALIFIED WITHDRAWALS.—Section
16 53509(a) of title 46, United States Code, is amend-
17 ed—

18 (A) in paragraph (1), by striking “quali-
19 fied vessel; or” and inserting “qualified vessel,
20 or the acquisition, construction, or reconstruc-
21 tion of a qualified fishery facility; or”; and

22 (B) in paragraph (2), by striking “quali-
23 fied vessel.” and inserting “qualified vessel, or
24 the acquisition, construction, or reconstruction,
25 of a qualified fishery facility.”.

1 (2) TAX TREATMENT OF QUALIFIED WITH-
2 DRAWALS AND BASIS OF PROPERTY.—Section 53510
3 of title 46, United States Code, is amended—

4 (A) in subsections (b) and (c), by striking
5 “or container” each place it appears and insert-
6 ing “container, or fishery facility”; and

7 (B) in subsection (d), by striking “and
8 containers” and inserting “containers, and fish-
9 ery facilities”.

10 (3) TAX TREATMENT OF NONQUALIFIED WITH-
11 DRAWALS.—Section 53511(e)(4) of title 46, United
12 States Code, is amended by inserting “or fishery fa-
13 cility” after “vessel”.

14 (e) TECHNICAL AMENDMENT.—Section 53501 of
15 title 46, United States Code, as amended by subsection
16 (a) of this section, is further amended in paragraph
17 (8)(A)(iii), by striking “trade trade” and inserting
18 “trade”.

19 **SEC. 203. FISHERIES RESEARCH.**

20 (a) STOCK ASSESSMENT PLAN.—Section 404 (16
21 U.S.C. 1881c) is amended by adding at the end the fol-
22 lowing:

23 “(e) STOCK ASSESSMENT PLAN.—

24 “(1) IN GENERAL.—The Secretary, in consulta-
25 tion with the Councils, shall develop and publish in

1 the Federal Register, on the same schedule as re-
2 quired for the strategic plan required under section
3 404(b) of such Act, a plan to conduct stock assess-
4 ments for all stocks of fish for which a fishery man-
5 agement plan is in effect under this Act.

6 “(2) CONTENTS.—The plan shall—

7 “(A) for each stock of fish for which a
8 stock assessment has previously been con-
9 ducted—

10 “(i) establish a schedule for updating
11 the stock assessment that is reasonable
12 given the biology and characteristics of the
13 stock; and

14 “(ii) subject to the availability of ap-
15 propriations, require completion of a new
16 stock assessment, or an update of the most
17 recent stock assessment—

18 “(I) at least once every 5 years,
19 except a Council may delay action for
20 not more than 3 additional 1-year pe-
21 riods; or

22 “(II) within such other time pe-
23 riod specified and justified by the Sec-
24 retary in the plan;

1 “(B) for each economically important stock
2 of fish for which a stock assessment has not
3 previously been conducted—

4 “(i) establish a schedule for con-
5 ducting an initial stock assessment that is
6 reasonable given the biology and character-
7 istics of the stock; and

8 “(ii) subject to the availability of ap-
9 propriations, require completion of the ini-
10 tial stock assessment not later than 3
11 years after the date that the plan is pub-
12 lished in the Federal Register unless an-
13 other time period is specified and justified
14 by the Secretary in the plan; and

15 “(C) identify data and analysis, especially
16 concerning recreational fishing, that, if avail-
17 able, would reduce uncertainty in and improve
18 the accuracy of future stock assessments, in-
19 cluding whether that data and analysis could be
20 provided by nongovernmental sources, including
21 fishermen, fishing communities, universities,
22 and research institutions.

23 “(3) WAIVER OF STOCK ASSESSMENT REQUIRE-
24 MENT.—Notwithstanding subparagraphs (A)(ii) and
25 (B)(ii) of paragraph (2), a stock assessment shall

1 not be required for a stock of fish in the plan if the
2 Secretary determines that such a stock assessment
3 is not necessary and justifies the determination in
4 the Federal Register notice required by this sub-
5 section.”.

6 (b) DEADLINE.—Notwithstanding paragraph (1) of
7 section 404(e) of the Magnuson-Stevens Fishery Con-
8 servation and Management Act, as amended by this sec-
9 tion, the Secretary of Commerce shall issue the first stock
10 assessment plan under that section by not later than 1
11 year after the date of enactment of this Act.

12 (c) STRATEGIC PLAN.—Section 404(b)(5) (16 U.S.C.
13 1881c(b)(5)) is amended by striking “and affected States,
14 and provide for coordination with the Councils, affected
15 States, and other research entities” and inserting “, af-
16 fected States, and tribal governments, and provide for co-
17 ordination with the Councils, affected States, tribal gov-
18 ernments, and other research entities”.

19 **SEC. 204. IMPROVING SCIENCE.**

20 (a) IMPROVING DATA COLLECTION AND ANALYSIS.—

21 (1) IN GENERAL.—Section 404 (16 U.S.C.
22 1881c), as amended by section 203 of this Act, is
23 further amended by adding at the end the following:
24 “(f) IMPROVING DATA COLLECTION AND ANAL-
25 YSIS.—

1 “(1) IN GENERAL.—The Secretary, in consulta-
2 tion with the scientific and statistical committees of
3 the Councils established under section 302(g), shall
4 develop and submit to the Committee on Commerce,
5 Science, and Transportation of the Senate and the
6 Committee on Natural Resources of the House of
7 Representatives a report on facilitating greater in-
8 corporation of data, analysis, stock assessments, and
9 surveys from nongovernmental sources, including
10 fishermen, fishing communities, universities, and re-
11 search institutions, into fisheries management deci-
12 sions.

13 “(2) CONTENT.—The report under paragraph
14 (1) shall—

15 “(A) identify types of data and analysis,
16 especially concerning recreational fishing, that
17 can be reliably used for purposes of this Act
18 and the basis for establishing conservation and
19 management measures as required by section
20 303(a)(1), including setting standards for the
21 collection and use of that data and analysis in
22 stock assessments and surveys and for other
23 purposes;

24 “(B) provide specific recommendations for
25 collecting data and performing analyses identi-

1 fied as necessary to reduce the uncertainty re-
2 ferred to in section 404(e)(2)(C);

3 “(C) consider the extent to which it is pos-
4 sible to establish a registry of persons providing
5 such information; and

6 “(D) consider the extent to which the ac-
7 ceptance and use of data and analysis identified
8 in the report in fishery management decisions is
9 practicable.”.

10 (b) DEADLINE.—The Secretary of Commerce shall
11 submit the report required under the amendment made
12 by subsection (a) not later than 1 year after the date of
13 enactment of this Act.

14 (c) INFORMATION COLLECTION; CONTRACTING AU-
15 THORITY.—Section 402 (16 U.S.C. 1881a) is amended—

16 (1) in subsection (b)(1)(H), by striking the
17 comma through the period, and inserting “, includ-
18 ing the Coast Guard’s 11 statutory missions under
19 section 888(a) of the Homeland Security Act of
20 2002 (6 U.S.C. 468(a)).”; and

21 (2) in subsection (d), by inserting “tribal gov-
22 ernment,” before “Council” each place it appears.

1 **SEC. 205. FOCUSING ASSETS FOR IMPROVED FISHERIES**
2 **OUTCOMES.**

3 (a) IN GENERAL.—Section 2(b) of the Act of August
4 11, 1939 (15 U.S.C. 713c-3(b)), is amended—

5 (1) in paragraph (1)—

6 (A) by striking “beginning with the fiscal
7 year commencing July 1, 1954, and ending on
8 June 30, 1957,”;

9 (B) by striking “moneys” the first place
10 that term appears and inserting “monies”; and

11 (C) by striking “shall be maintained in a
12 separate fund only for” and all that follows and
13 inserting “shall only be used for the purposes
14 described under subsection (c).”; and

15 (2) by striking paragraph (2).

16 (b) LIMITATIONS ON BILLS TRANSFERRING
17 FUNDS.—Section 2(b) of the Act of August 11, 1939 (15
18 U.S.C. 713c-3(b)), as amended by subsection (a) of this
19 section, is further amended by adding at the end the fol-
20 lowing:

21 “(2) LIMITATIONS ON BILLS TRANSFERRING
22 FUNDS.—

23 “(A) IN GENERAL.—It shall not be in
24 order in the Senate or the House of Represent-
25 atives to consider any bill, resolution, amend-
26 ment, or conference report that reduces any

1 amount in the fund referred to in paragraph
2 (1) in a manner that is inconsistent with such
3 paragraph.

4 “(B) LIMITATION ON CHANGES TO THIS
5 PARAGRAPH.—It shall not be in order in the
6 Senate or the House of Representatives to con-
7 sider any bill, resolution, amendment, or con-
8 ference report that would repeal or otherwise
9 amend this paragraph.

10 “(C) WAIVER.—A provision of this para-
11 graph may be waived or suspended in the Sen-
12 ate only by the affirmative vote of three-fifths
13 of the Members, duly chosen and sworn.

14 “(D) APPEALS.—An affirmative vote of
15 three-fifths of the Members of the Senate, duly
16 chosen and sworn, shall be required to sustain
17 an appeal of the ruling of the Chair on the
18 point of order raised under this paragraph.

19 “(E) RULES OF THE SENATE AND THE
20 HOUSE OF REPRESENTATIVES.—This para-
21 graph is enacted by Congress—

22 “(i) as an exercise of the rulemaking
23 power of the Senate and the House of Rep-
24 resentatives, respectively, and is deemed to
25 be part of the rules of each house, respec-

1 tively, but applicable only with respect to
2 the procedure to be followed in the House
3 in the case of a bill, resolution, amend-
4 ment, or conference report under this
5 paragraph, and it supersedes other rules
6 only to the extent that it is inconsistent
7 with such rules; and

8 “(ii) with full recognition of the con-
9 stitutional right of either House to change
10 the rules (so far as they relate to the pro-
11 cedure of that House) at any time, in the
12 same manner, and to the same extent as in
13 the case of any other rule of that House.”.

14 **SEC. 206. SEAFOOD MARKETING.**

15 (a) IN GENERAL.—The Secretary of Commerce shall
16 analyze the likely costs and benefits of establishing and
17 administering a seafood marketing program to facilitate
18 fuller realization of the commercial and economic value of
19 U.S. fishery resources.

20 (b) SCOPE.—In performing the analysis under this
21 section, the Secretary shall consider—

22 (1) the impacts of additional investment in sea-
23 food marketing for seafood harvesters, processors,
24 growers, and other persons in the United States
25 on—

1 (A) domestic and international markets for
2 U.S. seafood and the competitive position of the
3 United States in those markets;

4 (B) sustainable development and utiliza-
5 tion of fishery resources of the United States
6 resulting from promotion, public education, and
7 changes in markets;

8 (C) the ability of seafood harvesters, proc-
9 essors, growers and other persons in the United
10 States to improve—

11 (i) the safety, traceability, quality,
12 marketability, and sustainability of U.S.
13 seafood; and

14 (ii) the coordination of their mar-
15 keting activities; and

16 (D) education of consumers regarding nu-
17 tritional and health benefits of seafood; and

18 (2) the feasibility of a seafood marketing pro-
19 gram that—

20 (A) is funded by—

21 (i) industry fees;

22 (ii) contributions, donations, or gifts
23 by private or nonprofit organizations;

24 (iii) sums received as fines, penalties,
25 or forfeitures of property for violations of

1 the Magnuson-Stevens Fishery Conserva-
2 tion and Management Act (16 U.S.C. 1801
3 et seq.) or any other marine resource law
4 enforced by the Secretary of Commerce, in-
5 cluding the Lacey Act Amendments of
6 1981 (16 U.S.C. 3371 et seq.);

7 (iv) interest generated by the invest-
8 ment of amounts described in clauses (i)
9 through (iii); or

10 (v) any combination of the amounts
11 described in clauses (i) through (iv); and

12 (B) apportions funds annually, on a for-
13 mula basis, to each State, territory, or posses-
14 sion of the United States that is represented on
15 a Regional Fishery Management Council under
16 section 302(a)(1) of the Magnuson-Stevens
17 Fishery Conservation and Management Act (16
18 U.S.C. 1852(a)(1)), to award through a com-
19 petitive process to U.S. seafood growers, har-
20 vesters, processors, and other persons.

21 (c) DEADLINE FOR SUBMISSION.—Not later than 1
22 year after the date of enactment of this Act, the Secretary
23 of Commerce shall provide the analysis under this section,
24 together with any recommendations the Secretary con-
25 siders appropriate, in writing to the Committee on Com-

merce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives.

TITLE III—REAUTHORIZATION OF OTHER FISHERY STATUTES

SEC. 301. ANADROMOUS FISH CONSERVATION ACT.

Section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) is amended by striking “2007 through 2012” and inserting “2015 through 2021”.

SEC. 302. INTERJURISDICTIONAL FISHERIES ACT OF 1986.

Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) in subsection (a), by striking “\$5,000,000” and all that follows through the end of that subsection and inserting “**[\$X,XXX,XXX]** for each of fiscal years 2015 through 2021.”; and

(2) in subsection (c), by striking “\$900,000 for each of fiscal years 2007 through 2012” and inserting “**[\$X,XXX,XXX]** for each of fiscal years 2015 through 2021”.

SEC. 303. ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT.

Section 811(a) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5108(a)) is amended—

1 (1) by striking “\$10,000,000” and inserting
2 [“\$XX,XXX,XXX”]; and

3 (2) by striking “2001 through 2005” and in-
4 serting “2015 through 2021”.

5 **SEC. 304. ATLANTIC STRIPED BASS CONSERVATION ACT.**

6 Section 7(a) of the Atlantic Striped Bass Conserva-
7 tion Act (16 U.S.C. 5156(a)) is amended by striking
8 “2007, 2008, 2009, 2010, 2011” and inserting “2015
9 through 2021”.

10 **SEC. 305. YUKON RIVER SALMON ACT OF 2000.**

11 Section 208 of the Yukon River Salmon Act of 2000
12 (16 U.S.C. 5727) is amended by striking “fiscal years
13 2007 through 2011” and inserting “fiscal years 2015
14 through 2021”.

15 **SEC. 306. STATE AUTHORITY FOR DUNGENESS CRAB FISH-
16 ERY MANAGEMENT.**

17 Section 203 of Public Law 105—384 (16 U.S.C.
18 1856 note) is amended—

19 (1) by striking subsection (i); and

20 (2) by redesignating subsection (j) as sub-
21 section (i).

1 **TITLE IV—INTERNATIONAL**

2 **SEC. 401. SECRETARIAL REPRESENTATIVE FOR INTER-**
3 **NATIONAL FISHERIES.**

4 (a) IN GENERAL.—Title II (16 U.S.C. 1821 et seq.)
5 is amended by inserting after section 202 the following:

6 **“SEC. 202A. SECRETARIAL REPRESENTATIVE FOR INTER-**
7 **NATIONAL FISHERIES.**

8 “(a) IN GENERAL.—The Secretary, in consultation
9 with the Under Secretary of Commerce for Oceans and
10 Atmosphere, shall designate a senior official who is ap-
11 pointed by the President, by and with the advice and con-
12 sent of the Senate, to serve as the Secretarial Representa-
13 tive for International Fisheries for the purpose of per-
14 forming the duties of the Secretary with respect to inter-
15 national agreements involving fisheries and other living
16 marine resources, including the development of policy and
17 representation of the United States as a Commissioner
18 under such international agreements.

19 “(b) ADVICE.—The Secretarial Representative for
20 International Fisheries shall, in consultation with the
21 Deputy Assistant Secretary for International Affairs and
22 the Administrator of the National Marine Fisheries Serv-
23 ice, advise the Secretary, Undersecretary of Commerce for
24 Oceans and Atmosphere, and other senior officials of the
25 Department of Commerce and the National Oceanic and

1 Atmospheric Administration on development of policy on
2 international fishery conservation and management mat-
3 ters.

4 “(c) CONSULTATION.—The Secretarial Representa-
5 tive for International Fisheries shall consult with the Com-
6 mittee on Natural Resources of the House of Representa-
7 tives and the Committee on Commerce, Science, and
8 Transportation of the Senate on matters pertaining to any
9 regional or international negotiation concerning living ma-
10 rine resources.”.

11 (b) REPEAL.—Section 408 of the Magnuson-Stevens
12 Fishery Conservation and Management Reauthorization
13 Act of 2006 (16 U.S.C. 1891d) and the item relating to
14 that section in the table of contents for that Act are re-
15 pealed.

16 (c) CONFORMING AMENDMENT.—The table of con-
17 tents in the first section of the Act (16 U.S.C. 1801 et
18 seq.) is amended by inserting after the item relating to
19 section 202 the following:

“Sec. 202A. Secretarial Representative for International Fisheries.”.

20 **SEC. 402. AMENDMENT TO PACIFIC SALMON TREATY ACT**
21 **OF 1985.**

22 Section 11 of the Pacific Salmon Treaty Act of 1985
23 (16 U.S.C. 3640) is amended—

24 (1) by redesignating subsections (c) and (d) as
25 subsections (d) and (e), respectively;

1 (2) by inserting after subsection (b) the fol-
2 lowing:

3 “(c) COMPENSATION OF COMMITTEE ON SCIENTIFIC
4 COOPERATION MEMBERS.—Members of the Committee on
5 Scientific Cooperation who are not State or Federal em-
6 ployees shall receive compensation at a rate equivalent to
7 the rate payable for level IV of the Executive Schedule
8 under section 5315 of title 5, United States Code, when
9 engaged in actual performance of duties for the Commis-
10 sion.”; and

11 (3) by striking “71” in subsection (e), as redes-
12 ignated, and inserting “171”.

13 **SEC. 403. REAUTHORIZATION OF ATLANTIC TUNAS CON-**
14 **VENTION ACT OF 1975.**

15 Section 10 of the Atlantic Tunas Convention Act of
16 1975 (16 U.S.C. 971h) is amended—

17 (1) in subsection (a)(1), by striking
18 “\$5,770,000 for each of fiscal years 2007 and
19 2008” and inserting “**[\$X,XXX,XXX]** for each of
20 fiscal years 2015 and 2016”;

21 (2) in subsection (a)(2), by striking
22 “\$6,058,000 for each of fiscal years 2009 and
23 2010” and inserting “**[\$X,XXX,XXX]** for each of
24 fiscal years 2017 and 2018”;

1 (3) in subsection (a)(3), by striking
2 “\$6,361,000 for each of fiscal years 2011 and
3 2013” and inserting “**[\$X,XXX,XXX]** for each of
4 fiscal years 2019, 2020, and 2021”;

5 (4) in subsection (b)(1), by striking “\$160,000”
6 and inserting **["\$XXX,XXX"]**; and

7 (5) in subsection (b)(2), by striking
8 “\$7,500,000” and inserting **["\$X,XXX,XXX"]**.

9 **SEC. 404. REAUTHORIZATION OF SOUTH PACIFIC TUNA ACT**
10 **OF 1988.**

11 Section 20(a) of the South Pacific Tuna Act of 1988
12 (16 U.S.C. 973r(a)) is amended—

13 (1) in the text preceding paragraph (1)—

14 (A) by striking “for fiscal years 1992,
15 1993, 1994, 1995, 1996, 1997, 1998, 1999,
16 2000, 2001, and 2002”; and

17 (B) by striking “Act including—” and in-
18 serting “Act.”; and

19 (2) by striking paragraphs (1) and (2).

20 **SEC. 405. HIGH SEAS DRIFTNET FISHING MORATORIUM**
21 **PROTECTION ACT.**

22 (a) **ILLEGAL, UNREPORTED, OR UNREGULATED**
23 **FISHING DEFINED.**—Section 609(e) of the High Seas
24 Driftnet Fishing Moratorium Protection Act (16 U.S.C.
25 1826j(e)) is amended—

1 (1) by striking “Within 3 months after the date
2 of enactment of the Magnuson-Stevens Fishery Con-
3 servation and Management Reauthorization Act of
4 2006” and inserting “Not later than 3 months after
5 the date of enactment of the Magnuson-Stevens
6 Fishery Conservation and Management Reauthoriza-
7 tion Act of 2014” in paragraph (2);

8 (2) by striking “and” at the end of paragraph
9 (3)(B);

10 (3) in paragraph (3)(C), by striking “agree-
11 ment.” and inserting “agreement; and”; and

12 (4) by adding at the end the following:

13 “(D) to the extent possible—

14 “(i) fishing activities conducted by
15 foreign vessels in waters under the juris-
16 diction of a nation without permission of
17 that nation; and

18 “(ii) fishing activities conducted by
19 foreign vessels in contravention of a na-
20 tion’s laws, including fishing activity that
21 has not been reported or that has been
22 misreported to the relevant national au-
23 thority of a nation in contravention of that
24 nation’s laws.”.

1 (b) AUTHORIZATION OF APPROPRIATIONS; ILLEGAL,
2 UNREPORTED, OR UNREGULATED FISHING.—Section
3 609(f) of the High Seas Driftnet Fishing Moratorium Pro-
4 tection Act (16 U.S.C. 1826j(f)) is amended by striking
5 “2007 through 2013” and inserting “2015 through
6 2021”.

7 (c) AUTHORIZATION OF APPROPRIATIONS; EQUIVA-
8 LENT CONSERVATION MEASURES.—Section 610(f) of the
9 High Seas Driftnet Fishing Moratorium Protection Act
10 (16 U.S.C. 1826k) is amended by striking “2007 through
11 2013” and inserting “2015 through 2021”.

12 **SEC. 406. REAUTHORIZATION OF NORTHWEST ATLANTIC**
13 **FISHERIES CONVENTION ACT OF 1995.**

14 Section 211 of the Northwest Atlantic Fisheries Con-
15 vention Act of 1995 (16 U.S.C. 5610) is amended—

16 (1) by striking “\$500,000” and inserting
17 **["\$XXX,XXX"]**; and

18 (2) by striking “2012” and inserting “2020”.

19 **TITLE V—MISCELLANEOUS**

20 **SEC. 501. TECHNICAL AMENDMENTS.**

21 (a) MAGNUSON-STEVENS FISHERY CONSERVATION
22 AND MANAGEMENT ACT.—

23 (1) Section 202(e)(5) (16 U.S.C. 1822(e)(5)) is
24 amended by striking “and it Annexes” and inserting
25 “and its Annexes”.

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

2 (A) in subsection (a)(1)(F) by striking
3 “Federally” and inserting “federally”;

4 (B) in subsection (b)(2)(C) by striking
5 “subsection (k)” and inserting “subsection (j)”;

6 (C) in subsection (b)(5)(A) by striking
7 “Federally” and inserting “federally”;

8 (D) in subsection (b)(6) by striking “para-
9 graphs” and inserting “paragraph”;

10 (E) in subsection (h)(5) by striking “ex-
11 cept as provided in section” and inserting “ex-
12 cept as provided in”; and

13 (F) in subsection (i)(3)(B) by striking
14 “subpararaph” and inserting “subparagraph”.

15 (3) Section 303 (16 U.S.C. 1853) is amended—

16 (A) in subsection (a)(5)—

17 (i) by striking “recreational,” and in-
18 serting “recreational, and”; and

19 (ii) by striking “processors,” and in-
20 serting “processors;”; and

21 (B) in subsection (b) by redesignating
22 paragraph (14) as paragraph (13).

23 (4) Section 303A(c)(4)(A)(v) (16 U.S.C.
24 1853a(c)(4)(A)(v)) is amended by striking “is” and
25 inserting “its”.

1 (5) Section 307(1)(K) (16 U.S.C. 1857(1)(K))
2 is amended by striking “to to steal” and inserting
3 “to steal”.

4 (6) Section 312(b)(2)(A) (16 U.S.C. 1861a) is
5 amended by striking “federal or state” and inserting
6 “Federal or State”.

7 (7) Section 313 (16 U.S.C. 1862) is amended—

8 (A) in subsection (a)(2), by striking “or
9 system” and inserting “or systems”; and

10 (B) in subsection (j)(9), by striking “sec-
11 tion 307(l)” and inserting “section 307(1)”.

12 (8) Section 314(a)(3) (16 U.S.C. 1863(a)(3)) is
13 amended by striking “subsection (1)” and inserting
14 “paragraph (1)”.

15 (9) Section 316(c) (16 U.S.C. 1865(c)) is
16 amended by striking “Interior” and inserting “the
17 Interior”.

18 (10) Section 401(c)(5) (16 U.S.C. 1881(c)(5))
19 is amended by striking “subsection” and inserting
20 “section”.

21 (11) Section 406(f)(1)(A) (16 U.S.C. 1882) is
22 amended by striking “federal, state” and inserting
23 “Federal, State”.

24 (b) MAGNUSON-STEVENS FISHERY CONSERVATION
25 AND MANAGEMENT REAUTHORIZATION ACT OF 2006.—

1 Section 104 of the Magnuson-Stevens Fishery Conserva-
2 tion and Management Reauthorization Act of 2006 (120
3 Stat. 3584; 16 U.S.C. 1854 note) is amended by striking
4 subsection (d).

5 (c) HIGH SEAS DRIFTNET FISHING MORATORIUM
6 PROTECTION ACT.—Section 610(a)(1)(A) of the High
7 Seas Driftnet Fishing Moratorium Protection Act (16
8 U.S.C. 1826k(a)(1)(A)) is amended by striking “prac-
9 tices;” and inserting “practices—”.

10 (d) ANADROMOUS FISH CONSERVATION ACT.—Sec-
11 tion 2 of the Anadromous Fish Conservation Act (16
12 U.S.C. 757b) is amended in paragraph (5) by striking
13 “Seretary” and inserting “Secretary”.

14 (e) NORTHERN PACIFIC HALIBUT ACT OF 1982.—
15 The Northern Pacific Halibut Act of 1982 is amended—

16 (1) in section 9(a) (16 U.S.C. 773g(a)) by
17 striking “any” and inserting “an”; and

18 (2) in section 12 (16 U.S.C. 773j)—

19 (A) by redesignating subsections (a) and

20 (b) as paragraphs (1) and (2), respectively; and

21 (B) in paragraph (2), as redesignated, by
22 striking “section 262(b)” and inserting “section
23 262b”.

24 (f) GREAT LAKES FISHERY ACT OF 1956.—The
25 Great Lakes Fishery Act of 1956 is amended—

1 (1) in section 3(a)(1)(B) (16 U.S.C.
2 932(a)(1)(B)) by inserting “a” after “official of”;
3 and

4 (2) in section 8 (16 U.S.C. 937) by striking
5 “these provisions of title 28, U. S. C.,” and insert-
6 ing “those provisions of title 28, United States
7 Code,”.

8 (g) SOUTH PACIFIC TUNA ACT OF 1988.—Section
9 9(h) of the South Pacific Tuna Act of 1988 (16 U.S.C.
10 973g(h)) is amended—

11 (1) in paragraph (3), by striking “(16 U.S.C.
12 1374(h)(2) and 1416(a))—” and inserting “(16
13 U.S.C. 1374(h)(2) and 1416(a));”; and

14 (2) in the matter following paragraph (3), by
15 striking “treaty” and inserting “Treaty”.

16 (h) ANTARCTIC MARINE LIVING RESOURCES CON-
17 VENTION ACT OF 1984.—Section 303(1) of the Antarctic
18 Marine Living Resources Act of 1984 (16 U.S.C. 2432(1))
19 is amended by striking “60 degrees south; 50 degrees
20 west” and inserting “60 degrees south, 50 degrees west”.

21 (i) PACIFIC SALMON TREATY ACT OF 1985.—The
22 Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 et
23 seq.) is amended—

1 (1) in section 3(a) (16 U.S.C. 3632(a)), by
2 striking “States of Oregon, or Washington” and in-
3 serting “State of Oregon or Washington”; and

4 (2) in section 3(h)(2) (16 U.S.C. 3632(h)(2))
5 by inserting a period after “under subsection (a)”.

6 (j) NORTH PACIFIC ANADROMOUS STOCKS ACT OF
7 1992.—The North Pacific Anadromous Stocks Act of
8 1992 (16 U.S.C. 5001 et seq.) is amended—

9 (1) in section 803(6) (16 U.S.C. 5002(6)) by
10 striking “North Latitude” and inserting “north lati-
11 tude”; and

12 (2) in section 809(d)(1)(B) (16 U.S.C.
13 5008(d)(1)(B), by striking “If any” and inserting
14 “if any”.

15 (k) NORTHWEST ATLANTIC FISHERIES CONVENTION
16 ACT OF 1995.—Section 210(5) of the Northwest Atlantic
17 Fisheries Convention Act of 1995 (16 U.S.C. 5609(5)) is
18 amended by striking “Article” and inserting “Articles”.

19 (l) YUKON RIVER SALMON ACT OF 1995.—The
20 Yukon River Salmon Act of 1995 (16 U.S.C. 5701 et seq.)
21 is amended.—

22 (1) in section 704(c) (16 U.S.C. 5703(c)), by
23 striking “subsections (b)(1) and (3)” and inserting
24 “paragraphs (1) or (3) of subsection (b)”;

1 (2) in section 709(c) (16 U.S.C. 5708(c)), by
2 striking “chapter 71” and inserting “chapter 171”;
3 and

4 (3) in section 710(2) (16 U.S.C. 5709(2)), by
5 striking “section 262(b)” and inserting “section
6 262b”.

7 (m) YUKON RIVER SALMON ACT OF 2000.—Section
8 206(c) of the Yukon River Salmon Act of 2000 (16 U.S.C.
9 5725(c)) is amended by striking “chapter 71” and insert-
10 ing “chapter 171”.

11 (n) WESTERN AND CENTRAL PACIFIC FISHERIES
12 CONVENTION IMPLEMENTATION ACT.—The Western and
13 Central Pacific Fisheries Convention Implementation Act
14 (16 U.S.C. 6901 et seq.) is amended.—

15 (1) in section 502(8) (16 U.S.C. 6901(8)), by
16 striking “Convention Area” and inserting “conven-
17 tion area”;

18 (2) in section 503 (16 U.S.C. 6902)—

19 (A) by striking “fashion.” in section
20 (d)(1)(C) and inserting “fashion,”; and

21 (B) by redesignating subsection (f) as sub-
22 section (e);

23 (3) in section 507(a)(7) (16 U.S.C.
24 6906(a)(7)), by striking “chapter” and inserting
25 “act”;

1 (4) in section 508 (16 U.S.C. 6907)—

2 (A) in subsection (a), by striking “United
3 States government” and inserting “United
4 States Government”;

5 (B) in subsection (e)(1)((B)(i)), by striking
6 “that” and inserting “than”;

7 (C) by striking “(e) APPLICATION OF REG-
8 ULATIONS—” and inserting “(e) APPLICATION
9 OF REGULATIONS.—”; and

10 (D) in subsection (e)(3), by striking “pur-
11 suant” and inserting “under”.

12 (o) PACIFIC WHITING ACT OF 2006.—Section
13 608(c)(4) of the Pacific Whiting Act of 2006 (16 U.S.C.
14 7007(c)(4)) is amended by striking “United State’s” and
15 inserting “United States’”.

16 **SEC. 502. PACIFIC INSULAR AREAS; MARINE CONSERVA-**
17 **TION PLANS.**

18 Section 204(e)(4)(A) (16 U.S.C. 1824(e)(4)(A)) is
19 amended—

20 (1) in clause (i), by inserting “, in consultation
21 with the Western Pacific Council,” after “Sec-
22 retary”;

23 (2) in clause (iii), by striking “coastal studies;”
24 and inserting “coastal studies; and”;

25 (3) by striking clause (iv); and

1 (4) by redesignating clause (v) as clause (iv).

2 **SEC. 503. GULF OF MEXICO RED SNAPPER CATCH LIMITS;**

3 **REPEAL.**

4 Section 407 (16 U.S.C. 1883) is amended by striking
5 subsection (d).

WORKING DRAFT

STAFF ANALYSIS OF MSA REAUTHORIZATION LEGISLATION

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

Public Law 94-265

**As amended by the Magnuson-Stevens Fishery Conservation and
Management Reauthorization Act (P.L. 109-479)**

AN ACT

**To provide for the conservation and management of the fisheries, and for
other purposes.**

**Highlights changes made in HR 4742 (Hastings/House bill) in red text; includes
amendments made during House Committee on Natural Resources markup
on May 29, 2014**

**Highlights changes made in the Second Senate discussion draft in green text
(underlined text is new since previous Senate draft)**

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SEC. 2. FINDINGS, PURPOSES, AND POLICY

(a) FINDINGS.—The Congress finds and declares the following:

- (1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.
- (2) Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.¹
- (3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at ~~an ever-increasing rate over the past decade~~². The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

[New (4)] Subsistence fishing is an integral part of life in many communities throughout the United States, and the Nation's marine and anadromous fish are important sources of nutrition, subsistence, and the cultural heritage of those communities.³

- (4) [Change to paragraph 5] International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.
- (5) [Change to paragraph 6] Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.
- (6) [Change to paragraph 7] A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild ~~overfished~~ ~~depleted~~⁴ stocks, to insure conservation, to facilitate long-term protection of essential fish habitats ~~and marine ecosystems~~⁵, and to realize the full potential of the Nation's fishery resources.

[New (8)] By establishing mechanisms, under authority of this Act, for specifying science-based annual catch limits in fishery management plans at levels such that overfishing does not occur in fisheries, including measures to ensure accountability, the Nation's fishery resources are now being managed sustainably to prevent overfishing and respond quickly if overfishing occurs.⁶

1 Second Senate draft removed changes that first draft made to this paragraph.

2 Second Senate draft page 3 lines 13-14

3 Second Senate draft page 4 line 16+ (Adds references to subsistence and tribal government throughout).

4 HR 4742 page 9 line 22-25 (HR 4742 changes "overfished" to "depleted" throughout)

5 Second Senate draft page 3 line 15+

6 Second Senate draft page 3 line 23+

[New (9)] It is of critical importance to the health of the Nation's fishery resources and the coastal communities that depend on them that the United States maintain its progress in preventing overfishing and rebuilding overfished stocks.⁷

- (7) [Change to paragraph 10] A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.⁸
- (8) [change to paragraph 11] The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.
- (10) [Change to paragraph 12] One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.⁹
- (11) [Change to paragraph 13] Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.
- (12) [Change to paragraph 14] A number of the Fishery Management Councils ~~have demonstrated~~ **are demonstrating**¹⁰ significant progress in integrating ecosystem considerations in fisheries management using the existing authorities provided under this Act.¹¹
- (13) [Change to paragraph 15] International cooperation is necessary to address illegal, unreported, and unregulated fishing and other fishing practices which may harm the sustainability of living marine resources and disadvantage the United States fishing industry.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

- (1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources¹²;
- (2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;
- (3) to promote domestic commercial and ~~recreational~~ **recreational and subsistence**¹³ fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;
- (4) to provide for the preparation and implementation, in accordance with national standards, of fishery

7 Second Senate draft page 4 line 7+

8 Second Senate draft removes all references to forage fish.

9 Second Senate draft deletes earlier text about nongovernmental sources of information. (See section on integrated data collection)

10 Second Senate draft page 3 line 18

11 Second Senate draft deletes earlier text about impacts of bycatch.

12 Second Senate draft removes “[, and fishery resources in the special areas]”. This was in brackets in original MSA. (7/23)

13 Second Senate draft page 4 line 23+

management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;¹⁴

- (5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, **tribal governments**¹⁵, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;
- (6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and
- (7) to promote the protection of essential fish habitat in ~~the review of projects~~ **projects and activities**¹⁶ conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

- (1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;
- (2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;
- (4) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States, **tribes**, and citizens; considers efficiency; draws upon Federal, State, **tribal**, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures ~~that minimize bycatch~~¹⁷ and avoid unnecessary waste of fish; and is workable and effective.
- (5) to permit foreign fishing consistent with the provisions of this Act;
- (6) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;
- (7) to foster and maintain the diversity of fisheries in the United States; and
- (8) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

SEC. 3. DEFINITIONS

16 U.S.C. 1802

14 *Second Senate draft removes wording on ecosystem management in previous version.*

15 *Second Senate draft page 5 line 1+.*

16 *Second Senate draft page 5 line 3+. Implications unclear.*

17 *Second Senate draft removes earlier “to avoid bycatch, minimize mortality of bycatch that cannot be avoided.”*

As used in this Act, unless the context otherwise requires—

- (1) The term “anadromous species” means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.
- (2) The term “bycatch” means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.¹⁸
- (2a) The term ‘catch share’ means any fishery management program that allocates a specific percentage of the total allowable catch for a fishery, or a specific fishing area, to an individual, cooperative, community, processor, representative of a commercial sector, or regional fishery association established in accordance with section 303A(c)(4), or other entity.¹⁹
- (3) The term “charter fishing” means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.
- (4) The term “commercial fishing” means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.
- (4a) The term ‘confidential information’ means—
 - (A) trade secrets;
 - (B) proprietary information;
 - (C) observer information; and
 - (D) commercial or financial information the disclosure of which is likely to result in harm to the competitive position of the person that submitted the information to the Secretary.²⁰
- (5) The term “conservation and management” refers to all of the rules, regulations, conditions, methods, and other measures
 - (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and
 - (B) which are designed to assure that—
 - (i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;
 - (ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and
 - (iii) there will be a multiplicity of options available with respect to future uses of these resources.
- (6) The term “Continental Shelf” means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.
- (7) The term “Continental Shelf fishery resources” means the following:

CNIDARIA

Bamboo Coral—*Acanella* spp.; Black Coral—*Antipathes* spp.; Gold Coral—*Callogorgia* spp.;

Precious Red Coral—*Corallium* spp.; Bamboo Coral—*Keratoisis* spp.; and Gold Coral—*Parazoanthus*

18 Second Senate draft deletes previous changes to this definition which defined bycatch more precisely to include certain categories of fish that are not target fish.

19 HR 4742 page 17 lines 3-13

20 HR 4742 page 27 line 20- page 28. “Observer information” is added since discussion draft.

spp.

CRUSTACEA

Tanner Crab—*Chionoecetes tanneri*; Tanner Crab—*Chionoecetes opilio*; Tanner Crab—*Chionoecetes angulatus*; Tanner Crab—*Chionoecetes bairdi*; King Crab—*Paralithodes camtschatica*; King Crab—*Paralithodes platypus*; King Crab—*Paralithodes brevipes*;

Lobster—*Homarus americanus*; Dungeness Crab—*Cancer magister*;

California King Crab—*Paralithodes californiensis*; California King Crab—*Paralithodes rathbuni*;
Golden King Crab—*Lithodes aequispinus*; Northern Stone Crab—*Lithodes maja*;

Stone Crab—*Menippe mercenaria*; and Deep-sea Red Crab—*Chaceon quinque-dens*.

MOLLUSKS

Red Abalone—*Haliotis rufescens*; Pink Abalone—*Haliotis corrugata*;

Japanese Abalone—*Haliotis kamtschatkana*; Queen Conch—*Strombus gigas*;

Surf Clam—*Spisula solidissima*; and Ocean Quahog—*Arctica islandica*.

SPONGES

Glove Sponge—*Spongia cheiris*; Sheepswool Sponge—*Hippiospongia lachne*; Grass Sponge—*Spongia graminea*; and Yellow Sponge—*Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil, of the Continental Shelf which appertains to the United States, and publishes notices of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(8) The term “Council” means any Regional Fishery Management Council established under section 302.

(8a) The term ‘depleted’ and ‘depletion’ mean, with respect to a stock of fish in a fishery, that the stock is of a size that jeopardizes the capacity of the fishery to produce the maximum sustainable yield on a continuing basis.²¹

(8a) The term ‘depleted’ means, with respect to a stock of fish or stock complex, that the stock or stock complex has a biomass that has declined below a level that jeopardizes the capacity of the stock or stock complex to produce maximum sustainable yield on a continuing basis.²²

(9) The term “economic discards” means fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons.

(10) The term “essential fish habitat” means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.

(11) The term “exclusive economic zone” means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line co-terminous with the seaward boundary of each of the coastal States.

(12) The term “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

21 Second Senate draft page 5 line 15+. This is the same definition as “overfished,” but allows for non-fishing causes of depletion.

22 HR 4742 page 9 lines 16-21.

- (13) The term “fishery” means—
- (A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and
 - (B) any fishing for such stocks.
- (14) The term ‘regional fishery association’ means an association formed for the mutual benefit of members—
- (A) to meet social and economic needs in a region or subregion; and
 - (B) comprised of persons engaging in the harvest or processing of fishery resources in that specific region or subregion or who otherwise own or operate businesses substantially dependent upon a fishery.
- (15) The term “fishery resource” means any fishery, any stock of fish, any species of fish, and any habitat of fish.
- (16) The term “fishing” means—
- (A) the catching, taking, or harvesting of fish;
 - (B) the attempted catching, taking, or harvesting of fish;
 - (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
 - (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).
- Such term does not include any scientific research activity which is conducted by a scientific research vessel.
- (17) The term “fishing community” means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.
- (18) The term “fishing vessel” means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—
- (A) fishing; or
 - (B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.²³
- (19) The term “foreign fishing” means fishing by a vessel other than a vessel of the United States.
- (20) The term “high seas” means all waters beyond the territorial sea of the United States and beyond any foreign nation’s territorial sea, to the extent that such sea is recognized by the United States.
- (21) The term “highly migratory species” means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).
- (22) The term ‘import’—
- (A) means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

23 Second Senate draft deletes definition of forage fish offered previously.

- (B) does not include any activity described in subparagraph (A) with respect to fish caught in the exclusive economic zone or by a vessel of the United States.
- (23) The term “individual fishing quota” means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).
- (24) The term “international fishery agreement” means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.
- (25) The term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.
- (26) The term ‘limited access privilege’—
 - (A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and
 - (B) includes an individual fishing quota; but
 - (C) does not include community development quotas as described in section 305(i).
- (27) The term ‘limited access system’ means a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.
- (28) The term “Marine Fisheries Commission” means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.
- (30) The term “migratory range” means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.²⁴
- (31) The term “national standards” means the national standards for fishery conservation and management set forth in section 301.
- (32) The term “observer” means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.
- (33) The term ‘observer information’ means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.
- (34) The term “optimum”, with respect to the yield from a fishery, means the amount of fish which—
 - (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;
 - (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced

24 *Second Senate draft deletes definition of non-target fish offered previously (as “fish that are caught incidentally during the pursuit of target fish in a fishery including regulatory discards which may or may not be retained for sale or personal use”).*

- by any relevant economic, social, or ecological factor; and
- (C) in the case of an **overfished or otherwise²⁵ depleted** fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.
- (35) The terms “overfishing” **and “overfished”²⁶** 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.
- (36) The term “Pacific Insular Area” means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.
- (37) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, **tribal**, local, or foreign government or any entity of any such government.
- (38) The term “recreational fishing” means fishing for sport or pleasure.
- (39) The term “regulatory discards” means fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.
- (40) The term “Secretary” means the Secretary of Commerce or his designee.
- (41) The term “special areas” means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.¹
- (42) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.
- (42A) The term ‘subsistence fishing’ means fishing in which the fish harvested are intended for customary and traditional uses, including for direct personal or family consumption as food or clothing; for the making or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and for customary trade. In this paragraph, the term—
- (A) ‘family’ means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and
- (B) ‘barter’ means the exchange of a fish or fish part—
- (i) for another fish or fish part; or
- (ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.²⁷
- (43) The term “stock of fish” means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.
- (43A) The term ‘subsistence fishing’ means fishing in which the fish harvested are intended for customary and traditional uses, including for direct personal or family consumption as food or clothing; for the mak-

²⁵ Second Senate draft page 5 line 20+

²⁶ HR 4742 page 9 lines 12-13. Text says this applies to paragraph 34 but seems to be in error.

²⁷ Second Senate draft removes previous definition of target fish as “fish that are caught for sale or personal use, including economic discards.”

ing or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and for customary trade.

(B) In this paragraph--

- (i) the term ‘family’ means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and
- (ii) the term ‘barter’ means the exchange of a fish or fish part--
 - (I) for another fish or fish part; or
 - (II) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.²⁸

(43A) The terms ‘tribal’ and ‘tribe’ mean an Indian tribe as defined in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).²⁹

(44) The term “treaty” means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.³⁰

(45) The term “tuna species” means the following: Albacore Tuna—Thunnus alalunga; Bigeye Tuna—Thunnus obesus; Bluefin Tuna—Thunnus thynnus; Skipjack Tuna—Katsuwonus pelamis; and Yellowfin Tuna—Thunnus albacares.

(46) The term “United States”, when used in a geographical context, means all the States thereof.

Section 102(10) of Public Law 104-297 appears to codify the definition of “special areas” at paragraph 36 after the definition of “State.” Section 405(a) of Public Law 104-297 appears to add a redundant definition of “special areas” and create numerous numbering conflicts in the definitions. The editors assume Congress intends to add one definition of “special areas” in alphabetical order.

(47) The term “United States fish processors” means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(48) The term “United States harvested fish” means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under this Act.

(49) The term “vessel of the United States” means—

- (A) any vessel documented under chapter 121 of title 46, United States Code;
- (B) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and measuring less than 5 net tons;
- (C) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and used exclusively for pleasure; or
- (D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

(50) The term “vessel subject to the jurisdiction of the United States” has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).

(51) The term “waters of a foreign nation” means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

28 Amendment made by Rep. Young of Alaska at markup held on 5/29/14

29 Second Senate draft page 6 lines 23+.

30 Second Senate draft removes previous definition of stock assessments.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS

16 U.S.C. 1803

There are authorized to be appropriated to the Secretary to carry out the provisions of this Act—

- ~~(1) \$337,844,000 for fiscal year 2007;~~
- ~~(2) \$347,684,000 for fiscal year 2008; —~~
- ~~(3) \$357,524,000 for fiscal year 2009;~~
- ~~(4) \$367,364,000 for fiscal year 2010;~~
- ~~(5) \$377,204,000 for fiscal year 2011;~~
- ~~(6) \$387,044,000 for fiscal year 2012; and~~
- ~~(7) \$396,875,000 for fiscal year 2013 each of fiscal years 2014 through 2018.~~³¹
- (1) [XXX,XXX,XXX] for fiscal year 2015;
- (2) [XXX,XXX,XXX] for fiscal year 2016;
- (3) [XXX,XXX,XXX] for fiscal year 2017;
- (4) [XXX,XXX,XXX] for fiscal year 2018;
- (5) [XXX,XXX,XXX] for fiscal year 2019;
- (6) [XXX,XXX,XXX] for fiscal year 2020; and
- (7) [XXX,XXX,XXX] for fiscal year 2021.³²

SEC. 5. ENSURING CONSISTENT FISHERIES MANAGEMENT UNDER OTHER FEDERAL LAWS

- (a) **NATIONAL MARINE SANCTUARIES ACT AND ANTIQUITIES ACT OF 1906.**—In any case of a conflict between this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or the Antiquities Act of 190 (16 U.S.C. 431 et seq.), this Act shall control.
- (b) **FISHERIES RESTRICTIONS UNDER ENDANGERED SPECIES ACT OF 1973.**—To ensure transparency and consistent management of fisheries throughout their range, any restriction on the management of fish in the exclusive economic zone that is necessary to implement a recovery plan under the Endangered Species Act of 1973 (16 U.S.C 1531 et seq.) shall be implemented—
 - (1) using authority under this Act; and
 - (2) in accordance with processes and time schedules required under this Act.³³

31 HR 4742, page 37 lines 19+. No change from discussion draft.

32 Second Senate draft page 9.

33 HR 4742 page 36. The Council supports the MSA and NMSA language. For the ESA, the Council recommends the kind of ESA integration with MSA that has recently occurred in Columbia River tule stock management. (3/14, 3/26 letter to Hastings)

TITLE I—UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

SEC. 101. UNITED STATES SOVEREIGN RIGHTS TO FISH AND FISHERY MANAGEMENT AUTHORITY

16 U.S.C. 1811

- (a) **IN THE EXCLUSIVE ECONOMIC ZONE.**—Except as provided in section 102, the United States claims, and will exercise in the manner provided for in this Act, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone [and special areas]*.
- (b) **BEYOND THE EXCLUSIVE ECONOMIC ZONE.**—The United States claims, and will exercise in the manner provided for in this Act, exclusive fishery management authority over the following:
 - (1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to any such species during the time they are found within any waters of a foreign nation.
 - (2) All Continental Shelf fishery resources beyond the exclusive economic zone. [(3) All fishery resources in the special areas.]*

SEC. 102. HIGHLY MIGRATORY SPECIES

16 U.S.C. 1812

- (a) **IN GENERAL.**—The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and shall promote the achievement of optimum yield of such species throughout their range, both within and beyond the exclusive economic zone.
- (b) **TRADITIONAL PARTICIPATION.**—In managing any fisheries under an international fisheries agreement to which the United States is a party, the appropriate Council or Secretary shall take into account the traditional participation in the fishery, relative to other nations, by fishermen of the United States on fishing vessels of the United States.
- (c) **PROMOTION OF STOCK MANAGEMENT.**—If a relevant international fisheries organization does not have a process for developing a formal plan to rebuild a depleted stock, an ~~overfished~~ depleted stock, or a stock that is approaching a condition of being ~~overfished~~ depleted, the provisions of this Act in this regard shall be communicated to and promoted by the United States in the international or regional fisheries organization.

SEC. _____. PROHIBITION ON CONSIDERING RED SNAPPER KILLED DURING REMOVAL OF OIL RIGS.

Any red snapper that are killed during the removal of any offshore oil rig in the Gulf of Mexico shall not be

considered in determining under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) whether the total allowable catch for redsnapper has been reached.³⁴

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

SEC. 201. FOREIGN FISHING

16 U.S.C. 1821

- (a) **IN GENERAL.**—After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, [within the special areas,]* or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone [such zone or areas]*, unless such foreign fishing—
- (1) is authorized under subsections (b) or (c) or section 204(e), or under a permit issued under section 204(d);
 - (2) is not prohibited by subsection (f); and
 - (3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.
- (b) **EXISTING INTERNATIONAL FISHERY AGREEMENTS.**—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202(b) or (c)), if such agreement—
- (1) was in effect on the date of enactment of this Act; and
 - (2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.
- (c) **GOVERNING INTERNATIONAL FISHERY AGREEMENTS.**—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a “governing international fishery agreement”. Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:
- (1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.
 - (2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—
 - (A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted—
 - (i) to board, and search or inspect, any such vessel at any time,
 - (ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or

34 Amendment by Rep. Southerland of Florida made at Committee markup on 5/29/14

any person has committed an act prohibited by section 307, and

(iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;

- (B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;
- (C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;
- (D) United States observers required under subsection (h) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;
- (E) any fees required under section 204(b)(10) be paid in advance;
- (F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and
- (G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;
and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

- (A) apply, pursuant to section 204, for any required permits;
- (B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;
- (C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) and the applicable conditions and restrictions established under section 204(b)(7); and
- (D) take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the optimum yield of such fishery which cannot, or will not be harvested by vessels of the United States, as determined in accordance with this Act. Allocations of the total allowable level of foreign fishing are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess domestic harvest capacity.

(e) ALLOCATION OF ALLOWABLE LEVEL.—

(1)

- (A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

- (B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation.
- (C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.
- (D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—
 - (i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and
 - (ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate
- (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.
- (E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—
 - (i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;
 - (ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;
 - (iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;
 - (iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone [or special areas]* for its domestic consumption;
 - (v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;
 - (vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;
 - (vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and
 - (viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems ap-

appropriate.

- (2) (A) For the purposes of this paragraph—
 - (i) The term “certification” means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).
 - (ii) The term “remedial period” means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.
- (B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—
 - (i) is in effect for that foreign country on the date of issuance; or
 - (ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period; shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.
- (C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:
 - (i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.
 - (ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.
 - (iii) If the certification is terminated under such section 8(d) during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this Act.
 - (iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 204.
- (D) If the certification of a foreign country is not terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the last day of the remedial period, the Secretary of State—
 - (i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and
 - (ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f) RECIPROCITY.—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to for-

foreign fishing vessels.

(g) PRELIMINARY FISHERY MANAGEMENT PLANS.—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan—

- (1) shall contain a preliminary description of the fishery and a preliminary determination as to—
 - (A) the optimum yield from such fishery;
 - (B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and
 - (C) the total allowable level of foreign fishing with respect to such fishery;
- (2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;
- (3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and
- (4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—
 - (A) are determined to be necessary and appropriate for the conservation and management of such fishery,
 - (B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and
 - (C) are described in section 303(b)(2), (3), (4), (5), and (7).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305.

(h) FULL OBSERVER COVERAGE PROGRAM.—

- (1)
 - (A) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone [or special areas]*.
 - (B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.
- (2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—
 - (A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone [or special areas]* to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

- (B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program or other monitoring program that the Secretary, in consultation with the Western Pacific Management Council, determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement;
 - (C) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone [or special areas]* will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or
 - (D) for reasons beyond the control of the Secretary, an observer is not available.
- (3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.
- (4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).
- (5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.
- (6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:
 - (A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);
 - (B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;
 - (C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and
 - (D) monitor the performance of observers to ensure that it meets the purposes of this Act.
- (i) **RECREATIONAL FISHING.**—Notwithstanding any other provision of this title, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone, [special areas,]* and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone, [areas,]* or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 304. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the

authority of this subsection.

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS

16 U.S.C. 1822

(a) NEGOTIATIONS.—The Secretary of State—

- (1) shall renegotiate treaties as provided for in subsection (b);
- (2) shall negotiate governing international fishery agreements described in section 201(c);
- (3) may negotiate boundary agreements as provided for in subsection (d);
- (4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements--
 - (A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and
 - (B) which provide for the conservation and management of anadromous species and highly migratory species; and
- (5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

(b) TREATY RENEGOTIATION.—The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977) [or special areas]*, or for anadromous species or Continental Shelf fishery resources beyond such zone or area[s]*, and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.

(c) INTERNATIONAL FISHERY AGREEMENTS.—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977) [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone or area[s]*—

- (1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or
 - (2) may be entered into after May 31, 1976;
- by the United States unless it is in accordance with the provisions of section 201(c) or section 204(e).

(d) BOUNDARY NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone of the United States in relation to any such nation.

(e) HIGHLY MIGRATORY SPECIES AGREEMENTS.—

- (1) EVALUATION.—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—
 - (A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;
 - (B) the establishment of measures applicable to the fishery which are necessary and appropriate for

the conservation and management of the fishery resource involved;

- (C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;
 - (D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and
 - (E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.
- (2) ACCESS NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.
- (3) REPORTS.—The Secretary of State shall report to the Congress—
- (A) within 12 months after the date of enactment of this subsection, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and
 - (B) within six months after such date of enactment, on the results of the access negotiations required under paragraph (2).
- (4) NEGOTIATION.—The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).
- (5) SOUTH PACIFIC TUNA TREATY.—It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and it[s] Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.

(f) NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

- (1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;
- (2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or
- (3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

(g) FISHERY AGREEMENT WITH UNION OF SOVIET SOCIALIST REPUBLICS.—

- (1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with Russia of a duration of no more than 3 years, pursuant to which—
 - (A) Russia will give United States fishing vessels the opportunity to conduct traditional fisheries within the waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;
 - (B) the United States will give fishing vessels of Russia the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the maritime boundary, including the eastern

- special areas described in Article 3(1) of the Agreement;
- (C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and
- (D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.
- (2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.
- (3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).

(h) BYCATCH REDUCTION AGREEMENTS.—

- (1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this Act for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.
- (2) An international agreement negotiated under this subsection shall be—
 - (A) consistent with the policies and purposes of this Act; and
 - (B) subject to approval by Congress under section 203.
- (3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing actions taken under this subsection.

SEC. 202A. SECRETARIAL REPRESENTATIVE FOR INTERNATIONAL FISHERIES

- (a) **IN GENERAL.**—The Secretary, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, shall designate a senior official who is appointed by the President, by and with the advice and consent of the Senate, to serve as the Secretarial Representative for International Fisheries for the purpose of performing the duties of the Secretary with respect to international agreements involving fisheries and other living marine resources, including the development of policy and representation of the United States as a Commissioner under such international agreements.
- (b) **ADVICE.**—The Secretarial Representative for International Fisheries shall, in consultation with the Deputy Assistant Secretary for International Affairs and the Administrator of the National Marine Fisheries Service, advise the Secretary, Undersecretary of Commerce for Oceans and Atmosphere, and other senior officials of the Department of Commerce and the National Oceanic and Atmospheric Administration on development of policy on international fishery conservation and management matters.
- (c) **CONSULTATION.**—The Secretarial Representative for International Fisheries shall consult with the Committee on Natural Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on matters pertaining to any regional or international negotiation concerning living marine resources.³⁵

³⁵ Second Senate draft page 63 line 2+.

SEC. 203. CONGRESSIONAL OVERSIGHT OF 16 U.S.C. 1823 INTERNATIONAL FISHERY AGREEMENTS

- (a) **IN GENERAL.**—No governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement shall become effective with respect to the United States before the close of the first 120 calendar days (excluding any days in a period for which the Congress is adjourned sine die) after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.
- (b) **REFERRAL TO COMMITTEES.**—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.
- (c) **CONGRESSIONAL PROCEDURES.**—
- (1) **RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.**—The provisions of this section are enacted by the Congress—
 - (A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and
 - (B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.
 - (2) **DEFINITION.**—For purposes of this subsection, the term “fishery agreement resolution” refers to a joint resolution of either House of Congress—
 - (A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and
 - (B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.
 - (3) **PLACEMENT ON CALENDAR.** —Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.
 - (4) **FLOOR CONSIDERATION IN THE HOUSE.**—
 - (A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.
 - (B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.
 - (C) Motions to postpone, made in the House of Representatives with respect to the consideration of

any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

- (D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.
 - (E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.
- (5) FLOOR CONSIDERATION IN THE SENATE.—
- (A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.
 - (B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.
 - (C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.
 - (D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order

SEC. 204. PERMITS FOR FOREIGN FISHING

16 U.S.C. 1824

- (a) **IN GENERAL.**—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the exclusive economic zone [within the special areas]*, or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*, unless such vessel has on board a valid permit issued under this section for such vessel.
- (b) **APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.**—
 - (1) **ELIGIBILITY.**—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a). No permit issued under this section may be valid for longer than a year; and section 558(c) of title 5, United States Code, does not apply to the renewal of any such permit.
 - (2) **FORMS.**—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.
 - (3) **CONTENTS.**—Any application made under this subsection shall specify—
 - (A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;
 - (B) the tonnage, hold capacity, speed, processing equipment, type and quantity of fishing gear, and

such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

- (C) each fishery in which each such vessel wishes to fish;
 - (D) the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;
 - (E) the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States; (F) the ocean area in which, and the season or period during which, such fishing will be conducted; and (G) all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards; and shall include any other pertinent information and material which the Secretary may require.
- (4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3). The Secretary of State shall promptly transmit—
- (A) such application, together with his comments and recommendations thereon, to the Secretary;
 - (B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and
 - (C) a copy or a summary of the application to the appropriate Council.
- (5) ACTION BY COUNCIL.—After receiving a copy or summary of an application under paragraph (4) (C), the Council may prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.
- (6) APPROVAL.—
- (A) After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B), the application, if he determines that the fishing described in the application will meet the requirements of this Act, or he may disapprove all or any portion of the application.
 - (B)
 - (i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.
 - (ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by United States fish processors.
 - (iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.

- (7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) or subsection (d) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:
- (A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and any applicable Federal or State fishing regulations.
 - (B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.
 - (C) The requirements described in section 201(c)(1), (2), and (3).
 - (D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B) or subsection (d), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.
 - (E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.
 - (F) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.
- (8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—
- (A) the Secretary of State for transmittal to the foreign nation involved;
 - (B) the Secretary of the department in which the Coast Guard is operating; and
 - (C) any Council which has authority over any fishery specified in such application.
- (9) DISAPPROVAL OF APPLICATIONS.—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.
- (10) FEES.—
- (A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.
 - (B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.
- (11) ISSUANCE OF PERMITS.—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

- (c) **REGISTRATION PERMITS.—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in**

the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

(d) TRANSSHIPMENT PERMITS—

- (1) **AUTHORITY TO ISSUE PERMITS.**—The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the exclusive economic zone or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States to any person who—
 - (A) submits an application which is approved by the Secretary under paragraph (3); and
 - (B) pays a fee imposed under paragraph (7).
- (2) **TRANSMITTAL.**—Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of State, Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any affected State.
- (3) **APPROVAL OF APPLICATION.**—The Secretary may approve, in consultation with the appropriate Council or Marine Fisheries Commission, an application for a permit under this section if the Secretary determines that—
 - (A) the transportation of fish or fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this Act;
 - (B) the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application;
 - (C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and
 - (D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.
- (4) **WHOLE OR PARTIAL APPROVAL.**—The Secretary may approve all or any portion of an application under paragraph (3).
- (5) **FAILURE TO APPROVE APPLICATION.**—If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.
- (6) **CONDITIONS AND RESTRICTIONS.**—The Secretary shall establish and include in each permit under this subsection conditions and restrictions, including those conditions and restrictions set forth in subsection (b)(7), which shall be complied with by the owner and operator of the vessel for which the permit is issued.
- (7) **FEEES.**—The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit, except that the Secretary shall waive the fee for the permit if the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation.

(e) PACIFIC INSULAR AREAS.—

- (1) **NEGOTIATION OF PACIFIC INSULAR AREA FISHERY AGREEMENTS.**—The Secretary of State, with the concurrence of the Secretary and in consultation with any appropriate Council, may negotiate and enter into a Pacific Insular Area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to a Pacific Insular Area—
 - (A) in the case of American Samoa, Guam, or the Northern Mariana Islands, at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which such agreement applies; and
 - (B) in the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, at the request of the Western Pacific Council.
- (2) **AGREEMENT TERMS AND CONDITIONS.**—A Pacific Insular Area fishery agreement—
 - (A) shall not be considered to supersede any governing international fishery agreement currently in effect under this Act, but shall provide an alternative basis for the conduct of foreign fishing within the exclusive economic zone adjacent to Pacific Insular Areas;
 - (B) shall be negotiated and implemented consistent only with the governing international fishery agreement provisions of this title specifically made applicable in this subsection;
 - (C) may not be negotiated with a nation that is in violation of a governing international fishery agreement in effect under this Act;
 - (D) shall not be entered into if it is determined by the Governor of the applicable Pacific Insular Area with respect to agreements initiated under paragraph (1)(A), or the Western Pacific Council with respect to agreements initiated under paragraph (1)(B), that such an agreement will adversely affect the fishing activities of the indigenous people of such Pacific Insular Area;
 - (E) shall be valid for a period not to exceed three years and shall only become effective according to the procedures in section 203; and
 - (F) shall require the foreign nation and its fishing vessels to comply with the requirements of paragraphs (1), (2), (3) and (4)(A) of section 201(c), section 201(d), and section 201(h).
- (3) **PERMITS FOR FOREIGN FISHING.**—
 - (A) Application for permits for foreign fishing authorized under a Pacific Insular Areas fishing agreement shall be made, considered and approved or disapproved in accordance with paragraphs (3), (4), (5), (6), (7) (A) and (B), (8), and (9) of subsection (b), and shall include any conditions and restrictions established by the Secretary in consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, the Governor of the applicable Pacific Insular Area, and the appropriate Council.
 - (B) If a foreign nation notifies the Secretary of State of its acceptance of the requirements of this paragraph, paragraph (2)(F), and paragraph (5), including any conditions and restrictions established under subparagraph (A), the Secretary of State shall promptly transmit such notification to the Secretary. Upon receipt of any payment required under a Pacific Insular Area fishing agreement, the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all of the requirements, conditions, and restrictions established under this subsection which apply to the fishing vessel for which the permit is issued.
- (4) **MARINE CONSERVATION PLANS.**—
 - (A) Prior to entering into a Pacific Insular Area fishery agreement, the Western Pacific Council and the appropriate Governor shall develop a 3-year marine conservation plan detailing uses for funds to be collected by the Secretary pursuant to such agreement. Such plan shall be consistent with any applicable fishery management plan, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned

marine conservation projects. Conservation and management objectives shall include, but not be limited to—

- (i) Pacific Insular Area observer programs, or other monitoring programs, that the Secretary determines 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;
 - (ii) conduct of marine and fisheries research, including development of systems for information collection, analysis, evaluation, and reporting;
 - (iii) conservation, education, and enforcement activities related to marine and coastal management, such as living marine resource assessments, habitat monitoring and coastal studies;
 - (iv) grants to the University of Hawaii for technical assistance projects by the Pacific Island Network, such as education and training in the development and implementation of sustainable marine resources development projects, scientific research, and conservation strategies; and
 - (v) western Pacific community-based demonstration projects under section 112(b) of the Sustainable Fisheries Act and other coastal improvement projects to foster and promote the management, conservation, and economic enhancement of the Pacific Insular Areas.
 - (B) In the case of American Samoa, Guam, and the Northern Mariana Islands, the appropriate Governor, with the concurrence of the Western Pacific Council, shall develop the marine conservation plan described in subparagraph (A) and submit such plan to the Secretary for approval. In the case of other Pacific Insular Areas, the Western Pacific Council shall develop and submit the marine conservation plan described in subparagraph (A) to the Secretary for approval.
 - (C) If a Governor or the Western Pacific Council intends to request that the Secretary of State renew a Pacific Insular Area fishery agreement, a subsequent 3-year plan shall be submitted to the Secretary for approval by the end of the second year of the existing 3-year plan.
- (5) RECIPROCAL CONDITIONS.—Except as expressly provided otherwise in this subsection, a Pacific Insular Area fishing agreement may include terms similar to the terms applicable to United States fishing vessels for access to similar fisheries in waters subject to the fisheries jurisdiction of another nation.
- (6) USE OF PAYMENTS BY AMERICAN SAMOA, GUAM, NORTHERN MARIANA ISLANDS.—Any payments received by the Secretary under a Pacific Insular Area fishery agreement for American Samoa, Guam, or the Northern Mariana Islands shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which those funds were collected. Amounts deposited in the Treasury of a Pacific Insular Area shall be available, without appropriation or fiscal year limitation, to the Governor of the Pacific Insular Area—
- (A) to carry out the purposes of this subsection;
 - (B) to compensate (i) the Western Pacific Council for mutually agreed upon administrative costs incurred relating to any Pacific Insular Area fishery agreement for such Pacific Insular Area, and (ii) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(A); and
 - (C) to implement a marine conservation plan developed and approved under paragraph (4).
- (7) WESTERN PACIFIC SUSTAINABLE FISHERIES FUND.—There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which any payments received by the Secretary under a Pacific Insular Area fishery agreement and any funds or contributions received in support of conservation and management objectives under a marine conservation plan for any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Western Pacific Sustainable Fisheries Fund shall be made available, without appropriation or fiscal year limitation, to the Secretary, who shall provide such funds only to—

- (A) the Western Pacific Council for the purpose of carrying out the provisions of this subsection, including implementation of a marine conservation plan approved under paragraph (4);
 - (B) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(B); and
 - (C) the Western Pacific Council to meet conservation and management objectives in the State of Hawaii if monies remain in the Western Pacific Sustainable Fisheries Fund after the funding requirements of subparagraphs (A) and (B) have been satisfied. Amounts deposited in such fund shall not diminish funding received by the Western Pacific Council for the purpose of carrying out other responsibilities under this Act.
- (8) **USE OF FINES AND PENALTIES.**—In the case of violations occurring within the exclusive economic zone off American Samoa, Guam, or the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the exclusive economic zone in which the violation occurred, to be used for fisheries enforcement and for implementation of a marine conservation plan under paragraph (4). In the case of violations by foreign vessels occurring within the exclusive economic zones off Midway Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis, Howland, Baker, and Wake Islands, amounts received by the Secretary attributable to fines and penalties imposed under this Act, shall be deposited into the Western Pacific Sustainable Fisheries Fund established under paragraph (7) of this subsection.

P.L. 104-297, sec. 105(e), MSA § 204 note

ATLANTIC HERRING TRANSSHIPMENT—Within 30 days of receiving an application, the Secretary shall, under section 204(d) of the Magnuson Fishery Conservation and Management Act, as amended by this Act [Public Law 104-297], issue permits to up to fourteen Canadian transport vessels that are not equipped for fish harvesting or processing, for the transshipment, within the boundaries of the State of Maine or within the portion of the exclusive economic zone east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State, of Atlantic herring harvested by United States fishermen within the area described and used solely in sardine processing. In issuing a permit pursuant to this subsection, the Secretary shall provide a waiver under section 201(h)(2)(C) of the Magnuson Fishery Conservation and Management Act, as amended by this Act: Provided, That such vessels comply with Federal or State monitoring and reporting requirements for the Atlantic herring fishery, including the stationing of United States observers aboard such vessels, if necessary.

SEC. 205. IMPORT PROHIBITIONS

16 U.S.C. 1825

(a) DETERMINATIONS BY SECRETARY OF STATE.—If the Secretary of State determines that—

- (1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, including fisheries for tuna species, as recognized by the United States, in accordance with fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 201(c) and (d) and 204(b)(7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;
- (2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for tuna species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;
- (3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation

asserts exclusive fishery management authority; or

- (4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

- (A) in violation of an applicable international fishery agreement;

- (B) without authorization under an agreement between the United States and such nation; or

- (C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

- (b) PROHIBITIONS.—Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—**

- (1) of all fish and fish products from the fishery involved, if any; and

- (2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

- (c) REMOVAL OF PROHIBITION.—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.**

- (d) DEFINITIONS.—As used in this section—**

- (1) The term “fish” includes any highly migratory species.

- (2) The term “fish products” means any article which is produced from or composed of (in whole or in part) any fish.

SEC. 206. LARGE-SCALE DRIFTNET FISHING

16 U.S.C. 1826

- (a) SHORT TITLE.—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the ‘Driftnet Act Amendments of 1990’.**

- (b) FINDINGS.—The Congress finds that—**

- (1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world's oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;
 - (2) the use of large-scale driftnets is expanding into new regions of the world's oceans, including the Atlantic Ocean and Caribbean Sea;
 - (3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;
 - (4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;
 - (5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;
 - (6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the

South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

- (7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

(c) POLICY.—It is declared to be the policy of the Congress in this section that the United States should—

- (1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;
- (2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and
- (3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(d) INTERNATIONAL AGREEMENTS.—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

- (1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;
- (2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;
- (3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;
- (4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;
- (5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;
- (6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;
- (7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;
- (8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;
- (9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and
- (10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclu-

sive economic zone of any nation.

- (e) **REPORT.**—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—
- (1) describing the steps taken to carry out the provisions of this section, particularly subsection (c);
 - (2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;
 - (3) containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and
 - (4) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.
- (f) **CERTIFICATION.**—If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (e)(4), the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).
- (g) **EFFECT ON SOVEREIGN RIGHTS.**—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this Act or other existing law.
- (h) **DEFINITION.**—As used in this section, the term “living marine resources” includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT ACT

SEC. 101.3 DENIAL OF PORT PRIVILEGES AND SANCTIONS FOR HIGH SEAS LARGE-SCALE DRIFTNET FISHING

16 U.S.C. 1826a

(a) DENIAL OF PORT PRIVILEGES.—

- (1) **PUBLICATION OF LIST.**—Not later than 30 days after November 2, 1992, and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.
- (2) **DENIAL OF PORT PRIVILEGES.**—The Secretary of the Treasury shall, in accordance with recognized principles of international law—
 - (A) withhold or revoke the clearance required by section 91 of the Appendix to Title 46 for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1); and
 - (B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States.
- (3) **NOTIFICATION OF NATION.**—Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding—
 - (A) the effect of that publication on port privileges of vessels of that nation under paragraph (1); and
 - (B) any sanctions or requirements, under this Act or any other law, that may be imposed on that nation if nationals or vessels of that nation continue to conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation after December 31, 1992.

(b) SANCTIONS.—

- (1) **IDENTIFICATIONS.**—
 - (A) **INITIAL IDENTIFICATIONS.**—Not later than January 10, 1993, the Secretary of Commerce shall—
 - (i) identify each nation whose nationals or vessels are conducting large-scale driftnet fishing or illegal, unreported, or unregulated fishing beyond the exclusive economic zone of any nation; and
 - (ii) notify the President and that nation of the identification under clause (i).
 - (B) **ADDITIONAL IDENTIFICATIONS.**—At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing or illegal, unreported, or unregulated fishing beyond the exclusive economic zone of any nation, the Secretary of Commerce shall—
 - (i) identify that nation; and
 - (ii) notify the President and that nation of the identification under clause (i).
- (2) **CONSULTATIONS.**—Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing or illegal, unreported, or unregulated fishing by the nationals or vessels of that nation beyond the exclusive economic zone

of any nation.

(3) PROHIBITION ON IMPORTS OF FISH AND FISH PRODUCTS AND SPORT FISHING EQUIPMENT.—

(A) PROHIBITION.—The President—

- (i) upon receipt of notification of the identification of a nation under paragraph (1)(A); or
- (ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within 90 days,

shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined in section 4162 of Title 26) from that nation.

(B) IMPLEMENTATION OF PROHIBITION.—With respect to an import prohibition directed under subparagraph (A), the Secretary of the Treasury shall implement such prohibition not later than the date that is 45 days after the date on which the Secretary has received the direction from the President.

(C) PUBLIC NOTICE OF PROHIBITION.—Before the effective date of any import prohibition under this paragraph, the Secretary of the Treasury shall provide public notice of the impending prohibition.

(4) ADDITIONAL ECONOMIC SANCTIONS.—

(A) DETERMINATION OF EFFECTIVENESS OF SANCTIONS.—Not later than six months after the date the Secretary of Commerce identifies a nation under paragraph (1), the Secretary shall determine whether—

- (i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing or illegal, unreported, or unregulated fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation; or
- (ii) that nation has retaliated against the United States as a result of that prohibition.

(B) CERTIFICATION.—The Secretary of Commerce shall certify to the President each affirmative determination under subparagraph (A) with respect to a nation.

(C) EFFECT OF CERTIFICATION.—Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 1978(a) of Title 22, as amended by this Act.

SEC. 102.4 DURATION OF DENIAL OF PORT PRIVILEGES AND SANCTIONS

Any denial of port privileges or sanction under section 101 with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing or illegal, unreported, or unregulated fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

SEC. 104. DEFINITIONS

In this title [High Seas Driftnet Fisheries Enforcement Act], the following definitions apply:

- (1) FISH AND FISH PRODUCTS.—The term “fish and fish products” means any aquatic species (including marine mammals and plants) and all products thereof exported from a nation, whether or not taken by fishing vessels of that nation or packed, processed, or otherwise prepared for export in that nation or within the jurisdiction thereof.

- (2) LARGE-SCALE DRIFTNET FISHING.—
 - (A) IN GENERAL.—Except as provided in subparagraph (B), the term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.
 - (B) EXCEPTION.—Until January 1, 1994, the term “large-scale driftnet fishing” does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.
- (3) LARGE-SCALE DRIFTNET FISHING VESSEL.—The term “large-scale driftnet fishing vessel” means any vessel which is—
 - (A) used for, equipped to be used for, or of a type which is normally used for large-scale driftnet fishing; or
 - (B) used for aiding or assisting one or more vessels at sea in the performance of large-scale driftnet fishing, including preparation, supply, storage, refrigeration, transportation, or processing.

HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT 104-43

SEC. 603. PROHIBITION

The United States, or any agency or official acting on behalf of the United States, may not enter into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the global moratorium on large-scale driftnet fishing on the high seas, as such moratorium is expressed in Resolution 46/215 of the United Nations General Assembly.

SEC. 604. NEGOTIATIONS

The Secretary of State, on behalf of the United States, shall seek to enhance the implementation and effectiveness of the United Nations General Assembly resolutions and decisions regarding the moratorium on large-scale driftnet fishing on the high seas through appropriate international agreements and organizations.

SEC. 605. CERTIFICATION

The Secretary of State shall determine in writing prior to the signing or provisional application by the United States of any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that the prohibition contained in section 603 will not be violated if such agreement is signed or provisionally applied.

SEC. 606. ENFORCEMENT

The President shall utilize appropriate assets of the Department of Defense, the United States Coast Guard, and other Federal agencies to detect, monitor, and prevent violations of the United Nations moratorium on large-scale driftnet fishing on the high seas for all fisheries under the jurisdiction of the United States and, in the case of fisheries not under the jurisdiction of the United States, to the fullest extent permitted under international law.

SEC. 607. BIENNIAL REPORT ON INTERNATIONAL COMPLIANCE

The Secretary, in consultation with the Secretary of State, shall provide to Congress, by not later than 2 years after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, and every 2 years thereafter, a report that includes—

- (1) the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all such fish

stocks classified as ~~overfished~~ depleted, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with management or conservation of living marine resources;

- (2) a list of nations whose vessels have been identified under section 609(a) or 610(a), including the specific offending activities and any subsequent actions taken pursuant to section 609 or 610;
- (3) a description of efforts taken by nations on those lists to comply [sic] take appropriate corrective action consistent with sections 609 and 610, and an evaluation of the progress of those efforts, including steps taken by the United States to implement those sections and to improve international compliance;
- (4) progress at the international level, consistent with section 608, to strengthen the efforts of international fishery management organizations to end illegal, unreported, or unregulated fishing; and
- (5) steps taken by the Secretary at the international level to adopt international measures comparable to those of the United States to reduce impacts of fishing and other practices on protected living marine resources, if no international agreement to achieve such goal exists, or if the relevant international fishery or conservation organization has failed to implement effective measures to end or reduce the adverse impacts of fishing practices on such species.

SEC. 608. ACTION TO STRENGTHEN INTERNATIONAL FISHERY MANAGEMENT ORGANIZATIONS

The Secretary, in consultation with the Secretary of State, and in cooperation with relevant fishery management councils and any relevant advisory committees, shall take actions to improve the effectiveness of international fishery management organizations in conserving and managing fish stocks under their jurisdiction. These actions shall include—

- (1) urging international fishery management organizations to which the United States is a member—
 - (A) to incorporate multilateral market-related measures against member or nonmember governments whose vessels engage in illegal, unreported, or unregulated fishing;
 - (B) to seek adoption of lists that identify fishing vessels and vessel owners engaged in illegal, unreported, or unregulated fishing that can be shared among all members and other international fishery management organizations;
 - (C) to seek international adoption of a centralized vessel monitoring system in order to monitor and document capacity in fleets of all nations involved in fishing in areas under an international fishery management organization's jurisdiction;
 - (D) to increase use of observers and technologies needed to monitor compliance with conservation and management measures established by the organization, including vessel monitoring systems and automatic identification systems; and
 - (E) to seek adoption of stronger port state controls in all nations, particularly those nations in whose ports vessels engaged in illegal, unreported, or unregulated fishing land or transship fish;
- (2) urging international fishery management organizations to which the United States is a member, as well as all members of those organizations, to adopt and expand the use of market-related measures to combat illegal, unreported, or unregulated fishing, including—
 - (A) import prohibitions, landing restrictions, or other market-based measures needed to enforce compliance with international fishery management organization measures, such as quotas and catch limits;
 - (B) import restrictions or other market-based measures to prevent the trade or importation of fish caught by vessels identified multilaterally as engaging in illegal, unreported, or unregulated fishing; and
 - (C) catch documentation and certification schemes to improve tracking and identification of catch of vessels engaged in illegal, unreported, or unregulated fishing, including advance transmission of

catch documents to ports of entry; and

- (3) urging other nations at bilateral, regional, and international levels, including the Convention on International Trade in Endangered Species of Fauna and Flora and the World Trade Organization to take all steps necessary, consistent with international law, to adopt measures and policies that will prevent fish or other living marine resources harvested by vessels engaged in illegal, unreported, or unregulated fishing from being traded or imported into their nation or territories.

SEC. 609. ILLEGAL, UNREPORTED, OR UNREGULATED FISHING

(a) IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607, a nation if fishing vessels of that nation are engaged, or have been engaged at any point during the preceding 2 years, in illegal, unreported, or unregulated fishing—

- (1) the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by vessels of that nation or the nation is not a party to, or does not maintain cooperating status with, such organization; or
- (2) where no international fishery management organization exists with a mandate to regulate the fishing activity in question.

(b) NOTIFICATION.—An identification under subsection (a) or section 610(a) is deemed to be an identification under section 101(b)(1)(A) of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a(b)(1)(A)), and the Secretary shall notify the President and that nation of such identification.

(c) CONSULTATION.—No later than 60 days after submitting a report to Congress under section 607, the Secretary, acting through the Secretary of State, shall—

- (1) notify nations listed in the report of the requirements of this section;
- (2) initiate consultations for the purpose of encouraging such nations to take the appropriate corrective action with respect to the offending activities of their fishing vessels identified in the report; and
- (3) notify any relevant international fishery management organization of the actions taken by the United States under this section.

(d) IUU CERTIFICATION PROCEDURE.—

- (1) **CERTIFICATION.—**The Secretary shall establish a procedure, consistent with the provisions of subchapter II of chapter of title 5, United States Code, for determining if a nation identified under subsection (a) and listed in the report under section 607 has taken appropriate corrective action with respect to the offending activities of its fishing vessels identified in the report under section 607. The certification procedure shall provide for notice and an opportunity for comment by any such nation. The Secretary shall determine, on the basis of the procedure, and certify to the Congress no later than 90 days after the date on which the Secretary promulgates a final rule containing the procedure, and biennially thereafter in the report under section 607—

- (A) whether the government of each nation identified under subsection (a) has provided documentary evidence that it has taken corrective action with respect to the offending activities of its fishing vessels identified in the report; or
- (B) whether the relevant international fishery management organization has implemented measures that are effective in ending the illegal, unreported, or unregulated fishing activity by vessels of that nation.

- (2) **ALTERNATIVE PROCEDURE.—**The Secretary may establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation not certified under paragraph (1) if the Secretary determines that—

- (A) the vessel has not engaged in illegal, unreported, or unregulated fishing under an international fishery management agreement to which the United States is a party; or
 - (B) the vessel is not identified by an international fishery management organization as participating in illegal, unreported, or unregulated fishing activities.
- (3) EFFECT OF CERTIFICATION.—
- (A) IN GENERAL.—The provisions of section 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4))—
 - (i) shall apply to any nation identified under subsection (a) that has not been certified by the Secretary under this subsection, or for which the Secretary has issued a negative certification under this subsection; but
 - (ii) shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.
 - (B) EXCEPTIONS.—Subparagraph (A)(i) does not apply—
 - (i) to the extent that such provisions would apply to sport fishing equipment or to fish or fish products not managed under the applicable international fishery agreement; or
 - (ii) if there is no applicable international fishery agreement, to the extent that such provisions would apply to fish or fish products caught by vessels not engaged in illegal, unreported, or unregulated fishing.

(e) ILLEGAL, UNREPORTED, OR UNREGULATED FISHING DEFINED.—

- (1) IN GENERAL.—In this Act the term ‘illegal, unreported, or unregulated fishing’ has the meaning established under paragraph (2).
- (2) SECRETARY TO DEFINE TERM WITHIN LEGISLATIVE GUIDELINES.— ~~Within 3 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Not later than 3 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2014³⁶,~~ the Secretary shall publish a definition of the term ‘illegal, unreported, or unregulated fishing’ for purposes of this Act.
- (3) GUIDELINES.—The Secretary shall include in the definition, at a minimum—
 - (A) fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;
 - (B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; ~~and~~
 - (C) fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement, ~~and~~.
 - (D) ~~To the extent possible--~~
 - (i) ~~fishing activities conducted by foreign vessels in waters under the jurisdiction of a nation without permission of that nation; and~~
 - (ii) ~~fishing activities conducted by foreign vessels in contravention of a nation’s laws, including fishing activity that has not been reported or that has been misreported to the relevant~~

- (f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary for fiscal years ~~2007 through 2013~~ **2015 through 2021**³⁸ such sums as are necessary to carry out this section.

SEC. 610. EQUIVALENT CONSERVATION MEASURES

- (a) **IDENTIFICATION.**—The Secretary shall identify, and list in the report under section 607, a nation if—

- (1) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year in fishing activities or practices;
 - (A) in waters beyond any national jurisdiction that result in bycatch of a protected living marine resource; or
 - (B) beyond the exclusive economic zone of the United States that result in bycatch of a protected living marine resource shared by the United States;
- (2) the relevant international organization for the conservation and protection of such resources or the relevant international or regional fishery organization has failed to implement effective measures to end or reduce such bycatch, or the nation is not a party to, or does not maintain cooperating status with, such organization; and
- (3) the nation has not adopted a regulatory program governing such fishing practices designed to end or reduce such bycatch that is comparable to that of the United States, taking into account different conditions.

- (b) **CONSULTATION AND NEGOTIATION.**—The Secretary, acting through the Secretary of State, shall—

- (1) notify, as soon as possible, other nations whose vessels engage in fishing activities or practices described in subsection (a), about the provisions of this section and this Act;
- (2) initiate discussions as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, fishing activities or practices described in subsection (a), for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species;
- (3) seek agreements calling for international restrictions on fishing activities or practices described in subsection (a) through the United Nations, the Food and Agriculture Organization's Committee on Fisheries, and appropriate international fishery management bodies; and
- (4) initiate the amendment of any existing international treaty for the protection and conservation of such species to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section.

- (c) **CONSERVATION CERTIFICATION PROCEDURE.**—

- (1) **DETERMINATION.**—The Secretary shall establish a procedure consistent with the provisions of subchapter II of chapter 5 of title 5, United States Code, for determining whether the government of a harvesting nation identified under subsection (a) and listed in the report under section 607—
 - (A) has provided documentary evidence of the adoption of a regulatory program governing the conservation of the protected living marine resource that is comparable to that of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training

³⁷ *Second Senate draft page 67 lines 13+.*

³⁸ *Second Senate draft page 68 lines 1+*

and observer programs; and

- (B) has established a management plan containing requirements that will assist in gathering species-specific data to support international stock assessments and conservation enforcement efforts for protected living marine resources.

(2) **PROCEDURAL REQUIREMENT.**—The procedure established by the Secretary under paragraph (1) shall include notice and opportunity for comment by any such nation.

(3) **CERTIFICATION.**—The Secretary shall certify to the Congress by January 31, 2007, and biennially thereafter whether each such nation has provided the documentary evidence described in paragraph (1)(A) and established a management plan described in paragraph (1)(B).

(4) **ALTERNATIVE PROCEDURE.**—The Secretary shall establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation not certified under paragraph (3) if the Secretary determines that such imports were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that—

- (A) are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

- (B) include the gathering of species specific data that can be used to support international and regional stock assessments and conservation efforts for protected living marine resources.

(5) **EFFECT OF CERTIFICATION.**—The provisions of section 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4)) (except to the extent that such provisions apply to sport fishing equipment or fish or fish products not caught by the vessels engaged in illegal, unreported, or unregulated fishing) shall apply to any nation identified under subsection (a) that has not been certified by the Secretary under this subsection, or for which the Secretary has issued a negative certification under this subsection, but shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

(d) INTERNATIONAL COOPERATION AND ASSISTANCE.—To the greatest extent possible consistent with existing authority and the availability of funds, the Secretary shall—

- (1) provide appropriate assistance to nations identified by the Secretary under subsection (a) and international organizations of which those nations are members to assist those nations in qualifying for certification under subsection (c);
- (2) undertake, where appropriate, cooperative research activities on species statistics and improved harvesting techniques, with those nations or organizations;
- (3) encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for certification under subsection (c); and
- (4) provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

(e) PROTECTED LIVING MARINE RESOURCE DEFINED.—In this section the term ‘protected living marine resource’—

- (1) means non-target fish, sea turtles, or marine mammals that are protected under United States law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; but
- (2) does not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement.

- (f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary for fiscal years ~~2007 through 2013~~ **2015 through 2021**³⁹ such sums as are necessary to carry out this section.

P.L. 104-43, sec. 602

FINDINGS.

The Congress finds that—

- (1) *Congress has enacted and the President has signed into law numerous Acts to control or prohibit large-scale driftnet fishing both within the jurisdiction of the United States and beyond the exclusive economic zone of any nation, including the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (title IV, Public Law 100-220), the Driftnet Act Amendments of 1990 (Public Law 101-627), and the High Seas Driftnet Fisheries Enforcement Act (title I, Public Law 102-582);*
- (2) *the United States is a party to the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention;*
- (3) *the General Assembly of the United Nations has adopted three resolutions and three decisions which established and reaffirm a global moratorium on large-scale driftnet fishing on the high seas, beginning with Resolution 44/225 in 1989 and most recently in Decision 48/445 in 1993;*
- (4) *the General Assembly of the United Nations adopted these resolutions and decisions at the request of the United States and other concerned nations;*
- (5) *the best scientific information demonstrates the wastefulness and potentially destructive impacts of large-scale driftnet fishing on living marine resources and seabirds; and*
- (6) *Resolution 46/215 of the United Nations General Assembly calls on all nations, both individually and collectively, to prevent large-scale driftnet fishing on the high seas.*

SEC. 207. INTERNATIONAL MONITORING AND COMPLIANCE

- (a) **IN GENERAL.**—The Secretary may undertake activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and to implement the requirements of this title.

- (b) **SPECIFIC AUTHORITIES.**—In carrying out subsection (a), the Secretary may—

- (1) share information on harvesting and processing capacity and illegal, unreported and unregulated fishing on the high seas, in areas covered by international fishery management agreements, and by vessels of other nations within the United States exclusive economic zone, with relevant law enforcement organizations of foreign nations and relevant international organizations;
- (2) further develop real time information sharing capabilities, particularly on harvesting and processing capacity and illegal, unreported and unregulated fishing;
- (3) participate in global and regional efforts to build an international network for monitoring, control, and surveillance of high seas fishing and fishing under regional or global agreements;
- (4) support efforts to create an international registry or database of fishing vessels, including by building on or enhancing registries developed by international fishery management organizations;
- (5) enhance enforcement capabilities through the application of commercial or governmental remote sensing technology to locate or identify vessels engaged in illegal, unreported, or unregulated fishing on the high seas, including encroachments into the exclusive economic zone by fishing vessels of other nations;

³⁹ *Second Senate draft page 68 lines 7+*

- (6) provide technical or other assistance to developing countries to improve their monitoring, control, and surveillance capabilities; and
- (7) support coordinated international efforts to ensure that all large-scale fishing vessels operating on the high seas are required by their flag State to be fitted with vessel monitoring systems no later than December 31, 2008, or earlier if so decided by the relevant flag State or any relevant international fishery management organization.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

SEC.301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

- (a) **IN GENERAL.**—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:
- (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
 - (2) Conservation and management measures shall be based upon the best scientific information available.
 - (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
 - (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
 - (5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
 - (6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.
 - (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.
 - (8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of ~~overfished~~ depleted stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.
 - (9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.
 - (10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.
- (c) **GUIDELINES.**—The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.
- (c) **INTER-SECTOR TRADING OF COMMERCIAL CATCH SHARE ALLOCATIONS IN THE GULF OF MEXICO.**—Notwithstanding any other provision of this Act, any commercial fishing catch share allocation in a fishery in

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

(a) ESTABLISHMENT.—

- (1) There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:
 - (A) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have ~~17~~ 1 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State) and a liaison who is a member of the Mid-Atlantic Fishery Management Council to represent the interests of fisheries under the jurisdiction of such Council.
 - (B) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of ~~Rhode Island~~⁴¹, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, ~~Rhode Island~~ and as provided in paragraph (3)). The Mid-Atlantic Council shall have ~~21~~ 22 23 voting members, including ~~13~~ 14 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State) and a liaison who is a member of the New England Fishery Management Council to represent the interests of fisheries under the jurisdiction of such Council.⁴²
 - (C) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).
 - (D) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States and of commonwealths, territories, and possessions of the United States in the Caribbean Sea (except as provided in paragraph (3)). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).
 - (E) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in paragraph (3)). The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).
 - (F) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be

40 Amendment by Rep. Southerland of Florida during committee markup on 5/29/14.

41 Begich page 10-11 (all). No effect on PFMC. (7/23)

42 All House changes on this page from HR 4742 page 32. No effect on PFMC

appointed from each such State), and including one appointed from an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).

- (G) NORTH PACIFIC COUNCIL.—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).
 - (H) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).
- (2) Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.
 - (3) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

(b) VOTING MEMBERS.—

- (1) The voting members of each Council shall be:
 - (A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.
 - (B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.
 - (C) The members required to be appointed by the Secretary in accordance with paragraphs (2) and (5).
- (2)
 - (A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management,

BEGICH: ~~or the commercial or recreational harvest~~, ~~or the commercial, recreational, or subsistence fishing harvest~~⁴³

HOUSE: or the commercial, recreational, ~~or subsistence fishing~~⁴⁴

of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

43 Begich page 9 lines 18+ (7/23)

44 Amendment made by Rep. Young of Alaska at markup held on 5/29/14

- (B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial, ~~and~~ recreational ~~and subsistence~~ fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—
- (i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;
 - (ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and
 - (iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.
- (C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial, ~~and~~ recreational ~~and subsistence~~ fishing interests of the State, ~~and in the case of the Governor of Alaska with the subsistence fishing interests of the State~~⁴⁵, regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).
- (D)
- (i) The Governor of a State submitting a list of names of individuals for appointment by the Secretary of Commerce to the Gulf of Mexico ~~Fisheries Fishery~~ Management Council ~~or the South Atlantic Fishery Management Council~~⁴⁶ under subparagraph (C) shall include—
 - (I) at least 1 nominee each from the commercial, recreational, and charter fishing sectors; and
 - (II) at least 1 other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.
 - (ii) Notwithstanding the requirements of subparagraph (C), if the Secretary determines that the list of names submitted by the Governor does not meet the requirements of clause (i) the Secretary shall—
 - (I) publish a notice in the Federal Register asking the residents of that State to submit the names and pertinent biographical data of individuals who would meet the

45 Amendment made by Rep. Young of Alaska at markup held on 5/29/14

46 Begich page 10. No effect on PFMC (7/23)

requirement not met for appointment to the Council; and

(II) add the name of any qualified individual submitted by the public who meets the unmet requirement to the list of names submitted by the Governor.

(iii) For purposes of clause (i) an individual who owns or operates a fish farm outside of the United States shall not be considered to be a representative of the commercial or recreational fishing sector.

~~(iv) The requirements of this subparagraph shall expire at the end of fiscal year 2012.~~

(E) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with paragraphs (2) and (5) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.

(4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(5)

(A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph.

(B) Representation shall be rotated among the tribes taking into consideration—

(i) the qualifications of the individuals on the list referred to in subparagraph (A),

(ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and

(iii) the geographic area in which the tribe of the representative is located.

(C) A vacancy occurring prior to the expiration of any term shall be filled in the same manner as set out in subparagraphs (A) and (B), except that the Secretary may use the list from which the vacating representative was chosen.

(D) The tribal representative appointed under subparagraph (A) may designate as an alternate, during the period of the representative's term, an individual knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.

(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraphs (2) or (5) if—

(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

(B) the member is 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)(O).

(c) NONVOTING MEMBERS.—

- (1) The nonvoting members of each Council shall be:
 - (A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.
 - (B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.
 - (C) The Executive Director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.
 - (D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.
- (2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) COMPENSATION AND EXPENSES.—The voting members of each Council who are required to be appointed by the Secretary and who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-15, step 7 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other non-voting members and Council staff members may be reimbursed for actual expenses.

(e) TRANSACTION OF BUSINESS.—

- (1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.
- (2) The voting members of each Council shall select a Chairman for such Council from among the voting members.
- (3) Each Council shall meet at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.
- (4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.
- (5) At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.

(f) STAFF AND ADMINISTRATION.—

- (1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.
- (2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.
- (3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

- (4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.
- (5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.
- (6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g), must be consistent with the procedural guidelines set forth in subsection [i](2). Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.
- (7) The Secretary shall pay—
 - (A) the compensation and expenses provided for in subsection (d);
 - (B) appropriate compensation to employees appointed under paragraph (1);
 - (C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);
 - (D) the actual expenses of the members of the committees and panels established under subsection (g); and
 - (E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) COMMITTEES AND ADVISORY PANELS.—

(1)

- (A) Each Council shall establish, maintain, and appoint the members of a scientific and statistical committee to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(B) Each scientific and statistical committee shall—

- (i) provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, achieving rebuilding targets, ~~goals and objectives of fishery ecosystem plans developed under the discretionary authority provided under section 303B,~~ and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices; and
 - (ii) ~~develop a control rule to derive annual recommendations for acceptable biological catch for a forage fishery which account for the importance of forage species to managed fish throughout their range and provide a minimum reference point to determine when a forage fishery should close; and~~
 - (iii) carry out the requirements of this subparagraph in a transparent manner, allowing for public involvement in the process.⁴⁷
- (B) [Begich deletes this paragraph and replaces it with the text above]. Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, by-

47 Second Senate draft page 11. Strikeouts refer to previous Begich draft. References to ecosystem & forage fish removed.

catch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. *Each scientific and statistical committee shall develop such advice in a transparent manner and allow for public involvement in the process*⁴⁸.

- (C) Members appointed by the Councils to the scientific and statistical committees shall be Federal employees, State employees, academicians, or independent experts and shall have strong scientific or technical credentials and experience.
 - (D) Each member of a scientific and statistical committee shall be treated as an affected individual for purposes of paragraphs (2), (3)(B), (4), and (5)(A) of subsection (j). The Secretary shall keep disclosures made pursuant to this subparagraph on file.
 - (E) The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery. The review process, which may include existing committees or panels, is deemed to satisfy the requirements of the guidelines issued pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal year 2001 (Public Law 106–554—Appendix C; 114 Stat. 2763A–153).
 - (F) In addition to the provisions of section 302(f)(7), the Secretary shall, subject to the availability of appropriations, pay a stipend to members of the scientific and statistical committees or advisory panels who are not employed by the Federal Government or a State marine fisheries agency.
 - (G) A science and statistical committee shall hold its meetings in conjunction with the meeting of the Council, to the extent practicable.
- (2) Each Council shall establish such advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.
 - (3)
 - (A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.
 - (B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.
 - (4) The Secretary shall establish advisory panels to assist in the collection and evaluation of information relevant to the development of any fishery management plan or plan amendment for a fishery to which subsection (a)(3) applies. Each advisory panel shall participate in all aspects of the development of the plan or amendment; be balanced in its representation of commercial, recreational, and other interests; and consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from among—
 - (A) members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and
 - (B) other interested persons.
 - (5) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

- (1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time (and promptly whenever changes in conservation and management measures in

48 *HR 4742 page 10 lines 11-15. Our SSC already does this.*

another fishery substantially affect the fishery for which such plan was developed);⁴⁹

- (2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(C) or section 204(d), and any fishery management plan or amendment transmitted to it under section 304(c)(4);
- (3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act (and for purposes of this paragraph, the term “geographical area concerned” may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area);
- (4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;
- (5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery (except as provided in section subsection (a)(3)) within its geographical area of authority;
- (6) develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g);
- (7) develop, in conjunction with the scientific and statistical committee, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall—
 - (A) establish priorities for 5-year periods;
 - (B) be updated as necessary; and
 - (C) be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service for their consideration in developing research priorities and budgets for the region of the Council; ~~and~~
- (8) *have the authority to use alternative fishery management measures in a recreational fishery (or the recreational component of a mixed-use fishery), including extraction rates, fishing mortality, and harvest control rules, to the extent they are in accordance with the requirements of this section; and*⁵⁰
- ~~(8-9)~~ conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

(i) PROCEDURAL MATTERS.—

- (1) The Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to the Councils, the Council coordination committee established under subsection (l), or to the scientific and statistical committees or other committees or advisory panels established under subsection (g).
- (2) The following guidelines apply with respect to the conduct of business at meetings of a Council, of the Council coordination committee established under subsection (l), and of the scientific and statistical committees or other committees or advisory panels established under subsection (g):
 - (A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meet-

⁴⁹ *Second Senate draft removes requirement to review allocations at least every 8 years.*

⁵⁰ *Second Senate draft page 12 lines 1+. Provides more flexibility in managing recreational fisheries.*

ing shall be open to the public.

- (B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.
- (C) 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), except that e-mail notification and website postings alone are not sufficient. Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c), in which case public notice shall be given immediately.
- (D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.
- (E) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.
- (F) Subject to the procedures established under paragraph (4), and the guidelines prescribed by the Secretary under section 402(b), relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council or the Secretary, as appropriate.
- (G) Unless closed in accordance with paragraph (3), each Council shall, where practicable, make available on the Internet website of the Council a video or audio webcast of each meeting of the Council and each meeting of the science and statistical committee of the Council not later than 30 days after the date of the conclusion of such meeting.⁵¹
- (G) Each Council shall make available on the Internet Web site of the Council—
 - (i) to the extent practicable, a Webcast, an audio recording, or a live broadcast of each meeting of the Council, and of the Council Coordination Committee established under subsection (I), that is not closed in accordance with paragraph (3); and⁵²
 - (ii) audio, video (if the meeting was in person or by video conference), or a searchable audio or written transcript of each meeting of the Council and of the meetings of committees referred to in section 302(g)(1)(B) of the Council by not later than 30 days after the conclusion of the meeting.
- (H) The Secretary shall maintain and make available to the public an archive of Council and scientific and statistical committee meeting audios, videos, and transcripts made available under clauses (i) and (ii) subparagraph (G).⁵³

51 Second Senate draft page 12 lines 10+. Requires less than the Hastings draft, but still requires (at the least) an audio broadcast of the SSC meeting on top of what the Council already does. (Unchanged from earlier draft).

52 Change from discussion draft. Allows audio recording/webcast instead of just live broadcast.

53 Change from discussion draft. Allows “searchable audio or written transcript” rather than complete

(A)

(3)

(A) Each Council, the Council Coordination Committee established under subsection (l), scientific and statistical committee, other committees, and advisory panel—

- (i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and
- (ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested; and

(B) If any meeting or portion is closed, the Council concerned shall provide notice 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), except that e-mail notification and website postings alone are not sufficient, including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters. Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

- (4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring confidentiality of the statistics that may be submitted to it by Federal, State, or tribal authorities⁵⁴ or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 402(b), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.
- (5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans.
- (6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency, tribal government, or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

(j) DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.—

(1) For the purposes of this subsection—

(A) the term “affected individual” means an individual who—

- (i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or
- (ii) is a voting member of a Council appointed—

(I) under subsection (b)(2); or

(II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

written transcripts; 302(g)(1)(B) refers to SSC. HR 4742 page 10-11 lines 16-12. The Pacific Council already provides live broadcasts of each Council meeting and does not support additional requirements.

54 Second Senate draft page 12 lines 21+

- (B) the term “designated official” means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).
- (2) Each affected individual must disclose any financial interest held by—
- (A) that individual;
- (B) the spouse, minor child, or partner of that individual; and
- (C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; in any harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction, or with respect to an individual or organization with a financial interest in such activity.
- (3) The disclosure required under paragraph (2) shall be made—
- (A) in the case of an affected individual referred to in paragraph (1)(A)(i), before appointment by the Secretary; and
- (B) in the case of an affected individual referred to in paragraph (1)(A)(ii), within 45 days of taking office.
- (4) An affected individual referred to in paragraph (1)(A)(ii) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C).
- (5) The financial interest disclosures required by this subsection shall—
- (A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe;
- (B) be kept on file by the Council and made available on the Internet and for public inspection at the Council offices during reasonable hours; and
- (C) be kept on file by the Secretary for use in reviewing determinations under paragraph 7(B) and made available for public inspection at reasonable hours.
- (6) The participation by an affected individual referred to in paragraph (1)(A)(ii) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.
- (7)
- (A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.
- (B) At the request of an affected individual, 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 a significant and predictable effect on a financial interest.
- (C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

- (D) Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the record how he or she would have voted on such decision if he or she had voted.
 - (E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph (C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.
 - (F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of the Sustainable Fisheries Act, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and which allow for the making of determinations under subparagraphs (B) and (C).
- (8) 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 in which that individual is in compliance with the regulations prescribed under paragraph (5).
 - (9) On January 1, 2008, and annually thereafter, the Secretary shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements of this subsection, including identification of any conflict of interest problems with respect to the Councils and scientific and statistical committees and recommendations for addressing any such problems.

(k) COUNCIL TRAINING PROGRAM.—

- (1) TRAINING COURSE.—~~Within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the~~ The Secretary, in consultation with the Councils and the National Sea Grant College Program, shall develop a training course for newly appointed Council members. The course may cover a variety of topics relevant to matters before the Councils, including—
 - (A) fishery science and basic stock assessment methods;
 - (B) fishery management techniques, data needs, and Council procedures;
 - (C) social science and fishery economics;
 - (D) tribal treaty rights and native customs, access, and other rights related to Western Pacific indigenous communities;
 - (E) legal requirements of this Act, including conflict of interest and disclosure provisions of this section and related policies;
 - (F) other relevant legal and regulatory requirements, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.);
 - (G) public process for development of fishery management plans;
 - (H) other topics suggested by the Council; **and**
 - (I) recreational and commercial fishing information, including fish harvesting techniques, gear types, fishing vessel types, and economics for the fisheries within each Council's jurisdiction; **and**
 - (J) **ecosystem-based fishery management.**⁵⁵
- (2) MEMBER TRAINING.—The training course shall be available to both new and existing Council members, staff from the regional offices and regional science centers of the National Marine Fisheries Service, and may be made available to committee or advisory panel members as resources allow.

55 *Second Senate draft page 13 lines 7+. No major changes; adds (and retains) ecosystem management as a training topic.*

- (3) **REQUIRED TRAINING.**—Council members appointed after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 shall complete a training course that meets the requirements of this section not later than 1 year after the date on which they were appointed. Any Council member who has completed a training course within 24 months before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 shall be considered to have met the training requirement of this paragraph.

(l) COUNCIL COORDINATION COMMITTEE.—The Councils may establish a Council coordination committee consisting of the chairs, vice chairs, and executive directors of each of the 8 Councils described in subsection (a)(1), or other Council members or staff, in order to discuss issues of relevance to all Councils, including issues related to the implementation of this Act.

(m) CONSIDERATIONS FOR MODIFICATIONS TO ANNUAL CATCH LIMIT REQUIREMENTS.—

- (1) **CONSIDERATION OF ECOSYSTEM AND ECONOMIC IMPACTS.**—In establishing annual catch limits a Council may, consistent with section 302(h)(6), consider changes in an ecosystem and the economic needs of the fishing communities.
- (2) **LIMITATIONS TO ANNUAL CATCH LIMIT REQUIREMENT FOR SPECIAL FISHERIES.**—Notwithstanding subsection (h)(6), a Council is not required to develop an annual catch limit for—
- (A) an ecosystem component species;
 - (B) a fishery for a species that has a life cycle of approximately 1 year, unless the Secretary has determined the fishery is subject to overfishing; or
 - (C) a stock for which—
 - (i) more than half of a single-year class will complete their life cycle in less than 18 months; and
 - (ii) fishing mortality will have little impact on the stock.
- (3) **RELATIONSHIP TO INTERNATIONAL EFFORTS.**—Each annual catch limit may, consistent with section 302(h)(6), take into account—
- (A) management measures under international agreements in which the United States participates; and
 - (B) informal transboundary agreements under which fishery management activities by another country outside the exclusive economic zone may hinder conservation efforts by United States fishermen for a fish species for which any of the recruitment, distribution, life history, or fishing activities are transboundary.
- (4) **AUTHORIZATION FOR MULTISPECIES COMPLEXES AND MULTIYEAR ANNUAL CATCH LIMITS.**—
- For purposes of subsection (h)(6), a Council may establish—
- (A) an annual catch limit for a stock complex; or
 - (B) annual catch limits for each year in any continuous period that is not more than three years in duration.
- (5) **ECOSYSTEM COMPONENT SPECIES DEFINED.**—In this subsection the term ‘ecosystem component species’ means a stock of fish that is a nontarget, incidentally harvested stock of fish in a fishery, or a nontarget, incidentally harvested stock of fish that a Council or the Secretary has determined—
- (A) is not subject to overfishing, approaching a depleted condition or depleted; and
 - (B) is not likely to become subject to overfishing or depleted in the absence of conservation and

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS

16 U.S.C. 1853

(a) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

- (1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—
 - (A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild ~~overfished~~ depleted stocks, and to protect, restore, and promote the long-term health and stability of the fishery;
 - (B) described in this subsection or subsection (b), or both; and
 - (C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;
- (2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;
- (3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;
- (4) assess and specify—
 - (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),
 - (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and
 - (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;
- (5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter, and subsistence fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;
- (6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

⁵⁶ HR 4742 page 6-9, lines 20-7. The Council recommends language specifying that a carryover exception allow ACLs to be exceeded in order to carry over surplus and deficit harvest from one year to the next, provided there is a finding from the SSC that such a carryover provision will have negligible biological impacts. However, it appears the House Discussion Draft language goes beyond achieving this goal, and the Council did not discuss additional language and its ramifications. (3/14, 3/26)

- (7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;
- (8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;
- ~~(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—~~
 - ~~(A) participants in the fisheries and fishing communities affected by the plan or amendment;~~
 - ~~(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and~~
 - ~~(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;~~⁵⁷
- ~~(10)~~(9) specify objective and measurable criteria for identifying when the fishery to which the plan applies is ~~overfished~~ ~~depleted~~ (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an ~~overfished~~ ~~depleted~~ condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;
- ~~(11)~~(10) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—
 - (A) minimize bycatch; and
 - (B) minimize the mortality of bycatch which cannot be avoided;
- ~~(12)~~(11) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;
- ~~(13)~~(12) include a description of the commercial, recreational, and charter, ~~and subsistence~~ fishing ~~sectors~~ components which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter, ~~and subsistence~~ fishing sectors components;^{58 59 60}

57 HR 4742 page 11 lines 16-19.

58 All “subsistence” additions - Second Senate draft page 15. New version changes sectors to components.

59 Second Senate draft removes section on forage fish that would require, when determining ACLs, to assess, specify, and adjust ACLs by the feeding requirements of dependent fish throughout their range; and include a control rule developed by the SSC for ABC for forage fish fisheries and a minimum reference point to determine when a fishery for a forage fish should close; and account for the importance of forage fish to managed species throughout their range.

60 Second Senate draft removes previous requirement to assess the fishery dependent data needs of the fishery and, if necessary to meet those needs, establish an integrated data collection program to gather and analyze data required for fisheries management.

- (14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector component of the fishery, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, ~~and~~ charter, ~~and~~ subsistence fishing sectors components in the fishery and
- (15) ~~establish a mechanism~~ subject to subsection (d), establish a mechanism⁶¹ for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

- (1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—
 - (A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;
 - (B) the operator of any such vessel; or
 - (C) any United States fish processor who first receives fish that are subject to the plan;
- (2)
 - (A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;
 - (B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and
 - (C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—
 - (i) is based on the best scientific information available;
 - (ii) includes criteria to assess the conservation benefit of the closed area;
 - (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
 - (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;
- (3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—
 - (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
 - (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
 - (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

61 *Second Senate draft page 14 lines 3+*

- (4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;
- (5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;
- (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) present participation in the fishery;
 - (B) historical fishing practices in, and dependence on, the fishery;
 - (C) the economics of the fishery;
 - (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
 - (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
 - (F) the fair and equitable distribution of access privileges in the fishery; and
 - (G) any other relevant considerations;
- (7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;
- (8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;
- (9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;
- (10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;
- (11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;
- (12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and
- (14) [sic] prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

- (1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and
- (2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

(d) FISHERY IMPACT STATEMENT—

- (1) Any fishery management plan (or fishery management plan amendment) prepared by any Council or by the Secretary pursuant to subsection (a) or (b), or proposed regulations deemed necessary pursuant

to subsection (c), shall include a fishery impact statement which shall assess, specify and analyze the likely effects and impact of the proposed action on the quality of the human environment.

- (2) The fishery impact statement shall describe—
 - (A) a purpose of the proposed action;
 - (B) the environmental impact of the proposed action;
 - (C) any adverse environmental effects which cannot be avoided should the proposed action be implemented;
 - (D) a reasonable range of alternatives to the proposed action;
 - (E) the relationship between short-term use of fishery resources and the enhancement of long-term productivity;
 - (F) the cumulative conservation and management effects; and
 - (G) economic, and social impacts of the proposed action on—
 - (i) participants in the fisheries and fishing communities affected by the proposed action;
 - (ii) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and
 - (iii) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery.
- (3) A substantially complete fishery impact statement, which may be in draft form, shall be available not less than 14 days before the beginning of the meeting at which a Council makes its final decision on the proposal (for plans, plan amendments, or proposed regulations prepared by a Council pursuant to subsection (a) or (c)). Availability of this fishery impact statement will be announced by the methods used by the council to disseminate public information and the public and relevant government agencies will be invited to comment on the fishery impact statement.
- (4) The completed fishery impact statement shall accompany the transmittal of a fishery management plan or plan amendment as specified in section 304(a), as well as the transmittal of proposed regulations as specified in section 304(b).
- (5) The Councils shall, subject to approval by the Secretary, establish criteria to determine actions or classes of action of minor significance regarding subparagraphs (A), (B), (D), (E), and (F) of paragraph (2), for which preparation of a fishery impact statement is unnecessary and categorically excluded from the requirements of this section, and the documentation required to establish the exclusion.
- (6) The Councils shall, subject to approval by the Secretary, prepare procedures for compliance with this section that provide for timely, clear, and concise analysis that is useful to decisionmakers and the public, reduce extraneous paperwork and effectively involve the public, including—
 - (A) using Council meetings to determine the scope of issues to be addressed and identifying significant issues related to the proposed action;
 - (B) integration of the fishery impact statement development process with preliminary and final Council decisionmaking in a manner that provides opportunity for comment from the public and relevant government agencies prior to these decision points; and
 - (C) providing scientific, technical, and legal advice at an early stage of the development of the fishery impact statement to ensure timely transmittal and Secretarial review of the proposed fishery management plan, plan amendment, or regulations to the Secretary.
- (7) Actions taken in accordance with the procedures of this section shall constitute fulfillment of the requirements the National Environmental Policy Improvement Act of 1970 (42 U.S.C. 4371 et seq.) and all related imple-

menting regulations.⁶²

(d) LIMITATIONS—

(1) **IN GENERAL.**—The requirements under subsection (a)(16) [ACLs] shall not—

- (A) apply to a species in a fishery that has a mean life cycle of 18 months or less, or to a species in a fishery with respect to which all spawning and recruitment occurs beyond State waters and the exclusive economic zone, unless the Secretary has determined the fishery is subject to overfishing of that species; and⁶³
- (B) limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of this Act.⁶⁴

(2) **CONSTRUCTION.**—Nothing in this subsection shall be construed to affect any effective date regarding the requirements under subsection (a)(16) otherwise provided for under an international agreement in which the United States participates.⁶⁵

P.L. 109-479, sec. 104(b), MSA § 303 note 16 U.S.C. 1853 note EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10) —

- (1) *shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—*
 - (A) *in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and*
 - (B) *in fishing year 2011 for all other fisheries; and*
- (2) *shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and*
- (3) *shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson- Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).*

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS

16 U.S.C. 1853a

- (a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.
- (b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—
 - (1) shall be considered a permit for the purposes of sections 307, 308, and 309;
 - (2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;
 - (3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;
 - (4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is

62 *More detail regarding integration of NEPA-like requirements with MSA. HR 4742 pages 11 (line 21)-15.*

63 *Second Senate draft page 14 lines 15+. See HR 4742 language in 302(m) for comparison*

64 *Second Senate draft removes “[this section shall not] be construed as requiring that a fishery management plan specify a separate annual catch limit and accountability measures for each individual species of non-target fish in the fishery.”*

65 *Senate language on integrated data collection program moved to end*

harvested by the holder; and

- (5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

- (1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—
 - (A) if established in a fishery that is ~~overfished~~ depleted or subject to a rebuilding plan, assist in its rebuilding;
 - (B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;
 - (C) promote—
 - (i) fishing safety;
 - (ii) fishery conservation and management; and
 - (iii) social and economic benefits;
 - (D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;
 - (E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);
 - (F) specify the goals of the program;
 - (G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);
 - (H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;
 - (I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;
 - (J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and
 - (K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.
- (2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—
 - (A) the fishery has historically processed the fish outside of the United States; and
 - (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

- (i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—
 - (I) be located within the management area of the relevant Council;
 - (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
 - (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
 - (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.
- (ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
- (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire

such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic] members contribute; and

- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.
- (B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.
- (C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—
 - (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the administrative and fiduciary soundness of the association; and
 - (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.
- (5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—
 - (A) establish procedures to ensure fair and equitable initial allocations, including consideration of—
 - (i) current and historical harvests;
 - (ii) employment in the harvesting and processing sectors;
 - (iii) investments in, and dependence upon, the fishery; and
 - (iv) the current and historical participation of fishing communities;
 - (B) consider the basic cultural and social framework of the fishery, especially through—
 - (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
 - (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;
 - (C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;
 - (D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—
 - (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
 - (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and
 - (E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under

the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

- (A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.
- (B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.
- (C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.
- (D) NEW ENGLAND AND GULF REFERENDUM.—

~~(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.~~

(D) CATCH SHARE REFERENDUM PILOT PROGRAM—

- (i) The New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils may not submit a fishery management plan or amendment that creates a catch share program for a fishery, and the Secretary may not approve or implement such a plan or amendment submitted by such a Council or a secretarial plan or amendment under section 304(c) that creates such a program, unless the final program has been approved, in a referendum in accordance with this subparagraph, by a majority of the permit holders eligible to participate in the fishery. For multispecies permits in the Gulf of Mexico, any permit holder with landings from within the sector of the fishery being considered for the catch share program within the 5-year period preceding the date of the referendum and still active in fishing in the fishery shall be eligible to participate in such a referendum. If a catch share program is not approved by the requisite number of permit holders, it may be revised and submitted for approval in a subsequent referendum.
- (ii) The Secretary may, at the request of the New England Fishery Management Council, allow participation in such a referendum for a fishery under the Council's authority, by fishing vessel crewmembers who derive a significant portion of their livelihood from such fish-

ing⁶⁶.

- (iii) The Secretary shall conduct a referendum under this subparagraph, including notifying all permit holders eligible to participate in the referendum and making available to them—
 - (I) a copy of the proposed program;
 - (II) an estimate of the costs of the program, including costs to participants;
 - (III) an estimate of the amount of fish or percentage of quota each permit holder would be allocated; and
 - (IV) information concerning the schedule, procedures, and eligibility requirements for the referendum process.
 - (iii) For the purposes of this subparagraph, the term ‘permit holder eligible to participate’ only includes the holder of a permit for a fishery under which fishing has occurred in 3 of the 5 years preceding a referendum for the fishery, unless sickness, injury, or other unavoidable hardship prevented the permit holder from engaging in such fishing.
 - (iv) The Secretary may not implement any catch share program for any fishery managed exclusively by the Secretary unless first petitioned by a majority of those permit holders eligible to participate in the fishery.
- (2) **LIMITATION ON APPLICATION.**—The amendment made by paragraph (1) shall not apply to a catch share program that is submitted to, or proposed by, the Secretary of Commerce before the date of enactment of this Act.
- (3) **REGULATIONS.**—Before conducting a referendum under the amendment made by paragraph (1), the Secretary of Commerce shall issue regulations implementing such amendment after providing an opportunity for submission by the public of comments on the regulations.⁶⁷
- The Secretary shall conduct a referendum under this subparagraph, 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 individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.
 - The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.
 - Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.
 - The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

⁶⁶ This paragraph is new in HR 4742.

⁶⁷ HR 4742 pages 17 line 14-page 20. Does not affect the PFMC.

- In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.
- (iv) **TRANSFERABILITY.**—In establishing a limited access privilege program, a Council shall—
- establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and
 - establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.
- (v) **PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.**—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).
- (vi) **ANTITRUST SAVINGS CLAUSE.**—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.
- (d) AUCTION AND OTHER PROGRAMS.**—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—
- (1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and
 - (2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.
- (e) COST RECOVERY.**—In establishing a limited access privilege program, a Council shall—
- (1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and
 - (2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.
- (f) CHARACTERISTICS.**—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—
- (1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;
 - (2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;
 - (3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and
 - (4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

- (1) **IN GENERAL.**—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 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—
 - (A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and
 - (B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.
- (2) **ELIGIBILITY CRITERIA.**—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

- (1) **IN GENERAL.**—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—
 - (A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;
 - (B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and
 - (C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.
- (2) **PACIFIC GROUND FISH PROPOSALS.**—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note; 16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secre-

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

(a) REVIEW OF PLANS.—

- (1) Upon transmittal by the Council to the Secretary of a fishery management plan, or plan amendment, the Secretary shall—
 - (A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and
 - (B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.
- (2) In undertaking the review required under paragraph (1), the Secretary shall—
 - (A) take into account the information, views, and comments received from interested persons;
 - (B) consult with the Secretary of State with respect to foreign fishing; ~~and~~
 - (C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6); ~~and~~
 - (D) ~~evaluate the adequacy of the accompanying fishery impact statement as basis for fully considering the environmental impacts of implementing the fishery management plan or plan amendment.~~⁶⁹
- (3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—
 - (A) the applicable law with which the plan or amendment is inconsistent;
 - (B) the nature of such inconsistencies; and
 - (C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.
- (4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.
- (5) For purposes of this subsection and subsection (b), the term “immediately” means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

(b) REVIEW OF REGULATIONS.—

- (1) ~~Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine~~

⁶⁸ Draft Begich section on fishery ecosystem plans deleted here.

⁶⁹ HR 4742 page 15 lines 14-24.

~~whether they are consistent with the fishery management plan, fishery ecosystem plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—~~

- (1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. The Secretary shall also immediately initiate an evaluation of the accompanying fishery impact statement as a basis for fully considering the environmental impacts of implementing the proposed regulations. Within 15 days of initiating such evaluation the Secretary shall make a determination and--⁷⁰
 - (A) if that determination is affirmative, the Secretary shall 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; or
 - (B) if that determination is negative, the Secretary shall 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) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).
- (3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.—

- (1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—
 - (A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;
 - (B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or
 - (C) the Secretary is given authority to prepare such plan or amendment under this section.

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

- (2) In preparing any plan or amendment under this subsection, the Secretary shall—
 - (A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and
 - (B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the

⁷⁰ HR 4742 page 16 lines 1-18.

department in which the Coast Guard is operating with respect to enforcement at sea.

- (3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any limited access privilege program unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.
- (4) Whenever the Secretary prepares a fishery management plan, or plan amendment under this section, the Secretary shall immediately—
 - (A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and
 - (B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.
- (5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.
- (6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.
- (7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.

(d) ESTABLISHMENT OF FEES.—

- (1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.
- (2)
 - (A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to net incremental costs attributable to⁷¹ the management, data collection, and enforcement of any—
 - (i) limited access privilege program; **and**
 - (ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program; **and**
 - (iii) **management program that allocates a percentage of the total allowable catch to individuals**

who have formed a sector (for purposes of this subparagraph, as defined in section 684.2 of title 50, Code of Federal Regulations).⁷²

- (B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.
- (C)
 - (i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B).
 - (ii) Upon applicati ~~overfished~~ ~~depleted~~ on by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.
- (D) The shall report annually on the amount collected under this paragraph from each fishery and detail how the funds were spent in the prior year on a fishery-by-fishery basis, to--
 - (i) Congress; and
 - (ii) each Council from whose fisheries the fee under this paragraph were collected.⁷³
- (3) The Secretary shall not collect any fee under this section or section 313(a) before preparing an analysis that identifies the costs that will be recovered by the fee and the costs that will not be recovered by the fee. The analysis shall be included in the applicable fisheries management plan.⁷⁴

(e) REBUILDING ~~OVERFISHED~~ ~~DEPLETED~~ FISHERIES.—

(e) REBUILDING OVERFISHED AND OTHERWISE DEPLETED FISHERIES.--⁷⁵

- (1) BEGICH VERSION - The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished; ~~or otherwise depleted~~, or are approaching a condition of being overfished or ~~otherwise depleted~~. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing (or depletion, where applicable) specified in ~~such~~ the plan or agreement. A fishery shall be classified as approaching a condition of being overfished ~~or otherwise depleted~~ if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished ~~or otherwise depleted~~ within two years.⁷⁶
- (1) HASTINGS VERSION - The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a

72 Second Senate draft page 17 lines 2+. This is meant to address sector co-ops as implemented in New England. It may be helpful to define the difference between a "sector" and "individuals who have formed a sector."

73 HR 4742 addition since discussion draft. Page 20 line 21.

74 Second Senate draft page 17 lines 9+

75 Second Senate draft page 17 lines 18+. Uses "overfished and otherwise depleted" instead of just "depleted."

76 Second Senate draft - all changes pages 17 lines 19+

fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become ~~overfished depleted~~ within two years. ~~The report shall distinguish between fisheries that are depleted (or approaching that condition) as a result of fishing and fisheries that are depleted (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as depleted or approaching that condition, whether the fishery is the target of directed fishing.~~⁷⁷

- (2) If the Secretary determines at any time that a fishery is ~~overfished depleted~~, ~~overfished or otherwise depleted~~, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.
- (3) Within 2 years after an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—
 - (A) to end overfishing immediately in the fishery and to rebuild affected stocks of fish; or⁷⁸
 - (B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an ~~overfished depleted~~ ~~overfished or otherwise depleted~~ condition.
- (4) For a fishery that is ~~overfished depleted~~, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—
 - (A) specify a time period for rebuilding the fishery that shall—
 - (i) be as short as ~~possible practicable~~⁷⁹, taking into account the status and biology of any ~~overfished depleted~~ ~~overfished~~ stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the ~~overfished depleted~~ ~~overfished~~ stock of fish within the marine ecosystem; and

SENATE/BEGICH VERSION (STRIKEOUTS ARE FROM PREVIOUS BEGICH DRAFT)

- (ii) ~~except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which with the United States participates dictate otherwise, not exceed—~~
 - (I) 10 years, except in cases where the biology of the stock of fish or other environmental conditions dictate otherwise; or
 - (II) the sum of the time in which the affected stock of fish is expected to rebuilt to its maximum sustainable yield biomass level in the absence of any fishing mortality, and the mean generation of time of the affected stock of fish, if those time values are the best scientific information available;
 - ~~(I) the sum of the minimum time required to rebuild an affected stock of fish and the mean generation time of the affected stock of fish, if those time values are scientifically established and widely accepted among fish population biologists; or~~

77 HR 4742 page 10, lines 1-9. This is in line with Council recommendations to differentiate between causes of depletion.

78 Hastings discussion draft included phasing-in of rebuilding plans here; removed in HR 4742.

79 HR 4742 page 3 lines 8-9. The Council approves of this change. (3/26 letter). Begich does not make this change.

~~(H) 10 years, if either of the time values specified in subclause (I) is not scientifically established and widely accepted among fish population biologists.⁸⁰~~

HOUSE/HASTINGS VERSION (AND ORIGINAL VERSION WHERE STRUCK OUT OR IN BLACK TEXT)

- (ii) may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation⁸¹, except in a case in which—
 - (I) the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;
 - (II) the Secretary determines that the cause of the stock being depleted is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities;
 - (III) the Secretary determines that one or more components of a mixed-stock fishery is depleted but cannot be rebuilt within that timeframe without significant economic harm to the fishery, or cannot be rebuilt without causing another component of the mixed-stock fishery to approach a depleted status;
 - (IV) the Secretary determines that recruitment, distribution, or life history of, or fishing activities for, the stock are affected by informal transboundary agreements under which management activities outside the exclusive economic zone by another country may hinder conservation efforts by United States fishermen;and
 - (V) the Secretary determines that the stock has been affected by unusual events that make rebuilding within the specified time period improbable without significant economic harm to fishing communities; ~~not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise,⁸²~~
- (B) take into account environmental condition including predator/prey relationships⁸³
- ~~(B)~~ (C) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; ~~and~~
- ~~(C)~~ (D) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States; ~~and~~
- (E) specify a schedule for reviewing the rebuilding targets, evaluating environmental impacts on rebuilding progress, and evaluating progress being made toward reaching rebuilding targets.⁸⁴
- (5) If, within the 2-year period beginning on the date of identification or notification that a fishery is ~~overfished depleted~~, ~~overfished or otherwise depleted~~, the Council does not submit to the Secretary a

80 Second Senate draft pages 18-19 lines 20+. Note new definition.

81 HR 4742 page 3. The Council endorses the deletion of the ten-year rebuilding time requirement and supports a maximum standard tied to the biology of the fish stock (one mean generation time) (3/26)

82 HR 4742 pages 3-5 lines 12-2. Exceptions to rebuilding times. The Council recommends exceptions due to changing environmental conditions, depletion due to international fisheries outside U.S. control, and a mixed stock exception that would rarely be instituted. The Council does not support broad exceptions that might be exercised frequently or that might weaken incentives to conserve stocks. (3/26)

83 HR 4742 page 5 lines 8-10

84 HR 4742 page 5 lines 15-19. The Council already does this.

fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

- (6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.
- (7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—
 - (A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or
 - (B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.
- (8) A fishery management plan, plan amendment, or proposed regulations may use alternative rebuilding strategies, including harvest control rules and fishing mortality-rate targets to the extent they are in compliance with the requirements of this Act.
- (9) A Council may terminate the application of paragraph (3) to a fishery if the Council's scientific and statistical committee determines and the Secretary concurs that the original determination that the fishery was depleted was erroneous, either—
 - (A) within the 2-year period beginning on the effective date a fishery management plan, plan amendment, or proposed regulation for a fishery under this subsection takes effect; or
 - (B) within 90 days after the completion of the next stock assessment after such determination.⁸⁵

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—

- (1) Except as provided in paragraph (3)18, if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—
 - (A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or
 - (B) may require that the plan and amendment be prepared jointly by the Councils concerned.No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.
- (2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

18 Former paragraph (3) now appears at section 302(a)(3) and section 304(g).

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—

- (1) PREPARATION AND IMPLEMENTATION OF PLAN OR PLAN AMENDMENT.—The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any

85 HR 4742 page 5-6 lines 21-12. Wording slightly changed from discussion draft. The Council recommends language specifying that stocks later determined never overfished should not be held to rebuilding provisions, a matter not specifically addressed by this draft language. (3/26)

highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall—

- (A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);
- (B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;
- (C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;
- (D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;
- (E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;
- (F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and
- (G) ensure that conservation and management measures under this subsection--
 - (i) promote international conservation of the affected fishery;
 - (ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;
 - (iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and
 - (iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

- (2) CERTAIN FISH EXCLUDED FROM “BYCATCH” DEFINITION.— Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d), or highly migratory species harvested in a commercial fishery managed by a Council under this Act or the Western and Central Pacific Fisheries Convention Implementation Act, that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.

(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

(i) ENVIRONMENTAL REVIEW PROCESS.—⁸⁶

- (1) PROCEDURES.—The Secretary shall, in consultation with the Councils and the Council on Environmental Quality, revise and update agency procedures for compliance with the National Environmental

⁸⁶ This section has never been fully implemented. Second Senate draft version requires that NMFS revise and update procedures under this mandate within 90 days of passage of the Act. (Second Senate draft page 16 lines 7+)

Policy Act (42 U.S.C. 4231 et seq.). The procedures shall—

- (A) conform to the time lines for review and approval of fishery management plans and plan amendments under this section; and
 - (B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.
- (2) USAGE.—The updated agency procedures promulgated in accordance with this section used by the Councils or the Secretary shall be the sole environmental impact assessment procedure for fishery management plans, amendments, regulations, or other actions taken or approved pursuant to this Act.
- (3) SCHEDULE FOR PROMULGATION OF FINAL PROCEDURES.—The Secretary shall—
- (A) propose revised procedures within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006;
 - (B) provide 90 days for public review and comments; and
 - (C) promulgate final procedures no later than 12 months after the date of enactment of that Act.
- (4) PUBLIC PARTICIPATION.—The Secretary is authorized and directed, in cooperation with the Council on Environmental Quality and the Councils, to involve the affected public in the development of revised procedures, including workshops or other appropriate means of public involvement.

(j)(i) INTERNATIONAL OVERFISHING.—The provisions of this subsection shall apply in lieu of subsection (e) to a fishery that the Secretary determines is **overfished depleted or approaching a condition of being overfished depleted due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. For such fisheries—**

- (1) the Secretary, in cooperation with the Secretary of State, ~~is~~ **shall** immediately take appropriate action at the international level to end the overfishing; and
- (2) within 1 year after the Secretary's determination, the appropriate Council, or Secretary, for fisheries under section 302(a)(3) shall—
 - (A) develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States on the stock and, if developed by a Council, the Council shall submit such recommendations to the Secretary; and
 - (B) develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock.

(k) ANNUAL REPORT ON SPECIAL FUNDS --

- (1) ANNUAL REPORT.—Not later than 30 days after the last day of each fiscal year, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report for that fiscal year on—
 - (A) the Western Pacific Sustainable Fisheries Fund established under section 204(e)(7);
 - (B) the Limited Access System Administration Fund established under section 305(h)(5)(B);
 - (C) the North Pacific Fishery Observer Fund established under section 313(d);
 - (D) the Fisheries Conservation and Management Fund established under section 208(a) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (16 U.S.C.

1891b(a)) and

(E) the Fisheries Enforcement Fund established under section 311(f)(2)⁸⁷.

- (2) REQUIRED INFORMATION.—The annual report required under paragraph (1) shall include detailed accounting of—
- (A) all moneys in each fund at the start of the fiscal year;
 - (B) all moneys deposited in each fund during the fiscal year;
 - (C) all moneys paid out of each fund during the fiscal year; and
 - (D) all projects, programs, and activities funded by each fund during the fiscal year.⁸⁸

P.L. 109-479, sec. 104(d), MSA § 304 note 16 U.S.C. 1854 note

EFFECTIVE DATE FOR SUBSECTION (c).—*The amendments made by subsection (c) shall take effect 30 months after the date of enactment of this Act.*

P.L. 101-627, sec. 108(k), MSA § 304 note 16 U.S.C. 1854 note

INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.—

Notwithstanding the amendments made by subsections (a) and (g) [of section 108 of Pub. L. 101-627], any fishery management plan or amendment which—

- (1) *addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act [101-627]) applies,*
 - (2) *was prepared by one or more Regional Fishery Management Councils, and*
 - (3) *was in force and effect on January 1, 1990,*
- shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.*

P.L. 104-297, sec. 109(h), MSA § 304 note 16 U.S.C. 1854 note

COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY.—

- (1) *The Secretary of Commerce shall—*
 - (A) *establish an advisory panel under section 302(g)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species;*
 - (B) *conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;*
 - (C) *to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and*
 - (D) *complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.*
- (2) *Based on the study under paragraph (1)(D) and consistent with the requirements of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000.*

⁸⁷ Second Senate draft page 29 lines 6-7.

⁸⁸ Second Senate draft page 20 line 13+

SEC. 305. OTHER REQUIREMENTS AND AUTHORITY

16 U.S.C. 1855

(a) GEAR EVALUATION AND NOTIFICATION OF ENTRY—

- (1) Not later than 18 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries—
 - (A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 303(a); and
 - (B) to which section 302(a)(3) applies and all fishing gear used in such fisheries.
- (2) The Secretary shall include with such list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).
- (3) Effective 180 days after the publication of such list, no person or vessel may employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council, or the Secretary with respect to a fishery to which section 302(a)(3) applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.
- (4) A Council may submit to the Secretary any proposed changes to such list or such guidelines the Council deems appropriate. The Secretary shall publish a revised list, after notice and an opportunity for public comment, upon receiving any such proposed changes from a Council.
- (5) A Council may request the Secretary to promulgate emergency regulations under subsection (c) to prohibit any persons or vessels from using an unlisted fishing gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary for fisheries to which section 302(a)(3) applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this Act.
- (6) Nothing in this subsection shall be construed to permit a person or vessel to engage in fishing or employ fishing gear when such fishing or gear is prohibited or restricted by regulation under a fishery management plan or plan amendment, or under other applicable law.

(b) FISH HABITAT.—

- (1)
 - (A) The Secretary shall, within 6 months of the date of enactment of the Sustainable Fisheries Act, establish by regulation guidelines to assist the Councils in the description and identification of essential fish habitat in fishery management plans (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat. The Secretary shall set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat and for the review and updating of such identifications based on new scientific evidence or other relevant information.
 - (B) The Secretary, in consultation with participants in the fishery, shall provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.
 - (C) The Secretary shall review programs administered by the Department of Commerce and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.

- (D) The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.
- (2) Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.
- (3) Each Council—
 - (A) may comment on and make recommendations to the Secretary and any Federal or State agency **or tribal government**⁸⁹ concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency **or tribal government** that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and
 - (B) shall comment on and make recommendations to the Secretary and any Federal or State agency **or tribal government** concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority.
- (4)
 - (A) If the Secretary receives information from a Council, **or** Federal or State agency **or tribal government** or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency **or tribal government** would adversely affect any essential fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.
 - (B) Within 30 days after receiving a recommendation under subparagraph (A), a Federal agency shall provide a detailed response in writing to any Council commenting under paragraph (3) and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.

(c) EMERGENCY ACTIONS AND INTERIM MEASURES.—

- (1) If the Secretary finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery.
- (2) If a Council finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery—
 - (A) the Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members who are voting members, requests the taking of such actions; and
 - (B) the Secretary may promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by less than a unanimous vote, requests the taking of such action.
- (3) Any emergency regulation or interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation or interim measure promulgated under this subsection—

89 All Second Senate draft changes here page 21-22

- (A) shall be published in the Federal Register together with the reasons therefor;
- (B) shall, except as provided in subparagraph (C), remain in effect for 1 year after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 1 year, if ~~180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 180 days, provided~~⁹⁰ the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;
- (C) that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, Provided, That the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action; and
- (D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations or interim measures promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

(d) **RESPONSIBILITY OF THE SECRETARY.**—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

(e) **EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.—**

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), ~~the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),~~⁹¹ and Executive Order Numbered 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsections (a), (b), and (c) of section 304 as they apply to the functions of the Secretary under such provisions.

(f) **JUDICIAL REVIEW.—**

- (1) Regulations promulgated by the Secretary under this Act and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that—
 - (A) section 705 of such title is not applicable, and
 - (B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2)(A), (B), (C), or (D) of such title.
- (2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, ~~including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing. including but not limited to actions that establish the date of closure of a fishery to commercial, recreational, or subsistence fishing~~⁹².
- (3)
 - (A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition

90 HR 4742 page 6 lines 13-19. The Council supports this provision. (3/26)

91 HR 4742 pages 16, lines 19-23

92 Second Senate draft page 22 lines 7+

filed in accordance with paragraph (1), not later than 45 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.

(g) NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES.— (1)(A) In accordance with regulations promulgated by the Secretary pursuant to this paragraph, a Council may establish a fishery negotiation panel to assist in the development of specific conservation and management measures for a fishery under its authority. The Secretary may establish a fishery negotiation panel to assist in the development of specific conservation and management measures required for a fishery under section 304(e)(5), for a fishery for which the Secretary has authority under section 304(g), or for any other fishery with the approval of the appropriate Council.

(B) No later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations establishing procedures, developed in cooperation with the Administrative Conference of the United States, for the establishment and operation of fishery negotiation panels. Such procedures shall be comparable to the procedures for negotiated rulemaking established by subchapter III of chapter 5 of Title 5, United States Code.

(2) If a negotiation panel submits a report, such report shall specify all the areas where consensus was reached by the panel, including, if appropriate, proposed conservation and management measures, as well as any other information submitted by members of the negotiation panel. Upon receipt, the Secretary shall publish such report in the Federal Register for public comment.

(3) Nothing in this subsection shall be construed to require either a Council or the Secretary, whichever is appropriate, to use all or any portion of a report from a negotiation panel established under this subsection in the development of specific conservation and management measures for the fishery for which the panel was established.

(h) CENTRAL REGISTRY SYSTEM FOR LIMITED ACCESS SYSTEM PERMITS.—

(1) Within 6 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits established under section 303(b)(6) or other Federal law, including limited access privileges, which shall provide for the registration of title to, and interests in, such permits, as well as for procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial or nonjudicial foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate by the Secretary. Such registry system shall—

(A) provide a mechanism for filing notice of a nonjudicial foreclosure or enforcement of a judgment by which the holder of a senior security interest acquires or conveys ownership of a permit, and in the event of a nonjudicial foreclosure, by which the interests of the holders of junior security interests are released when the permit is transferred;

(B) provide for public access to the information filed under such system, notwithstanding section 402(b); and

(C) provide such notice and other requirements of applicable law that the Secretary deems necessary for an effective registry system.

(2) The Secretary shall promulgate such regulations as may be necessary to carry out this subsection, after consulting with the Councils and providing an opportunity for public comment. The Secretary is authorized to contract with non-Federal entities to administer the central registry system.

- (3) To be effective and perfected against any person except the transferor, its heirs and devisees, and persons having actual notice thereof, all security interests, and all sales and other transfers of permits described in paragraph (1), shall be registered in compliance with the regulations promulgated under paragraph (2). Such registration shall constitute the exclusive means of perfection of title to, and security interests in, such permits, except for Federal tax liens thereon, which shall be perfected exclusively in accordance with the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.). The Secretary shall notify both the buyer and seller of a permit if a lien has been filed by the Secretary of the Treasury against the permit before collecting any transfer fee under paragraph (5) of this subsection.
- (4) The priority of security interests shall be determined in order of filing, the first filed having the highest priority. A validly-filed security interest shall remain valid and perfected notwithstanding a change in residence or place of business of the owner of record. For the purposes of this subsection, “security interest” shall include security interests, assignments, liens and other encumbrances of whatever kind.
- (5) (A) Notwithstanding section 304(d)(1), the Secretary shall collect a reasonable fee of not more than one-half of one percent of the value of a limited access system permit upon registration of the title to such permit with the central registry system and upon the transfer of such registered title. Any such fee collected shall be deposited in the Limited Access System Administration Fund established under subparagraph (B).
(B) There is established in the Treasury a Limited Access System Administration Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purposes of—
 - (i) administering the central registry system; and
 - (ii) administering and implementing this Act in the fishery in which the fees were collected. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(i) ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS.—

- (1) WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM.—
 - (A) IN GENERAL.—There is established the western Alaska community development quota program in order—
 - (i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area;
 - (ii) to support economic development in western Alaska;
 - (iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and
 - (iv) to achieve sustainable and diversified local economies in western Alaska.
 - (B) PROGRAM ALLOCATION.—
 - (i) IN GENERAL.—Except as provided in clause (ii), the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006, for the program. The percentage for each fishery shall be either a directed fishing allowance or include both directed fishing and nontarget needs based on existing practice with respect to the program as of March 1, 2006, for each fishery.
 - (ii) EXCEPTIONS.—Notwithstanding clause (i)—
 - (I) the allocation under the program for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a total allocation (directed and nontarget combined) of 10.7 percent ef-

fective January 1, 2008; and

- (II) the allocation under the program in any directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) established after the date of enactment of this subclause shall be a total allocation (directed and nontarget combined) of 10.7 percent.

The total allocation (directed and nontarget combined) for a fishery to which subclause (I) or (II) applies may not be exceeded.

- (iii) PROCESSING AND OTHER RIGHTS.—Allocations to the program include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006.
 - (iv) REGULATION OF HARVEST.—The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.
- (C) ALLOCATIONS TO ENTITIES.—Each entity eligible to participate in the program shall be authorized under the program to harvest annually the same percentage of each species allocated to the program under subparagraph (B) that it was authorized by the Secretary to harvest of such species annually as of March 1, 2006, except to the extent that its allocation is adjusted under subparagraph (H). Such allocation shall include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006. Voluntary transfers by and among eligible entities shall be allowed, whether before or after harvesting. Notwithstanding the first sentence of this subparagraph, seven-tenths of one percent of the total allowable catch, guideline harvest level, or other annual catch limit, within the amount allocated to the program by subclause (I) or subclause (II) of subparagraph (B)(ii), shall be allocated among the eligible entities by the panel established in subparagraph (G), or allocated by the Secretary based on the nontarget needs of eligible entities in the absence of a panel decision.
- (D) ELIGIBLE VILLAGES.—The following villages shall be eligible to participate in the program through the following entities:
- (i) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.
 - (ii) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.
 - (iii) The village of Saint Paul through the Central Bering Sea Fishermen's Association.
 - (iv) The villages of Chefornek, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.
 - (v) The villages of Brevig Mission, Diomede, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.
 - (vi) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.
- (E) ELIGIBILITY REQUIREMENTS FOR PARTICIPATING ENTITIES.—To be eligible to participate in the program, an entity referred to in subparagraph (D) shall meet the following requirements:

- (i) BOARD OF DIRECTORS.—The entity shall be governed by a board of directors. At least 75 percent of the members of the board shall be resident fishermen from the entity's member villages. The board shall include at least one director selected by each such member village.
- (ii) PANEL REPRESENTATIVE.—The entity shall elect a representative to serve on the panel established by subparagraph (G).
- (iii) OTHER INVESTMENTS.—The entity may make up to 20 percent of its annual investments in any combination of the following:
 - (I) For projects that are not fishery-related and that are located in its region.
 - (II) On a pooled or joint investment basis with one or more other entities participating in the program for projects that are not fishery-related and that are located in one or more of their regions.
 - (III) For matching Federal or State grants for projects or programs in its member villages without regard to any limitation on the Federal or State share, or restriction on the source of any non-Federal or non-State matching funds, of any grant program under any other provision of law.
- (iv) FISHERY-RELATED INVESTMENTS.—The entity shall make the remainder percent of its annual investments in fisheries-related projects or for other purposes consistent with the practices of the entity prior to March 1, 2006.
- (v) ANNUAL STATEMENT OF COMPLIANCE.—Each year the entity, following approval by its board of directors and signed by its chief executive officer, shall submit a written statement to the Secretary and the State of Alaska that summarizes the purposes for which it made investments under clauses (iii) and (iv) during the preceding year.
- (vi) OTHER PANEL REQUIREMENTS.—The entity shall comply with any other requirements established by the panel under subparagraph (G).
- (F) ENTITY STATUS, LIMITATIONS, AND REGULATION.—The entity—
 - (i) shall be subject to any excessive share ownership, harvesting, or processing limitations in the fisheries of the Bering Sea and Aleutian Islands Management Area only to the extent of the entity's proportional ownership, excluding any program allocations, and notwithstanding any other provision of law;
 - (ii) shall comply with State of Alaska law requiring annual reports to the entity's member villages summarizing financial operations for the previous calendar year, including general and administrative costs and compensation levels of the top 5 highest paid personnel;
 - (iii) shall comply with State of Alaska laws to prevent fraud that are administered by the Alaska Division of Banking and Securities, except that the entity and the State shall keep confidential from public disclosure any information if the disclosure would be harmful to the entity or its investments; and
 - (iv) is exempt from compliance with any State law requiring approval of financial transactions, community development plans, or amendments thereto, except as required by subparagraph (H).
- (G) ADMINISTRATIVE PANEL.—
 - (i) ESTABLISHMENT.—There is established a community development quota program panel.
 - (ii) MEMBERSHIP.—The panel shall consist of 6 members. Each entity participating in the program shall select one member of the panel.
 - (iii) FUNCTIONS.—The panel shall—

- (I) administer those aspects of the program not otherwise addressed in this paragraph, either through private contractual arrangement or through recommendations to the North Pacific Council, the Secretary, or the State of Alaska, as the case may be; and
 - (II) coordinate and facilitate activities of the entities under the program.
- (iv) UNANIMITY REQUIRED.—The panel may act only by unanimous vote of all 6 members of the panel and may not act if there is a vacancy in the membership of the panel.
- (H) DECENNIAL REVIEW AND ADJUSTMENT OF ENTITY ALLOCATIONS.—
 - (i) IN GENERAL.—During calendar year 2012 and every 10 years thereafter, the State of Alaska shall evaluate the performance of each entity participating in the program based on the criteria described in clause (ii).
 - (ii) CRITERIA.—The panel shall establish a system to be applied under this subparagraph that allows each entity participating in the program to assign relative values to the following criteria to reflect the particular needs of its villages:
 - (I) Changes during the preceding 10-year period in population, poverty level, and economic development in the entity's member villages.
 - (II) The overall financial performance of the entity, including fishery and nonfishery investments by the entity.
 - (III) Employment, scholarships, and training supported by the entity.
 - (IV) Achieving of the goals of the entity's community development plan.
 - (iii) ADJUSTMENT OF ALLOCATIONS.—After the evaluation required by clause (i), the State of Alaska shall make a determination, on the record and after an opportunity for a hearing, with respect to the performance of each entity participating in the program for the criteria described in clause (ii). If the State determines that the entity has maintained or improved its overall performance with respect to the criteria, the allocation to such entity under the program shall be extended by the State for the next 10-year period. If the State determines that the entity has not maintained or improved its overall performance with respect to the criteria—
 - (I) at least 90 percent of the entity's allocation for each species under subparagraph (C) shall be extended by the State for the next 10-year period; and
 - (II) the State may determine, or the Secretary may determine (if State law prevents the State from making the determination), and implement an appropriate reduction of up to 10 percent of the entity's allocation for each species under subparagraph (C) for all or part of such 10-year period.
 - (iv) REALLOCATION OF REDUCED AMOUNT.—If the State or the Secretary reduces an entity's allocation under clause (iii), the reduction shall be reallocated among other entities participating in the program whose allocations are not reduced during the same period in proportion to each such entity's allocation of the applicable species under subparagraph (C).
- (I) SECRETARIAL APPROVAL NOT REQUIRED.—Notwithstanding any other provision of law or regulation thereunder, the approval by the Secretary of a community development plan, or an amendment thereof, under the program is not required.
 - (J) COMMUNITY DEVELOPMENT PLAN DEFINED.—In this paragraph, the term 'community development plan' means a plan, prepared by an entity referred to in subparagraph (D), for the program that describes how the entity intends—
 - (i) to harvest its share of fishery resources allocated to the program, or

- (ii) to use its share of fishery resources allocated to the program, and any revenue derived from such use, to assist its member villages with projects to advance economic development, but does not include a plan that allocates fishery resources to the program.
- (2)
 - (A) The Western Pacific Council and the Secretary may establish a western Pacific community development program for any fishery under the authority of such Council in order to provide access to such fishery for western Pacific communities that participate in the program.
 - (B) To be eligible to participate in the western Pacific community development program, a community shall—
 - (i) be located within the Western Pacific Regional Fishery Management Area;
 - (ii) meet criteria developed by the Western Pacific Council, approved by the Secretary and published in the Federal Register;
 - (iii) consist of community residents who are descended from the aboriginal people indigenous to the area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the Western Pacific region;
 - (iv) not have previously developed harvesting or processing capability sufficient to support substantial participation in fisheries in the Western Pacific Regional Fishery Management Area; and
 - (v) develop and submit a Community Development Plan to the Western Pacific Council and the Secretary.
 - (C) In developing the criteria for eligible communities under subparagraph (B)(ii), the Western Pacific Council shall base such criteria on traditional fishing practices in or dependence on the fishery, the cultural and social framework relevant to the fishery, and economic barriers to access to the fishery.
 - (D) For the purposes of this subsection “Western Pacific Regional Fishery Management Area” means the area under the jurisdiction of the Western Pacific Council, or an island within such area.
 - (E) Notwithstanding any other provision of this Act, the Western Pacific Council shall take into account traditional indigenous fishing practices in preparing any fishery management plan.
- (3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.
- (4) After the date of enactment of the Sustainable Fisheries Act, the North Pacific Council and Western Pacific Council may not submit to the Secretary a community development quota program that is not in compliance with this subsection.

(j) WESTERN PACIFIC AND NORTHERN PACIFIC REGIONAL MARINE EDUCATION AND TRAINING.—

- (1) **IN GENERAL.**—The Secretary shall establish a pilot program for regionally-based marine education and training programs in the Western Pacific and the Northern Pacific to foster understanding, practical use of knowledge (including native Hawaiian, Alaskan Native, and other Pacific Islander-based knowledge), and technical expertise relevant to stewardship of living marine resources. The Secretary shall, in cooperation with the Western Pacific and the North Pacific Regional Fishery Management Councils, regional educational institutions, and local Western Pacific and Northern Pacific community training entities, establish programs or projects that will improve communication, education, and training on marine resource issues throughout the region and increase scientific education for marine-related professions among coastal community residents, including indigenous Pacific islanders, Native Hawaiians, Alaskan Natives, and other underrepresented groups in the region.

- (2) PROGRAM COMPONENTS.—The program shall—
- (A) include marine science and technology education and training programs focused on preparing community residents for employment in marine related professions, including marine resource conservation and management, marine science, marine technology, and maritime operations;
 - (B) include fisheries and seafood-related training programs, including programs for fishery observers, seafood safety and seafood marketing, focused on increasing the involvement of coastal community residents in fishing, fishery management, and seafood-related operations;
 - (C) include outreach programs and materials to educate and inform consumers about the quality and sustainability of wild fish or fish products farmed through responsible aquaculture, particularly in Hawaii, Alaska, the Western Pacific, the Northern Pacific, and the Central Pacific;
 - (D) include programs to identify, with the fishing industry, methods and technologies that will improve the data collection, quality, and reporting and increase the sustainability of fishing practices, and to transfer such methods and technologies among fisheries sectors and to other nations in the Western, Northern, and Central Pacific;
 - (E) develop means by which local and traditional knowledge (including Pacific islander, Native Hawaiian, and Alaskan Native knowledge) can enhance science-based management of fishery resources of the region; and
 - (F) develop partnerships with other Western Pacific Island and Alaskan agencies, academic institutions, and other entities to meet the purposes of this section.

(II) SUSTAINABILITY STANDARD.—

- (1) IN GENERAL.—For the purpose of this Act, fish meets the sustainability standard if—
- (A) the fish is harvested in accordance with—
 - (i) a fishery management plan prepared and approved under this Act; or
 - (ii) equivalent conservation and management measures of a State or tribe, or under an international agreement to which the United States is a party, as determined by the Secretary;
 - (B) the fishery from which the fish is harvested is not overfished or otherwise depleted; and
 - (C) the overfishing or other depletion is not occurring in the fishery from which the fish is harvested.
- (2) REBUILDING FISHERIES.—A fishery that is subject to a rebuilding plan under this Act, or equivalent conservation and management measures as determined by the Secretary, meets the criteria specified in subparagraphs (B) and (C) of paragraph (1) if the Secretary determines that the plan is effectively rebuilding the fishery.⁹³

MSA §§ 305, 305 note
109-479

(k) MULTISPECIES GROUND FISH.—

- (1) IN GENERAL.—*Within 60 days after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary of Commerce shall determine whether fishing in State waters—*
- (A) *without a New England multispecies groundfish fishery permit on regulated species within the multispecies complex is not consistent with the applicable Federal fishery management plan; or*
 - (B) *without a Federal bottomfish and seamount groundfish permit in the Hawaiian archipelago on*

93 *Second Senate draft page 22 line 14+. In general all of the fish managed by the Council would be labeled as “sustainably caught.” Second draft removes detailed requirements for optional sustainability label.*

regulated species within the complex is not consistent with the applicable Federal fishery management plan or State data are not sufficient to make such a determination.

- (2) *CURE.—If the Secretary makes a determination that such actions are not consistent with the plan, the Secretary shall, in consultation with the Council, and after notifying the affected State, develop and implement measures to cure the inconsistency pursuant to section 306(b).*

P.L. 109-479, sec. 116(b)(2), MSA § 305 note

EFFECTIVE DATE.—The allocation percentage in subclause (I) of section 305(i)(1)(B)(ii) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(i)(1)(B)(ii)), as amended by paragraph (1) of this subsection, shall be in effect in 2007 with respect to any sector of a fishery to which such subclause applies and in which a fishing cooperative is established in 2007, and such sector's 2007 allocation shall be reduced by a pro rata amount to accomplish such increased allocation to the program. For purposes of section 305(i)(1) of that Act and of this subsection, the term "fishing cooperative" means a fishing cooperative whether or not authorized by a fishery management council or Federal agency, if a majority of the participants in the sector are participants in the fishing cooperative.

P.L. 104-297, sec. 110(e), MSA § 305 note

REGISTRY TRANSITION.—Security interests on permits described under section 305(h)(1) of the Magnuson Fishery Conservation and Management Act, as amended by this Act [104-297], that are effective and perfected by otherwise applicable law on the date of the final regulations implementing section 305(h) shall remain effective and perfected if, within 120 days after such date, the secured party submits evidence satisfactory to the Secretary of Commerce and in compliance with such regulations of the perfection of such security.

P.L. 104-297, sec. 111(b); 106-555; 109-479, sec. 207; MSA § 305 note

WESTERN PACIFIC DEMONSTRATION PROJECTS.—

- (1) *The Secretary of Commerce is authorized to make direct grants to eligible western Pacific communities, as recommended by the Western Pacific Fishery Management Council, for the purpose of establishing fishery demonstration projects to foster and promote traditional indigenous fishing practices. There are authorized to be appropriated to carry out this section \$500,000 for each fiscal year.*
- (2) *Demonstration projects funded pursuant to this subsection shall foster and promote the involvement of western Pacific communities in western Pacific fisheries and may—*
 - (A) *identify and apply traditional indigenous fishing practices;*
 - (B) *develop or enhance western Pacific community-based fishing opportunities; and*
 - (C) *involve research, community education, or the acquisition of materials and equipment necessary to carry out any such demonstration project.*
- (3)
 - (A) *The Western Pacific Fishery Management Council, in consultation with the Secretary of Commerce, shall establish an advisory panel under section 302(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(g)) to evaluate, determine the relative merits of, and annually rank applications for such grants. The panel shall consist of not more than 8 individuals who are knowledgeable or experienced in traditional indigenous fishery practices of western Pacific communities and who are not members or employees of the Western Pacific Fishery Management Council.*
 - (B) *If the Secretary of Commerce or the Secretary of the Interior awards a grant for a demonstration project not in accordance with the rank given to such project by the advisory panel, the Secretary shall provide a detailed written explanation of the reasons therefor.*
- (4) *The Western Pacific Fishery Management Council shall, with the assistance of such advisory panel, submit an annual report to the Congress assessing the status and progress of demonstration projects carried out under this subsection.*
- (5) *Appropriate Federal agencies may provide technical assistance to western Pacific community-based entities*

to assist in carrying out demonstration projects under this subsection.

- (6) *In this subsection the term ‘Western Pacific community’ means 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. 306. STATE JURISDICTION

16 U.S.C. 1856

(a) IN GENERAL.—

- (1) Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.
- (2) For the purposes of this Act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend
 - (A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;
 - (B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and
 - (C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are—
 - (i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or
 - (ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.
- (3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:
 - (A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.
 - (B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.
 - (C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there ~~was~~ is no fishery management plan

in place ~~on August 1, 1996~~, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this Act is approved and implemented for such fishery.

(b) EXCEPTION.—

- (1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—
 - (A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the exclusive economic zone and beyond such zone; and
 - (B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan; the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.
- (2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.
- (3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).
- (3) Notwithstanding section 3(11), for the purposes of managing the recreational sector of the Gulf of Mexico red snapper fishery, the seaward boundary of a coastal State in the Gulf of Mexico is a line 9 miles seaward from the baseline from which the territorial sea of the United States is measured⁹⁴.

FUNDING OF STOCK ASSESSMENTS.—The Secretary of Commerce and the Secretary of the Interior, acting through the Bureau of Ocean Energy Management, shall enter into a cooperative agreement for the funding of stock assessments that are necessitated by any action by the Bureau with respect to offshore oil rigs in the Gulf of Mexico that adversely impacts red snapper.⁹⁵

(c) EXCEPTION REGARDING FOREIGN FISH PROCESSING IN INTERNAL WATERS.—

- (1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if—
 - (A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C) or has received a permit under section 204(d);
 - (B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing and the application specifies the species to be processed; and
 - (C) the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.

16 U.S.C. 1856, 1856 note
MSA §§ 306, 306 note

⁹⁴ HR 4742 page 35.

⁹⁵ Amendment made by Rep. Southerland of Florida during markup on 5/29/14. Not clear where this should go.

- (2) *The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—*
 - (A) *for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—*
 - (i) *consulting with the appropriate Council and Marine Fisheries Commission, and*
 - (ii) *considering any comments received from the Governor of any other State where the fishery occurs; and*
 - (B) *if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.*
- (3) *Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the internal waters of a State incident to permission obtained under paragraph (1)(B).*
- (4) *For purposes of this subsection—*
 - (A) *The term “fish processing” includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.*
 - (B) *The phrase “internal waters of a State” means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured.*
 - (C) *A foreign fishing vessel shall be treated as qualified for purposes of paragraph (1) if the foreign nation under which it is flagged will be a party to (i) a governing international fishery agreement or (ii) a treaty described in section 201(b) of this Act (16 U.S.C. 1821(b)) during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).*

P.L. 109-479, sec. 302(e), MSA § 306 note 16 U.S.C. 1856 note

AUTHORITY OF STATES OF WASHINGTON, OREGON, AND CALIFORNIA TO MANAGE DUNGENESS CRAB FISHERY.

- (a) **IN GENERAL**—*Subject to the provisions of this section and notwithstanding section 306(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1856(a)), each of the States of Washington, Oregon, and California may adopt and enforce State laws and regulations governing fishing and processing in the exclusive economic zone adjacent to that State in any Dungeness crab (*Cancer magister*) fishery for which there is no fishery management plan in effect under that Act.*
- (b) **REQUIREMENTS FOR STATE MANAGEMENT**—*Any law or regulation adopted by a State under this section for a Dungeness crab fishery—*
 - (1) *except as provided in paragraph (2), shall apply equally to vessels engaged in the fishery in the exclusive economic zone and vessels engaged in the fishery in the waters of the State, and without regard to the State that issued the permit under which a vessel is operating;*
 - (2) *shall not apply to any fishing by a vessel in exercise of tribal treaty rights except as provided in United States v. Washington, D.C. No. CV-70-09213, United States District Court for the Western District of Washington; and*
 - (3) *shall include any provisions necessary to implement tribal treaty rights pursuant to the decision in United States v. Washington, D.C. No. CV-70-09213.*
- (c) **LIMITATION ON ENFORCEMENT OF STATE LIMITED ACCESS SYSTEMS**—**Any law of the State of Washington, Oregon, or California that establishes or implements a limited access system for a Dungeness crab fishery may not be enforced against a vessel that is otherwise legally fishing in the exclusive economic zone adja-**

cent to that State and that is not registered under the laws of that State, except a law regulating landings.

- (d) **STATE PERMIT OR TREATY RIGHT REQUIRED**—No vessel may harvest or process Dungeness crab in the exclusive economic zone adjacent to the State of Washington, Oregon, or California, except as authorized by a permit issued by any of those States or pursuant to any tribal treaty rights to Dungeness crab pursuant to the decision in *United States v. Washington*, D.C. No. CV-70- 09213.
- (e) **STATE AUTHORITY OTHERWISE PRESERVED**—Except as expressly provided in this section, nothing in this section reduces the authority of any State under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to regulate fishing, fish processing, or landing of fish.
- (f) **TERMINATION OF AUTHORITY**—The authority of the States of Washington, Oregon, and California under this section with respect to a Dungeness crab fishery shall expire on the effective date of a fishery management plan for the fishery under the Magnuson-Stevens Fishery Conservation and Management Act.
- (g) **REPEAL**—Section 112(d) of Public Law 104-297 (16 U.S.C. 1856 note) is repealed.
- (h) **DEFINITIONS**—The definitions set forth in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) shall apply to this section.
- (i) ~~**SUNSET**—This section shall have no force or effect on and after September 30, 2016.~~⁹⁶
- (j) **Not later than December 31, 2001, and every 2 years thereafter, the Pacific State Marine Fisheries Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report on the status and management of the Dungeness Crab fishery located off the coasts of the States of Washington, Oregon, and California, including—**
 - (1) stock status and trends throughout its range;
 - (2) a description of applicable research and scientific review processes used to determine stock status and trends; and
 - (3) measures implemented or planned that are designed to prevent or end overfishing in the fishery.

SEC. 307. PROHIBITED ACTS

16 U.S.C. 1857

It is unlawful—

- (1) for any person—
 - (A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;
 - (B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;
 - (C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);
 - (D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for the purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

⁹⁶ *Second Senate draft: In Section 203 of Public Law 105 (State Authority for Dungeness Crab Fishery Management), subsection (i) is deleted. (This makes state authority for dungeness crab permanent). This is a Council priority. (Page 62 line 15+)*

- (E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);
- (F) to resist a lawful arrest for any act prohibited by this section;
- (G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);
- (H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;
- (I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act;
- (J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus*, that—
 - (i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan implemented under this title, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.);
 - (ii) is bearing eggs attached to its abdominal appendages; or
 - (iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;
- (K) to to [sic] steal or attempt to steal or to negligently and without authorization remove, damage, or tamper with—
 - (i) fishing gear owned by another person, which is located in the exclusive economic zone [or special areas]*, or
 - (ii) fish contained in such fishing gear;
- (L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act;
- (M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation;
- (N) to strip pollock of its roe and discard the flesh of the pollock;
- (O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7) (A);
- (P)
 - (i) to remove any of the fins of a shark (including the tail) and discard the carcass of the shark at sea;
 - (ii) to have custody, control, or possession of any such fin aboard a fishing vessel without the corresponding carcass; or
 - (iii) to land any such fin without the corresponding carcass;

- (Q) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation; ~~or~~
- (R) to knowingly and willfully make or submit any incomplete, invalid, or false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the date or location where harvested) that has been or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce, except where such making or submission is prohibited under subparagraph (I); or⁹⁷
- ~~(R)~~(S) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or in the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).

For the purposes of subparagraph (P) there is a rebuttable presumption that any shark fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of subparagraph (P) if the total weight of shark fins landed or found on board exceeds 5 percent of the total weight of shark carcasses landed or found on board.

- (2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—
 - (A) in fishing within the boundaries of any State, except—
 - (i) recreational fishing permitted under section 201(i);
 - (ii) fish processing permitted under section 306(c); or
 - (iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);
 - (B) in fishing, except recreational fishing permitted under section 201(i), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b), (c) or (d); or
 - (C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);
- (3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone [or special areas]* or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(d) or section 306(c) to receive such fish;
- (4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone [or special areas]* or within the boundaries of any State, if—
 - (A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or
 - (B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and
- (5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery

97 Addresses seafood fraud. Section in earlier draft on labeling has been removed.

agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

SEC. 308. CIVIL PENALTIES AND PERMIT SANCTIONS

16 U.S.C. 1858

- (a) **ASSESSMENT OF PENALTY.**—Any person who is 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 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed ~~\$100,000~~ **\$180,000**⁹⁸ for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, Provided, That the information is served on the Secretary at least 30 days prior to an administrative hearing.
- (b) **REVIEW OF CIVIL PENALTY.**—Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.
- (c) **ACTION UPON FAILURE TO PAY ASSESSMENT.**—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.
- (d) **IN REM JURISDICTION.**—A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 307 shall be liable in rem for any civil penalty assessed for such violation under section 308 and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.
- (e) **COMPROMISE OR OTHER ACTION BY SECRETARY.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.
- (f) **SUBPOENAS.**—For the purposes of conducting any hearing under this section, **or investigation of a viola-**

⁹⁸ *Second Senate draft page 24 lines 12+*

tion of this Act,⁹⁹ the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) PERMIT SANCTIONS.—

- (1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue, the Secretary may—
 - (i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;
 - (ii) suspend such permit for a period of time considered by the Secretary to be appropriate;
 - (iii) deny such permit; or
 - (iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.
- (2) In imposing a sanction under this subsection, the Secretary shall take into account—
 - (A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and
 - (B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.
- (3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.
- (4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.
- (5) No sanctions shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

SEC. 309. CRIMINAL OFFENSES

16 U.S.C. 1859

- (a) **OFFENSES.**—A person is guilty of an offense if he commits any act prohibited by— (1) section 307(1)(D), (E), (F), (H), (I), or (L); or (2) section 307(2).
- (b) **PUNISHMENT.**—Any offense described in subsection (a)(1) is punishable by a fine of not more than ~~\$100,000~~ **\$180,000**¹⁰⁰, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any observer described in section 307(1)(L) or any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such observer or officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than ~~\$200,000~~ **\$360,000**, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than ~~\$200,000~~ **\$360,000**¹⁰¹.
- (c) **JURISDICTION.**—There is Federal jurisdiction over any offense described in this section.

SEC. 310. CIVIL FORFEITURES

16 U.S.C. 1860

- (a) **IN GENERAL.**—Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 (other than any act for which the issuance of a citation under section 311(c) is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.
- (b) **JURISDICTION OF DISTRICT COURTS.**—Any district court of the United States which has jurisdiction under section 311~~(d)~~**(e)** shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection ~~(d)~~**(e)**.
- (c) **JUDGMENT.**—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to—
- (1) the seizure, forfeiture, and condemnation of property for violation of the customs law;
 - (2) the disposition of such property or the proceeds from the sale thereof; and
 - (3) the remission or mitigation of any such forfeiture; shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary.
- (d) **PROCEDURE.**—
- (1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 311~~(d)~~**(e)** shall—

100 Second Senate draft page 24 lines 20+

101 Second Senate draft new change: increases penalty (same page as above)

- (A) stay the execution of such process; or
 - (B) discharge any fish seized pursuant to such process; upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court. Nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 311~~(d)~~ **(e)**, to release on bond any seized fish or other property or the proceeds from the sale thereof.
- (2) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION.—

- (1) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken and retained in violation of this Act.
- (2) For purposes of this Act, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.
- (3) For purposes of this Act, it shall be a rebuttable presumption that any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has gear on board that is capable of use for large-scale driftnet fishing, is engaged in such fishing.

SEC. 311. ENFORCEMENT

16 U.S.C. 1861

- (a) RESPONSIBILITY.—**The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties.

(b) POWERS OF AUTHORIZED OFFICERS.—

- (1) Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may—
 - (A) with or without a warrant or other process—
 - (i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307;
 - (ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;
 - (iii) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;
 - (iv) seize any fish (wherever found) taken or retained in violation of any provision of this Act;

- (v) seize any other evidence related to any violation of any provision of this Act; and
 - (vi) access, directly or indirectly, for enforcement purposes any data or information required to be provided under this title or regulations under this title, including data from vessel monitoring systems, satellite-based maritime distress and safety systems, or any similar system, subject to the confidentiality provisions of section 402;
 - (B) execute any warrant or other process issued by any court of competent jurisdiction; and
 - (C) exercise any other lawful authority.
- (2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. The arrest authority described in the preceding sentence may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations within the exclusive economic zone [and special areas]*, the Secretary of the department in which the Coast Guard is operating.
- (c) **ISSUANCE OF CITATIONS.**—If any officer authorized to enforce the provisions of this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this Act, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.
- (d) **ADMINISTRATIVE ADJUDICATION.**—
- (1) **IN GENERAL.**—Notwithstanding section 559 of title 5, United States Code, with respect to any marine resource conservation law or regulation administered by the Secretary acting through the National Oceanic and Atmospheric Administration, all adjudicatory functions that are required by chapter 5 of title 5, United States Code to be performed by an administrative law judge may be performed by another Federal agency on a reimbursable basis.
 - (2) **DETAILS.**—If another Federal agency performing adjudicatory functions under paragraph (1) requires the detail of an administrative law judge to perform any of these functions, it may request temporary or occasional assistance from the Office of Personnel Management under section 3344 of title 5, United States Code.^{102, 103}
- ~~(d)~~(e) **JURISDICTION OF COURTS.**—
- (1) **In general**—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. ~~In the case of Guam or any possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii, and except that in the case of the Northern Mariana Islands, the~~

102 Second Senate draft page 28 line 1+. This allows NOAA to use agencies other than the Coast Guard for administrative adjudications involving marine resources.

103 Second Senate draft: Sections 110 and 111 of title I of Division B of the Consolidated and Further Continuing Appropriations Act, 2012 (Public Law 112—55; 16 U.S.C.1861 note), and the items relating to those sections in the table of contents for that Act, are repealed.

~~appropriate court is the United States District Court for the District of the Northern Mariana Islands.~~

¹⁰⁴Any such court may, at any time—

- ~~(1)(A)~~ enter restraining orders or prohibitions;
- ~~(2)(B)~~ issue warrants, process in rem, or other process;
- ~~(3)(C)~~ prescribe and accept satisfactory bonds or other security; and
- ~~(4)(D)~~ take such other actions as are in the interest of justice.

(2) ~~HAWAII AND PACIFIC INSULAR AREAS.—In the case of Hawaii or any possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Hawaii, except that—~~

- ~~(A) in the case of Guam and Wake Island, the appropriate court is the United States District Court for the District of Guam; and~~
- ~~(B) in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands.~~¹⁰⁵

~~(e)~~(f) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—

- (1) ~~Notwithstanding any other provision of law, IN GENERAL~~¹⁰⁶~~—except as otherwise required under section 204(e)(8)~~ the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this Act or of any other marine resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—
 - (A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other marine resource law enforced by the Secretary with respect to that fish or other property;
 - (B) a reward of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount, to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary;
 - (C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;
 - (D) any valid liens or mortgages against any property that has been forfeited;
 - (E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), as made applicable by section 310(c) of this Act or by any other marine resource law enforced by the Secretary, to seizures made by the Secretary, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; ~~and~~
 - (F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law; ~~and~~
 - ~~(G) the costs of stock assessments, surveys, and data collection in fisheries managed under this Act.~~¹⁰⁷

¹⁰⁴ Begich page 40 lines 3-15.

¹⁰⁵ Second Senate draft 25-26. This section refines jurisdiction of the courts under MSA to allow more cases arising in the waters off US territories and possessions in the Pacific to be heard in Hawaii.

¹⁰⁶ Second Senate draft page 26 lines 11+

¹⁰⁷ Second Senate draft - new language. Page 27 line 1+

(2) **FISHERIES ENFORCEMENT FUND.**—There is established in the Treasury a non-interest bearing fund to be known as the Fisheries Enforcement Fund, into which shall be deposited all sums received as described in paragraph (1), which shall remain available to the Secretary of Commerce until expended as authorized in paragraph (1), without appropriation or fiscal year limitation.¹⁰⁸

~~(2)~~(3) **Any person LIABILITY FOR COSTS INCURRED--**Any person¹⁰⁹ found in an administrative or judicial proceeding to have violated this Act or any other marine resource law enforced by the Secretary shall be liable for the cost incurred in the sale, storage, care, and maintenance of any fish or other property lawfully seized in connection with the violation.

~~(f)~~(g) ENFORCEMENT OF NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN.—

- (1) **ENFORCEMENT AGREEMENTS.**—Beginning not later than October 1, 1993, the Secretary shall, if requested by the Governor of a State represented on the New England Fishery Management Council, enter into an agreement under subsection (a), with each of the States represented on such Council, that authorizes the marine law enforcement agency of such State to perform duties of the Secretary relating to enforcement of the Northeast Multispecies Fishery Management Plan.
- (2) **REIMBURSEMENT.**—An agreement with a State under this subsection shall provide, subject to the availability of appropriations, for reimbursement of the State for expenses incurred in detection and prosecution of violations of any fishery management plan approved by the Secretary.
- (3) **COAST GUARD ENFORCEMENT WORKING GROUP.—**
 - (A) **ESTABLISHMENT.**—The Commander of the First Coast Guard District shall establish an informal fisheries enforcement working group to improve the overall compliance with and effectiveness of the regulations issued under the Northeast Multispecies Fishery Management Plan.
 - (B) **MEMBERSHIP.**—The working group shall consist of members selected by the Commander, and shall include—
 - (i) individuals who are representatives of various fishing ports located in the States represented on the New England Fishery Management Council;
 - (ii) captains of fishing vessels that operate in waters under the jurisdiction of that Council; and
 - (iii) other individuals the Commander considers appropriate.
 - (C) **NON-FEDERAL STATUS OF WORKING GROUP MEMBERS.**—An individual shall not receive any compensation for, and shall not be considered to be a Federal employee based on, membership in the working group.
 - (D) **MEETINGS.**—The working group shall meet, at the call of the Commander, at least four times each year. The meetings shall be held at various major fishing ports in States represented on the New England Fishery Management Council, as specified by the Commander.
- (4) **USE OF FINES AND PENALTIES.**—Amounts available to the Secretary under this Act which are attributable to fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan shall be used by the Secretary pursuant to this section to enforce that Plan.

~~(g)~~(h) ENFORCEMENT IN THE PACIFIC INSULAR AREAS.—The Secretary, in consultation with the Governors of the Pacific Insular Areas and the Western Pacific Council, shall to the extent practicable support cooperative enforcement agreements between Federal and Pacific Insular Area authorities.

~~(h)~~(i) JOINT ENFORCEMENT AGREEMENTS.—

108 Second Senate draft - page 27 lines 11+. Establishes new Fisheries Enforcement Fund; compare to Hastings asset forfeiture fund in (404)(e)(1)(a).

109 Second Senate draft - page 27 lines 6+

- (1) **IN GENERAL.**—The Governor of an eligible State may apply to the Secretary for execution of a joint enforcement agreement with the Secretary that will authorize the deputization and funding of State law enforcement officers with marine law enforcement responsibilities to perform duties of the Secretary relating to law enforcement provisions under this title or any other marine resource law enforced by the Secretary. Upon receiving an application meeting the requirements of this subsection, the Secretary may enter into a joint enforcement agreement with the requesting State.
- (2) **ELIGIBLE STATE.**—A State is eligible to participate in the cooperative enforcement agreements under this section if it is in, or bordering on, the Atlantic Ocean (including the Caribbean Sea), the Pacific Ocean, the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or 1 or more of the Great Lakes.
- (3) **REQUIREMENTS.**—Joint enforcement agreements executed under paragraph (1)—
 - (A) shall be consistent with the purposes and intent of this section to the extent applicable to the regulated activities;
 - (B) may include specifications for joint management responsibilities as provided by the first section of Public Law 91–412 (15 U.S.C. 1525); and
 - (C) shall provide for confidentiality of data and information submitted to the State under section 402.
- (4) **ALLOCATION OF FUNDS.**—The Secretary shall include in each joint enforcement agreement an allocation of funds to assist in management of the agreement. The allocation shall be fairly distributed among all eligible States participating in cooperative enforcement agreements under this subsection, based upon consideration of Federal marine enforcement needs, the specific marine conservation enforcement needs of each participating eligible State, and the capacity of the State to undertake the marine enforcement mission and assist with enforcement needs. The 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.

(i) IMPROVED DATA SHARING.—

- (1) **IN GENERAL.**—Notwithstanding any other provision of this Act, as soon as practicable but no later than 21 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall implement data-sharing measures to make any data required to be provided by this Act from satellite-based maritime distress and safety systems, vessel monitoring systems, or similar systems—
 - (A) directly accessible by State enforcement officers authorized under subsection (a) of this section; and
 - (B) available to a State management agency involved in, or affected by, management of a fishery if the State has entered into an agreement with the Secretary under section 402(b)(1)(B) of this Act.
- (2) **AGREEMENT REQUIRED.**—The Secretary shall promptly enter into an agreement with a State under section 402(b)(1)(B) of this Act if—
 - (A) the Attorney General or highest ranking legal officer of the State provides a written opinion or certification that State law allows the State to maintain the confidentiality of information required by Federal law to be kept confidential; or
 - (B) the Secretary is provided other reasonable assurance that the State can and will protect the identity or business of any person to which such information relates.

(j)(k) DEFINITIONS.23—For purposes of this section—

- (1) The term “provisions of this Act” includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201(b) or (c), or section 204(d), with respect to fishing subject to the exclusive fishery management authority of the United States.

- (2) The term “violation of any provision of this Act” includes (A) the commission of any act prohibited by section 307, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

23 Section 115(e) of Public Law 104-297 “amends” ‘ 311(i) of the Magnuson-Stevens Act by: (1) inserting “201(b) or (c), or section 204(d),” and (2) striking “201(b), (c).” Since ‘ 311 does not include a subsection (i), the editors assume Congress intended to revise subsection (h). Since the words “201(b), (c),” do not appear in ‘ 311(h), the editors assume Congress intended to strike the words “201(b) or (c).”

SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES - 16 U.S.C. 1861a

(a) FISHERIES DISASTER RELIEF.—

- (1) At the discretion of the Secretary or at the request of the Governor of an affected State, a tribe, or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

(A)

(A)(i) natural causes;

(B)(ii) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or

(C)(iii) undetermined causes.

- (B) The Secretary shall publish the estimated cost or recovery from a fishery resource disaster no later than 30 days after the Secretary makes the determination under subparagraph (A) with respect to such disaster.¹¹⁰

[Southerland Amendment to HR 4742]:

- (2) The Secretary shall make a decision regarding a request from a Governor under paragraph (1) within 90 days after receiving an estimate of the economic impact of the fishery resource disaster from the entity requesting the relief.¹¹¹

[Second Senate Draft Version]:

- (2) The Secretary shall make a decision regarding a request under paragraph (1) not later than 90 days after the date the Secretary receives a complete estimate of the economic impact of the fishery resource disaster from the affected State, tribal government, or fishing community.¹¹²

- (2)(3) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, tribe, or fishing community, or by the Secretary in cooperation with the affected State, tribe or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a State, tribe, or fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

- (3)(4) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

110 Amendment made by Rep. Runyan of New Jersey at Committee markup on 5/29/14

111 Amendment made by Rep. Southerland of Florida at Committee markup on 5/29/14

112 Second Senate draft page 30 line 11+

- (4)(5) There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this subsection for each of the fiscal years ~~2007 through 2013~~ 2015 through 2021¹¹³.

(b) FISHING CAPACITY REDUCTION PROGRAM.—

- (1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, the Governor of a State for fisheries under State authority, or a majority of permit holders in the fishery, may conduct a voluntary fishing capacity reduction program (referred to in this section as the 'program') in a fishery if the Secretary determines that the program—
 - (A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;
 - (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 the replacement of fishing capacity removed by the program through a moratorium on new entrants, practicable restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and
 - (ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and
 - (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 title XI of the Merchant Marine Act, 1936.
- (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 vessel 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 or in any other fishery and such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions (including loss of the vessel's fisheries endorsement) that permanently prohibit and effectively prevent its use in fishing in federal or state waters, or fishing on the high seas or in the waters of a foreign nation; 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 was established.
- (3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.
- (4) The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, 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 any program under this section.
- (5) PAYMENT CONDITION.—The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of a foreign nation or fishing on the high seas.

(6) **REPORT.—**

- (A) **IN GENERAL.**—Subject to the availability of funds, the Secretary shall, within 12 months after the date of the enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 submit to the Congress a report—
 - (i) identifying and describing the 20 fisheries in United States waters with the most severe examples of excess harvesting capacity in the fisheries, based on value of each fishery and the amount of excess harvesting capacity as determined by the Secretary;
 - (ii) recommending measures for reducing such excess harvesting capacity, including the retirement of any latent fishing permits that could contribute to further excess harvesting capacity in those fisheries; and
 - (iii) potential sources of funding for such measures.
- (B) **BASIS FOR RECOMMENDATIONS.**—The Secretary shall base the recommendations made with respect to a fishery on—
 - (i) the most cost effective means of achieving voluntary reduction in capacity for the fishery using the potential for industry financing; and
 - (ii) including measures to prevent the capacity that is being removed from the fishery from moving to other fisheries in the United States, in the waters of a foreign nation, or on the high seas.

(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 by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or
 - (D) provided from any State or other public sources or private or non-profit organizations.
- (2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

(d) **INDUSTRY FEE SYSTEM.—**

- (1)
 - (A) If an industry fee system is necessary to fund the program, the Secretary may 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 considered approved if the referendum votes which are cast in favor of the proposed system constitute at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participated in the fishery.
- (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 incurred pursu-

ant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees 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 harvested from the fishery for which the program is established;
- (C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such 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) IMPLEMENTATION PLAN.—

- (1) **FRAMEWORK REGULATIONS.**—The Secretary shall propose and adopt framework regulations applicable to the implementation of all programs under this section.
- (2) **PROGRAM REGULATIONS.**—The Secretary shall implement each program under this section by promulgating regulations that, together with the framework regulations, establish each program and control its implementation.
- (3) **HARVESTER PROPONENTS' IMPLEMENTATION PLAN.**—The Secretary may not propose implementation regulations for a program to be paid for by an industry fee system until the harvester proponents of the program provide to the Secretary a proposed implementation plan that, among other matters—
 - (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 and affected fishing communities;
 - (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) proposes procedures for program participation (such as submission of owner bids under an auction system or fair market-value assessment), including any terms and conditions for participation, that the harvester proponents deem to be reasonably necessary to meet the program's proposed objectives.
- (4) **PARTICIPATION CONTRACTS.**—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 nonperformance) be consistent with the framework and implementing regulations and all other applicable law.
- (5) **REDUCTION AUCTIONS.**—Each program not involving fair market assessment shall involve a reduc-

tion 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 responsive bids in the rank order of their bid scores, starting with the bid whose reduction price is the lowest percentage of the productivity factor, and successively accepting each additional responsive bid in rank order until either there are no more responsive bids or acceptance of the next bid would cause the total value of bids accepted to exceed the amount of funds available for the program.

- (6) **BID INVITATIONS.**—Each program shall proceed by the Secretary 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. 313. NORTH PACIFIC FISHERIES CONSERVATION AND MANAGEMENT.

- (a) **IN GENERAL.**—The North Pacific Council may prepare, in consultation with the Secretary, a fisheries research plan for any fishery under the Council's jurisdiction, ~~except a salmon fishery, that which—~~

- (1) requires that ~~electronic technologies or~~¹¹⁴ observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and
- ~~(2) establishes a system, or system [sic], of fees, which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing the plan.~~
- (2) establish a system of fees to pay for the cost of implementing the plan and any integrated data collection program, including electronic technology requirements, established by the Council,¹¹⁵

- (b) **STANDARDS.**—

- (1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—
- (A) gather reliable data, by ~~placing electronic technologies or~~¹¹⁶ stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;
- (B) be fair and equitable to all vessels and processors;
- (C) be consistent with applicable provisions of law; and
- (D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.
- (2) Any system of fees established under this section shall—
- (A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers, or electronic monitoring systems, on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

114 Second Senate draft page 31 lines 9+. Allows electronic monitoring in lieu of human observers

115 Second Senate draft page 31 lines 14+. Wording slightly changed from previous draft.

116 Second Senate draft page 31 lines 20+. Same.

- (B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;
- (C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;
- (D) not be used to offset amounts authorized under other provisions of law;
- (E) be expressed as a fixed amount reflecting actual electronic technology costs or¹¹⁷ actual observer costs as described in subparagraph (A) or a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of the fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;
- (F) be assessed against some or all fishing vessels and United States fish processors, including those not required to carry an observer or an electronic monitoring system under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;
- (G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;
- (H) provide that fees collected will only be used for implementing the plan established under this section;
- (I) provide that fees collected will be credited against any fee for stationing observers or electronic monitoring systems on board fishing vessels and United States fish processors and the actual cost of inputting collected data to which a fishing vessel or fish processor is subject under section 304(d) of this Act; and
- (J) meet the requirements of section 9701(b) of title 31, United States Code.

(3) Any system of fees established under this section may vary by fishery, management area, electronic technology, or observer coverage level.¹¹⁸

(c) ACTION BY SECRETARY.—

- (1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.
- (2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.
- (3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.
- (4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) FISHERY OBSERVER FUND.—There is established in the Treasury a North Pacific Fishery Observer Fund.

¹¹⁷ *Second Senate draft page 31 lines 23+. Same.*

¹¹⁸ *Second Senate draft page 32 lines 1+. “Electronic monitoring” changed to “electronic technologies” throughout.*

The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) SPECIAL PROVISIONS REGARDING OBSERVERS.—

- (1) The Secretary shall review—
 - (A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and
 - (B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.
- (2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—
 - (A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and
 - (B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

(f) BYCATCH REDUCTION.—In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

(g) BYCATCH REDUCTION INCENTIVES.—

- (1) Notwithstanding section 304(d), the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this Act, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed \$25,000 per vessel per season. Any fines collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.
- (2)
 - (A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, Provided, That—
 - (i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and
 - (ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.
 - (B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

(h) CATCH MEASUREMENT.—

- (1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.
- (2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

(i) FULL RETENTION AND UTILIZATION.—

- (1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.
- (2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, 'processing waste' means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.

(j) BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION.

- (1) By not later than January 1, 2005, the Secretary shall approve and hereafter implement by regulation the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003. This section shall not preclude the Secretary from approving by January 1, 2005, and implementing any subsequent program amendments approved by the Council.
- (2) Notwithstanding any other provision of this Act, in carrying out paragraph (1) the Secretary shall approve all parts of the Program referred to in such paragraph. Further, no part of such Program may be implemented if, as approved by the North Pacific Fishery Management Council, individual fishing quotas, processing quotas, community development quota allocation, voluntary cooperatives, binding arbitration, regional landing and processing requirements, community protections, economic data collection, or the loan program for crab fishing vessel captains and crew members, is invalidated subject to a judicial determination not subject to judicial appeal. If the Secretary determines that a processor has leveraged its Individual Processor Quota shares to acquire a harvesters open-delivery "B shares", the processor's Individual Processor Quota shares shall be forfeited.
- (3) Subsequent to implementation pursuant to paragraph (1), the Council may submit and the Secretary may implement changes to or repeal of conservation and management measures, including measures authorized in this section, for crab fisheries of the Bering Sea and Aleutian Islands in accordance with applicable law, including this Act as amended by this subsection, to achieve on a continuing basis the purposes identified by the Council.
- (4) The loan program referred to in paragraph (2) shall be carried out pursuant to the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g).
- (5) For purposes of implementing this section \$ 1,000,000 shall be made available each year until fully implemented from funds otherwise made available to the National Marine Fisheries Service for Alaska fisheries activities.

- (6) Nothing in this Act shall constitute a waiver, either express or implied, of the antitrust laws of the United States. The Secretary, in consultation with the Department of Justice and the Federal Trade Commission, shall develop and implement a mandatory information collection and review process to provide any and all information necessary for the Department of Justice and the Federal Trade Commission to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quotas under the Program. The Secretary may revoke any individual processing quota held by any person found to have violated a provision of the antitrust laws of the United States.
- (7) An individual processing quota issued under the Program shall be considered a permit for the purposes of sections 307, 308, and 309, and may be revoked or limited at any time in accordance with this Act. Issuance of an individual processing quota under the program shall not confer any right of compensation to the holder of such individual processing quota if it is revoked or limited and shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is purchased from an individual fishing quota holder.
- (8) The restriction on the collection of economic data in section 303 shall not apply with respect to any fish processor who is eligible for, or who has received, individual processing quota under the Program. The restriction on the disclosure of information in section 402(b)(1) shall not apply when the information is used to determine eligibility for or compliance with an individual processing quota program.
- (9) The provisions of sections 308, 310, and 311 shall apply to the processing facilities and fish products of any person holding individual processing quota, and the provisions of subparagraphs (D), (E), and (L) of section 307(l) shall apply to any facility owned or controlled by a person holding individual processing quota.

(k) **ARCTIC COMMUNITY DEVELOPMENT QUOTA.**—If the North Pacific Fishery Management Council issues a fishery management plan for the exclusive economic zone in the Arctic Ocean, or an amendment to its current Fishery Management Plan for Fish Resources of the Arctic Management Area, that makes available to commercial fishing and establishes a sustainable harvest level for any part of such zone, the North Pacific Fishery Management Council shall set aside not less than 10 percent of the total allowable catch therein as a community development quota for coastal villages north and east of the Bering Strait¹¹⁹.

(l) Not later than 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2014, the Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives which examines agency actions since 2007 to reduce bycatch in fisheries of the North Pacific managed under this Act, including a review of regulatory actions that create incentives for individual vessels to avoid bycatch.¹²⁰

SEC. 313A. GULF OF MEXICO FISHERIES CONSERVATION AND MANAGEMENT.

At least once every 5 years, the Gulf Council shall review, in accordance with the provisions of this Act, any allocation of fishing privileges among the commercial, recreational, and charter components of a fishery managed under a fishery management plan prepared by the Council, except that the Council may delay action for not more than 3 additional 1 year periods if necessary.¹²¹

SEC. 313B. SOUTH ATLANTIC FISHERIES CONSERVATION AND MANAGEMENT.

119 Second Senate draft page 32 lines 4+. Allows new community development quota in NPFMC region

120 Second Senate draft page 32 lines 18+. New addition.

121 Second Senate draft page 33 lines 16+. New addition.

At least once every 5 years, the South Atlantic Council shall review, in accordance with the provisions of this Act, any allocation of fishing privileges among the commercial, recreational, and charter components of a fishery managed under a fishery management plan prepared by the Council, except that the Council may delay action for not more than 3 additional 1 year periods if necessary.¹²²

SEC. 314. NORTHWEST ATLANTIC OCEAN FISHERIES REINVESTMENT PROGRAM

16 U.S.C. 1863

(a) PROGRAM.—

- (1) Not later than October 1, 1993, the Secretary shall establish a Northwest Atlantic Ocean Fisheries Reinvestment Program for the purposes of—
 - (A) promoting development of commercial fisheries and markets for underutilized species of the northwest Atlantic Ocean;
 - (B) developing alternative fishing opportunities for participants in the New England groundfish fishery;
 - (C) providing technical support and assistance to United States fishermen and fish processors to improve the value-added processing of underutilized species and to make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable;
 - (D) creating new economic opportunities through the improved processing and expanded use of fish waste; and
 - (E) helping to restore **overfished depleted** New England groundfish stocks through aquaculture or hatchery programs.
- (2) **CONSULTATION.**—In establishing and implementing the Northwest [sic] Fisheries Reinvestment Program, the Secretary shall consult with representatives of the commercial fishing industry, the seafood processing industry, and the academic community (including the National Sea Grant Program).
- (3) **ACTIVITIES UNDER PROGRAM.**—Subject to the availability of appropriations, the Secretary shall award contracts, grants and other financial assistance to United States citizens to carry out the purposes of subsection (1), under the terms and conditions provided in section 2(c) of the Act of August 11, 1939 (15 U.S.C. 713(c)-3(c); commonly referred to as the “Saltonstall-Kennedy Act”), except that, in making awards under this section for projects involving participation in fisheries for underutilized species, the Secretary shall give the highest priority to a person who owns or operates a fishing vessel permitted under this Act to participate in the New England groundfish fishery who agrees to surrender that permit to the Secretary during the duration of the contract, grant or other assistance.
- (4) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$5,000,000 for each of fiscal years 1993 through 1999 to carry out the purposes of this section. For fiscal year 1993 no more than \$1,000,000, and for fiscal year 1994 no more than \$2,000,000, of such funds may be provided from monies made available under section 2(b) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)).

- (b) ASSISTANCE OF OTHER AGENCIES.**—The Secretary shall actively seek the assistance of other Federal agencies in the development of fisheries for underutilized species of the northwest Atlantic Ocean, including, to the extent permitted by other applicable laws, assistance from the Secretary of Agriculture in including such underutilized species as agricultural commodities in the programs of the Foreign Agricultural Service for which amounts are authorized under the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359).

- (c) **MANAGEMENT PLANS FOR UNDERUTILIZED SPECIES.**—The New England Fishery Management Council, in consultation with other appropriate Councils, shall develop fishery management plans as soon as possible for any underutilized species of the northwest Atlantic Ocean that is not covered under such a plan, in order to prevent overfishing of that species.
- (d) **UNDERUTILIZED SPECIES DEFINED.**—For purposes of this section, the term “underutilized species of the northwest Atlantic Ocean” means any fish species of the northwest Atlantic Ocean that is identified, by the Director of the Northeast Fisheries Center of the National Marine Fisheries Service, as an underutilized species.

SEC. 315. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM

16 U.S.C. 1864

- (a) **IN GENERAL.**—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.
- (b) **PROGRAM COMPONENTS.**—
 - (1) **IN GENERAL.**—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—
 - (A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure while ensuring that those projects will not result in an increase or replacement of fishing capacity;
 - (B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region that may be temporarily closed as a result of environmental or other effects associated with the disaster;
 - (C) funding, pursuant to the requirements of section 312(b), to fishermen who are willing to scrap a fishing vessel and permanently surrender permits for fisheries named on that vessel; and
 - (D) any other activities authorized under section 312 of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).
 - (2) **JOB TRAINING.**—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.
 - (3) **STATE PARTICIPATION OBLIGATION.**—The participation by a State in the program shall be conditioned upon a commitment by the appropriate State entity to ensure that the relevant State fishery meets the requirements of section 312(b) of this Act to ensure excess capacity does not re-enter the fishery.
 - (4) **NO MATCHING REQUIRED.**—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—
 - (A) no reasonable means are available through which applicants can meet the matching requirement; and
 - (B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.

(5) **NET REVENUE LIMIT INAPPLICABLE.**—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.

(c) **REGIONAL IMPACT EVALUATION.**—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region's fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.

(d) **CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.**—In this section the term 'catastrophic regional fishery disaster' means a natural disaster, including a hurricane or tsunami, or a regulatory closure (including regulatory closures resulting from judicial action) to protect human health or the marine environment, that—

- (1) results in economic losses to coastal or fishing communities;
- (2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and
- (3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

P.L. 109-479, sec. 115 16 U.S.C. 1864 note
FISHERIES HURRICANE ASSISTANCE PROGRAM.

(a) **IN GENERAL.**—*The Secretary of Commerce shall establish an assistance program for the Gulf of Mexico commercial and recreational fishing industry.*

(b) **ALLOCATION OF FUNDS.**—*Under the program, the Secretary shall allocate funds appropriated to carry out the program among the States of Alabama, Louisiana, Florida, Mississippi, and Texas in proportion to the percentage of the fishery (including crawfish) catch landed by each State before August 29, 2005, except that the amount allocated to Florida shall be based exclusively on the proportion of such catch landed by the Florida Gulf Coast fishery.*

(c) **USE OF FUNDS.**—*Of the amounts made available to each State under the program—*

(1) *2 percent shall be retained by the State to be used for the distribution of additional payments to fishermen with a demonstrated record of compliance with turtle excluder and bycatch reduction device regulations; and*

(2) *the remainder of the amounts shall be used for—*

- (A) *personal assistance, with priority given to food, energy needs, housing assistance, transportation fuel, and other urgent needs;*
- (B) *assistance for small businesses, including fishermen, fish processors, and related businesses serving the fishing industry;*
- (C) *domestic product marketing and seafood promotion;*
- (D) *State seafood testing programs;*
- (E) *the development of limited entry programs for the fishery;*
- (F) *funding or other incentives to ensure widespread and proper use of turtle excluder devices and bycatch reduction devices in the fishery; and*
- (G) *voluntary capacity reduction programs for shrimp fisheries under limited access programs.*

(d) **AUTHORIZATION OF APPROPRIATIONS.**—*There are authorized to be appropriated to the Secretary of Commerce \$17,500,000 for each of fiscal years 2007 through 2012 to carry out this section.*

SEC. 316. BYCATCH REDUCTION ENGINEERING PROGRAM

16 U.S.C. 1865

- (a) **BYCATCH REDUCTION ENGINEERING PROGRAM.**—Not later than 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in cooperation with the Councils and other affected interests, and based upon the best scientific information available, shall establish a bycatch reduction program, including grants, to develop technological devices and other conservation engineering changes designed to minimize bycatch, seabird interactions, bycatch mortality, and post-release mortality in Federally managed fisheries. The program shall—
- (1) be regionally based;
 - (2) be coordinated with projects conducted under the cooperative research and management program established under this Act;
 - (3) provide information and outreach to fishery participants that will encourage adoption and use of technologies developed under the program; and
 - (4) provide for routine consultation with the Councils in order to maximize opportunities to incorporate results of the program in Council actions and provide incentives for adoption of methods developed under the program in fishery management plans developed by the Councils.
- (b) **INCENTIVES.**—Any fishery management plan prepared by a Council or by the Secretary may establish a system of incentives to reduce total bycatch and seabird interactions, amounts, bycatch rates, and post-release mortality in fisheries under the Council's or Secretary's jurisdiction, including—
- (1) measures to incorporate bycatch into quotas, including the establishment of collective or individual bycatch quotas;
 - (2) measures to promote the use of gear with verifiable and monitored low bycatch and seabird interactions, rates; and
 - (3) measures that, based on the best scientific information available, will reduce bycatch and seabird interactions, bycatch mortality, post-release mortality, or regulatory discards in the fishery.
- (c) **COORDINATION ON SEABIRD INTERACTIONS.**—The Secretary, in coordination with the Secretary of Interior, is authorized to undertake projects in cooperation with industry to improve information and technology to reduce seabird bycatch, including—
- (1) outreach to industry on new technologies and methods;
 - (2) projects to mitigate for seabird mortality; and
 - (3) actions at appropriate international fishery organizations to reduce seabird interactions in fisheries.
- (d) **REPORT.**—The Secretary shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources that—
- (1) describes funding provided to implement this section;
 - (2) describes developments in gear technology achieved under this section; and
 - (3) describes improvements and reduction in bycatch and seabird interactions associated with implementing this section, as well as proposals to address remaining bycatch or seabird interaction problems.

SEC. 317. SHARK FEEDING

16 U.S.C. 1866

Except to the extent determined by the Secretary, or under State law, as presenting no public health hazard or safety risk, or when conducted as part of a research program funded in whole or in part by appropriated funds, it is unlaw-

ful to introduce, or attempt to introduce, food or any other substance into the water to attract sharks for any purpose other than to harvest sharks within the Exclusive Economic Zone seaward of the State of Hawaii and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean Area.

SEC. 318. COOPERATIVE RESEARCH AND MANAGEMENT PROGRAM

16 U.S.C. 1867

(a) IN GENERAL.—

- (1) The Secretary of Commerce, in consultation with the Councils, shall establish a cooperative research and management program to address needs identified under this Act and under any other marine resource laws enforced by the Secretary. The program shall be implemented on a regional basis and shall be developed and conducted through partnerships among Federal, State, and Tribal managers and scientists (including interstate fishery commissions), fishing industry participants (including use of commercial charter or recreational vessels for gathering data), and educational institutions.
- (2) Within one year after the date of enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, and after consultation with the Councils, the Secretary shall publish a plan for implementing and conducting the program established in paragraph (1). Such plan shall identify and describe critical regional fishery management and research needs, possible projects that may address those needs, and estimated costs for such projects. The plan shall be revised and updated every 5 years, and updated plans shall include a brief description of projects that were funded in the prior 5-year period and the research and management needs that were addressed by those projects¹²³.

(b) ELIGIBLE PROJECTS.—The Secretary shall make funds available under the program for the support of projects to address critical needs identified by the Councils in consultation with the Secretary. The program shall promote and encourage efforts to utilize sources of data maintained by other Federal agencies, State agencies, or academia for use in such projects.

(c) FUNDING PRIORITIES.—In making funds available the Secretary shall award funding on a competitive basis and based on regional fishery management needs, select programs that form part of a coherent program of research focused on solving priority issues identified by the Councils, and shall give priority to the following projects:

- (1) Projects to collect data to improve, supplement, or enhance stock assessments, including— ~~the use of fishing vessels or acoustic or other marine technology:~~
 - (A) ~~the use of fishing vessels or acoustic or other marine technology;~~
 - (B) ~~expanding the use of electronic catch reporting programs and technology; and~~
 - (C) ~~improving monitoring and observer coverage through the expanded use of electronic monitoring devices.~~¹²⁴
- (2) Projects to assess the amount and type of bycatch or post-release mortality occurring in a fishery.
- (3) Conservation engineering projects designed to reduce bycatch, including avoidance of post-release mortality, reduction of bycatch in high seas fisheries, and transfer of such fishing technologies to other nations.
- (4) Projects for the identification of habitat areas of particular concern and for habitat conservation.
- (5) Projects designed to collect and compile economic and social data.

123 HR 4742 page 30 lines 17+ . New since discussion draft.

124 HR 4247 page 31 lines 12+. New since discussion draft.

- (d) **EXPERIMENTAL PERMITTING PROCESS.**—Not later than 180 days after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with the Councils, shall promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits.
- (e) **GUIDELINES.**—The Secretary, in consultation with the Councils, shall establish guidelines to ensure that participation in a research project funded under this section does not result in loss of a participant’s catch history or unexpended days-at-sea as part of a limited entry system.
- (f) **EXEMPTED PROJECTS.**—The procedures of this section shall not apply to research funded by quota set-asides in a fishery.

SEC. 319. HERRING STUDY

16 U.S.C. 1868

- (a) **IN GENERAL.**—The Secretary may conduct a cooperative research program to study the issues of abundance, distribution and the role of herring as forage fish for other commercially important fish stocks in the Northwest Atlantic, and the potential for local scale depletion from herring harvesting and how it relates to other fisheries in the Northwest Atlantic. In planning, designing, and implementing this program, the Secretary shall engage multiple fisheries sectors and stakeholder groups concerned with herring management.
- (b) **REPORT.**—The Secretary shall present the final results of this study to Congress within 3 months following the completion of the study, and an interim report at the end of fiscal year 2008.
- (c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$2,000,000 for fiscal year 2007 through fiscal year 2009 to conduct this study.

SEC. 320. RESTORATION STUDY

16 U.S.C. 1869

- (a) **IN GENERAL.**—The Secretary may conduct a study to update scientific information and protocols needed to improve restoration techniques for a variety of coast habitat types and synthesize the results in a format easily understandable by restoration practitioners and local communities.
- (b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$500,000 for fiscal year 2007 to conduct this study.

TITLE IV—FISHERY MONITORING AND RESEARCH

SEC. 401. REGISTRATION AND INFORMATION MANAGEMENT

16 U.S.C. 1881

- (a) **STANDARDIZED FISHING VESSEL REGISTRATION AND INFORMATION MANAGEMENT SYSTEM.**—The Secretary shall, in cooperation with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, develop recommendations for implementation of a standardized fishing vessel registration and information management system on a regional basis. The recommendations shall be developed after consultation with interested governmental and nongovernmental parties and shall—

- (1) be designed to standardize the requirements of vessel registration and information collection systems required by this Act, the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), and any other marine resource law implemented by the Secretary, and, with the permission of a State, any marine resource law implemented by such State;
- (2) integrate information collection programs under existing fishery management plans into a non-duplicative information collection and management system;
- (3) avoid duplication of existing State, tribal, or Federal systems and shall utilize, to the maximum extent practicable, information collected from existing systems;
- (4) provide for implementation of the system through cooperative agreements with appropriate State, regional, or tribal entities and Marine Fisheries Commissions;
- (5) provide for funding (subject to appropriations) to assist appropriate State, regional, or tribal entities and Marine Fisheries Commissions in implementation;
- (6) establish standardized units of measurement, nomenclature, and formats for the collection and submission of information;
- (7) minimize the paperwork required for vessels registered under the system;
- (8) include all species of fish within the geographic areas of authority of the Councils and all fishing vessels including charter fishing vessels, but excluding recreational fishing vessels;
- (9) require United States fish processors, and fish dealers and other first ex-vessel purchasers of fish that are subject to the proposed system, to submit information (other than economic information) which may be necessary to meet the goals of the proposed system; and
- (10) include procedures necessary to ensure—
 - (A) the confidentiality of information collected under this section in accordance with section 402(b); and
 - (B) the timely release or availability to the public of information collected under this section consistent with section 402(b).

(b) FISHING VESSEL REGISTRATION.—The proposed registration system should, at a minimum, obtain the following information for each fishing vessel—

- (1) the name and official number or other identification, together with the name and address of the owner or operator or both;
- (2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation (catcher, catcher processor, or other), and such other pertinent information with respect to vessel characteristics as the Secretary may require; and
- (3) identification (by species, gear type, geographic area of operations, and season) of the fisheries in which the fishing vessel participates.

(c) FISHERY INFORMATION.—The proposed information management system should, at a minimum, provide basic fisheries performance information for each fishery, including—

- (1) the number of vessels participating in the fishery including charter fishing vessels;
- (2) the time period in which the fishery occurs;
- (3) the approximate geographic location or official reporting area where the fishery occurs;
- (4) a description of fishing gear used in the fishery, including the amount and type of such gear and the appropriate unit of fishing effort; and
- (5) other information required under subsection 303(a)(5) or requested by the Council under section 402.

(d) USE OF REGISTRATION.—Any registration recommended under this section shall not be considered a per-

mit for the purposes of this Act, and the Secretary may not propose to revoke, suspend, deny, or impose any other conditions or restrictions on any such registration or the use of such registration under this Act.

- (e) **PUBLIC COMMENT.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register for a 60-day public comment period a proposal that would provide for implementation of a standardized fishing vessel registration and information collection system that meets the requirements of subsections (a) through (c). The proposal shall include—
- (1) a description of the arrangements of the Secretary for consultation and cooperation with the department in which the Coast Guard is operating, the States, the Councils, Marine Fisheries Commissions, the fishing industry and other interested parties; and
 - (2) any proposed regulations or legislation necessary to implement the proposal.
- (f) **CONGRESSIONAL TRANSMITTAL.**—Within 60 days after the end of the comment period and after consideration of comments received under subsection (e), the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a recommended proposal for implementation of a national fishing vessel registration system that includes—
- (1) any modifications made after comment and consultation;
 - (2) a proposed implementation schedule, including a schedule for the proposed cooperative agreements required under subsection (a)(4); and
 - (3) recommendations for any such additional legislation as the Secretary considers necessary or desirable to implement the proposed system.
- (g) **RECREATIONAL FISHERIES.**—
- (1) **FEDERAL PROGRAM.**—The Secretary shall establish and implement a regionally based registry program for recreational fishermen in each of the 8 fishery management regions. The program, which shall not require a fee before January 1, 2011, shall provide for—
 - (A) the registration (including identification and contact information) of individuals who engage in recreational fishing—
 - (i) in the Exclusive Economic Zone;
 - (ii) for anadromous species; or
 - (iii) for Continental Shelf fishery resources beyond the Exclusive Economic Zone; and
 - (B) if appropriate, the registration (including the ownership, operator, and identification of the vessel) of vessels used in such fishing.
 - (2) **STATE PROGRAMS.**—The Secretary shall exempt from registration under the program recreational fishermen and charter fishing vessels licensed, permitted, or registered under the laws of a State if the Secretary determines that information from the State program is suitable for the Secretary's use or is used to assist in completing marine recreational fisheries statistical surveys, or evaluating the effects of proposed conservation and management measures for marine recreational fisheries.
 - (3) **DATA COLLECTION.**—
 - (A) **IMPROVEMENT OF THE MARINE RECREATIONAL FISHERY STATISTICS SURVEY.**—Within 24 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with representatives of the recreational fishing industry and experts in statistics, technology, and other appropriate fields, shall establish a program to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey, with a goal of achieving acceptable accuracy and utility for each individual fishery.

- (B) NRC REPORT RECOMMENDATIONS.—The program shall take into consideration and, to the extent feasible, implement the recommendations of the National Research Council in its report *Review of Recreational Fisheries Survey Methods* (2006), including—
 - (i) redesigning the Survey to improve the effectiveness and appropriateness of sampling and estimation procedures, its applicability to various kinds of management decisions, and its usefulness for social and economic analyses; and
 - (ii) providing for ongoing technical evaluation and modification as needed to meet emerging management needs.
- (C) METHODOLOGY.—Unless the Secretary determines that alternate methods will achieve this goal more efficiently and effectively, the program shall, to the extent possible, include—
 - (i) an adequate number of intercepts to accurately estimate recreational catch and effort;
 - (ii) use of surveys that target anglers registered or licensed at the State or Federal level to collect participation and effort data;
 - (iii) collection and analysis of vessel trip report data from charter fishing vessels;
 - (iv) development of a weather corrective factor that can be applied to recreational catch and effort estimates; and
 - (v) an independent committee composed of recreational fishermen, academics, persons with expertise in stock assessments and survey design, and appropriate personnel from the National Marine Fisheries Service to review the collection estimates, geographic, and other variables related to dockside intercepts and to identify deficiencies in recreational data collection, and possible correction measures.
- (D) DEADLINE.—The Secretary shall complete the program under this paragraph and implement the improved Marine Recreational Fishery Statistics Survey not later than January 1, 2009.

(4) FEDERAL-STATE PARTNERSHIPS.—

- (A) ESTABLISHMENT.—The Secretary shall establish partnerships with States to develop best practices for implementation of State programs established pursuant to paragraph (2).
- (B) GUIDANCE.—The Secretary shall develop guidance, in cooperation with the States, that details best practices for administering State programs pursuant to paragraph (2), and provide such guidance to the States.
- (C) BIENNIAL REPORT.—The Secretary shall submit to the Congress and publish biennial reports that include—
 - (i) the estimated accuracy of the registry program established under paragraph (1) and of State programs that are exempted under paragraph (2);
 - (ii) priorities for improving recreational fishing data collection; and
 - (iii) an explanation of any use of information collected by such State programs and by the Secretary, including a description of any consideration given to the information by the Secretary.
- (D) STATES GRANT PROGRAM.—The Secretary shall make grants to States to improve implementation of State programs consistent with this subsection. The Secretary shall prioritize such grants based on the ability of the grant to improve the quality and accuracy of such programs.¹²⁵
- (4)(5) REPORT.—Within 24 months after establishment of the program, the Secretary shall submit a report to Congress that describes the progress made toward achieving the goals and objectives of the program.

(6) STUDY ON PROGRAM IMPLEMENTATION.—

- (A) **IN GENERAL.**—Not later than 60 days after the enactment of this paragraph, the Secretary shall enter into an agreement with the National Research Council of the National Academy of Sciences to study the implementation of the programs described in this section. The study shall—
 - (i) provide an updated assessment of recreational survey methods established or improved since the publication of the Council’s report ‘Review of Recreational Fisheries Survey Methods (2006)’;
 - (ii) evaluate the extent to which the recommendations made in that report were implemented pursuant to paragraph (3)(B); and
 - (iii) examine any limitations of the Marine Recreational Fishery Statistics Survey and the Marine Recreational Information Program established under paragraph (1).
- (B) **REPORT.**—Not later than 1 year after entering into an agreement under subparagraph (A), the Secretary shall submit a report to Congress on the results of the study under subparagraph (A).¹²⁶

SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

(a) COLLECTION PROGRAMS.—

- (1) **COUNCIL REQUESTS.**—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.
- (2) **SECRETARIAL INITIATION.**—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

(b) CONFIDENTIALITY OF INFORMATION.—

- (1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—
 - (A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;
 - (B) to State or Marine Fisheries Commission employees as necessary **for achievement of the purposes of this Act, to further the Department’s mission**, subject to a confidentiality agreement **between the State or Commission, respectively, and the Secretary** that prohibits public disclosure

¹²⁶ Same as footnote above

- of the identity of ~~business of~~ any person ~~and of confidential information~~¹²⁷;
- (C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;
 - (D) when required by court order;
 - (E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a ~~catchshare limited access~~ program, but only to the extent that such use is consistent with subparagraph (B);
 - (F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;
 - (G) when such information is required to be submitted to the Secretary for any determination under a ~~limited access catch share~~ program; or
 - (H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)), including the Coast Guard's 11 statutory missions under section 888(a) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)).¹²⁸
- (2) Any observer information, ~~and information obtained through a vessel monitoring system or other technology used onboard a fishing vessel for enforcement or data collection purposes~~¹²⁹, shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—
- (A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;
 - (B) when such information is necessary in proceedings to adjudicate observer certifications; ~~or~~
 - ~~(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—~~
 - ~~(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or~~
 - ~~(ii) to validate the accuracy of the observer information collected.~~
 - (C) as authorized by any regulations issued under paragraph (6) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—
 - (i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or
 - (ii) to validate the accuracy of the observer information collected; or

127 HR 4742 page 24 lines 6-18. In the discussion draft all of section (1) was deleted.

128 Second Senate draft page 55 line 14+

129 HR 4742 page 25 lines 1-6

(D) to other persons if the Secretary has obtained written authorization from the person who submitted such information or from the person on whose vessel the information was collected, to release such information for reasons not otherwise provided for in this subsection.¹³⁰

- (3) Any information submitted to the Secretary, a State fisheries management agency, or a Marine Fisheries Commission by any person in compliance with the requirements of this Act, including confidential information, may only be used for purposes of fisheries management and monitoring and enforcement under this Act.
- (4) The Secretary may enter into a memorandum of understanding with the heads of other Federal agencies for the sharing of confidential information to ensure safety of life at sea or for fisheries enforcement purposes, including information obtained through a vessel monitoring system or other electronic enforcement and monitoring systems, if--
 - (A) the Secretary determines there is a compelling need to do so; and
 - (B) the heads of the other Federal agencies agree--
 - (i) to maintain the confidentiality of the information in accordance with the requirements that apply to the Secretary under this section; and
 - (ii) to use the information only for the purposes for which it was shared with the agencies.
- (5) The Secretary may not provide any vessel-specific or aggregate vessel information from a fishery that is collected for monitoring and enforcement purposes to any person for the purposes of coastal and marine spatial planning under Executive Order 13547, unless the Secretary determines that providing such information is important for maintaining or enhancing national security or for ensuring fishermen continued access to fishing grounds.^{131 132}
- (3) (6) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

- (1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes

130 HR 4742 page 26 lines 1-6 ((D) is new addition since discussion draft)

131 HR 4742 pages 24 line 6 to page 27. Changed from discussion draft version. The Council recommends no reduction in requirements for data aggregation, or distribution of bycatch information, which is important to the Council decision-making process. The Council recommends improving access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis. In addition, the Council is concerned that the prohibition on use of data for marine spatial planning could have unintended consequences in the management arena. (3/26). Begich does not make changes to use of information.

132 Underlined text is an amendment made by Rep. Bordallo of Guam during Committee markup on 5/29/14.

if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

- (2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

(d) CONTRACTING AUTHORITY.—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, tribal government, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

- (1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, tribal government, Council, or Marine Fisheries Commission; or
- (2) the Secretary has entered into a cooperative agreement with such State, tribal government, Council, or Marine Fisheries Commission¹³³.

(e) RESOURCE ASSESSMENTS.—

- (1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.
- (2) The Secretary, in consultation with the appropriate Council and the fishing industry--
 - (A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;
 - (B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and
 - (C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.
- (3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

SEC. 403. OBSERVERS - 16 U.S.C. 1881b

(a) GUIDELINES FOR CARRYING OBSERVERS.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

- (1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and
- (2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

¹³³ This section allows Commerce and NOAA to fund fishery disasters without the need for a 25% non-Federal matching requirement. The change allows tribes to be grantees or contractors.

- (b) **TRAINING.**—The Secretary, in cooperation with the appropriate States and the National Sea Grant College Program, shall—
- (1) establish programs to ensure that each observer receives adequate training in collecting and analyzing the information necessary for the conservation and management purposes of the fishery to which such observer is assigned;
 - (2) require that an observer demonstrate competence in fisheries science and statistical analysis at a level sufficient to enable such person to fulfill the responsibilities of the position;
 - (3) ensure that an observer has received adequate training in basic vessel safety; and
 - (4) make use of university and any appropriate private nonprofit organization training facilities and resources, where possible, in carrying out this subsection.
- (c) **OBSERVER STATUS.**—An observer on a vessel and under contract to carry out responsibilities under this Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall be deemed to be a Federal employee for the purpose of compensation under the Federal Employee Compensation Act (5 U.S.C. 8101 et seq.).

SEC. 404 FISHERIES RESEARCH

16 U.S.C. 1881c

- (a) **IN GENERAL.**—The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics and social characteristics of the fisheries.
- (b) **STRATEGIC PLAN.**—Within one year after the date of enactment of the Sustainable Fisheries Act, and at least every 3 years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the 5 years immediately following such publication. The plan shall—
- (1) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in subsection (c);
 - (2) indicate goals and timetables for the program described in paragraph (1);
 - (3) provide a role for commercial fishermen in such research, including involvement in field testing;
 - (4) provide for collection and dissemination, in a timely manner, of complete and accurate information concerning fishing activities, catch, effort, stock assessments, and other research conducted under this section; and
 - (5) be developed in cooperation with the Councils and affected States, and provide for coordination with the Councils, affected States, and other research entities.
- (c) **AREAS OF RESEARCH.**—Areas of research are as follows:
- (1) Research to support fishery conservation and management, including but not limited to, biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish, the identification of essential fish habitat, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other factors affecting the abundance and availability of fish.
 - (2) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species.
 - (3) Research on the fisheries, including the social, cultural, and economic relationships among fishing ves-

sel owners, crew, United States fish processors, associated shoreside labor, seafood markets and fishing communities.

- (4) Information management research, including the development of a fishery information base and an information management system that will permit the full use of information in the support of effective fishery conservation and management.

(d) PUBLIC NOTICE.—In developing the plan required under subsection (a), the Secretary shall consult with relevant Federal, State, and international agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.

(e) USE OF THE ASSET FORFEITURE FUND FOR FISHERY INDEPENDENT DATA COLLECTION.—

(1) IN GENERAL.—

- (A) The Secretary, subject to appropriations, may obligate for data collection purposes in accordance with prioritizations under paragraph (3) a portion of amounts received by the United States as fisheries enforcement penalties.
- (B) Amounts may be obligated under this paragraph only in the fishery management region with respect to which they are collected.

(2) INCLUDED PURPOSES.—The purposes referred to in paragraph (1) include—

- (A) the use of State personnel and resources, including fishery survey vessels owned and maintained by States to survey or assess data-poor fisheries for which fishery management plans are in effect under this Act; and
- (B) cooperative research activities authorized under section 318 to improve or enhance the fishery independent data used in fishery stock assessments.

(3) DATA-POOR FISHERIES PRIORITY LISTS.—Each Council shall—

- (A) identify those fisheries in its region considered to be data-poor fisheries;
- (B) prioritize those fisheries based on the need of each fishery for up-to-date information; and
- (C) provide those priorities to the Secretary.

(4) DEFINITIONS.—In this subsection:

- (A) The term ‘data-poor fishery’ means a fishery—
 - (i) that has not been surveyed in the preceding 5-year period;
 - (ii) for which a fishery stock assessment has not been performed within the preceding 5-year period; or
 - (iii) for which limited information on the status of the fishery is available for management purposes.
- (B) The term ‘fisheries enforcement penalties’ means any fine or penalty imposed, or proceeds of any property seized, for a violation of this Act or of any other marine resource law enforced by the Secretary.

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for each fiscal year to carry out this subsection up to 80 percent of the fisheries enforcement penalties

collected during the preceding fiscal year.¹³⁴

(e) STOCK ASSESSMENT PLAN.—

- (1) IN GENERAL.—The Secretary, in consultation with the Councils, shall develop and publish in the Federal Register, on the same schedule as required for the strategic plan required under section 404(b) of such Act, a plan to conduct stock assessments for all stocks of fish for which a fishery management plan is in effect under this Act.
- (2) CONTENTS.—The plan shall—
 - (A) for each stock of fish for which a stock assessment has previously been conducted—
 - (i) establish a schedule for updating the stock assessment that is reasonable given the biology and characteristics of the stock; and
 - (ii) subject to the availability of appropriations, require completion of a new stock assessment, or an update of the most recent stock assessment—
 - (I) every 5 years, except a Council may delay action for not more than 3 additional 1-year periods; or
 - (II) within such other time period specified and justified by the Secretary in the plan;
 - (B) for each economically important stock of fish for which a stock assessment has not previously been conducted—
 - (i) establish a schedule for conducting an initial stock assessment that is reasonable given the biology and characteristics of the stock; and
 - (ii) subject to the availability of appropriations, require completion of the initial stock assessment not later than 3 years after the date that the plan is published in the Federal Register unless another time period is specified and justified by the Secretary in the plan; and
 - (C) identify data and analysis, especially concerning recreational fishing, that, if available, would reduce uncertainty in and improve the accuracy of future stock assessments, including whether that data and analysis could be provided by nongovernmental sources, including fishermen, fishing communities, universities, and research institutions.
- (3) WAIVER OF STOCK ASSESSMENT REQUIREMENT.—Notwithstanding subparagraphs (A)(ii) and (B)(ii) of paragraph (2), a stock assessment shall not be required for a stock of fish in the plan if the Secretary determines that such a stock assessment is not necessary and justifies the determination in the Federal Register notice required by this subsection.
- (4) DEADLINE.—Notwithstanding paragraph (1) of section 404(e) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by this section, the Secretary of Commerce shall issue the first stock assessment plan under that section by not later than 1 year after the date of enactment of this Act.¹³⁵

(f) IMPROVING DATA COLLECTION AND ANALYSIS—

- (1) IN GENERAL.—The Secretary, in consultation with the science and statistical committee of the Councils established under section 302(g), shall develop and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on facilitating greater incorporation of data, analysis, stock assessments and

134 HR 4742 pages 28-30. Not substantially different from discussion draft. The Council generally supports this provision, provided that it does not redirect funds away from NMFS priorities. (3/26)

135 Second Senate draft page 50 line 19. This draft requires consultation with Councils and specifies that only economically important non-assessed stocks should be assessed

surveys from nongovernmental sources, including fishermen, fishing communities, universities, and research institutions, into fisheries management decisions.¹³⁶

(2) **CONTENT.**—The report under paragraph (1) shall—

- (A) identify types of data and analysis, especially concerning recreational fishing, that can be reliably used for purposes of this Act and the basis for establishing conservation and management measures as required by section 303(a)(1), including setting standards for the collection and use of that data and analysis in stock assessments and surveys and for other purposes;
- (B) provide specific recommendations for collecting data and performing analyses identified as necessary to reduce the uncertainty referred to in section 404(e)(2)(C);
- (C) consider the extent to which it is possible to establish a registry of persons providing such information; and
- (D) consider the extent to which the acceptance and use of data and analysis identified in the report in fishery management decisions is practicable.¹³⁷

[**DEADLINE.**—The Secretary of Commerce shall develop and publish guidelines under the amendment made by subsection (a) not later than 1 year after the date of enactment of this Act.]

SEC. 405. INCIDENTAL HARVEST RESEARCH

16 U.S.C. 1881d

- (a) **COLLECTION OF INFORMATION.**—Within nine months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall, after consultation with the Gulf Council and South Atlantic Council, conclude the collection of information in the program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils. Within the same time period, the Secretary shall make available to the public aggregated summaries of information collected prior to June 30, 1994 under such program.
- (b) **IDENTIFICATION OF STOCK.**—The program concluded pursuant to subsection (a) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.
- (c) **COLLECTION AND ASSESSMENT OF SPECIFIC STOCK INFORMATION.**—For stocks of fish identified pursuant to subsection (b), with priority given to stocks which (based upon the best available scientific information) are considered to be **overfished** **depleted**, the Secretary shall conduct—
 - (1) a program to collect and evaluate information on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;
 - (2) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and
 - (3) a program of information collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

136 Second Senate draft page 54 line 1+. This version adds report to committees (rather than just publishing in FR) and calls for a report on facilitating greater incorporation of data rather than “guidelines.”

137 Second Senate draft - last 2 items replace earlier section on acceptance and use of data and analyses.

- (d) **BYCATCH REDUCTION PROGRAM.**—Not later than 12 months after the enactment of the Sustainable Fisheries Act, the Secretary shall, in cooperation with affected interests, and based upon the best scientific information available, complete a program to—
- (1) develop technological devices and other changes in fishing operations necessary and appropriate to minimize the incidental mortality of bycatch in the course of shrimp trawl activity to the extent practicable, taking into account the level of bycatch mortality in the fishery on November 28, 1990;
 - (2) evaluate the ecological impacts and the benefits and costs of such devices and changes in fishing operations; and
 - (3) assess whether it is practicable to utilize bycatch which is not avoidable.
- (e) **REPORT TO CONGRESS.**—The Secretary shall, within one year of completing the programs required by this section, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.
- (f) **IMPLEMENTATION CRITERIA.**—To the extent practicable, any conservation and management measure implemented under this Act to reduce the incidental mortality of bycatch in the course of shrimp trawl fishing shall be consistent with—
- (1) measures applicable to fishing throughout the range in United States waters of the bycatch species concerned; and
 - (2) the need to avoid any serious adverse environmental impacts on such bycatch species or the ecology of the affected area.

SEC. 406 FISHERIES SYSTEMS RESEARCH

16 U.S.C. 1882

- (a) **ESTABLISHMENT OF PANEL.**—Not later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an advisory panel under this Act to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities.
- (b) **PANEL MEMBERSHIP.**—The advisory panel shall consist of not more than 20 individuals and include—
- (1) individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems; and
 - (2) representatives from the Councils, States, fishing industry, conservation organizations, or others with expertise in the management of marine resources.
- (c) **RECOMMENDATIONS.**—Prior to selecting advisory panel members, the Secretary shall, with respect to panel members described in subsection (b)(1), solicit recommendations from the National Academy of Sciences.
- (d) **REPORT.**—Within 2 years after the date of enactment of this Act, the Secretary shall submit to the Congress a completed report of the panel established under this section, which shall include—
- (1) an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities;
 - (2) proposed actions by the Secretary and by the Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and
 - (3) such other information as may be appropriate.
- (e) **PROCEDURAL MATTER.**—The advisory panel established under this section shall be deemed an advisory panel under section 302(g).

(f) REGIONAL ECOSYSTEM RESEARCH.—

- (1) STUDY.—Within 180 days after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with the Councils, shall undertake and complete a study on the state of the science for advancing the concepts and integration of ecosystem considerations in regional fishery management. The study should build upon the recommendations of the advisory panel and include—
 - (A) recommendations for scientific data, information and technology requirements for understanding ecosystem processes, and methods for integrating such information from a variety of federal, state, and regional sources;
 - (B) recommendations for processes for incorporating broad stake holder participation;
 - (C) recommendations for processes to account for effects of environmental variation on fish stocks and fisheries; and
 - (D) a description of existing and developing council efforts to implement e approaches, including lessons learned by the councils.
- (2) AGENCY TECHNICAL ADVICE AND ASSISTANCE, REGIONAL PILOT PROGRAMS.—The Secretary is authorized to provide necessary technical advice and assistance, including grants, to the Councils for the development and design of regional pilot programs that build upon the recommendations of the advisory panel and, when completed, the study.

Senate version keeps this section except for Section d.

~~SEC. 407 GULF OF MEXICO RED SNAPPER RESEARCH—16 U.S.C. 1883~~

~~(a) INDEPENDENT PEER REVIEW.—~~

- ~~(1) Within 30 days of the date of enactment of the Sustainable Fisheries Act, the Secretary shall initiate an independent peer review to evaluate—
 - ~~(A) the accuracy and adequacy of fishery statistics used by the Secretary for the red snapper fishery in the Gulf of Mexico to account for all commercial, recreational, and charter fishing harvests and fishing effort on the stock;~~
 - ~~(B) the appropriateness of the scientific methods, information, and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock and as the basis for the fishery management plan for the Gulf of Mexico red snapper fishery;~~
 - ~~(C) the appropriateness and adequacy of the management measures in the fishery management plan for red snapper in the Gulf of Mexico for conserving and managing the red snapper fishery under this Act; and~~
 - ~~(D) the costs and benefits of all reasonable alternatives to a limited access privilege program for the red snapper fishery in the Gulf of Mexico.~~~~
- ~~(2) The Secretary shall ensure that commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—
 - ~~(A) participate in the peer review under this subsection; and~~
 - ~~(B) provide information to the Secretary concerning the review of fishery statistics under this subsection without being subject to penalty under this Act or other applicable law for any past violation of a requirement to report such information to the Secretary.~~~~

~~(3) The Secretary shall submit a detailed written report on the findings of the peer review conducted under this subsection to the Gulf Council no later than one year after the date of enactment of the Sustainable Fisheries Act.~~

~~(b) PROHIBITION.—In addition to the restrictions under section 303(d)(1)(A), the Gulf Council may not, prior to October 1, 2002, undertake or continue the preparation of any fishery management plan, plan amendment or regulation under this Act for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class.~~

~~(c) REFERENDUM.—~~

- ~~(1) On or after October 1, 2002, the Gulf Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates a limited access privilege program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class, only if the preparation of such plan, amendment, or regulation is approved in a referendum conducted under paragraph (2) and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum conducted under paragraph (2).~~
- ~~(2) The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each~~

such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996. Prior to each referendum, the Secretary, in consultation with the Council, shall—

- (A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and
- (B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.

(d) CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—

- (1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and
- (2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.¹³⁸

~~SEC. 408. 409. DEEP SEA CORAL RESEARCH AND TECHNOLOGY PROGRAM - 16~~ **~~U.S.C. 1884~~**

(a) IN GENERAL.—The Secretary, in consultation with appropriate regional fishery management councils and in coordination with other federal agencies and educational institutions, shall, subject to the availability of appropriations, establish a program—

- (1) to identify existing research on, and known locations of, deep sea corals and submit such information to the appropriate Councils;
- (2) to locate and map locations of deep sea corals and submit such information to the Councils;
- (3) to monitor activity in locations where deep sea corals are known or likely to occur, based on best scientific information available, including through underwater or remote sensing technologies and submit such information to the appropriate Councils;
- (4) to conduct research, including cooperative research with fishing industry participants, on deep sea corals and related species, and on survey methods;
- (5) to develop technologies or methods designed to assist fishing industry participants in reducing interactions between fishing gear and deep sea corals; and
- (6) to prioritize program activities in areas where deep sea corals are known to occur, and in areas where scientific modeling or other methods predict deep sea corals are likely to be present.

(b) REPORTING.—Beginning 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with the Councils, shall submit biennial reports to Congress and the public on steps taken by the Secretary to identify, monitor, and protect deep sea coral areas, including summaries of the results of mapping, research, and data collection performed under the program.¹³⁹

138 HR 4742 page 32 lines 22-26. Does not affect PFMC

139 Second Senate version page 64. Not sure if this section is meant to be struck.

SEC. 409. STOCK ASSESSMENTS USED FOR FISHERIES MANAGED UNDER GULF OF MEXICO COUNCIL'S REEF FISH MANAGEMENT PLAN.

- (a) **IN GENERAL.**—The Gulf States Marine Fisheries Commission shall conduct all fishery stock assessments used for management purposes by the Gulf of Mexico Fishery Management Council for the fisheries managed under the Council's Reef Fish Management Plan.
- (b) **USE OF OTHER INFORMATION AND ASSETS.**—
- (1) **IN GENERAL.**—Such fishery assessments shall—
 - (A) incorporate fisheries survey information collected by university researchers; and
 - (B) to the extent practicable, use State, university, and private assets to conduct fisheries surveys
 - (2) **SURVEYS AT ARTIFICIAL REEFS.**—Any such fishery stock assessment conducted after the date of the enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act shall incorporate fishery surveys conducted, and other relevant fisheries information collected, on and around natural and artificial reefs.
- (c) **CONSTITUENT AND STAKEHOLDER PARTICIPATION.**—Each such fishery assessment shall—
- (1) emphasize constituent and stakeholder participation in the development of the assessment;
 - (2) contain all of the raw data used in the assessment and a description of the methods used to collect that data; and
 - (3) employ an assessment process that is transparent and includes—
 - (A) includes a rigorous and independent scientific review of the completed fishery stock assessment; and
 - (B) a panel of independent experts to review the data and assessment and make recommendations on the most appropriate values of critical population and management quantities.¹⁴⁰

¹⁴⁰ Amendment made by Rep. Byrne of Alabama at hearing on 5/29/14.

Appendix

INVESTMENT IN UNITED STATES SEAFOOD PROCESSING FACILITIES.—

The Secretary of Commerce shall work with the Small Business Administration and other Federal agencies to develop financial and other mechanisms to encourage United States investment in seafood processing facilities in the United States for fisheries that lack capacity needed to process fish harvested by United States vessels in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

COMMUNITY-BASED RESTORATION PROGRAM FOR FISHERY AND COASTAL HABITATS.

- (a) **IN GENERAL.**—The Secretary of Commerce shall establish a community-based fishery and coastal habitat restoration program to implement and support the restoration of fishery and coastal habitats.
- (b) **AUTHORIZED ACTIVITIES.**—In carrying out the program, the Secretary may—
 - (1) provide funding and technical expertise to fishery and coastal communities to assist them in restoring fishery and coastal habitat;
 - (2) advance the science and monitoring of coastal habitat restoration;
 - (3) transfer restoration technologies to the private sector, the public, and other governmental agencies;
 - (4) develop public-private partnerships to accomplish sound coastal restoration projects;
 - (5) promote significant community support and volunteer participation in fishery and coastal habitat restoration;
 - (6) promote stewardship of fishery and coastal habitats; and
 - (7) leverage resources through national, regional, and local public-private partnerships.

FISHERIES CONSERVATION AND MANAGEMENT FUND.

- (a) **IN GENERAL.**—The Secretary shall establish and maintain a fund, to be known as the “Fisheries Conservation and Management Fund”, which shall consist of amounts retained and deposited into the Fund under subsection (c).
- (b) **PURPOSES.**—Subject to the allocation of funds described in subsection (d), amounts in the Fund shall be available to the Secretary of Commerce, without appropriation or fiscal year limitation, to disburse as described in subsection (e) for—
 - (1) efforts to improve fishery harvest data collection including—
 - (A) expanding the use of electronic catch reporting programs and technology; and
 - (B) improvement of monitoring and observer coverage through the expanded use of electronic monitoring devices and satellite tracking systems such as VMS on small vessels;
 - (2) cooperative fishery research and analysis, in collaboration with fishery participants, academic institutions, community residents, and other interested parties;
 - (3) development of methods or new technologies to improve the quality, health safety, and value of fish landed;
 - (4) conducting analysis of fish and seafood for health benefits and risks, including levels of contaminants and, where feasible, the source of such contaminants;
 - (5) marketing of sustainable United States fishery products, including consumer education regarding the

health or other benefits of wild fishery products harvested by vessels of the United States;

- (6) improving data collection under the Marine Recreational Fishery Statistics Survey in accordance with section 401(g)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881(g)(3)); and
- (7) providing financial assistance to fishermen to offset the costs of modifying fishing practices and gear to meet the requirements of this Act, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and other Federal laws in pari materia.

(c) DEPOSITS TO THE FUND.—

- (1) **QUOTA SET-ASIDES.**—Any amount generated through quota set-asides established by a Council under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and designated by the Council for inclusion in the Fishery Conservation and Management Fund, may be deposited in the Fund.
- (2) **OTHER FUNDS.**—In addition to amounts received pursuant to paragraph (1) of this subsection, the Fishery Conservation and Management Fund may also receive funds from—
 - (A) appropriations for the purposes of this section; and
 - (B) States or other public sources or private or nonprofit organizations for purposes of this section.

(d) REGIONAL ALLOCATION.—The Secretary shall, every 2 years, apportion monies from the Fund among the eight Council regions according to recommendations of the Councils, based on regional priorities identified through the Council process, except that no region shall receive less than 5 percent of the Fund in each allocation period.

(e) LIMITATION ON THE USE OF THE FUND.—No amount made available from the Fund may be used to defray the costs of carrying out requirements of this Act or the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) other than those uses identified in this section.

UNITED STATES CATCH HISTORY.

In establishing catch allocations under international fisheries agreements, the Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating, and the Secretary of State, shall ensure that all catch history associated with a vessel of the United States remains with the United States and is not transferred or credited to any other nation or vessel of such nation, including when a vessel of the United States is sold or transferred to a citizen of another nation or to an entity controlled by citizens of another nation.

SECRETARIAL REPRESENTATIVE FOR INTERNATIONAL FISHERIES.¹⁴¹

- (a) **IN GENERAL.**—The Secretary, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, shall designate a Senate-confirmed, senior official within the National Oceanic and Atmospheric Administration to perform the duties of the Secretary with respect to international agreements involving fisheries and other living marine resources, including policy development and representation as a U.S. Commissioner, under any such international agreements.
- (b) **ADVICE.**—The designated official shall, in consultation with the Deputy Assistant Secretary for International Affairs and the Administrator of the National Marine Fisheries Service, advise the Secretary, Undersecretary of Commerce for Oceans and Atmosphere, and other senior officials of the Department of Commerce and the National Oceanic and Atmospheric Administration on development of policy on international fisheries conservation and management matters.

¹⁴¹ Begich moves this up into the MSA. This clarifies that the Secretarial Representative is a senior official appointed by the President and confirmed by the Senate; not to be delegated to a lower level officer or employee.

- (c) **CONSULTATION.**—The designated official shall consult with the Senate Committee on Commerce, Science, and Transportation and the House Committee on Resources on matters pertaining to any regional or international negotiation concerning living marine resources, including shellfish.
- (d) **DELEGATION.**—The designated official may delegate and authorize successive re-delegation of such functions, powers, and duties to such officers and employees of the National Oceanic and Atmospheric Administration as deemed necessary to discharge the responsibility of the Office.
- (e) **EFFECTIVE DATE.**—This section shall take effect on January 1, 2009.

REPORT (uncodified)¹⁴².—

Within 15 months after the date of enactment of this Act, the National Marine Fisheries Service and the United States Coast Guard shall transmit a joint report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources containing—

- (1) a cost-to-benefit analysis of the feasibility, value, and cost of using vessel monitoring systems, satellite-based maritime distress and safety systems, or similar systems for fishery management, conservation, enforcement, and safety purposes with the Federal government bearing the capital costs of any such system;
- (2) an examination of the cumulative impact of existing requirements for commercial vessels;
- (3) an examination of whether satellite-based maritime distress and safety systems, or similar requirements would overlap existing requirements or render them redundant;
- (4) an examination of how data integration from such systems could be addressed;
- (5) an examination of how to maximize the data-sharing opportunities between relevant State and Federal agencies and provide specific information on how to develop these opportunities, including the provision of direct access to satellite-based maritime distress and safety system or similar system data to State enforcement officers, while considering the need to maintain or provide an appropriate level of individual vessel confidentiality where practicable; and
- (6) an assessment of how the satellite-based maritime distress and safety system or similar systems could be developed, purchased, and distributed to regulated vessels.

SALMON PLAN AND STUDY.—

- (1) **RECOVERY PLAN.**—Not later than 6 months after the date of enactment of this Act, the Secretary of Commerce shall complete a recovery plan for Klamath River Coho salmon and make it available to the public.
- (2) **ANNUAL REPORT.**—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Secretary of Commerce shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on—
 - (A) the actions taken under the recovery plan and other law relating to recovery of Klamath River Coho salmon, and how those actions are specifically contributing to its recovery;
 - (B) the progress made on the restoration of salmon spawning habitat, including water conditions as they relate to salmon health and recovery, with emphasis on the Klamath River and its tributaries below Iron Gate Dam;

142 *Re “uncodified”: Only “general and permanent” laws are codified; the Code does not usually include provisions that apply only to a limited number of people (a private law) or for a limited time, such as most appropriation acts or budget laws, which apply only for a single fiscal year. If these limited provisions are significant, however, they may be printed as “notes” underneath related sections of the Code.*

- (C) the status of other Klamath River anadromous fish populations, particularly Chinook salmon; and
- (D) the actions taken by the Secretary to address the calendar year 2003 National Research Council recommendations regarding monitoring and research on Klamath River Basin salmon stocks.

OREGON AND CALIFORNIA SALMON FISHERY (uncodified).—

Federally recognized Indian tribes and small businesses, including fishermen, fish processors, and related businesses serving the fishing industry, adversely affected by Federal closures and fishing restrictions in the Oregon and California 2006 fall Chinook salmon fishery are eligible to receive direct assistance under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)) and section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)). The Secretary may use no more than 4 percent of any monetary assistance to pay for administrative costs.

FISHERY FINANCE PROGRAM HURRICANE ASSISTANCE (uncodified).

- (a) **LOAN ASSISTANCE.**—Subject to availability of appropriations, the Secretary of Commerce shall provide assistance to eligible holders of fishery finance program loans and allocate such assistance among eligible holders based upon their outstanding principal balances as of December 2, 2005, for any of the following purposes:
 - (1) To defer principal payments on the debt for 1 year and re-amortize the debt over the remaining term of the loan.
 - (2) To allow for an extension of the term of the loan for up to 1 year beyond the remaining term of the loan, or September 30, 2013, whichever is later.
 - (3) To pay the interest costs for such loans over fiscal years 2007 through 2013, not to exceed amounts authorized under subsection (d).
 - (4) To provide opportunities for loan forgiveness, as specified in subsection (c).
- (b) **LOAN FORGIVENESS.**—Upon application made by an eligible holder of a fishery finance program loan, made at such time, in such manner, and containing such information as the Secretary may require, the Secretary, on a calendar year basis beginning in 2005, may, with respect to uninsured losses—
 - (1) offset against the outstanding balance on the loan an amount equal to the sum of the amounts expended by the holder during the calendar year to repair or replace covered vessels or facilities, or to invest in new fisheries infrastructure within or for use within the declared fisheries disaster area; or
 - (2) cancel the amount of debt equal to 100 hundred percent of actual expenditures on eligible repairs, reinvestment, expansion, or new investment in fisheries infrastructure in the disaster region, or repairs to, or replacement of, eligible fishing vessels.
- (c) **DEFINITIONS.**—In this section:
 - (1) **DECLARED FISHERIES DISASTER AREA.**—The term “declared fisheries disaster area” means fisheries located in the major disaster area designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) as a result of Hurricane Katrina or Hurricane Rita.
 - (2) **ELIGIBLE HOLDER.**—The term “eligible holder” means the holder of a fishery finance program loan if—
 - (A) that loan is[*sic*] used to guarantee or finance any fishing vessel or fish processing facility homeported or located within the declared fisheries disaster area; and
 - (B) the holder makes expenditures to repair or replace such covered vessels or facilities, or invests in new fisheries infrastructure within or for use within the declared fisheries disaster area, to restore

such facilities following the disaster.

- (3) **FISHERY FINANCE PROGRAM LOAN.**—The term “fishery finance program loan” means a loan made or guaranteed under the fishery finance program under chapter 537 of title 46, United States Code.

- (d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Commerce for the purposes of this section not more than \$15,000,000 for each eligible holder for the period beginning with fiscal year 2007 through fiscal year 2013.

CLARIFICATION OF FLEXIBILITY (uncodified).

- (a) **IN GENERAL.**—The Secretary of Commerce has the discretion under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) to extend the time for rebuilding the summer flounder fishery to not later than January 1, 2013, only if—
 - (1) the Secretary has determined that—
 - (A) overfishing is not occurring in the fishery and that a mechanism is in place to ensure overfishing does not occur in the fishery; and
 - (B) stock biomass levels are increasing;
 - (2) the biomass rebuilding target previously applicable to such stock will be met or exceeded within the new time for rebuilding;
 - (3) the extension period is based on the status and biology of the stock and the rate of rebuilding;
 - (4) monitoring will ensure rebuilding continues;
 - (5) the extension meets the requirements of section 301(a)(1) of that Act (16 U.S.C. 1851(a)(1)); and
 - (6) the best scientific information available shows that the extension will allow continued rebuilding.
- (b) **AUTHORITY.**—Nothing in this section shall be construed to amend the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) or to limit or otherwise alter the authority of the Secretary under that Act concerning other species.

CONVERSION TO CATCHER/PROCESSOR SHARES (uncodified).

- (a) **IN GENERAL.**—
 - (1) **AMENDMENT OF PLAN.**—Not later than 90 days after the date of enactment of this Act, the Secretary of Commerce shall amend the fishery management plan for the Bering Sea/Aleutian Islands King and Tanner Crabs for the Northern Region (as that term is used in the plan) to authorize—
 - (A) an eligible entity holding processor quota shares to elect on an annual basis to work together with other entities holding processor quota shares and affiliated with such eligible entity through common ownership to combine any catcher vessel quota shares for the Northern Region with their processor quota shares and to exchange them for newly created catcher/processor owner quota shares for the Northern Region; and
 - (B) an eligible entity holding catcher vessel quota shares to elect on an annual basis to work together with other entities holding catcher vessel quota shares and affiliated with such eligible entity through common ownership to combine any processor quota shares for the Northern Region with their catcher vessel quota shares and to exchange them for newly created catcher/processor owner quota shares for the Northern Region.
 - (2) **ELIGIBILITY AND LIMITATIONS.**—
 - (A) The authority provided in paragraph (1)(A) shall—

(i)

(I) apply only to an entity which was initially awarded both catcher/processor owner quota shares, and processor quota shares under the plan (in combination with the processor quota shares of its commonly owned affiliates) of less than 7 percent of the Bering Sea/Aleutian Island processor quota shares; or

(II) apply only to an entity which was initially awarded both catcher/processor owner quota shares under the plan and processor quota shares under section 417(a) of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; 120 Stat. 546);

(ii) be limited to processor quota shares initially awarded to such entities and their commonly owned affiliates under the plan or section 417(a) of that Act; and

(iii) shall not exceed 1 million pounds per entity during any calendar year.

(B) The authority provided in paragraph (1)(B) shall—

(i) apply only to an entity which was initially awarded both catcher/processor owner quota shares, and processor quota shares under the plan (in combination with the processor quota shares of its commonly owned affiliates) of more than 7 percent of the Bering Sea/Aleutian Island processor quota shares;

(ii) be limited to catcher vessel quota shares initially awarded to such entity and its commonly owned affiliates; and

(iii) shall not exceed 1 million pounds per entity during any calendar year.

(3) EXCHANGE RATE.—The entities referred to in paragraph (1) shall receive under the amendment 1 unit of newly created catcher/processor owner quota shares in exchange for 1 unit of catcher vessel owner quota shares and 0.9 units of processor quota shares.

(4) AREA OF VALIDITY.—Each unit of newly created catcher/processor owner quota shares under this subsection shall only be valid for the Northern Region.

(b) FEES.—

(1) LOCAL FEES.—The holder of the newly created catcher/processor owner quota shares under subsection (a) shall pay a fee of 5 percent of the ex-vessel value of the crab harvested pursuant to those shares to any local governmental entities in the Northern Region if the processor quota shares used to produce those newly created catcher/processor owner quota shares were originally derived from the processing activities that occurred in a community under the jurisdiction of those local governmental entities.

(2) STATE FEE.—The State of Alaska may collect from the holder of the newly created catcher/processor owner quota shares under subsection (a) a fee of 1 percent of the ex-vessel value of the crab harvested pursuant to those shares.

(c) OFF-LOADING REQUIREMENT.—Crab harvested pursuant to catcher/processor owner quota shares created under this subsection shall be off-loaded in those communities receiving the local governmental entities fee revenue set forth in subsection (b)(1).

(d) PERIODIC COUNCIL REVIEW.—As part of its periodic review of the plan, the North Pacific Fishery Management Council may review the effect, if any, of this subsection upon communities in the Northern Region. If the Council determines that this section adversely affects the communities, the Council may recommend to the Secretary of Commerce, and the Secretary may approve, such changes to the plan as are necessary to mitigate those adverse effects.

(e) USE CAPS.—

(1) IN GENERAL.—Notwithstanding sections 680.42(b)(ii)(2) and 680.7(a)(ii)(7) of title 50, Code of Fed-

eral Regulations, custom processing arrangements shall not count against any use cap for the processing of opilio crab in the Northern Region so long as such crab is processed in the Northern Region by a shore-based crab processor.

- (2) **SHORE-BASED CRAB PROCESSOR DEFINED.**—In this paragraph, the term “shore-based crab processor” means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, that is located on shore or moored within the harbor.

IMPACT OF TURTLE EXCLUDER DEVICES ON SHRIMPING (uncodified).

- (a) **IN GENERAL.**—The Undersecretary of Commerce for Oceans and Atmosphere shall execute an agreement with the National Academy of Sciences to conduct, jointly, a multi-year, comprehensive in- water study designed—
 - (1) to measure accurately the efforts and effects of shrimp fishery efforts to utilize turtle excluder devices;
 - (2) to analyze the impact of those efforts on sea turtle mortality, including interaction between turtles and shrimp trawlers in the inshore, nearshore, and offshore waters of the Gulf of Mexico and similar geographical locations in the waters of the Southeastern United States; and
 - (3) to evaluate innovative technologies to increase shrimp retention in turtle excluder devices while ensuring the protection of endangered and threatened sea turtles.
- (b) **OBSERVERS.**—In conducting the study, the Undersecretary shall ensure that observers are placed onboard commercial shrimp fishing vessels where appropriate or necessary.
- (c) **INTERIM REPORTS.**—During the course of the study and until a final report is submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources, the National Academy of Sciences shall transmit interim reports to the Committees biannually containing a summary of preliminary findings and conclusions from the study.

HURRICANE EFFECTS ON COMMERCIAL AND RECREATION FISHERY HABITATS (uncodified).

- (a) **FISHERIES REPORT.**—Within 180 days after the date of enactment of this Act, the Secretary of Commerce shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on the impact of Hurricane Katrina, Hurricane Rita, and Hurricane Wilma on—
 - (1) commercial and recreational fisheries in the States of Alabama, Louisiana, Florida, Mississippi, and Texas;
 - (2) shrimp fishing vessels in those States; and
 - (3) the oyster industry in those States.
- (b) **HABITAT REPORT.**—Within 180 days after the date of enactment of this Act, the Secretary of Commerce shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on the impact of Hurricane Katrina, Hurricane Rita, and Hurricane Wilma on habitat, including the habitat of shrimp and oysters in those States.
- (c) **HABITAT RESTORATION.**—The Secretary shall carry out activities to restore fishery habitats, including the shrimp and oyster habitats in Louisiana and Mississippi.

NEW ENGLAND GROUND FISH FISHERY (uncodified).

- (a) **REVIEW.**—The Secretary of Commerce shall conduct a unique, thorough examination of the potential im-

pact on all affected and interested parties of Framework 42 to the Northeast Multispecies Fishery Management Plan.

(b) REPORT.—The Secretary shall report the Secretary’s findings under subsection (a) within 30 days after the date of enactment of this Act. The Secretary shall include in the report a detailed discussion of each of the following:

- (1) The economic and social implications for affected parties within the fishery, including potential losses to infrastructure, expected from the imposition of Framework 42.
- (2) The estimated average annual income generated by fishermen in New England, separated by State and vessel size, and the estimated annual income expected after the imposition of Framework 42.
- (3) Whether the differential days-at-sea counting imposed by Framework 42 would result in a reduction in the number of small vessels actively participating in the New England Fishery.
- (4) The percentage and approximate number of vessels in the New England fishery, separated by State and vessel type, that are incapable of fishing outside the areas designated in Framework 42 for differential days-at-sea counting.
- (5) The percentage of the annual groundfish catch in the New England fishery that is harvested by small vessels.
- (6) The current monetary value of groundfish permits in the New England fishery and the actual impact that the potential imposition of Framework 42 is having on such value.
- (7) Whether permitting days-at-sea to be leased is altering the market value for groundfish permits or days-at-sea in New England.
- (8) Whether there is a substantially high probability that the biomass targets used as a basis for Amendment 13 remain achievable.
- (9) An identification of the year in which the biomass targets used as a basis for Amendment 13 were last evident or achieved, and the evidence used to determine such date.
- (10) Any separate or non-fishing factors, including environmental factors, that may be leading to a slower rebuilding of groundfish than previously anticipated.
- (11) The potential harm to the non-fishing environment and ecosystem from the reduction in fishing resulting from Framework 42 and the potential redevelopment of the coastal land for other purposes, including potential for increases in non-point source of pollution and other impacts.

REPORT ON COUNCIL MANAGEMENT COORDINATION (uncodified).

The Mid-Atlantic Fishery Council, in consultation with the New England Fishery Council, shall submit a report to the Senate Committee on Commerce, Science, and Transportation within 9 months after the date of enactment of this Act—

- (1) describing the role of council liaisons between the Mid-Atlantic and New England Councils, including an explanation of council policies regarding the liaison’s role in Council decision-making since 1996;
- (2) describing how management actions are taken regarding the operational aspects of current joint fishery management plans, and how such joint plans may undergo changes through amendment or framework processes;
- (3) evaluating the role of the New England Fishery Council and the Mid-Atlantic Fishery Council liaisons in the development and approval of management plans for fisheries in which the liaisons or members of the non-controlling Council have a demonstrated interest and significant current and historical landings of species managed by either Council;
- (4) evaluating the effectiveness of the various approaches developed by the Councils to improve represen-

tation for affected members of the non-controlling Council in Council decision-making, such as use of liaisons, joint management plans, and other policies, taking into account both the procedural and conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act; and

- (5) analyzing characteristics of North Carolina and Florida that supported their inclusion as voting members of more than one Council and the extent to which those characteristics support Rhode Island's inclusion on a second Council (the Mid-Atlantic Council).

STUDY OF SHORTAGE IN THE NUMBER OF INDIVIDUALS WITH POST- BACCALAUREATE DEGREES IN SUBJECTS RELATED TO FISHERY SCIENCE (uncodified).

(a) IN GENERAL.—The Secretary of Commerce and the Secretary of Education shall collaborate to conduct a study of—

- (1) whether there is a shortage in the number of individuals with post-baccalaureate degrees in subjects related to fishery science, including fishery oceanography, fishery ecology, and fishery anthropology, who have the ability to conduct high quality scientific research in fishery stock assessment, fishery population dynamics, and related fields, for government, nonprofit, and private sector entities;
- (2) what Federal programs are available to help facilitate the education of students hoping to pursue these degrees; and
- (3) what institutions of higher education, the private sector, and the Congress could do to try to increase the number of individuals with such post-baccalaureate degrees.

(b) REPORT.—Not later than 8 months after the date of enactment of this Act, the Secretaries of Commerce and Education shall transmit a report to each committee of Congress with jurisdiction over the programs referred to in subsection (a), detailing the findings and recommendations of the study under this section.

PACIFIC FISHERY MANAGEMENT COUNCIL (uncodified).—

- (1) **IN GENERAL.**—The Pacific Fishery Management Council shall develop a proposal for the appropriate rationalization program for the Pacific trawl groundfish and whiting fisheries, including the shore-based sector of the Pacific whiting fishery under its jurisdiction. The proposal may include only the Pacific whiting fishery, including the shore-based sector, if the Pacific Council determines that a rationalization plan for the fishery as a whole cannot be achieved before the report is required to be submitted under paragraph (3).
- (2) **REQUIRED ANALYSIS.**—In developing the proposal to rationalize the fishery, the Pacific Council shall fully analyze alternative program designs, including the allocation of limited access privileges to harvest fish to fishermen and processors working together in regional fishery associations or some other cooperative manner to harvest and process the fish, as well as the effects of these program designs and allocations on competition and conservation. The analysis shall include an assessment of the impact of the proposal on conservation and the economics of communities, fishermen, and processors participating in the trawl groundfish fisheries, including the shore-based sector of the Pacific whiting fishery.
- (3) **REPORT.**—The Pacific Council shall submit the proposal and related analysis to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources no later than 24 months after the date of enactment of this Act.

STUDY OF THE ACIDIFICATION OF THE OCEANS AND EFFECT ON FISHERIES (uncodified).

The Secretary of Commerce shall request the National Research Council to conduct a study of the acidification of the oceans and how this process affects the United States.

OTHER GENERAL CHANGES

HASTINGS CHANGES

SEC. 8. DATA COLLECTION AND DATA CONFIDENTIALITY.

a) Electronic Monitoring.—

- (1) Issuance of regulations.—
 - (A) REQUIREMENT.—The Secretary shall issue regulations governing the use of electronic monitoring for the purposes of monitoring fisheries that are subject to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)
 - (B) CONTENT.—The regulations shall—
 - (i) distinguish between monitoring for data collection and research purposes and monitoring for compliance and enforcement purposes; and
 - (ii) include minimum criteria, objectives, or performance standards for electronic monitoring.
 - (C) PROCESS.—In issuing the regulations the Secretary shall—
 - (i) consult with the Councils and fishery management commissions;
 - (ii) publish the proposed regulations; and
 - (iii) provide an opportunity for the submission by the public of comments on the proposed regulations.
- (2) Implementation of monitoring.—
 - (A) IN GENERAL.—Subject to subparagraph (B), and after the issuance of the final regulations, a Council, or the Secretary for fisheries referred to in section 302(a)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(3)), may, in accordance with the regulations, on a fishery-by-fishery basis and consistent with the existing objectives and management goals of a fishery management plan and the Act for a fishery issued by the Council or the Secretary, respectively, amend such plan—
 - (i) to incorporate electronic monitoring as an alternative tool for data collection and monitoring purposes **or for compliance and enforcement purposes** (or both); and
 - (ii) to allow for the replacement of a percentage of on-board observers with electronic monitoring.
 - (B) COMPARABILITY.—Subparagraph (A) shall apply to a fishery only if the Council or Secretary, respectively, determines that such monitoring will yield comparable data collection and compliance results.
- (3) Pilot projects.—

Before the issuance of final regulations, a Council, or the Secretary for fisheries referred to in section 302(a)(3), may, subject to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, on a fishery-by-fishery basis, and consistent with the existing objectives and management goals of a fishery management plan for a fishery issued by the Council or the Secretary, respectively, conduct a pilot project for the use of electronic monitoring for the fishery.

- (4) **DEADLINE.**—The Secretary shall issue final regulations under this subsection by not later than 12 months after the date of enactment of this Act.¹⁴³

- (b) **VIDEO AND ACOUSTIC SURVEY TECHNOLOGIES.**—The Secretary shall work with the Regional Fishery Management Councils and nongovernmental entities to develop and implement the use pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) of video survey technologies and expanded use of acoustic survey technologies.¹⁴⁴

REPORTING AND DATA COLLECTION PROGRAM.¹⁴⁵

The Secretary of Commerce shall—

- (1) in conjunction with the States, the Gulf of Mexico Fishery Management Council, and the recreational fishing sectors, develop and implement a real-time reporting and data collection program for the Gulf of Mexico red snapper fishery using available technology; and
- (2) make implementation of this subsection a priority for funds received by the Secretary under section 2 of the Act of August 11, 1939 (commonly known as the “Saltonstall-Kennedy Act”) (15 U.S.C. 713c–3).

FISHERIES COOPERATIVE RESEARCH PROGRAM.¹⁴⁶

The Secretary of Commerce—

- (1) shall, in conjunction with the States, the Gulf States Marine Fisheries Commission and the Atlantic States Marine Fisheries Commission, the Gulf of Mexico and South Atlantic Fishery Management Councils, and the commercial, charter, and recreational fishing sectors, develop and implement a cooperative research program authorized under section 318 for the fisheries of the Gulf of Mexico and South Atlantic regions, giving priority to those fisheries that are considered data poor; and
- (2) may, subject to the availability of appropriations, use funds received by the Secretary under section 2 of the Act of August 11, 1939 (commonly known as the “Saltonstall-Kennedy Act”) (15 U.S.C. 713c–3) to implement this subsection.

STOCK SURVEYS AND STOCK ASSESSMENTS.¹⁴⁷

The Secretary of Commerce, acting through the National Marine Fisheries Service Regional Administrator of the Southeast Regional Office, shall for purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)—

- (1) develop a schedule of stock surveys and stock assessments for the Gulf of Mexico Region and the South Atlantic Region for the 5-year period beginning on the date of the enactment of this Act and for every 5-year period thereafter;
- (2) direct the Southeast Science Center Director to implement such schedule; and
- (3) in such development and implementation—
 - (A) give priority to those stocks that are commercially or recreationally important; and
 - (B) ensure that each such important stock is surveyed at least every 5 years.

143 HR 4742 change from discussion draft. Page 21 line 8 - page 23 line 23.

144 The Council supports this provision, while noting the need for additional funding to make it effective. (3/14, 3/26)

145 HR 4742 page 33. Does not affect PFMC.

146 HR 4742 page 33. Does not affect PFMC.

147 HR 4742 page 34. Does not affect PFMC.

USE OF FISHERIES INFORMATION IN STOCK ASSESSMENTS.¹⁴⁸

The Southeast Science Center Director shall ensure that fisheries information made available through research funded under Public Law 112–141 is incorporated as soon as possible into any fisheries stock assessments conducted after the date of the enactment of this Act.

LIMITATION ON HARVEST IN NORTH PACIFIC DIRECTED POLLOCK FISHERY.¹⁴⁹

Section 210(e)(1) of the American Fisheries Act (title II of division C of Public Law 105-277; 16 U.S.C. 1851 note) is amended to read as follows:

(1) Harvesting.--

- (A) Limitation.--No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a percentage of the pollock available to be harvested in the directed pollock fishery that exceeds the percentage established for purposes of this paragraph by the North Pacific Council.
- (B) Maximum percentage.--The percentage established by the North Pacific Council shall not exceed 24 percent of the pollock available to be harvested in the directed Pollock fishery.

REVITALIZING THE ECONOMY OF FISHERIES IN THE PACIFIC ACT.¹⁵⁰

FINDINGS; PURPOSE.

(a) Findings.--Congress makes the following findings:

- (1) In 2000, the Secretary of Commerce declared the West Coast groundfish fishery a Federal fisheries economic disaster due to low stock abundance, an overcapitalized fleet, and historically overfished stocks.
- (2) Section 212 of the Department of Commerce and Related Agencies Appropriations Act, 2003 (title II of division B of Public Law 108-7; 117 Stat. 80) was enacted to establish a Pacific Coast groundfish fishing capacity reduction program, also known as a buyback program, to remove excess fishing capacity.
- (3) In 2003, Congress authorized the \$35,700,000 buyback loan, creating the Pacific Coast groundfish fishing capacity reduction program through the National Marine Fisheries Service fisheries finance program with a term of 30 years. The interest rate of the buyback loan was fixed at 6.97 percent and is paid back based on an ex-vessel fee landing rate not to exceed 5 percent for the loan.
- (4) The groundfish fishing capacity reduction program resulted in the removal of limited entry trawl Federal fishing permits from the fishery, representing approximately 46 percent of total landings at the time.
- (5) Because of an absence of a repayment mechanism, \$4,243,730 in interest accrued before fee collection procedures were established in 2005, over 18 months after the groundfish fishing capacity reduction program was initiated.
- (6) In 2011, the West Coast groundfish fishery transitioned to an individual fishing quota fishery, which is a type of catch share program.
- (7) By 2015, West Coast groundfish fishermen's expenses are expected to include fees of approximately \$450 per day for observers, a 3-percent cost recovery fee as authorized by the Magnuson-Stevens Fish-

¹⁴⁸ HR 4742 pages 34-35 Does not affect PFMCA.

¹⁴⁹ HR 4742 page 37. New since discussion draft.

¹⁵⁰ HR 4742 page 38+. New since discussion draft.

ery Conservation and Management Act (16 U.S.C. 1801) for catch share programs, and a 5-percent ex-vessel landings rate for the loan repayment, which could reach 18 percent of their total gross revenue.

- (8) In 2012, the West Coast groundfish limited entry trawl fishery generated \$63,000,000, an increase from an average of \$45,000,000 during the years 2006 to 2011. This revenue is expected to continue to increase post-rationalization.
- (b) Purpose.--The purpose of this title is to refinance the Pacific Coast groundfish fishery fishing capacity reduction program to protect and conserve the West Coast groundfish fishery and the coastal economies in California, Oregon, and Washington that rely on it.

REFINANCING OF PACIFIC COAST GROUNDFISH FISHING CAPACITY REDUCTION LOAN.

(a) **In General.**--The Secretary of Commerce, upon receipt of such assurances as the Secretary considers appropriate to protect the interests of the United States, shall issue a loan to refinance the existing debt obligation funding the fishing capacity reduction program for the West Coast groundfish fishery implemented under section 212 of the Department of Commerce and Related Agencies Appropriations Act, 2003 (title II of division B of Public Law 108-7; 117 Stat. 80).

(b) **Applicable Law.**--Except as otherwise provided in this section, the Secretary shall issue the loan under this section in accordance with subsections (b) through (e) of section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a) and sections 53702 and 53735 of title 46, United States Code.

(c) Loan Term.--

- (1) In general.--Notwithstanding section 53735(c)(4) of title 46, United States Code, a loan under this section shall have a maturity that expires at the end of the 45-year period beginning on the date of issuance of the loan.
- (2) Extension.--Notwithstanding paragraph (1) and if there is an outstanding balance on the loan after the period described in paragraph (1), a loan under this section shall have a maturity of 45 years or until the loan is repaid in full.
- (d) Limitation on Fee Amount.--Notwithstanding section 312(d)(2)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(d)(2)(B)), the fee established by the Secretary with respect to a loan under this section shall not exceed 3 percent of the ex-vessel value of the harvest from each fishery for where the loan is issued.

(e) Interest Rate.--

- (1) In general.--Notwithstanding section 53702(b)(2) of title 46, United States Code, the annual rate of interest an obligor shall pay on a direct loan obligation under this section is the percent the Secretary must pay as interest to borrow from the Treasury the funds to make the loan.
- (2) Subloans.--Each subloan under the loan authorized by this section--
 - (A) shall receive the interest rate described in paragraph (1); and
 - (B) may be paid off at any time notwithstanding subsection (c)(1).

(f) Ex-Vessel Landing Fee.--

- (1) Calculations and accuracy.--The Secretary shall set the ex-vessel landing fee to be collected for payment of the loan under this section--
 - (A) as low as possible, based on recent landings value in the fishery, to meet the requirements of loan repayment;

- (B) upon issuance of the loan in accordance with paragraph (2); and
 - (C) on a regular interval not to exceed every 5 years beginning on the date of issuance of the loan.
- (2) Deadline for initial ex-vessel landings fee calculation.--Not later than 60 days after the date of issuance of the loan under this section, the Secretary shall recalculate the ex-vessel landing fee based on the most recent value of the fishery.
- (g) **Authorization.--There is authorized to be appropriated to the Secretary of Commerce to carry out this section an amount equal to 1 percent of the amount of the loan authorized under this section for purposes of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).**

BEGICH CHANGES

TECHNICAL AND CONFORMING AMENDMENTS.—

- (1) Section 7306b(b) of title 10, United States Code, is amended by striking “defined in section 3(14)” and inserting “defined in section 3”.
 - (2) Section 3 of the Whale Conservation and Protection Study Act (16 U.S.C. 917a) is amended by striking “including the fishery conservation zone as defined in section 3(8)” and inserting “including the exclusive economic zone as defined in section 3”.
 - (3) Section 114(o) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383a(o)) is amended—
 - (A) in paragraph (1), by striking “section 3(8)” and inserting “section 3”; and
 - (B) in paragraph (4), by striking “section 3(27)” and inserting “section 3”.
 - (4) Section 304(g)(2) (16 U.S.C. 1854(g)(2)) is amended by striking “Notwithstanding section 3(2)” and inserting “Notwithstanding the definition of bycatch under section 3”.¹⁵¹
 - (5) Section 8(b)(2) of the Lacey Act Amendments of 1981 (16 U.S.C. 3377(b)(2)) is amended—
 - (A) by striking “as defined in paragraph (14) of section 3” and inserting “as defined in section 3”; and
 - (B) by striking “as defined in paragraph (13) of such section 3” and inserting “as defined in such section 3”.
 - (6) Section 302 of the Atlantic Salmon Convention Act of 1982 (16 U.S.C. 3601) is amended—
 - (A) in paragraph (6), by striking “in section 3(10)” and inserting “in section 3’ ” and (B) in paragraph (8), by striking “in section 3(19)” and inserting “in section 3”.
 - (6a) Section 308 of the Atlantic Salmon Convention Act of 1982 (16 U.S.C. 3601) is amended by striking “and (d)” each place it appears and inserting “and (e)”.
 - (7) Section 3(6) of the Atlantic Striped Bass Conservation Act (16 U.S.C. 5152(6)) is amended by striking “in section 3(6)” and inserting “in section 3”.
 - (8) Section 104(f)(4)(B) of the Compact of Free Association Act of 1985 (48 U.S.C. 1904(f)(4)(B)) is amended by striking “have the same meanings as provided in paragraphs (10) and (14), respectively, of section 3” and inserting “have the same meanings as provided in section 3”.
- Section 104 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (120 Stat. 3584; 16 U.S.C. 1853 note) is amended—
- (A) by striking subsection (b); and

- (B) by redesignating subsection (c) as subsection (b).¹⁵²
- (9) Section 407(b) (16 U.S.C. 1883(b)) is amended by inserting “as in effect on the day before the date of enactment of Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (120 Stat. 3575),” after “In addition to the restrictions under section 303(d)(1)(A)”.¹⁵³
- (10) Section 53706(a)(7) of title 46, United States Code, is amended by striking “section 303(d)(4)” and inserting “section 303A”.¹⁵⁴

REAUTHORIZATIONS.—

- (1) The Anadromous Fish Conservation Act is reauthorized through 2021.¹⁵⁵
- (2) The Interjurisdictional Fisheries Act is reauthorized through 2021.¹⁵⁶
- (3) The Atlantic Coastal Fisheries Cooperative Management Act is reauthorized through 2021.¹⁵⁷
- (4) The Atlantic Striped Bass Conservation Act is reauthorized through 2021.¹⁵⁸
- (5) The Yukon River Salmon Act of 2000 is reauthorized through 2021.¹⁵⁹
- (6) The Pacific Salmon Treaty Act is amended to compensate members of the Committee on Scientific Cooperation who are not state or Federal employees.¹⁶⁰
- (7) The Atlantic Tunas Convention Act is reauthorized through 2021.¹⁶¹
- (8) The South Pacific Tuna Act of 1988 is reauthorized.¹⁶²
- (9) The Northwest Atlantic Fisheries Convention Act of 1995 is reauthorized through 2020.¹⁶³

FISHERY MANAGEMENT PLAN AMENDMENTS.—

UPDATED AGENCY PROCEDURES.—Not later than 90 days after the date of enactment of this Act, the Secretary of Commerce shall issue a notice of proposed rulemaking to revise and update agency procedures under the mandate of section 304(i) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1854(i)), as added by section 107 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (120 Stat. 3594).¹⁶⁴

SUMMER FLOUNDER MANAGEMENT. (MAFMC ONLY)

- (a) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act, the Mid-Atlantic Fishery

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- 152 Begich page 15. Confusing. Section 104 does not contain a subsection (b)
- 153 Second Senate draft page 15 line 21+
- 154 Second Senate draft page 16 lines 3+
- 155 Second Senate draft page 61 line 7+
- 156 Second Senate draft page 61 line 10+
- 157 Second Senate draft page 61 line 21+
- 158 Second Senate draft page 62 line 5+
- 159 Second Senate draft page 62 line 10+
- 160 Second Senate draft page 65 line 3+
- 161 Second Senate draft page 65 line 13+
- 162 Second Senate draft page 66 line 9+
- 163 Second Senate draft page 68 line 12+
- 164 Second Senate draft page 16 lines 6+. Section 304(i) requires NMFS to revise and update agency procedures for compliance with NEPA (see Section 304(i))

Management Council shall submit to the Secretary of Commerce, and the Secretary of Commerce may approve, a modified fishery management plan or plan amendment for the commercial and recreational management of summer flounder (*Paralichthys dentatus*) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). The modified fishery management plan or plan amendment shall—

- (1) be based on the best scientific information available;
 - (2) reflect changes in the distribution, abundance, and location of summer flounder in establishing distribution of the commercial and recreational catch quotas;
 - (3) consider regional, coast-wide, or other management measures for summer flounder that comply with the National Standards under section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)); and
 - (4) prohibit the allocation of commercial or recreational catch quotas for summer flounder on a State-by-State basis using historical landings data that does not reflect the status of the summer flounder stock, based on the most recent scientific information.
- (b) **CONSULTATION WITH THE COMMISSION.**—In preparing the modified fishery management plan or plan amendment as described in subsection (a), the Council shall consult with the Atlantic States Marine Fisheries Commission to ensure consistent management throughout the range of the fishery.
- (c) **FAILURE TO SUBMIT PLAN.**—If the Council fails to submit a modified fishery management plan or plan amendment as described in subsection (a) that may be approved by the Secretary, the Secretary shall prepare and approve such a modified plan or plan amendment.
- (d) **REPORT.**—Not later than 1 year after the date of the approval of a modified fishery management plan or plan amendment as described in subsection (a), the Comptroller General of the United States shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on the implementation of the modified plan or plan amendment that includes an assessment of whether the implementation complies with the national standards for fishery conservation and management under section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)).¹⁶⁵

STUDY OF ALLOCATIONS IN MIXED-USE FISHERIES.

- (a) **STUDY REQUIREMENTS.**—Not later than 60 days of the date of enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study—
- (1) to provide guidance on criteria that could be used for allocating fishing privileges, including consideration of the conservation and socioeconomic benefits of the commercial, recreational, and charter components of a fishery, to a Regional Fishery Management Council established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852) in the preparation of a fishery management plan under that Act; and
 - (2) to identify sources of information that could reasonably support the use of such criteria in allocation decisions.
- (b) **REPORT.**—Not later than 1 year after the date a contract is awarded under subsection (a), the National Academy of Sciences shall submit a report on the study conducted under subsection (a) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives.¹⁶⁶

¹⁶⁵ Second Senate draft pages 34 lines 17+. Does not affect PPMC

¹⁶⁶ Second Senate draft page 36 lines 21+. Wording slightly changed

INTEGRATED DATA COLLECTION PROGRAM AND ELECTRONIC TECHNOLOGIES. [NEW SECTION IN SECOND SENATE DRAFT]

- (a) **SENSE OF CONGRESS.**—It is the sense of Congress that the use of electronic technologies such as digital video cameras and monitors, digital recording systems, and other forms of electronic technology as a complement to, and in some cases a replacement for, observers can maintain, increase, or improve the amount and accuracy of observer and fishery dependent information collected from fisheries while reducing the need for observers and the financial costs and logistical difficulties associated with such observers and paper reporting requirements.
- (b) **INTEGRATED DATA COLLECTION PROGRAM ASSESSMENTS.**—
- (1) **IN GENERAL.**—Not later than 2 years after the date of enactment of this Act, the Regional Fishery Management Councils, in consultation with the Secretary of Commerce, shall assess the fishery dependent data needs of the fisheries in the regions and, if necessary to meet those needs, develop recommendations for an integrated data collection program, including appropriate electronic technologies, to gather and analyze data required for fisheries management.
 - (2) **ELEMENTS OF ASSESSMENTS.**—Each assessment required by this subsection shall—
 - (A) identify the fisheries with respect to which the incorporation of electronic technology, as a complement to or replacement for observers, and electronic reporting can decrease costs, improve efficiencies and data accuracy, or ease the logistic constraints posed by observers in the fisheries while continuing to meet the standards and requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and
 - (B) specify for each fishery identified which type or types of electronic technology can achieve such cost and efficiency improvements; and
 - (C) shall outline the system or systems of fees required in (c)(3) to support the integrated data collection program.
- (c) **REGIONAL INTEGRATED DATA COLLECTION PROGRAM ADOPTION PLANS.**—
- (1) **IN GENERAL.**—Not later than 1 year after receiving the results of the assessments required under subsection (b), the Secretary of Commerce, in consultation with the relevant Regional Fishery Management Council, shall review the relevant assessment for compliance with provisions of this section and shall develop a plan to adopt and implement, with any changes needed based on the compliance review, an integrated data collection program, including the use of electronic technologies, in each of the fisheries identified in the assessment.
 - (2) **ELEMENTS OF PLANS.**—Each plan under this subsection—
 - (A) shall have fishery dependent data collection as its principal purpose;
 - (B) shall include electronic technologies consistent with the assessment required under subsection (b) and the review in paragraph (1);
 - (C) shall include an estimate of anticipated improvements in cost effectiveness, accuracy of information, and management efficiency for each fishery in the plan;
 - (D) shall include an explanation of why the most-cost-effective approach is not being used, if applicable;
 - (E) shall prioritize fishery management plans in each region, to guide development, adoption, and implementation of integrated data collection amendments to such plans;
 - (F) shall set forth an implementation schedule, consistent with the implementation deadline specified in subsection (d), for the development, review, adoption, and implementation of integrated data collection program amendments to fishery management plans; and

- (G) may be reviewed or amended annually to address changing circumstances or improvements in technology.
- (3) **INTEGRATED DATA COLLECTION PROGRAM FEES.**—The Secretary of Commerce shall establish a system, or systems, of fees, which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing each relevant integrated data collection program implemented under this subsection.
- (4) **COUNCIL ACTION.**—Not later than 4 years after the date of enactment of this Act, each Regional Fishery Management Council shall amend its fishery management plans as necessary to comply with this subsection.
- (d) **DEADLINE FOR IMPLEMENTATION.**—Not later than 5 years after the date of enactment of this Act, the Regional Fishery Management Councils and the Secretary of Commerce shall complete implementation of the plans developed under subsection (c), subject to available appropriations.
- (e) **REVIEWS.**—The relevant Regional Fishery Management Council shall determine a time period for regular review of the integrated data collection program.¹⁶⁷

CAPITAL CONSTRUCTION.¹⁶⁸

- (a) **DEFINITIONS; ELIGIBLE AND QUALIFIED FISHERY FACILITIES.**—Section 53501 of title 46, United States Code is amended— (this is TITLE 46 - SHIPPING; SUBTITLE V - MERCHANT MARINE; PART C - FINANCIAL ASSISTANCE PROGRAMS; CHAPTER 535 - CAPITAL CONSTRUCTION FUNDS)

SEAFOOD MARKETING [NEW SECTION IN SECOND SENATE DRAFT]

- (a) **IN GENERAL.**—The Secretary of Commerce shall analyze the likely costs and benefits of establishing and administering a seafood marketing program to facilitate fuller realization of the commercial and economic value of U.S. fishery resources.
- (b) **SCOPE.**—In performing the analysis under this section, the Secretary shall consider—
 - (1) the impacts of additional investment in seafood marketing for seafood harvesters, processors, growers, and other persons in the United States on—
 - (A) domestic and international markets for U.S. seafood and the competitive position of the United States in those markets;
 - (B) sustainable development and utilization of fishery resources of the United States resulting from promotion, public education, and changes in markets;
 - (C) the ability of seafood harvesters, processors, growers and other persons in the United States to improve—
 - (i) the safety, traceability, quality, marketability, and sustainability of U.S. seafood; and
 - (ii) the coordination of their marketing activities; and
 - (D) education of consumers regarding nutritional and health benefits of seafood; and
 - (2) the feasibility of a seafood marketing program that—

¹⁶⁷ Second Senate draft page 38 line 1+.

¹⁶⁸ In essence, this section makes fishery facilities (processors, storage operations and aquaculture operations) eligible for capital construction funds. This was requested by commenters as a way to update and improve shoreside facilities. (Second Senate draft page 42 line 8+).

- (A) is funded by—
 - (i) industry fees;
 - (ii) contributions, donations, or gifts by private or nonprofit organizations;
 - (iii) sums received as fines, penalties, or forfeitures of property for violations of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or any other marine resource law enforced by the Secretary of Commerce, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.);
 - (iv) interest generated by the investment of amounts described in clauses (i) through (iii); or
 - (v) any combination of the amounts described in clauses (i) through (iv); and
- (B) apportions funds annually, on a formula basis, to each State, territory, or possession of the United States that is represented on a Regional Fishery Management Council under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)), to award through a competitive process to U.S. seafood growers, harvesters, processors, and other persons.

(c) **DEADLINE FOR SUBMISSION.**—Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce shall provide the analysis under this section, together with any recommendations the Secretary considers appropriate, in writing to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives.

PROMOTION OF THE FREE FLOW OF DOMESTICALLY PRODUCED FISHERY PRODUCTS (The Act of August 11, 1939)¹⁶⁹

(b) Transfer of funds

- (1) The Secretary of Agriculture shall transfer to the Secretary each fiscal year, ~~beginning with the fiscal year commencing July 1, 1954, and ending on June 30, 1957,~~ from moneys made available to carry out the provisions of section 612c of title 7, an amount equal to 30 per centum 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 only be used for the purposes described under subsection (c). shall be maintained in a separate fund only for—~~
 - ~~(A) use by the Secretary—~~
 - ~~(i) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c) of this section; [1]~~
 - ~~(ii) to implement the national fisheries research and development program provided for under subsection (d) of this section;~~
 - ~~(iii) to implement the Northwest Atlantic Ocean Fisheries Reinvestment Program established under section 1863 of title 16; and~~
 - ~~(iv) to fund the Federal share of a fishing capacity reduction program established under section 1861a of title 16; and~~
 - (B) the provision of moneys, subject to paragraph (2), to carry out the purposes of the Fisheries Promotion Fund established under section 208(a) [2] of the Fish and Seafood Promotion Act of 1986 [16 U.S.C. 4008 (a)].
- ~~(2) There are transferred from the fund established under paragraph (1) to the Fisheries Promotion Fund~~

¹⁶⁹ This section is the Saltonstall-Kennedy Act.

referred to in paragraph (1)(B) \$750,000 in fiscal year 1987, \$3,000,000 in each of fiscal years 1988 and 1989, and \$2,000,000 in each of fiscal years 1990 and 1991.¹⁷⁰

(C) Fisheries research and development projects

- (1) The Secretary shall make grants from the fund established under subsection (b) of this section to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures.
- (2) The Secretary shall—
 - (A) at least once each fiscal year, receive, during a 60-day period specified by him, applications for grants under this subsection;
 - (B) prescribe the form and manner in which applications for grants under this subsection must be made, including, but not limited to, the specification of the information which must accompany applications to ensure that the proposed projects comply with Federal law and can be evaluated in accordance with paragraph (3)(B); and
 - (C) approve or disapprove each such application before the close of the 120th day after the last day of the 60-day period (specified under subparagraph (a)) in which the application was received.

...

(2) LIMITATIONS ON BILLS TRANSFERRING FUNDS.--

- (A) **IN GENERAL.**—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that reduces any amount in the fund referred to in paragraph (1) in a manner that is inconsistent with such paragraph.
- (B) **LIMITATION ON CHANGES TO THIS PARAGRAPH.**—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that would repeal or otherwise amend this paragraph.
- (C) **WAIVER.**—A provision of this paragraph may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.
- (D) **APPEALS.**—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on the point of order raised under this paragraph.
- (E) **RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.**—This paragraph is enacted by Congress—
 - (i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and is deemed to be part of the rules of each house, respectively, but applicable only with respect to the procedure to be followed in the House in the case of a bill, resolution, amendment, or conference report under this paragraph, and it supersedes other rules only to the extent that it is inconsistent with such rules; and
 - (ii) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the

170 Second Senate draft page 56 line 1+. This addresses concerns that Saltonstall-Kennedy Act funds have been going to NOAA's Operations, Research and Facilities account for general use rather than going to fisheries promotion and development. This section includes language that would establish a budget point of order that could be used during House or Senate consideration of an appropriations bill that authorizes transfer of S-K funds to NOAA's Operations account.

same extent as in the case of any other rule of that House.¹⁷¹

171 *Second Senate draft page 56 lines 21+*

DRAFT WORKING DOCUMENT

**Comparison between House Bill 4742 and
First and Second Senate Magnuson-Stevens Act Reauthorization Discussion Drafts**

Note: Page numbers refer to the Pacific Fishery Management Council's current annotated version of Magnuson-Stevens Act. In the third column, points that are essentially the same as in the previous draft are plain text. Items that were removed in the second draft are italicized. Items that are new are underlined.

HOUSE (HR 4742)	FIRST SENATE DISCUSSION DRAFT	SECOND SENATE DISCUSSION DRAFT
Overfished/Depleted/Bycatch		
<ul style="list-style-type: none"> Replaces "overfished" with "depleted" throughout. Calls for Report to Congress to distinguish between fish that are depleted due to fishing, and those that are depleted for other reasons Defines "depleted" as "...with respect to a stock of fish or stock complex, that the stock or stock complex has a biomass that has declined below a level that jeopardizes the capacity of the stock or stock complex to produce maximum sustainable yield on a continuing basis." 	<ul style="list-style-type: none"> Uses the terminology "overfished or otherwise depleted." Defines "depleted" and "depletion" - "The term 'depleted' and 'depletion' mean, with respect to a stock of fish in a fishery, that the stock is of a size that jeopardizes the capacity of the fishery to produce the maximum sustainable yield on a continuing basis." Redefines/refines definition of bycatch 	<ul style="list-style-type: none"> Uses the terminology "overfished or otherwise depleted" in certain places but does not formally replace one with the other. No change to definition of "depleted" and "depletion" in first draft (p 9) <i>Removes earlier redefinition of bycatch</i>
Ending Overfishing		
<ul style="list-style-type: none"> The original discussion draft included a provision that would allow phasing of rebuilding plans. This section was removed in the House bill. 	<ul style="list-style-type: none"> No similar provision 	<ul style="list-style-type: none"> No similar provision

Rebuilding Timelines <ul style="list-style-type: none"> Rebuilding may not exceed the time the stock would be rebuilt without fishing, plus one mean generation, with exceptions for biology, environmental conditions, international agreements, cause of depletion outside the jurisdiction of the Council, mixed-stock fisheries, informal transboundary agreements, unusual events. Hastings also sets a schedule for reviewing rebuilding progress. Councils may end rebuilding program if it is determined that a fishery is not depleted. 	<ul style="list-style-type: none"> Rebuilding shall be as short as possible, (with current exceptions), and may not exceed the sum of the minimum time required to rebuild an affected stock of fish and the mean generation time of the affected stock of fish, if those time values are scientifically established and widely accepted among fish population biologists; or 10 years, if either of the time values is not scientifically acceptable. 	<ul style="list-style-type: none"> Rebuilding shall be as short as possible, (with current exceptions), and shall not exceed 10 years, or the sum of the time in which the affected stock of fish is expected to rebuild to its maximum sustainable yield biomass level in the absence of any fishing mortality, and the mean generation of time of the affected stock of fish, if those time values are the best scientific information available. (This basically means the same as the previous version, but is more specific) (p 77)
ACL Exceptions <ul style="list-style-type: none"> ACLs not required for ecosystem component species, or for species that have life cycles of approximately 1 year (unless subject to overfishing); or for species in which more than half of a single year-class will complete their lifecycle in less than 18 months In establishing ACLs, Councils may consider ecosystem changes and economic needs of fishing communities ACLs must take into account management measures under international agreements and informal transboundary agreements ACLs may be established for stock complexes; ACLs may be set for three years. 	<ul style="list-style-type: none"> ACLs not required for fish species with a mean lifecycle of 18 months; species where all spawning & recruitment occurs beyond state waters and the EEZ (unless overfishing is occurring). FMPs do not have to specify ACLs for each species of non-target fish in a fishery. 	<ul style="list-style-type: none"> ACLs not required for fish species with a mean lifecycle of 18 months; species where all spawning & recruitment occurs beyond state waters and the EEZ (unless overfishing is occurring). <i>Removes previous draft language about not having to specify ACLs for non-target fish. (page 65)</i> <i>Removes requirements to adjust ACLs of forage fish according to the feeding requirements of dependent fish; to include a control rule for forage fish; and to account for the importance of forage fish throughout their range.</i>
Ecosystem-Based Management <ul style="list-style-type: none"> In establishing ACLs, Councils may consider ecosystem changes 	<ul style="list-style-type: none"> Adds wording regarding ecosystems, ocean acidification, human impacts on ecosystems to 	<ul style="list-style-type: none"> Retains wording regarding ecosystems in “findings” (p 5)

<ul style="list-style-type: none"> • Defines ecosystem component species • Councils do not have to establish ACLs for EC species 	<p>“findings”</p> <ul style="list-style-type: none"> • Discusses importance of forage fish • Adds adoption of EBFM as a purpose of the Act • Adds EBFM as a Council member training topic • Outlines provisions for creating fishery ecosystem plans. 	<ul style="list-style-type: none"> • Retains EBFM as a Council member training topic (p 58) • <i>All wording regarding forage fish removed.</i> • <i>Detailed description of fishery ecosystem plans removed.</i>
Forage Fish		
<ul style="list-style-type: none"> • No similar provisions 	<ul style="list-style-type: none"> • Adds finding that “forage fish are a fundamental component of marine ecosystems” • Defines forage fish • Outlines the responsibilities of the SSC in regard to forage fish and other matters • Sets requirements for determining ACLs for forage species, including a control rule and consideration of the “feeding requirements of dependent fish throughout the range of the dependent fish” 	<ul style="list-style-type: none"> • <i>All wording regarding forage fish removed.</i>
Electronic Monitoring		
<ul style="list-style-type: none"> • Calls for developing objectives, regulations, schedules and performance standards for use of electronic monitoring. • The House bill allows use of electronic monitoring for law enforcement 	<ul style="list-style-type: none"> • The Secretary and Councils shall review FMPs in regard to where electronic monitoring can be used instead of human observers; and each Council shall develop a plan to adopt EM. These plans must be finalized within 4 years. • Defines integrated data collection programs that are required under 303(a)(15). These are essentially cooperative research programs. Emphasizes electronic monitoring; provides for system of fees. 	<ul style="list-style-type: none"> • <u>Councils must develop and implement a plan to use electronic technologies. For more details, see Data Collection and Use below.</u>

NEPA		
<ul style="list-style-type: none"> • Adds details on fishery impact statement requirement; fulfillment of these stipulations satisfies the requirements of NEPA 	<ul style="list-style-type: none"> • Requires that MSA Section 304(i) (Environmental Review Process) be implemented by NMFS within 90 days of passage. 	<ul style="list-style-type: none"> • Requires that Commerce issue a notice of proposed rulemaking to revise and update agency procedures under MSA Section 304(i) (Environmental Review Process) within 90 days of passage (p 153). [Same outcome, more specific language]
Allocation		
<ul style="list-style-type: none"> • No similar provisions 	<ul style="list-style-type: none"> • Calls for a regular review of allocation in mixed-use fisheries • Calls upon the National Academy of Sciences to study variables that should be considered when allocating fishing privileges, and what data sources should be used. 	<ul style="list-style-type: none"> • Calls upon the National Academy of Sciences to study variables that should be considered when allocating fishing privileges, and what data sources should be used. (Page 154) • <i>Removes requirement for allocation reviews, except for in Gulf of Mexico and South Atlantic regions</i>
International Fisheries		
<ul style="list-style-type: none"> • No similar provisions 	<ul style="list-style-type: none"> • Designates a Secretarial Representative for International Fisheries; must be a senior official appointed by the President • Defines IUU to include “fishing activities conducted by foreign vessels in waters under the jurisdiction of a nation without permission of that nation” and “...conducted by foreign vessels in contravention of a nation's laws, including fishing activity that has not been reported or that has been misreported to the relevant national authority of a nation in contravention of that nation's laws.” 	<ul style="list-style-type: none"> • No change from previous version (p 42)
Transparency		
<ul style="list-style-type: none"> • Calls for each Council to provide a webcast, audio recording, or live broadcast of Council 	<ul style="list-style-type: none"> • Calls for an audio or video webcast of each Council and SSC meeting online within 30 days 	<ul style="list-style-type: none"> • No change from previous version (page 55)

and CCC meetings; and audio, video, or a searchable audio or written transcript of each Council and SSC meeting online within 30 days of the meeting.	(not live; no transcripts) (page 56)	
Data Collection and Use		
<ul style="list-style-type: none"> • Describes uses of confidential information. Places limits on use of observer information. Vessel information collected for monitoring/enforcement shall not be used for coastal & marine spatial planning under EO 13547. • Encourages use of video and acoustic survey technologies 	<ul style="list-style-type: none"> • Councils must amend FMPs within one year to assess the fishery-dependent data needs of fisheries and establish an integrated data collection program to gather and analyze the data required. • The Secretary, with SSCs, shall develop guidelines for greater use of data from nongovernmental sources, including fishermen, fishing communities, universities, and research institutions. The guidelines should identify types of data that can be used as the best scientific information available, especially in regard to recreational fisheries; includes other requirements. Councils shall describe how these data have been used in management, and if they were not used, why not. 	<ul style="list-style-type: none"> • <u>Requires Councils/Commerce to assess fishery-dependent data needs and develop recommendations for an integrated data collection program, including electronic technologies, to gather data required for fisheries management, within 2 years after implementation of the Act. This includes identifying fisheries where electronic technology and electronic reporting can be useful and specifying which type of electronic technology will work; and outlining a system of fees to support the program. (Page 155)</u> • <u>Within 1 year of this assessment, the Councils/Commerce must develop a plan to adopt the integrated data collection program in each relevant fishery. Within 4 years after the Act is enacted, each Council must amend its FMPs to comply; must implement within one year after that, and review regularly afterward.</u> • <u>The Secretary, with SSCs, shall develop guidelines for facilitating greater use of data from nongovernmental sources, including fishermen, fishing communities, universities, and research institutions. Includes other requirements. (Page 132)</u> • <u>Allows costs of stock assessments to be paid out of fines. (Page 109)</u>

		<ul style="list-style-type: none"> • <i>References to ecosystem plans & forage fish removed in SSC requirements</i> • <i>Removes previous definition of stock assessment</i>
Data-Poor Species		
<ul style="list-style-type: none"> • Councils shall identify data-poor fisheries in their regions, prioritize them, and provide the list to the Secretary 	<ul style="list-style-type: none"> • The Secretary shall develop a plan to conduct stock assessments for all fish under FMPs. Includes detailed requirements for stock assessments and assessment schedule 	<ul style="list-style-type: none"> • Generally the same as in previous draft, except this version calls for consultation with Councils and requires assessments only for economically-important stocks of fish (p 132)
Seafood Labeling and Fraud Prevention		
<ul style="list-style-type: none"> • No similar provisions 	<ul style="list-style-type: none"> • In “findings,” states that U.S. fisheries are now being managed sustainably • Creates a “sustainably caught” label. Producers, processors, etc., MAY place the words “sustainably caught” on fish harvested under the MSA or equivalent state, tribal, or foreign measures, or if it is being effectively rebuilt. Includes cultivated fish. Fish must be labeled through processing, distribution & final sale (p 95-96) • Makes it illegal to falsely identify fish products, or to falsely label them as “sustainably caught” (p 103) 	<ul style="list-style-type: none"> • This version does not create a “sustainably caught” label, but it creates a sustainability standard that includes fish harvested under the MSA and finds that U.S. fish are now sustainably managed (p 5, 92). • Makes it illegal to falsely label fish products (p 99)
Seafood Marketing		
<ul style="list-style-type: none"> • No similar provision 	<ul style="list-style-type: none"> • No similar provision 	<ul style="list-style-type: none"> • <u>Calls for Commerce to consider (within one year) establishing a seafood marketing program. Such a program might include additional investment in seafood marketing; sustainable development; improved safety, traceability, quality, etc. of seafood; coordination of marketing activities; and</u>

		<p>consumer education. Would also look at <u>awarding funds through a competitive process to seafood growers, harvesters, processors, etc. Commerce must look at feasibility of different funding mechanisms.</u> (Page 157)</p>
Dungeness Crab Authority		
<ul style="list-style-type: none"> No similar provision 	<ul style="list-style-type: none"> Strikes subsection (i) in Section 203 of Public Law 105 (State Authority for Dungeness Crab), which sunsets state authority on September 30, 2016. (Date extended indefinitely). 	<ul style="list-style-type: none"> No change from previous version (p 97)
National Marine Sanctuaries Act & Endangered Species Act		
<ul style="list-style-type: none"> Notes that in case of conflict between MSA & NMSA, MSA shall control. Also notes that restriction on fisheries that are necessary to implement a recovery plan under ESA shall be done under the authority of the MSA 	<ul style="list-style-type: none"> No similar provision 	<ul style="list-style-type: none"> No similar provision
North Pacific Issues		
<ul style="list-style-type: none"> Limitations on harvest in North Pacific Pollock fishery. No entity may harvest, through a fishery cooperative or otherwise, more than 24% of the pollock available to be harvested in the directed pollock fishery. 	<ul style="list-style-type: none"> The NPFMC must set aside at least 10% of TAC as a community development quota for coastal villages. 	<ul style="list-style-type: none"> The NPFMC must set aside at least 10% of TAC as a community development quota for coastal villages, <u>but only under certain circumstances</u> (p 116) <u>Adds requirement for bycatch report for North Pacific stocks</u> (p 120)
Enforcement penalties		
<ul style="list-style-type: none"> In Sec. 404(e), says the Secretary may allocate a percentage of fishery enforcement penalties for data collection (only for the region in which they are 	<ul style="list-style-type: none"> Establishes a fisheries enforcement fund, in which fines are deposited for use by the Secretary in enforcement Raises civil penalty to not more than \$180,000 	<ul style="list-style-type: none"> Same as previous draft, except <u>raises fine for violent crimes to \$360,000 (from \$200,000)</u> (p 106, 102)

collected). Funds may be used for data-poor fisheries and cooperative research	(from \$100,000)	
Other changes		
	<ul style="list-style-type: none"> • Makes fisheries facilities (such as processors) and aquaculture facilities eligible for capital construction funds. 	<ul style="list-style-type: none"> • No change (p 157)
	<ul style="list-style-type: none"> • Gives Councils the authority to use alternative fishery management measures in recreational fisheries. 	<ul style="list-style-type: none"> • No change (p 54)
	<ul style="list-style-type: none"> • Includes subsistence fisheries as a sector and refers to subsistence and tribal fisheries throughout. 	<ul style="list-style-type: none"> • No change.
	<ul style="list-style-type: none"> • Calls for the Secretary to submit annual reports on several special funds such as the Limited Access System Administration Fund. 	<ul style="list-style-type: none"> • No change (p 81)
	<ul style="list-style-type: none"> • Allows NOAA to use agencies other than the Coast Guard for administrative adjudications involving marine resources. 	<ul style="list-style-type: none"> • No change (p 104)
	<ul style="list-style-type: none"> • Reauthorizes Anadromous Fish Conservation Act, Pacific Salmon Treaty Act, South Pacific Tuna Act 	<ul style="list-style-type: none"> • Reauthorizes these Acts <u>and others</u> (p 153)
	<ul style="list-style-type: none"> • The Secretary and Councils shall report on monitoring and enforcement plans, costs, and methods. 	<ul style="list-style-type: none"> • Deleted, but <u>new section on monitoring technologies added (see above)</u>
	<ul style="list-style-type: none"> • Addresses concerns that Saltonstall-Kennedy Act funds have been going to NOAA's 	<ul style="list-style-type: none"> • No change (p 157)

	Operations, Research and Facilities account for general use rather than going to fisheries promotion and development. Includes language that would establish a budget point of order that could be used during House or Senate consideration of an appropriations bill that authorizes transfer of S-K funds to NOAA's Operations account.	
<ul style="list-style-type: none"> • Incorporates the Revitalizing the Economy of Fisheries in the Pacific (REFI) Act, which refinances the groundfish buyback program • Councils may use alternative rebuilding strategies, including harvest control rules and fishing mortality targets • Emergency actions shall remain in effect for one year (as opposed to 180 days) • Requires the Secretary of Commerce to publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after making a disaster determination • Requires Federal-state partnerships to develop best practices for implementing recreational fishery data collection programs, and create a grant program to States to improve these programs, and require a National Research Council study of recreational fisheries data survey methods. 		



Gulf of Mexico Fishery Management Council

Managing Fishery Resources in the U.S. Federal Waters of the Gulf of Mexico

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July 18, 2014

The Honorable Doc Hastings
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hastings:

I am submitting comments on the May 2014 Discussion Draft, titled “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act” on behalf of the Gulf of Mexico Fishery Management Council (Gulf Council). The Gulf Council discussed the two versions of the draft bill during its February and June 2014 Council meetings, and I am providing its specific comments on the provisions of the May 2014 draft bill as well as some general comments relative to reauthorization of the Magnuson-Stevens Act (Act). The Gulf Council’s comments have also been influenced by the May 2013 “Managing Our Nation’s Fisheries” national conference, ongoing dialogue among the eight regional Councils through the Council Coordination Committee (CCC), and experience with the 2006 Act reauthorization.

The 2006 amendments to the Act included ambitious and comprehensive requirements for fisheries management for rebuilding and conserving fisheries through the mandate of annual catch limits (ACLs), accountability measures (AMs), and the strengthening of the role of our Scientific and Statistical Committees (SSCs) in establishing definitive catch limits based on the best scientific information available. The 2006 amendments also built on the initial mandates of the 1996 Sustainable Fisheries Act by establishing time-certain rebuilding plans and eliminating overfishing.

The Gulf Council believes that the current Act provides a good framework for sustainable fisheries management. However, the mandates from the last two reauthorizations have not been without disruption and costs to the fishing industry and the communities supported by them. A primary focus for the Gulf Council in the upcoming reauthorization of the Act is to re-establish some flexibility in the current mandates because not all fish stocks can efficiently nor effectively be managed if they are treated the same. The Councils need to be able to use the most appropriate measures when rebuilding stocks and maintaining sustainable fisheries, which requires modification of the Act in some cases to provide such flexibility.

TITLE I—AMENDMENTS TO THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 103. FLEXIBILITY IN REBUILDING FISH STOCKS.

In addition to specific comments below, the Gulf Council requests the authority for the Councils to phase-in the elimination of overfishing over a five year period if a fish stock is not overfished. The Gulf Council recognizes and does not support uncontrolled overfishing on a non-overfished stock because doing so would eventually lead to the stock becoming overfished. However, a non-overfished stock is not at risk of collapse and an immediate end to overfishing can have substantial negative economic and social impacts. It is reasonable to allow overfishing to be reduced and eliminated over a reasonable timeframe as long as fishing mortality is reduced in each successive year of the five-year period until overfishing no longer occurs.

Section 103(a)(1)(B), Page 3. In proposed paragraph (A)(ii), the Gulf Council endorses the deletion of the ten-year rebuilding time requirement and supports that rebuilding may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation.

Section 103(a)(1)(C), Page 5. In proposed paragraph (B), the Gulf Council agrees it is important to “take into account environmental conditions, including predator-prey relationships.” This point could be expanded to be more inclusive by adding “ecological interactions”, which includes predator-prey relationships. For example, the Gulf Council suggests the following wording, “consider known environmental conditions and ecological interactions, such as predator/prey relationships, where practicable.” This language is important because many of these relationships are not quantified.

Section 103(a)(2) Page 6. In the proposed paragraphs (8) and (9)(A)(B), the Gulf Council supports the proposed language allowing alternative rebuilding strategies and fishing mortality-rate targets. The Gulf Council also supports the language specifying it can terminate a rebuilding plan if the scientific and statistical committee determines a stock is not depleted (overfished) within two years of a fishery management plan or amendment initiating a rebuilding plan or within 90 days after completion of the next stock assessment. However, in other instances, the Gulf Council is in favor of continuing rebuilding plans until the stock reaches its maximum sustained yield biomass level.

SEC. 104. MODIFICATIONS TO THE ANNUAL CATCH LIMIT REQUIREMENT

In addition to specific comments below, the Gulf Council requests that annual catch limits not be required for data-poor species which have not been formally assessed because sufficient data are absent. These species are typically incidentally caught and as such are not classified as ecosystem species limited catch and life history information is available for assessment. Ad-hoc methods for setting ACLs for these types of stocks are inadequate for management.

Section 104, Pages 7-8. The Gulf Council supports the inclusion of section (m)(1) Consideration of Ecosystem and Economic Impacts, (m)(2) Limitations To Annual Catch Limit Requirement For Special Fisheries, and (m)(3) Relationship To International Efforts.

Section 104, Page 8. In proposed paragraph (4)(A-B) Authorization For Multispecies Complexes And Multi-Year Catch Limits, the Gulf Council supports the proposed allowance for a Council to establish a multispecies complex ACL and that multi-year ACLs be limited to three years.

This method is currently employed by the Gulf Council's Scientific and Statistical Committee (SSC) for acceptable biological catch (ABC) recommendations (i.e., three-year yield streams). The Gulf Council also requests that language be added to provide for a carryover exception to allow ACLs to be exceeded following a deficit harvest from one year to the next to provide for minimal disruptions to the fishery without jeopardizing the ability of a fish stock to rebuild or be capable of producing maximum sustainable yield on a long-term basis.

Section 104(5), Page 8-9. In proposed paragraph (5) ECOSYSTEM COMPONENT SPECIES DEFINED, the Gulf Council endorses the definition of ecosystem component species but requests that the section be modified by removing subsections (A) and (B) because it is highly unlikely that appropriate data are available to evaluate the status of ecosystem species relative to any scientifically determined level of depletion or overfishing.

SEC. 105. DISTINGUISHING BETWEEN OVERFISHED AND DEPLETED

Section 105(a), Page 9. DEFINITIONS and 105(b), Pages 9-10. SUBSTITUTION OF TERM. The Gulf Council recognizes that the definition of depleted proposed in this draft bill is equivalent to the definition of "overfished" in the NOAA/NMFS National Standard 1 Guidelines. It has been an ongoing source of confusion that the Act did not define "overfishing" and "overfished" separately and the Gulf Council applauds the attempt to do so now. Consequently, the Gulf Council suggests using the current definition in (34) for "overfishing" only, add a new definition of "overfished" to the Act, and modify the definition of "depleted" to clearly delineate stock reductions due to non-fishing activities from those caused by overfishing. Further, the Gulf Council does not recommend replacing "overfished" with "depleted" throughout the Act, but rather, where appropriate, use the phrase "overfished or depleted" when action is required.

SEC. 106 TRANSPARENCY AND PUBLIC PROCESS

Section 106(a), Page 10. ADVICE. The Gulf Council agrees that the SSC process should be as transparent as possible. The Gulf Council does not have a formal public comment period at our SSC meetings, but does allow public questions and input at the discretion of the SSC chair. To date, no member of the public has been disallowed input.

The Gulf Council webcasts all of its SSC meetings and provides all briefing material and the audio recording of each meeting on a public file server. It does not produce verbatim transcripts of the SSC meetings because of the cost involved, but it does provide summary reports that are also maintained on the Gulf Council's public website.

Section 106(c), Pages 11-16. FISHERY IMPACT STATEMENTS. The Gulf Council fully supports the need for fishery impact statements that provide the same basic analytical framework as the NEPA without having to go through the formal NEPA process. A preferred alternative for each action the Council is considering would need to be selected before the Fishery Impact Statement can be prepared. This will help the Council and public see a summary of potential impacts of the preferred alternatives before making a final decision.

SEC. 107. LIMITATION ON FUTURE CATCH SHARE PROGRAMS

Section 107(b), Pages 17-20. CATCH SHARE REFERENDUM PILOT PROGRAM. The Gulf Council generally supports the language in this section if referenda are required by Congress. However, it requests clarification that referenda only be required for the initiation of a catch share program and not be required for subsequent amendments to a catch share program. The Gulf Council also suggests not calling these pilot programs.

The Gulf Council recommends that if Congress deems it important to specify “an eligible participant to vote” in a referendum, that the eligibility requirements be the same for multispecies and single species catch share programs.

SEC. 109. DATA COLLECTION AND DATA CONFIDENTIALITY

Section 109(a), Pages 21-24. ELECTRONIC MONITORING and VIDEO AND ACOUSTIC SURVEY TECHNOLOGIES. The Gulf Council is supportive of the language specifying the requirement, content, process, and implementation of electronic monitoring programs for data collection and fisheries enforcement.

Section 109(c), Pages 24-28. CONFIDENTIALITY OF INFORMATION. The Gulf Council is supportive of the language in this section with exception to the restriction on the use of data and enforcement monitoring information for the purpose of marine spatial planning.

Section 109(d), Pages 28-30. INCREASED DATA COLLECTION AND ACTIONS TO ADDRESS DATA-POOR FISHERIES. The Gulf Council supports the proposed language but requests that all enforcement penalties be spent in the region in which the infractions occurred be added to this section.

SEC. 112. GULF OF MEXICO FISHERIES COOPERATIVE RESEARCH AND RED SNAPPER MANAGEMENT

Section 112(a), Page 33. REPEAL. The Gulf Council supports the repeal of Section 407 in its entirety from the Act.

Section 112(b),(c),(d) and (e), Page 33. REPORTING AND DATA COLLECTION PROGRAM. The Gulf Council supports the effort to develop and implement real-time reporting as part of the overall fishery data collection programs that involves the red snapper fishery.

Section 112(c), Page 33-34. FISHERIES COOPERATIVE RESEARCH PROGRAM. The Gulf Council supports the development and implementation of a fisheries cooperative research program for the southeastern U.S. with priority going to data poor fisheries.

Section 112(d), Page 34-35. STOCK SURVEYS AND STOCK ASSESSMENTS. The Gulf Council supports the development of five-year stock survey and assessment plans with priority going to economically important fisheries and the requirement that such fisheries are assessed no less once every five years.

Section 112(e), Page 35. USE OF FISHERIES INFORMATION IN STOCK ASSESSMENTS. The Gulf Council supports the effort to incorporate fisheries information into stock assessments as soon as possible.

Section 112(f), Page 35. STATE FISHERIES MANAGEMENT IN THE GULF OF MEXICO WITH RESPECT TO RED SNAPPER. The Gulf Council supports the language in this section but suggests that the seaward boundary of the coastal states be changed to 9 nautical miles, not 9 statute miles. This change would make the seaward boundaries consistent with those of the states of Florida and Texas which are measured in nautical miles. The Gulf Council also suggests with the extension of the states' seaward boundaries be the inclusion of all living marine resources, as is currently the case for the states of Florida and Texas.

Thank you for the opportunity to review the House's two drafts of proposed changes to the Act and to provide these comments to you on behalf of the Gulf Council. The Gulf Council also discussed and provided a letter commenting on the proposed changes from the Senate draft bill and requests that the House also consider the following proposed changes:

1. The inclusion of forage fish because of their importance in the structure and function of marine ecosystems and to consider the ecological role of forage fish in the quota-setting process. The Gulf Council recommends that this section not be overly prescriptive and recognize that the majority of forage fish populations occur in State waters because there is little evidence that forage fish are subject to increasing fishing pressure in the Gulf of Mexico.
2. The Gulf Council regards the proposed change to the definition of "bycatch" as too broad because targeted species used for bait at sea would be included in this definition, but are not necessarily bycatch.
3. The Gulf Council generally supports the addition of language that addresses ecosystem-level management objectives. These provisions should be discretionary and not overly prescriptive or redundant to initiatives already underway in the management regions. As currently stated in the Senate draft, the detailed requirements may serve as a deterrent to Councils considering implementing ecosystem approaches to fisheries management. This section should be strengthened by removing the specific requirements for fishery ecosystem plans and focusing on providing the Councils with the resources and funding needed to develop such plans.
4. The inclusion of language regarding a sustainability standard for U.S. seafood. The U.S. standards for sustainable management are the strongest in the world, and an affirmation of this sustainability would be an important step to facilitate education, awareness, and marketing for the benefit of U.S. fisheries.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglass Boyd", followed by the word "for" in a smaller font.

Douglass Boyd
Chairman

cc: Dave Whaley
Jeff Lewis
Eileen Sobeck
Regional Fishery Management Councils
GMFMC



Pacific Fishery Management Council

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Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

August 7, 2014

The Honorable Doc Hastings
United States House of Representatives
1203 Longworth House Office Building
Washington, D.C. 20515-4704

The Honorable Mark Begich
Russell Senate Office Building
Room 111
2 Constitution Avenue NE
Washington, D.C. 20510-0204

Re: Magnuson-Stevens Act Reauthorization

Dear Chairman Hastings and Senator Begich:

Thank you for your interest in the Pacific Fishery Management Council's (Pacific Council) comments and perspectives of the Magnuson-Stevens Act (MSA) reauthorization proposals and issues. At its June meeting, the Pacific Council heard from its Legislative Committee, advisory bodies, and the public regarding HR 4742, the Senate staff discussion draft, and comments by other entities on proposed legislation. The Pacific Council offers the following points as this important legislative process moves forward. We understood at the time of our June Council meeting that the comment period for the Senate staff discussion draft was technically closed, thus the following is focused primarily on HR 4742, and, unless otherwise specified, targets the language or presumed intent of HR 4742.

General

As we have noted before, the Pacific Council believes that the MSA has worked well to ensure a science-based management process that ensures long-term sustainable harvests while preventing overfishing and rebuilding depleted stocks. The Pacific Council believes large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered.

Other Acts

With regard to the section describing consistency under Federal laws, the Pacific Council supports the language in HR 4742 mandating that the MSA control when there is any conflict with the National Marine Sanctuaries Act or the Antiquities Act.

The Pacific Council feels the wording to streamline the National Environmental Policy Act (NEPA)/MSA process in the Senate Staff Discussion Draft was insufficient to address the current

problems associated with NEPA implementation, and instead supports the solution in HR 4742. The language in HR 4742 mirrors the approach outlined in a draft white paper discussed by the Council Coordination Committee at their annual meeting in May 2014, which recommends integrating the policy objectives and key requirements of NEPA directly into the MSA. This recommendation proposes that the MSA be amended by adding a section to the end of Section 303, Contents of Fishery Management Plans. This new section would incorporate the key parts of NEPA into the MSA, including the requirement to prepare “a detailed statement” on “the environmental impact of the proposed action.” It is important to emphasize that the objective is not to “get out of” complying with the intent of NEPA but rather to incorporate the important aspects of NEPA directly into the MSA. This change would enable a substantially more efficient fishery management process while ensuring that the objectives of NEPA are fully met.

Regarding language about the intersection between the MSA and the Endangered Species Act (ESA), it is unclear whether HR 4742 intends to have the Councils select the appropriate incidental catch rate for ESA-listed fish (such as some salmon stocks) caught under MSA authority, or whether current ESA processes would determine the incidental take rate, and Councils would then simply adopt conforming regulations. The Pacific Council previously adopted an intermediate position on this matter advocating for an open and transparent process, with Pacific Council involvement, for the selection of ESA-related fishery impact rates by the National Marine Fisheries Service; this occurred recently in the case of the appropriate ESA limit for Lower Columbia River Tule Fall Chinook and was broadly viewed as a very successful process.

Electronic Monitoring

While the Pacific Council does not object to overarching standards for the implementation of electronic monitoring programs as described in HR 4742, it believes there should be some exemption for programs that already exist or that are nearly ready to be implemented.

The Pacific Council supports the change in HR 4742 (as compared to the earlier discussion draft) that allows use of electronic monitoring for enforcement purposes.

The electronic monitoring section in the Senate Staff Discussion Draft contains an excessive amount of detail regarding requirements and timelines, and should be made more flexible.

Rebuilding Time Adjustments and Exemptions

The Pacific Council recommends that rebuilding exemptions include a category that clearly specifies instances when a rebuilding plan is not required, either because fishing is not the cause of the stock’s depletion, and/or because fishing restrictions cannot correct the depleted condition.

Asset Forfeiture Fund

The Pacific Council supports the use of the asset forfeiture fund for use in the areas in which the fines were collected.

New Science Requirements

The Senate Staff Discussion Draft includes requirements for a great deal of new science and reporting that would require more staff and funding, and could decrease flexibility of individual Councils. For example, under Section 404(e), the draft would require stock assessments for every stock of fish that has not already been assessed, subject to appropriations; and under Section

303(a)(14), would require annual catch limits (ACLs) for forage fish fisheries to take into account “the feeding requirements of dependent fish throughout [their] range.” A substantial amount of new science and staffing would be required for both of these provisions, given that the Pacific Council manages 119 stocks of fish.

Subsistence Fisheries

The definition of “subsistence fisheries” needs to be made more specific. As it currently stands, it could apply to recreational fishers who bring fish home for consumption.

Fishery Ecosystem Plans

The section on Fishery Ecosystem Plans should be reconsidered. As currently written, the high standards included in that section could have a chilling effect on the development of Fishery Ecosystem Plans.

REFI Act

The Council supports the REFI Act (HR 2646), which has been incorporated into HR 4742.

Marine Spatial Planning

The Council supports the newly-added language that allows the use of data for marine spatial planning in order to ensure access to fishing grounds and for national security purposes.

Disaster Recovery Costs

The Council believes the newly-added language that requires the Secretary to publish the estimated cost of recovery from a fishery resource disaster with 30 days of the disaster determination is impractical, and the time period should be lengthened if the provision is maintained.

Dungeness Crab Jurisdiction

The Pacific Council fully supports extension of State jurisdiction over Dungeness crab.

IUU Definition

The Council supports for the definition of illegal, unreported, and unregulated (IUU) fisheries in the Senate Staff Discussion Draft (including the importance of unreported catches), which contains elements critical to achieving a level playing field for U.S. fisheries in the international arena.

Other Council Priorities

There are several issues important to the Pacific Council that remain unaddressed by either HR4742 or the Senate Staff Discussion Draft. Such topics include not requiring revision of rebuilding plans when there are minor changes in stock status (the “noise vs. signal” issue), providing specific language to allow Councils to consider the needs of fishing communities in developing rebuilding plans, exploring flexibility for fishery impacts on data-poor species when the precautionary approach becomes a bottleneck for healthy mixed stock fisheries, and several issues related to highly migratory species fisheries. Such topics related to highly migratory species issues include designating one Commissioner seat on the Inter-American Tropical Tuna Commission for the Pacific Council; expanding state enforcement authority to all vessels that

fish directly offshore of the territorial sea within the state-given boundaries; enhancing enforcement capabilities for international fisheries, including at-sea and in-port monitoring and enforcement, and providing assistance to developing countries in their enforcement capacity; changing "vessels" to "vessel" in the IUU certification section; and providing flexibility in observer requirements.

Additionally, it would be useful to clarify in Section 302(i)(A)(3) that Council discussion of international negotiations, such as proposals and counter proposals in the recent the US-Canada Albacore Treaty negotiations, are clearly an eligible topic for discussion during closed sessions of Council meetings. It would also be useful to include a carryover exception to allow ACLs to be exceeded in order to carry over surplus and deficit harvest in individual quota programs from one year to the next, provided the Scientific and Statistical Committee finds that such a carryover will have negligible biological impacts. It is important to also clarify current MSA language about the Scientific and Statistical Committee recommending true biological point estimate overfishing limits (OFLs), and not policy decision-dependent catch limits related to social, economic, or management performance cushions (ACLs), or policy decision-dependent assessments of the size of scientific inaccuracy risk buffers (currently identified as an acceptable biological catch limit).

Thank you again for the opportunity to comment. Should you or your staff have any questions about the enclosed report or require additional information, please don't hesitate to contact me at any time.

Sincerely



D. O. McIsaac, Ph.D.

Executive Director

JDG:kma

Cc: Council Members
Mr. Dave Whaley
Mr. Jeff Lewis
Pacific Council Advisory Body Members
RFMC Executive Directors

SUMMARY OF JUNE, 2014 ADVISORY BODY COMMENTS ON
MAGNUSON-STEVENS ACT (MSA) REAUTHORIZATION

General:

- Given the progress made on rebuilding stocks and the work currently underway in the Councils, the Coastal Pelagic Species Advisory Subpanel (CPSAS) believes significant changes to the MSA are not necessary at this time.

Carryover:

- The Groundfish Advisory Subpanel (GAP) calls for including a carryover exception to annual catch limits.

Data:

- Both versions of the Senate draft call for the Council Scientific and Statistical Committees to develop guidelines for the greater use of data from non-governmental sources, including fishermen, fishing communities, universities, and research institutions so that some of this data could be used as the best scientific information available. The Highly Migratory Species Advisory Subpanel (HMSAS) favors this provision.
- HR 4742 requires Federal-state partnerships to develop best practices for implementing recreational fishery data collection programs and create a grant program to improve these programs, as well as requiring the National Research Council to study recreational data survey methods. The HMSAS favors this.

Data-poor species:

- The HMSAS favors provisions calling for Councils to identify data-poor species and prioritize them for the U.S. Secretary of Commerce, who will then develop a plan to conduct stock assessments as soon as possible.
- The GAP calls for generally exploring more flexibility for data-poor stocks.

Depleted/Depletion:

- The CPSAS believes the use and definition of “depleted” and “depletion” in the reauthorization drafts will cause confusion and will require substantial clarification, and believes the term “depleted” in HR 4742, which replaces “overfished” throughout, would essentially change the definition of “overfished.”

Electronic monitoring:

- The HMSAS suggests only vessels greater than 24 meters in length should be required to carry vessel monitoring systems. In addition, the HMSAS agrees with the provisions in the Senate draft calling for Councils to review fishery management plans to determine where electronic monitoring can be used instead of human observers.

Enforcement:

- The HMSAS strongly favors HR 4742’s provision calling for a portion of penalty monies to be used for data-poor fisheries and cooperative research. The Senate version indicates such monies should be used to increase enforcement, and also would raise the maximum penalty from \$100,000 to \$180,000; the HMSAS strongly opposes such provisions.

Mixed-Stock Exception:

- The GAP notes that National Standard 1 guidelines are not explicit in allowing an exception. The GAP suggests that if it is referenced and available to use, a clear allowance should be included in the MSA.

National Environmental Policy Act (NEPA):

- The GAP calls for streamlining NEPA and MSA section 204(i) (addressed in HR 4742; partially addressed in Senate draft).

Observers:

- The GAP calls for more flexibility in requirements for observers.

Rebuilding timelines:

- The HMSAS favors the flexible approach to rebuilding timelines set out in the HR 4742.
- The GAP favors revising rebuilding time requirements and addressing social and economic issues by changing “possible” to “practicable.”
- The GAP believes stocks later determined to have never been overfished should not be held to rebuilding provisions (addressed in HR 4742).

Recreational Fisheries:

- Both Senate drafts provide authority for the Councils to use alternative fisheries management measures in recreational fisheries. The HMSAS favors this.

Referendum Before Imposition of Catch Share Programs:

- HR 4742 would provide for a referendum before the Secretary can approve or implement a catch share program coming from certain Councils. The HMSAS strongly recommends that such a provision include the Pacific Council (for fisheries other than the trawl rationalization program).

Other:

- The CPSAS disagreed with the definition of bycatch included in the first Senate draft. This definition was subsequently removed in the second draft.
- The CPSAS objected to language in the first Senate draft regarding forage species. All language regarding forage fish was removed in the second Senate draft.

FEDERAL LEGISLATION IN THE 113TH U.S. CONGRESS

A summary of Federal legislation introduced in the 113th Congress is provided below. This summary is intended as a general overview for discussion purposes. Full text of these bills, with background information and current status, can be found at the Library of Congress website (<http://thomas.gov>) or at <http://govtrack.us>. These summaries are primarily from the GovTrack.us website, further summarized by Council staff.

New, Relevant Bills Since June

S 2608: Improved National Monument Designation Process Act

- **Introduced by** Lisa Murkowski (R-AK) on July 15, 2014; no cosponsors
- **Status:** Referred to committee.
- **GovTrack chance of passage:** 2%
- **Companion bill:** HR 4988 (essentially identical)

This bill would amend the Antiquities Act to require Congressional approval prior to designation of any National Monument, and application of the National Environmental Policy Act to any proposed National Monument. With respect to any National Monument proposed within the EEZ, the bill would require specific authorization by an Act of Congress; approval by each State legislature within 100 miles of the proposed National Monument; and a stakeholder review process prior to the implementation of any restrictions on public uses within the designated area.

S 2674: Columbia River Basin Restoration Act of 2014

- **Introduced by** Jeff Merkley (D-OR) on July 28, 2014; three cosponsors
- **Status:** Referred to committee.
- **GovTrack chance of passage:** 5%
- **Companion bill:** HR 5216 (identical)

This bill would amend the Federal Water Pollution Control Act to establish a Columbia River Basin Restoration Program, within the Environmental Protection Agency (EPA), in order to reduce toxic contamination and clean up contaminated sites throughout the Columbia River Basin. The program would build on the work of the existing Columbia River Toxics Reduction Working Group and would consist of a collaborative stakeholder-based program for reducing toxic contamination throughout the Columbia River Basin. The program would include grants for projects that eliminate or reduce pollution, clean up contaminated sites, improve water quality, protect habitat, etc.

S 2727: Klamath Basin Water Recovery and Economic Restoration Act of 2014

- **Introduced by** Ron Wyden (D-OR) on July 31, 2014; cosponsored by Jeff Merkley (D-OR).
- **Status:** Referred to committee.

- **GovTrack chance of passage:** 2%
- **Companion bill:** Similar to S 2379.

A bill to approve and implement the Klamath Basin agreements, to improve natural resource management, support economic development, and sustain agricultural production in the Klamath River Basin in the public interest and the interest of the United States. This bill is identical to S 2379, which was discussed at the June Legislative Committee meeting, except that it appears to create a tax exemption for irrigation companies that are transferring water rights.

S 2771: Water in the 21st Century Act (W21)

- **Introduced by** Barbara Boxer (D-CA) on July 31, 2014; two cosponsors
- **Status:** Referred to committee.
- **GovTrack chance of passage:** 19%

This bill is meant to help communities nationwide better prepare for the future by providing new incentives and investments to help residents, businesses and local water agencies to conserve, recycle and manage limited water supplies. Among other things, the legislation would expand incentives for water conservation and efficiency; support local investments in water recycling and improved groundwater management and storage; and invest in research into water-saving technologies and desalination. The bill is meant to compliment the Emergency Drought Relief Act (S 2198), which was discussed at the June Legislative Committee meeting.

S 2771 directs U.S. Fish and Wildlife Service to prepare a salmon drought plan to address the impacts of drought on the salmon population. The plan would include options to protect California salmon populations, particularly actions to aid salmon during drought—for example, relocating the release location and timing of hatchery fish to avoid predation and temperature impacts; barging hatchery release fish to improve survival and reduce straying; coordinating with water users, Reclamation, and California Department of Water Resources regarding voluntary water transfers to provide benefits for salmon; hatchery management modifications; and increasing rescue operations of upstream migrating fish.

HR 4005: Coast Guard and Maritime Transportation Act of 2013

- **Introduced by** Duncan Hunter (R-CA) on February 6, 2014; 2 bipartisan cosponsors
- **Status:** Passed the House on April 1, 2014.
- **GovTrack chance of passage:** 54%

This bill authorizes appropriations for the Coast Guard for 2015 and 2016. In addition to many Coast Guard-related actions, it bars specified Federal shipping laws related to maritime liability from establishing maritime liens on state or federal fishing permits, and authorizing civil actions to enforce maritime liens on such permits. The bill specifies that a “fishing permit” is governed solely by the state or Federal law under which it was issued, and shall not be treated as part of a vessel, or as an appurtenance or intangible of a vessel, for any purpose under federal law.

The bill incorporates the Commercial Vessel Discharge Reform Act of 2014, which makes permanent a provision prohibiting the EPA, or a state with an approved National Pollutant Discharge Elimination System (NPDES) permit program under the Clean Water Act, from requiring an NPDES permit for a

covered vessel (a vessel that is less than 79 feet in length or a fishing vessel) for any discharge of effluent from properly functioning marine engines; of laundry, shower, and galley sink wastes; or that is incidental to the normal operation of a covered vessel. (Currently, such prohibition ends on December 18, 2014.)

In addition, the bill reauthorizes the Fishing Safety Training Grant Program and the Fishing Safety Research Grant Program through FY2016.

HR 4988: Marine Access and State Transparency Act

- **Introduced by** Steve Southerland (R-FL) on June 26, 2014; 15 cosponsors
- **Status:** Referred to committee.
- **GovTrack chance of passage:** 23%
- **Companion bill:** S 2608 (essentially identical)

See S 2608 (above).

HR 5026: Fish Hatchery Protection Act

- **Introduced by** Paul Gosar (R-AZ) on July 8, 2014; 6 bipartisan cosponsors
- **Status:** Referred to committee.
- **GovTrack chance of passage:** 20%

This very brief bill would prohibit closing, significantly altering, or decommissioning any Department of the Interior fish hatchery or propagation program unless expressly authorized by an Act of Congress. The Act would be in effect for 10 years.

HR 5216: Columbia Basin Restoration Act

- **Introduced by** Earl Blumenauer (D-OR) on July 28, 2014; two cosponsors
- **Status:** Referred to committee.
- **GovTrack chance of passage:** 8%
- **Companion bill:** S 2674

See S 2674 (above).

HR 5283: Land-Based Marine Debris Reduction Act

- **Introduced by** Mike Honda (D-CA) on July 30, 2014; no cosponsors
- **Status:** Referred to committee.
- **GovTrack chance of passage:** 1%

This bill would establish national goals for the reduction and recycling of municipal solid waste in order to address the growing problem of marine debris, and would require the EPA to promulgate regulations to attain those goals. The Act would require a yearly report on solid waste generation and the amount of solid waste that enters the ocean, and progress in reducing the amount of waste entering the ocean. It would also require a report on how marine debris reaches the ocean, and best practices to reduce such

debris. It would look at products and their packaging and would allow the EPA to promulgate regulations to reduce packaging waste and create packaging standards.

Bills Signed Into Law Since June

S 1254: Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2014

- **Introduced by** Bill Nelson (D-FL) on June 27, 2013; 18 bipartisan cosponsors
- **Status:** Signed by the President.

Among other things, this bill requires the Under Secretary of Commerce for Oceans and Atmosphere to maintain a national harmful algal bloom and hypoxia program, and develop a comprehensive research plan and action strategy to address marine and freshwater harmful algal blooms and hypoxia. It adjusts the responsibilities of the existing Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia to speed up the review process and promote the development of new technologies for predicting, monitoring, and mitigating harmful algal bloom and hypoxia conditions. NOAA will administer the program.

Bills Reported by Committee Since June

S. 2094, the Vessel Incidental Discharge Act (Begich), was reported by committee on July 23 with minor amendments related to ballast water.

HR 5026, the Fish Hatchery Protection Act (Gosar), was reported by committee on July 30.

SUMMARY OF FEDERAL LEGISLATION IN THE 113TH U.S. CONGRESS

A summary of relevant Federal legislation introduced in the 113th Congress is provided below. Full text of these bills, with background information and current status, can be found at the Library of Congress website (<http://thomas.gov>) or at <http://govtrack.us>.

Bills that have experienced change since June are highlighted. Bills that are greyed out have not progressed in at least 12 months, although their text may have been incorporated into another bill.

HOUSE BILLS

Number	Name of Bill	Notes	Introduced by	Status	Chance of Passage (govtrack.com) ¹
HR 69	Illegal, Unreported, and Unregulated (IUU) Fishing Enforcement Act of 2013	Strengthens enforcement mechanisms to stop IUU fishing, to amend the Tuna Conventions Act to implement the Antigua Convention, etc.	Madeleine Bordallo, D-Guam (Jan 2013)	Referred to committee	15%
HR 71	Coral Reef Conservation Act Reauthorization and Enhancement Amendments of 2013	Self-explanatory.	Madeleine Bordallo, D-Guam (Jan 2013)	Referred to committee	4%
HR 584	To amend the Federal Food, Drug, and Cosmetic Act to require labeling of genetically engineered fish	Self-explanatory. Companion bill to S 248 (Mark Begich)	Don Young, R-Alaska (Feb 2013)	Referred to committee	1%
HR 753	Untitled	Prohibits finfish aquaculture in the EEZ	Don Young, R-Alaska (Feb 2013)	Referred to committee	3%
HR 764	Coastal State Climate Change Planning Act	Amends the Coastal Zone Management Act of 1972 to require the Secretary of Commerce to establish a coastal climate change adaptation planning and response program	Lois Capps, D-California (Feb 2013)	Referred to committee	7%

¹ The GovTrack.us chance of passage is based on an analysis of over 50 variables including similarity to other bills, committee membership of the sponsors, etc. While this rating system may be used to compare the relative chance of passage of various bills among the thousands introduced during a Congressional session, it should be taken advisedly.

Number	Name of Bill	Notes	Introduced by	Status	Chance of Passage
HR 799	Fisheries Disaster Relief and Research Investment Act	Amends the Saltonstall-Kennedy Act to protect fishing communities.	John Tierney, D-Massachusetts (Feb 2013)	Referred to committee	3%
HR 1147	To provide limitations on maritime liens on fishing permits, and for other purposes	Limits liens on fishing permits. Incorporated into Coast Guard reauthorization bill (HR 4005).	Don Young, R-Alaska (March 2013)	Referred to committee	3%
HR 1308	Endangered Salmon and Fisheries Predation Prevention Act	To reduce predation on Columbia River salmon.	Doc Hastings, R-Washington (March 2013)	Reported by committee 11/14/13.	14%
HR 1667	Prevention of Escapement of Genetically Altered Salmon in the United States Act	Self-explanatory	Don Young, R-Alaska (April 2013)	Referred to committee	24%
HR 1927	More Water and Security for Californians Act	Provide congressional direction for implementation of the Endangered Species Act as it relates to operation of the Central Valley Project and the California State Water Project and for water relief in the State of California.	Jim Costa, D-California (May 2013)	Referred to committee	3%
HR 3063	Healthy Fisheries through Better Science Act	Amends MSA to require stock assessments for all FMP species.	Robert Wittman, R-Virginia (August 2013)	Referred to committee	6%
HR 3105	Aquaculture Risk Reduction Act	Exempts animals accidentally included in aquaculture shipments from the Lacey Act.	Rick Crawford, R-Arkansas	Referred to committee	4%
HR 3414	Fundamentally Improving Salmon Habitat Act	Would amend WRRDA to provide funding for ecosystem restoration in the Columbia and Tillamook basins.	Jaime Herrera-Beutler, D-Washington (October 2013)	Referred to committee	6%

Number	Name of Bill	Notes	Introduced by	Status	Chance of Passage
HR 3464	Commercial Vessel Discharges Reform Act of 2013	Exempts small vessels from certain discharge regulations. Substance incorporated into Coast Guard reauthorization bill (HR 4005).	Frank LoBiondo, R-New Jersey (Nov 2013)	Referred to committee	22%
HR 3533	Endangered Species Management Self-Determination Act	Allow states to manage endangered species protections. Identical to S. 1731.	Mark Amodei, R-Nevada (Nov 2013)	Referred to committee	3%
HR 3964	Sacramento-San Joaquin Valley Emergency Water Delivery Act	Directs water to agriculture; repeals environmental laws.	David Valadeo, R-California (Jan 2013)	Passed House 2/5/14. No action since.	28%
HR 4005	Coast Guard and Maritime Transportation Act of 2013 (NEW TO COUNCIL)	Authorizes appropriations for the Coast Guard for 2015 and 2016. See more details above.	Duncan Hunter (R-CA)	Passed House 4/1/14.	54%
HR 4025	Fishing Safety Training and Research Act	Reauthorizes and amends the Fishing Safety Training Grant Program and the Fishing Safety Research Grant Program. (Both programs reauthorized in Coast Guard bill, HR 4005).	William Keating, D-Massachusetts (Feb 2014)	Referred to committee	3%
HR 4039	California Emergency Drought Relief Act of 2014	Similar to S 2016; emphasizes flexibility in existing water programs.	Jim Costa, D-California (Feb 2014)	Referred to committee	4%
HR 4097	Salmon Solutions and Planning Act	To ensure that proper information gathering and planning are undertaken to secure the preservation and recovery of the salmon and steelhead of the Columbia River Basin.	Jim McDermott, D-Washington (Feb 2014)	Referred to committee	2%
HR 4300	Sacramento Valley Water Storage and Restoration Act of 2014	Directs the Secretary of the Interior to take actions to support non-Federal investments in water infrastructure improvements in the Sacramento Valley.	Doug LaMalfa, R-California (March 2014)	Referred to committee	9%

Number	Name of Bill	Notes	Introduced by	Status	Chance of Passage
HR 4692	Coastal Communities Ocean Acidification Act of 2014	Directs Commerce/NOAA to conduct coastal community vulnerability assessments related to ocean acidification.	Chellie Pingree (D-ME)	Referred to committee	2%
HR 4742	Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act	MSA reauthorization bill. Incorporates REFI Act.	Doc Hastings, R-Washington (May 2014)	Reported by committee 4/29/14	28%
HR 4988 (NEW)	Marine Access and State Transparency Act	Requires Congressional approval, NEPA analysis of new National Monuments (see description above)	Steve Southerland (R-FL) (June 2014)	Referred to committee	23%
HR 5026 (NEW)	Fish Hatchery Protection Act	Requires an Act of Congress to decommission Department of Interior hatcheries, programs. (See description above)	Paul Gosar (R-AZ) (July 2014)	Reported by committee 7/30/14	9%
HR 5177 (NEW)	Estuary Urgent Needs Priority Program Act	Amends the Federal Water Pollution Control Act by adding a competitive award program, awarding recipients that are best able to address issues threatening the economic and ecological well-being of coastal areas. Such issues include seagrass habitat losses resulting in significant impacts on fisheries and water quality, recurring harmful algae blooms, unusual marine mammal mortalities, invasive exotic species, and jellyfish proliferation.	Bill Posey (R-FL) (July 2014)	Referred to committee	4%
HR 5216 (NEW)	Columbia Basin Restoration Act	See S 2674 (identical companion bill)	Earl Blumenauer (D-OR) (July 2014)	Referred to committee	8%
HR 5266 (NEW)	Untitled	To reauthorize the National Estuary Programs and to create a competitive award program similar to HR 5177.	Frank LoBiondo (R-NJ) (July 2014)	Referred to committee	9%
HR 5283 (NEW)	Land-Based Marine Debris Reduction Act	To establish national goals for the reduction and recycling of municipal solid waste and to address the growing problem of marine debris.	Mike Honda (D-CA) (July 2014)	Referred to committee	1%

SENATE BILLS

Number	Name of Bill	Notes	Introduced by	Status	Chance of Passage
S 45	West Coast Ocean Protection Act of 2013	Prohibits drilling off the coast of California, Oregon, and Washington	Barbara Boxer, D-California (Jan 2013)	Referred to committee	1%
S 224	San Francisco Bay Restoration Act	Amends the Federal Water Pollution Control Act to establish a grant program to support the restoration of San Francisco Bay	Dianne Feinstein, D-California (Feb 2013)	Reported by committee 4/3/14	20%
S 248	Untitled	Amends the Federal Food, Drug, and Cosmetic Act to require labeling of genetically engineered fish	Mark Begich, D-Alaska (Feb 2013)	Referred to committee	0%
S 267	Pirate Fishing Elimination Act	To prevent, deter, and eliminate illegal, unreported and unregulated fishing through port State measures	John “Jay” Rockefeller, D-West Virginia (Feb 2013)	Reported by committee 7/13/13	14%
S 269	International Fisheries Stewardship and Enforcement Act	Establishes uniform authorities for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes	Jay Rockefeller, D-West Virginia (Feb 2013)	Council commented on this. Reported by committee 7/30/13	14%
S 518	H2O Visa for Seafood Processing Act	Authorizes the issuance of H2O nonimmigrant visas for aliens temporarily performing labor in the seafood processing industry	Mark Begich, D-Alaska (March 2013)	Referred to committee	1%
S 520	Safety and Fraud Enforcement for Seafood Act	Replaces HR 1012 (Ed Markey, D-MA). To reduce seafood fraud.	Mark Begich, D-Alaska (March 2013)	Referred to committee	2%
S 542	Maritime Lien Reform Act	Limits maritime liens on fishing licenses. Included in HR 4005.	Lisa Murkowski, R-Alaska (March 2013)	Referred to committee	0%

Number	Name of Bill	Notes	Introduced by	Status	Chance of Passage
S 646	National Endowment for the Oceans Act	Creates a National Endowment for the Oceans to promote the protection and conservation of ocean, coastal, and Great Lakes ecosystems	Sheldon Whitehouse, D-Rhode Island (March 2013)	Referred to committee	2%
S 839	Coral Reef Conservation Amendments Act of 2013	Reauthorizes the Coral Reef Conservation Act of 2000.	Bill Nelson, D-Florida (April 2013)	Reported by committee 7/30/13	20%
S 1153	Invasive Fish and Wildlife Prevention Act	Self-explanatory.	Kirsten Gillibrand, D-New York (June 2013)	Referred to committee	3%
S 1275	Revitalizing the Economy of Fisheries in the Pacific (REFI) Act	Replaces HR 2646 (Jaime Herrera-Beutler, R-WA). Directs the Secretary of Commerce to issue a fishing capacity reduction loan to refinance the existing loan funding the Pacific Coast groundfish fishing capacity reduction program. Incorporated into HR 4742 (MSA reauth.)	Maria Cantwell, D-Washington (July 2013)	Reported by committee 4/9/14.	20%
S 1335	Sportsmen's Act.	Aims to ensure public lands are open to fishing and hunting. (Several other bills have the same goal)	Lisa Murkowski, R-Alaska (July 2013)	Reported by committee 7/18/13.	20%
S 1521	Responsible Seafood Certification and Labeling Act	Prohibits Federal agencies from requiring seafood to be certified as sustainable by a third party nongovernmental organization.	Lisa Murkowski, R-Alaska (Sept 2013)	Referred to committee	0%
S 1731	Endangered Species Management Self-Determination Act	Amends the Endangered Species Act to permit Governors of states to regulate intrastate endangered species and intrastate threatened species.	Rand Paul, R-Kentucky (Nov 2013)	Referred to committee	3%
S 2028	Sport Fish Restoration and Recreational Boating Safety Act of 2014	Amends laws relating to sport fish restoration and recreational boating safety.	Jay Rockefeller, D-West Virginia (Feb 2014)	Reported by committee 4/9/14.	47%

Number	Name of Bill	Notes	Introduced by	Status	Chance of Passage
S 2016	California Emergency Drought Relief Act of 2014	A “compromise” drought bill focused on flexibility in water allocations rather than repealing environmental laws	Dianne Feinstein, D-California (Feb 2014)	Referred to committee	6%
S 2042	Clean Estuaries Act of 2014	Amends the Federal Water Pollution Control Act to reauthorize the National Estuary Program.	Sheldon Whitehouse, D-Rhode Island (Feb 2014)	Reported by committee 4/3/14.	28%
S 2080	National Fish Habitat Conservation Act	A bill to conserve fish and aquatic communities through partnerships that foster fish habitat conservation, enhance fish and wildlife-dependent recreation, etc.	Benjamin Cardin, D-Maryland (March 2014)	Reported by committee 4/3/14.	20%
S 2094	Vessel Incidental Discharge Act	To establish uniform and environmentally sound standards governing discharges incidental to the normal operation of a vessel.	Mark Begich, D-Alaska (March 2014)	Reported by committee 7/23/14	53% (up from 24% in June)
S 2198	Emergency Drought Relief Act of 2014	Directs Interior, Commerce, Agriculture, and EPA to provide additional water supplies to the State of California due to drought.	Dianne Feinstein, D-California (April 2014)	Passed Senate 5/22/14.	20%
S 2379	Klamath Basin Water Recovery and Economic Restoration Act of 2014	Would formalize the Upper Klamath Basin Comprehensive Agreement and authorize the Klamath Basin Restoration Agreement and Klamath Hydroelectric Settlement Agreement.	Ron Wyden and Jeff Merkley (D-OR) (May 2014)	Referred to committee	5%
S 2560 (NEW)	United States Fish and Wildlife Resource Protection Act	A bill to authorize the United States Fish and Wildlife Service to seek compensation for injuries to trust resources and use those funds to restore, replace, or acquire equivalent resources, and for other purposes.	Benjamin Cardin (D-MD) (June 2014)	Referred to committee	18%
S 2608 (NEW)	Improved National Monument Designation Process Act	See description in text above.	Lisa Murkowski (R-WA) (July 2014)	Referred to committee	2%

Number	Name of Bill	Notes	Introduced by	Status	Chance of Passage
S 2674 (NEW)	Columbia River Basin Restoration Act of 2014	See description in text above.	Jeff Merkley (D-OR)	Referred to committee	5%
S 2727 (NEW)	Klamath Basin Water Recovery and Economic Restoration Act	See description in text above.	Ron Wyden (D-OR) (July 2014)	Referred to committee	2%
S 2771 (NEW)	Water in the 21st Century Act	See description in text above.	Barbara Boxer (D-CA) (July 2014)	Referred to committee	19%

SIGNED INTO LAW

HR 3080	Water Resources Reform and Development Act (WRRDA) of 2013	Wide-ranging bill authorizes Army Corps of Engineers projects; reforms water resource policy; increases transparency; requires review of levee vegetation policies	Bill Schuster, R-Pennsylvania (Sept 2013)	Signed by President 6/10/14	PASSED
S 1254	Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2013	Amends the Harmful Algal Blooms and Hypoxia Research and Control Act. Creates a national algal bloom and hypoxia program and requires a research plan and action strategy under NOAA. Creates a grant program in support of this strategy. Authorizes \$20.5 million per year through 2018.	Bill Nelson, D-Florida (June 2013)	Signed by President 6/30/14	PASSED

PFMC
08/18/2014

113TH CONGRESS
2D SESSION

S. 2608

To provide for congressional approval of national monuments and restrictions on the use of national monuments, to establish requirements for the declaration of marine national monuments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2014

Ms. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for congressional approval of national monuments and restrictions on the use of national monuments, to establish requirements for the declaration of marine national monuments, 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 “Improved National
5 Monument Designation Process Act”.

1 **SEC. 2. DESIGNATION OF NATIONAL MONUMENTS.**

2 The Act of June 8, 1906 (commonly known as the
3 “Antiquities Act of 1906”) (16 U.S.C. 431 et seq.), is
4 amended—

5 (1) in section 2 (16 U.S.C. 431)—

6 (A) by striking “**SEC. 2.** That the Presi-
7 dent is hereby authorized, in his discretion to”
8 and inserting the following:

9 **“SEC. 2. DESIGNATION OF NATIONAL MONUMENTS.**

10 “(a) IN GENERAL.—After obtaining congressional
11 approval of the proposed national monument and certi-
12 fying compliance with the National Environmental Policy
13 Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the
14 proposed national monument and subject to subsection
15 (b), the President may”; and

16 (B) by adding at the end the following:

17 “(b) REQUIREMENTS FOR DECLARATION OF MARINE
18 NATIONAL MONUMENTS.—

19 “(1) DEFINITION OF EXCLUSIVE ECONOMIC
20 ZONE.—In this subsection, the term ‘exclusive eco-
21 nomic zone’ means the zone established by Procla-
22 mation Number 5030, dated March 10, 1983 (16
23 U.S.C. 1453 note).

24 “(2) REQUIREMENTS.—The President may not
25 declare any area of the exclusive economic zone to
26 be a national monument unless—

1 “(A) the declaration is specifically author-
2 ized by an Act of Congress;

3 “(B) the President has submitted to the
4 Governor of each State and each territory, any
5 part of which is located within 100 nautical
6 miles of the proposed national monument, a
7 proposal to make the declaration;

8 “(C) the Governor of each State and terri-
9 tory described in subparagraph (B) submits to
10 the President notice that the legislature of the
11 State or territory has approved the proposal
12 submitted under that paragraph; and

13 “(D) the declaration is substantially the
14 same as the proposal submitted under subpara-
15 graph (B).”; and

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

17 **“SEC. 5. RESTRICTIONS ON PUBLIC USE.**

18 “The Secretary of the Interior, or the Secretary of
19 Commerce, with respect to any area of the exclusive eco-
20 nomic zone (as defined in section 2(b)(1)) designated as
21 a national monument, shall not implement any restrictions
22 on the public use of a national monument until the expira-
23 tion of an appropriate review period (as determined by the
24 Secretary of the Interior or the Secretary of Commerce,

- 1 as applicable) providing for public input and congressional
- 2 approval.”.



Background on

“Improved National Monument Designation Process Act”

- The Obama Administration’s recent announcement to expand the scope and boundaries of the Pacific Remote Islands Marine National Monument (from 77,020 to more than 782,000 square miles) is a stark reminder of the sweeping, unilateral actions that the executive branch can take.
- There are already 109 National Monuments in the U.S., ranging in size from 0.0074 acres for the Father Millett Cross National Monument in New York, to 139,797 square miles for the Papahānaumokuākea Marine National Monument in Hawaii.
- Despite strong concerns raised by diverse stakeholders, the Executive Branch is showing increasing interest in establishing new National Monuments, or substantially expanding existing boundaries.
- This bill would amend the Antiquities Act of 1906 (16 U.S.C. 431 *et seq.*) to require:
 - Congressional approval prior to designation of any National Monument; and
 - Application of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) to any proposed National Monument.
- With respect to any National Monument proposed within the exclusive economic zone as defined by Proclamation Number 5030 (16 U.S.C. note), the bill would require:
 - Specific authorization by an Act of Congress;
 - Approval by each State legislature within 100 miles of the proposed National Monument; and
 - A stakeholder review process prior to the implementation of any restrictions on public uses within the designated area.

September 2014



Jennifer Gilden - NOAA Affiliate <jennifer.gilden@noaa.gov>

Re: Request for Pacific Council comments

Donald McIsaac - NOAA Affiliate <donald.mcisaac@noaa.gov>

Fri, Jul 18, 2014 at 5:51 AM

To: "Sterne, Jay (Murkowski)" <Jay_Sterne@murkowski.senate.gov>, Jennifer Gilden - NOAA Affiliate <jennifer.gilden@noaa.gov>

Cc: Dave Hanson <Dave_Hanson@psmfc.org>, Dorothy Lowman <dmlowman01@comcast.net>, Herb Pollard <hapollard@yahoo.com>, Don Hansen - NOAA Affiliate <don.hansen@noaa.gov>, Chuck Tracy - NOAA Affiliate <chuck.tracy@noaa.gov>, Chris Oliver - NOAA Affiliate <chris.oliver@noaa.gov>, Kitty Simonds - NOAA Affiliate <kitty.simonds@noaa.gov>

Thank you, this email will suffice.

Jennifer please put Jay's communique in the Briefing Book materials for the Legislative Matters agenda item for the upcoming Council meeting, and orient the Legislative Committee members during their meeting.

Thanks,

Don

On Thu, Jul 17, 2014 at 2:58 PM, Sterne, Jay (Murkowski) <Jay_Sterne@murkowski.senate.gov> wrote:

Don –

I would like to request a formal review and comments from the Pacific Council on the attached legislation (S.2608) that was introduced this week by Senator Murkowski. Please let me know if you need additional information, or if you require a formal letter from the Senator.

I appreciate your assistance with this request.

Best regards,

Jay Sterne

Jay Sterne

Legislative Assistant

Senator Lisa Murkowski

709 Hart Office Building

Washington, DC 20510

[202-224-6665](tel:202-224-6665)

jay_sterne@murkowski.senate.gov

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Donald O. McIsaac, Ph. D.
Executive Director
Pacific Fishery Management Council
[\(503\) 820 2280](tel:(503)8202280)
www.pcouncil.org

LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (LC) met on Thursday, September 11 to discuss current legislation, the reauthorization of the Magnuson-Stevens Act, and the Congressional request for comment on HR 2608, the Improved National Monument Designation Process Act.

The meeting was attended by committee members Dr. David Hanson, Mr. David Crabbe, Ms. Dorothy Lowman, Mr. Buzz Brizendine, Mr. Dale Myer, and Mr. Dan Wolford; Council Executive Director Dr. Donald McIsaac, and Council staff Ms. Jennifer Gilden. Rod Moore (West Coast Seafood Processors Association), Mr. Phil Anderson (Washington Department of Fish and Wildlife), Mr. Chuck Tracy (Council staff), and two staff members from the Gulf of Mexico Fishery Management Council also attended.

Magnuson-Stevens Act (MSA) Reauthorization

The LC briefly discussed MSA reauthorization. A full discussion of relevant issues would have included a review of a second Senate draft of a bill to reauthorize the MSA, released shortly before the September Briefing Book deadline, and excerpts from advisory body statements delivered at the June Council meeting that recommended new priorities beyond those adopted by the Council. However, given the short time available for the LC meeting and the request from Senator Murkowski for Council comment on S 2608, the LC postponed their discussion of MSA reauthorization at this meeting, proposing instead to meet by webinar before the November Council meeting. That webinar would focus on the advisory body comments and MSA bills noted above, and the development of a draft report to be finalized at the November LC meeting for review by other advisory bodies in November.

S 2608

The LC discussed HR 2608, the Improved National Monument Designation Process Act (Agenda Item I.1.a, Attachment 8), with reference to the materials in Agenda Item I.2 regarding the proposed expansion of the Pacific Remote Islands Marine National Monument using Presidential authority under the Antiquities Act. The LC recommends (1) that any legislation dealing with establishing national monuments make clear that fishing regulation within marine national monuments be accomplished under the authority and processes of the MSA—rather than the Antiquities Act or any other Act, and (2) that a requirement be added to the bill in Section 2 that any proposed marine national monument be presented to the appropriate Regional Fishery Management Council in a manner to allow for a recommendation from the Council subsequent to its normal public process.

The LC purposely chose to focus on the MSA-related elements of this proposed legislation without commenting on the bill's proposed requirement for state legislatures to specifically approve any monument within 100 nautical miles of their state. The LC noted the Council is already on record as supporting that portion of HR 4742 calling for the primacy of the MSA over the Antiquities Act in terms of managing marine fisheries.

ECOSYSTEM ADVISORY SUBPANEL REPORT ON LEGISLATIVE MATTERS

The Ecosystem Advisory Subpanel (EAS) encourages inclusion of policies and practices that support implementation of ecosystem-based management in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) reauthorization. The following proposed legislative initiatives are illustrations of efforts that would enhance broad stakeholder engagement and stewardship opportunities: (a) developing guidelines (with Scientific and Statistical Committees) to facilitate greater use of data from nongovernment sources, including fishermen, fishing communities, universities, and research institutions and (b) authority to Councils to use alternative fishery management measures in recreational fisheries that encourage regional stewardship.

The EAS looks forward to reviewing the further work of the Legislative Committee and opportunities to comment for the Council's final deliberations on advice concerning the MSA Reauthorization.

PFMC
09/13/14

GROUND FISH ADVISORY SUBPANEL REPORT ON LEGISLATIVE MATTERS

The Groundfish Advisory Subpanel (GAP) heard a report by Ms. Jennifer Gilden and offers the following comments on legislative matters.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) Reauthorization

The GAP understands it's unlikely that any MSFCMA reauthorization will move forward in this session, but can provide comments in November if needed.

REFI Pacific Act (S. 1275)

Ms. Gilden noted S. 1275 has moved out of committee and is making progress in the Senate. However, the Congressional Budget Office estimates the enactment of S. 1275 would require an offset of \$7 million – the amount of revenue the government anticipates losing if the loan is refinanced – and must be found in the current budget. This amount could be made without a subsequent appropriation, but it must be found within the current budget. Given the Council's support of the REFI Pacific Act in the past, the GAP requests the Council continue to support it and that the entire Council family, including National Marine Fisheries Service, work to find an offset for the \$7 million cost.

Improved National Monument Designation Process Act (S. 2608)

The GAP briefly discussed this proposed legislation and supports the Legislative Committee's recommendation that any fishing regulations within any marine national monuments fall under the Magnuson-Stevens Act. Furthermore, we also agree that Regional Fishery Management Councils must be consulted to review proposed monuments within their respective areas prior to designation.

PPMC
09/14/14

COMMENTS ON EXECUTIVE ACTIONS

Recently President Obama announced an executive action and a presidential memorandum that affect fisheries management:

Executive Action on Marine Areas, Combating Illegal, Unreported and Unregulated (IUU) Fishing, and Other Matters

On June 17, President Obama announced a suite of new executive actions, including

- A commitment to immediately consider how to expand protections near the **Pacific Remote Islands Marine National Monument** in the south-central Pacific Ocean. Input of fishermen, scientists, conservation experts, elected officials, and other stakeholders will be considered before decisions about the geographic scope and details of the marine protections.
- **Combating black market fishing and supporting fishermen.** The President is directing Federal agencies to develop a comprehensive program aimed at deterring illegal fishing, addressing seafood fraud, and preventing illegally-caught fish from entering the marketplace by increasing traceability and transparency.
- **The President also announced a series of actions aimed at protecting coastal communities** from the impacts of climate change, improving domestic aquaculture, and providing research to better understand the challenges facing oceans.

A fact sheet on these actions is attached (Agenda Item I.2.a, Attachment 1). National Oceanic and Atmospheric Administration and the U.S. Fish and Wildlife Service conducted a Town Hall meeting on the possible expansion of the protections of the Pacific Remote Islands Marine National Monument on August 11. Other than this meeting, it is unclear at this time how comments on the proposed expansion will be accepted. The Western Pacific Fishery Management Council has commented directly to the President, and has issued a press release and official reaction (Agenda Item I.2.a, Attachments 2, 3, and 4). Comments by the Marine Conservation Alliance are also attached (Agenda Item I.2.a, Attachment 5).

The Legislative Committee will discuss both the expansion proposal and the Murkowski legislation presented under Agenda Item I.1 at their September 11 meeting and develop comments (Agenda Item I.2.b, Supplemental LC Report).

Presidential Memorandum on Establishing a Comprehensive Framework to Combat IUU Fishing and Seafood Fraud

Among other things, the Presidential Memorandum on Seafood Fraud Prevention (Agenda Item I.2.a, Attachment 6), also issued on June 17, establishes a Presidential Task Force, co-chaired by the Departments of State and Commerce and made up of other federal agencies, which is directed to report to the President within six months with “recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need.”

The Task Force initiated a public engagement process to advise them in developing recommendations in compliance with the Memorandum (Agenda Item I.2.a, Attachment 7); however, the comment period did not include the September Council meeting. Public comments were requested through September 2, 2014. In addition, there were two conference calls, an in-person meeting in Seattle on August 20, and an in-person meeting in Washington, D.C. on August 28.

Council Action:

Provide Comments on Executive Orders on Expanding the National Monuments, Seafood Fraud, and Illegal Fishing and Marketing.

Reference Materials:

1. Agenda Item I.2.a, Attachment 1: Fact sheet: Leading at Home and Internationally to Protect Our Oceans and Coasts.
2. Agenda Item I.2.a, Attachment 2: WPFMC letter to President Obama.
3. Agenda Item I.2.a, Attachment 3: WPFMC Press Release.
4. Agenda Item I.2.a, Attachment 4: WPFMC Reaction.
5. Agenda Item I.2.a, Attachment 5: Letter from Marine Conservation Alliance on Proposed Monument Expansion.
6. Agenda Item I.2.a, Attachment 6: Presidential Memorandum on Seafood Fraud Prevention.
7. Agenda Item I.2.a, Attachment 7: Federal Register Notice on Public Meetings and Request for Comment on Seafood Fraud.
8. Agenda Item I.2.b, Supplemental LC Report.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Provide Comments on Executive Actions, Including Consideration to Expand the National Monument in the South Pacific Region, Address Seafood Fraud, and Deter Illegal Fishing and Marketing

Jennifer Gilden

PFCMC
08/13/14

The White House

Office of the Press Secretary

Agenda Item I.2.a

Attachment 1

September 2014

For Immediate Release

June 17, 2014

FACT SHEET: Leading at Home and Internationally to Protect Our Ocean and Coasts

"We've already shown that when we work together, we can protect our oceans for future generations. So let's redouble our efforts. Let's make sure that years from now we can look our children in the eye and tell them that, yes, we did our part, we took action, and we led the way toward a safer, more stable world."

President Barack Obama, June 17, 2014

President Obama is committed to protecting the ocean and its marine ecosystems. Americans all over the country depend on the ocean for food, jobs, and recreation. But the health of our ocean is under threat on multiple fronts, from overfishing to carbon pollution. The recently released [National Climate Assessment](#) confirms that climate change is causing sea levels and ocean temperatures to rise. Changing temperatures can harm coral reefs and force certain species to migrate. In addition, carbon pollution is being absorbed by the oceans, causing them to acidify, which can damage coastal shellfish beds and reefs, altering entire marine ecosystems. In fact, the acidity of our ocean is changing 50 times faster than any known change in millions of years. And black market fishing—fishing that is illegal, unreported, and unregulated (IUU)—continues to pose a major threat to the sustainability of our world's fisheries, economies and to global security.

Recognizing these significant challenges, President Obama launched the National Ocean Policy early in his first term. The National Ocean Policy seeks to streamline more than 100 laws that govern our oceans and create a coordinated, science-based approach to managing the many resources and uses of our coasts and oceans. National Ocean Policy initiatives range from voluntary marine planning to releasing more federal data to supporting offshore renewable energy projects to making our ports more resilient to sea level rise.

This week, the State Department is hosting the "Our Ocean" conference, an international conference on sustainable fisheries, marine pollution, and ocean acidification that concludes today. Secretary Kerry has also issued a [global call to action](#) to protect the oceans. As part of the conference, the President is announcing several steps that the United States is taking to answer that call. During the closing events of the conference, the State Department will announce additional steps and commitments it has secured to protect our oceans.

New Actions to Protect and Preserve the Ocean

Today, in a video message to conference participants, President Obama is announcing new executive actions to preserve and protect the oceans.

- **New protections for world-class marine areas.** The President today announced a commitment to use his authority to protect some of our most precious marine landscape just like he has for our mountains and rivers and forests. To meet the President's commitment, the Administration will immediately consider how we might expand protections near the Pacific Remote Islands Marine National Monument in the south-central Pacific Ocean, an area which contains some of the most pristine tropical marine environments in the world. These tropical coral reefs and associated marine ecosystems are also among the most vulnerable areas to the impacts of climate change and ocean acidification. Before making decisions about the geographic scope and details of future marine protections, we will consider the input of fishermen, scientists, conservation experts, elected officials, and other stakeholders. The

President is also calling on other world leaders to join him in this effort to ensure that the world's most valuable ocean ecosystems remain productive and pristine for our children and grandchildren.

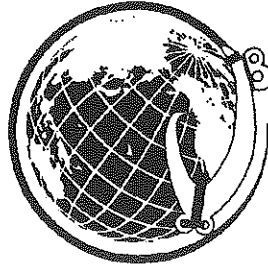
- **Combating black market fishing and supporting fishermen.** The President is directing Federal agencies to develop a comprehensive program aimed at deterring illegal fishing, addressing seafood fraud, and preventing illegally caught fish from entering the marketplace by increasing traceability and transparency. Black market fishing constitutes up to 20 percent of the wild marine fish caught each year around the world, and drains up to \$23 billion from legitimate fishing enterprises. The program will be an important step in ending illegal, unreported, and unregulated fishing, building the market for legally and sustainably caught seafood, and supporting the men and women of the fishing industry.

In addition, the Administration is taking steps to protect coastal communities from the impacts of climate change, improve domestic aquaculture, and providing research to better understand the challenges facing our oceans.

- **Establishing a pathway to new marine sanctuaries.** Last week, the National Oceanic and Atmospheric Administration (NOAA) released a final rule re-opening the [public nomination process for proposing new sanctuaries](#) in our oceans and Great Lakes. For the first time since 1995, Americans will be able to nominate nationally significant marine and Great Lakes areas as marine sanctuaries. This reflects the overwhelming consensus of more than 18,000 comments NOAA received on the proposed version of the rule and will give local communities and organizations the opportunity to voice their support for significant marine areas in need of protection.
- **Meeting diverse coastal needs with regional marine planning.** Under the President's National Ocean Policy, voluntary marine planning bodies are working all over the country to find commonsense ways for the wide range of people and organizations who live, work, and play in the ocean to enjoy the full benefits of its resources. Regional marine plans help balance coastal use issues including fishing, energy, and marine transportation with the interests of communities, ensuring maximum benefits for all. Last week, the Administration announced that the Northeast and Mid-Atlantic regional marine planning bodies will have their plans out the door by the end of the President's term. This will allow fishing and coastal communities from Maine to Virginia to meet diverse needs and establish priorities for the use of their ocean areas, while making them less vulnerable to economic shocks and the resilience of climate change.
- **Understanding the impacts of ocean acidification.** Today, the White House Office of Science and Technology Policy is releasing a [white paper on ocean acidification](#), summarizing current scientific knowledge about this key challenge, its relationship to climate change, and its impacts on society, as well as highlighting key steps the Obama Administration is taking to better understand the problem and potential solutions.
- **\$102 million to build resilience in coastal communities.** Yesterday, the Department of the Interior announced [\\$102 million in competitive grants](#) funding science-based solutions to restore flood plains and natural barriers, such as marshes and wetlands along the Atlantic Coast. The funded projects will help deliver on the Administration's Climate Action Plan commitment to make local communities more resilient against future storms.
- **Bolstering domestic shellfish aquaculture.** Federal agencies are completing work on a new roadmap to streamline the permitting process for shellfish aquaculture. The roadmap will help shellfish farmers understand how to secure the permits they need and will help federal agencies identify ways to improve efficiency in the permitting process. By removing barriers in the permitting process, the United States can encourage shellfish farming and help rebalance our seafood trade. Currently, most seafood consumed in the U.S. is imported, resulting in a seafood trade deficit of between \$8 and \$10 billion a year. Farming more shellfish will also be an economic boon to local communities, creating jobs and investment on our shores.

- **National Strategic Plan for Federal Aquaculture Research.** Aquaculture is an increasingly integral source of safe, nutritious, sustainable seafood for consumers in the United States and worldwide. Today, the interagency National Science & Technology Council's Committee on Science is releasing a new [National Strategic Plan for Federal Aquaculture Research](#) to provide a framework for coordination and collaboration across agencies on research related to this important agricultural domain and to guide Federal agencies going forward as they prioritize their aquaculture-related research and development activities.

For more information on the Our Ocean conference, visit <http://www.state.gov/>. For more information on the President's National Ocean Policy, visit <http://www.whitehouse.gov/administration/eop/oceans>.



**Western
Pacific
Regional
Fishery
Management
Council**

Agenda Item I.2.a
Attachment 2
September 2014

June 26, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

We are writing to express our dismay and respectfully offer our advice regarding your June 17th announcement of the proposed expansion of the Pacific Remote Islands Marine National Monument (MNM). Fishing is the only existing activity that will be impacted by such an expansion as currently proposed. We are surprised that your staff did not consult with the Western Pacific Regional Fishery Management Council as part of your decision making process. The Council has been developing management measures and monitoring the fisheries operating in these waters for nearly four decades, and strongly advises against banning US fishermen from fishing in the waters surrounding the US Pacific Remote Islands.


As noted in the findings of the Magnuson-Stevens Fishery Conservation and Management Act, "Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth." The Pacific Remote Islands are important tuna fishing grounds for US pelagic longline vessels operating out of Hawaii and US purse seine vessels operating from American Samoa. Events such as El Niño/La Niña lead to shifts in tuna biomass by many thousands of miles, and, at these times, the US exclusive economic zone (EEZ) around the Pacific Remote Islands becomes extremely important to our fishermen.

Neither fishery poses a threat to the pristine coral reef and reef associated habitats around the US Pacific Remote Islands, and fishing is already banned in waters from 0 to 50 nautical miles from shore of these islands through the existing monument boundaries. These fisheries also have no significant impact to any other marine resource in the waters contained within the proposed monument expansion.

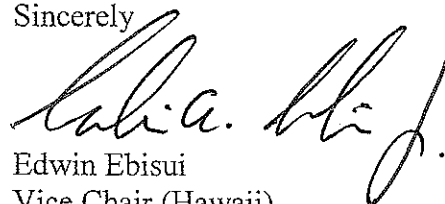
We, therefore, strongly advise that it is in the best interests of the US Pacific Islands region and the nation, which benefits from the fresh and canned tuna from our fisheries, that US commercial fishing continue to be allowed in perpetuity in the US EEZ around the US Pacific Remote Islands from 50 to 200 nautical miles from shore should any proposal to expand the Pacific Remote Islands MNM move forward. Our position statement is enclosed.



Arnold Palacios
Chair


William Sword
Vice Chair (American Samoa)


Richard Seman
Vice Chair (Commonwealth of the Northern Mariana Islands)

Sincerely


Edwin Ebisui
Vice Chair (Hawaii)


Michael Duenas
Vice Chair (Guam)

Enclosure: "Obama Administration's Proposed Pacific Remote Islands Marine National Monument Expansion Betrays US Fishermen, Places Unfair Burden on US Pacific Islands"

Cc: Mr. Michael Boots, Acting Director, Council on Environmental Quality

Congressional Delegation of US Pacific Islands



PRESS RELEASE

Contact: Sylvia Spalding (808) 383-1069 or Sylvia.Spalding@noaa.gov
For Immediate Release

HONOLULU (WPRFMC) – June 30, 2014 – The voting members of the Western Pacific Regional Fishery Management Council (WPRFMC) from the State of Hawaii, Territories of American Samoa and Guam and the Commonwealth of the Northern Mariana Islands have analyzed the Obama Administration’s newly announced plan to expand the Pacific Remote Islands Marine National Monument. They have determined that it would provide no added conservation benefit to marine resources, but will economically harm the area’s fishermen and those reliant on Pacific marine resources. Noting that the President himself has declared that the United States “has largely ended overfishing in federally managed waters,” the Council members are urging the Administration to continue allowing US fishermen into these areas. According to the WPRFMC, the Administration failed to consult the WPRFMC about the true economic and environmental impacts of its plan to expand the Monument. The WPRFMC also recommends modifications to the Antiquities Act to prevent similar such unilateral declarations in the future, which override existing fisheries management statutes, such as the Magnuson-Steven Fishery Conservation and Management Act.

The June 17 announcement, made at the Our Oceans Conference hosted at the State Department, would enlarge the current Pacific Remote Islands Marine National Monument—established by President Bush in 2009—to encompass the full 200-nautical-mile Exclusive Economic Zone of seven US Pacific Island Possessions. However, the Council counters in its report that this expansion will ultimately be ineffective in reaching the Obama Administration’s stated goal of combatting threats to the ocean’s health, like overfishing and ocean acidification caused by greenhouse gas pollution.

US fisheries are already required by the Magnuson-Stevens Act to eliminate overfishing, and the US boasts the strongest, most conservation-minded fisheries management in the world.

Fishermen in the region are already subject to catch limits, vessel monitoring, observer requirements, and gear restrictions to ensure that they do not overfish the species they target nor endanger other species in the process. The President’s plan aims to aid marine species like tuna, seabirds, coral reefs, and sharks, but, according to the WPRFMC, it disregards the effective management plans already in place. Because the region’s fish are highly migratory, the Council views the current, more focused international management approach as the most effective move to achieve the Administration’s stated goals, and that the Marine Monuments are superfluous in stopping overfishing.

The value of consulting regional management and local merchants in fisheries management is emphasized by the same Administration that announced this sweeping Executive plan. John Podesta, described by the *Washington Post* as “the man behind President Obama’s new environmental push” has said, “Responsible fishery management grounded in strong science and reinforced by strong partnerships between the fishing, conservation, and science communities is crucial for the economic health of fishing communities and the country as a whole.”

Weighed against any prospective environmental benefit is the serious economic cost to Western Pacific fisheries and fishing communities. The areas covered by the Marine Monument are important for the region’s longline and purse seine fisheries, which were already pushed out of valuable fishing grounds with the original 2009 Pacific Islands Remote Marine Monument designation. Expanding the monuments will sever local fishermen’s access to these resources and in turn strain the island communities that depend on the Pacific for their livelihoods. For this reason, the Council urges the Administration to continue to allow US fishermen into these areas.



June 30, 2014

Obama Administration's Proposed Pacific Remote Islands Marine National Monument Expansion Betrays US Fishermen, Places Unfair Burden on US Pacific Islands

On June 17, 2014, at the Our Oceans Conference held at the State Department in Washington, DC, President Obama announced his intent to use Presidential authority to “preserve and protect the ocean.”ⁱ The White House’s press release clarifies that the Administration will immediately consider expansion of the Pacific Remote Islands Marine National Monument.ⁱⁱ Further details on what the public and US fishermen in the Pacific Islands might expect are in the May 20, 2014, report to the United States government “Expansion of the U.S. Pacific Remote Islands Marine National Monument: The largest ocean legacy on Earth,” accessible on the Marine Conservation Institute website.ⁱⁱⁱ The report recommends that the current monument encompassing 50 nautical miles (nm) around the seven US Pacific Remote Islands be expanded to the full extent of the US 200-nm exclusive economic zone (EEZ).

President Obama’s continued aspiration for a strong legacy concerning environmental issues is commendable, but his plan for the US Pacific Islands unfairly penalizes the US fishermen and seafood consumers who depend on this resource. US fishermen, including those in the Pacific, already abide by the strictest fishing regulations in the world, and this plan further inhibits their economic survival. For example, the proposal will result in a tenfold increase in US waters from which US fishermen are banned and disproportionately burdens fishermen in the US Pacific Islands.

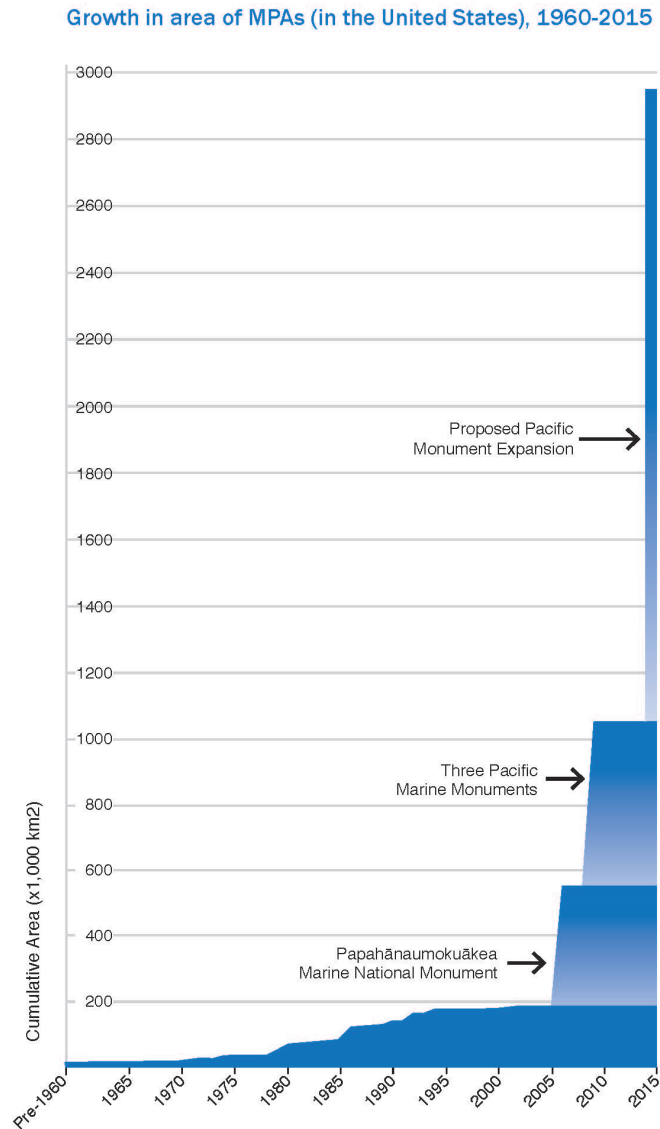
To ensure their continued survival and because these changes will do little for conservation, the US government should allow US fishermen continued access to the US EEZ around the existing 0-50 nm Pacific Remote Islands Marine National Monument.

HISTORY

The Obama Administration’s proposed monument expansion joins a lengthy list of historical restrictions on US Pacific Island fishermen. In 2006, President George W. Bush used the Antiquities Act, a power created in 1906 for the President to declare areas of US land to be national monuments, to establish the first-ever marine national monument. It spans 140,000 square miles of waters surrounding the Hawaiian Islands.^{iv} Its establishment shut down federally managed US fisheries that supplied Hawaii with nearly 50 percent of its bottomfish by restricting US fishermen from their traditional fishing grounds in the US EEZ around the remote Hawaiian Islands. These restrictions led to increased foreign fish imports into Hawaii, the loss of livelihood for US fishermen, and the displacement of other US fishermen. In 2009, President Bush used the same Act to establish three more marine monuments where commercial fishing is banned.^v

Creation of the existing monuments in the US Pacific Islands also included many broken promises. For example, when the monument in the Hawaiian Islands was developed, native Hawaiians

were told they could continue traditional fishing there. However, once the monument was established, fishermen were prohibited from bringing their catch home to their families and community, as was customary. When the Marianas Trench Marine Monument was created, promises such as millions of dollars in revenue, a visitors' center and co-management promised by the Pew Environment Group and James Connaughton from the White House's Council on Environmental Quality were left unfilled.

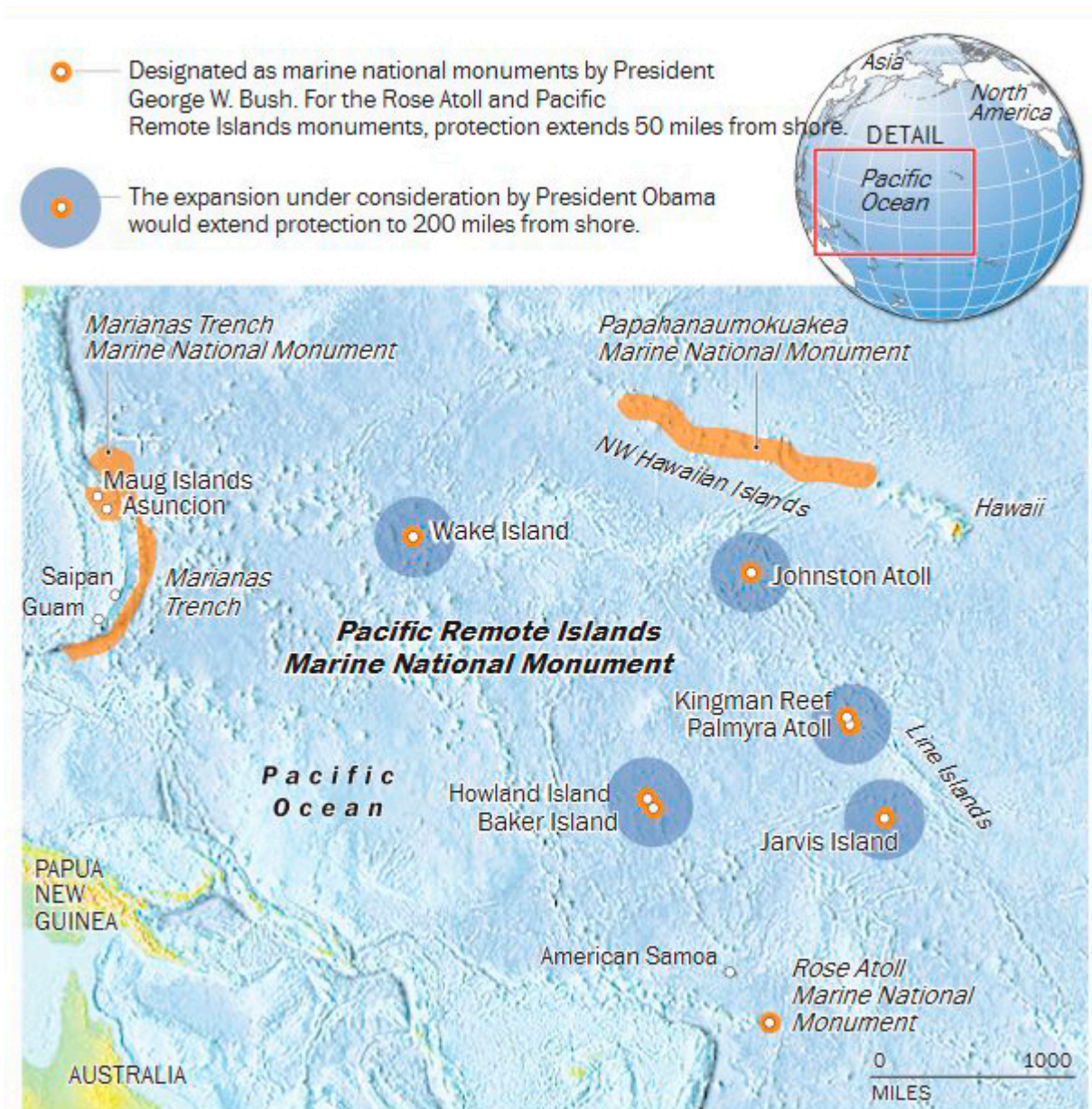


[Source: “Conserving our Oceans One Place at a Time.” marineprotectedareas.noaa.gov]

CURRENT SITUATION

The US commercial fishing industry operating in the US EEZ around the US Pacific Islands is already strictly regulated by federal and international measures ranging from restrictions on gear types to allowable locations. Only two fish stocks are overfished. The first is the ground seamount stock at Hancock Seamount, which was depleted by foreign fishing prior to establishment of the US EEZ and which is under a moratorium. The second overfished stock was announced just this year, the West Central North Pacific striped marlin, which is highly migratory and subject to international fishery management. Likewise, there is only one stock experiencing overfishing in waters around the US Pacific Islands, the bigeye tuna, which is also highly migratory and subject to international management measures. The “overfished” designation relates to the status of the stock. Overfishing indicates that a fishery under its existing catch and effort is unsustainable over the long-term, and could lead to an overfished stock. Given the highly migratory nature of the stocks and international nature of these fisheries and the management of them, further reductions on US fishing opportunities in US waters are unnecessary and will only cause harm to our nation.

The existing Pacific Remote Islands Marine National Monument encompasses 77,020 square miles (199,500 km²) of US waters around Kingman Reef, Palmyra Atoll, Howland Island, Baker Island, Jarvis Island, Johnston Atoll and Wake Island. These are the waters located 0-50 nautical miles (nm) from shore. At Howland Island, Baker Island, Jarvis Island, Palmyra Atoll, and Kingman Reef the terrestrial areas, reefs and waters out to 12 nautical miles (22 km; 14 mi) (radius) are further protected as part of the National Wildlife Refuge System. Coral reefs, near-shore habitats and deep-water precious corals are well protected through these designations. Commercial fishing is banned, and recreational fishing is allowed only at Palmyra, operated by the National Wildlife Refuge in partnership with The Nature Conservancy.



[Source: DATA: Interior Department. GRAPHIC: Patterson Clark. *The Washington Post*. Published June 17, 2014.]

Commercial fishing by US fishermen is the only existing activity that would be affected by the monument expansion. Foreign fishing vessels do not operate in the US EEZ around the Pacific Remote Islands nor for that matter in US waters around any other Pacific Island, including American Samoa, the Commonwealth of the Northern Mariana Islands (CMNI), Guam and Hawaii. Foreign fishing in these waters would require a Pacific Insular Areas Fishing Agreement (PIAFA). Since the creation of the US EEZ in 1976, no such agreement has been made.

US fishermen in the Pacific Islands have to observe no-take areas in the monuments and additional fishing areas closed due to designated National Marine Sanctuary expansions, such as Aunu'u in American Samoa. They also have to contend with myriad military zones including Pearl

Harbor and Barking Sands in Hawaii, the northern two-thirds of the island of Guam plus its southern banks, and the waters around the islands of Tinian and Farallon de Medinilla, and around pre-positioning vessel sites off Saipan in the CNMI. Pagan is being proposed as another militarized closed area. These closed areas, along with state and territorial marine protected areas and reserves, as well as fishing areas inaccessible due to currents and inclement weather (islands typically have calm waters on one side and rough waters on the other) have resulted in fishermen being forced into more dangerous waters and increased injuries and drownings of American fishermen. By comparison, federally restricted fishing zones developed through a public process take into account safety-at-sea and other national standards of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

With the four marine monuments in place, the US Pacific Islands account for 90 percent of the nation's marine protected areas in size of area protected and 95 percent of the nation's marine protected areas that do not allow commercial fishing. If the Pacific Remote Islands Monument were to be expanded to the 200-mile EEZ, 67 percent of the US EEZ in the Pacific Islands would be closed to US commercial fishermen.

IMPACT OF EXPANSION

Given these factors, the expansion of the Pacific Remote Islands Marine National Monument will negatively impact the US fishing economy by overstepping currently managed sustainable management regimes, reducing US fisheries competitiveness, and yielding few, if any, ecological benefits from the restrictions.

Successful US Fishing Regulations Disregarded

US commercial fisheries operating in US waters around the Pacific Islands are already well regulated and monitored to ensure conservation and management of fish stocks, habitat and the ecosystem. Fishermen operating in the waters around the Pacific Remote Islands include US longline vessels targeting bigeye and yellowfin tuna for the US fresh fish markets (with fish kept on ice and not put in freezers) and US purse seine vessels targeting skipjack for tuna canneries, such as those that make up the primary economy of American Samoa. These fishing operations are based in Hawaii, American Samoa and California and are managed federally through the MSA, among other federal regulations.

They also abide by the international conservation and management measures of the Western and Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission, both of which the United States is a treaty member. These US vessels adhere to numerous regulations including, but not limited to, annual catch quotas, vessel monitoring systems, observer coverage (i.e., observers placed onboard to monitor catches and compliance with regulations, including potential protected species interactions), protected species workshops, mandatory protected species release gear, restricted vessel size of 101 feet for longline vessels, and restricted fleet size (Hawaii longline fleet capped at 164 with actual size at about 140 vessels).

In the White House's press release, the President proclaimed "the health of our ocean is under threat on multiple fronts, from overfishing to carbon pollution." Expanding the Monument and restricting US fishermen from US waters will not mitigate these threats. US fisheries already operate under annual catch and effort limits and numerous other federal and international regulations.

John Podesta, described by the *Washington Post* as “the man behind President Obama’s new environmental push” told conferees at the Capitol Hill Ocean Week in Washington, DC on June 10, “Because of [the] MSA [Magnuson-Stevens Act] reforms...we have largely ended overfishing in federally managed waters and we’re rebuilding fish stocks at unprecedented rates in much of our country...I want to emphasize what a tremendous accomplishment that is ...”

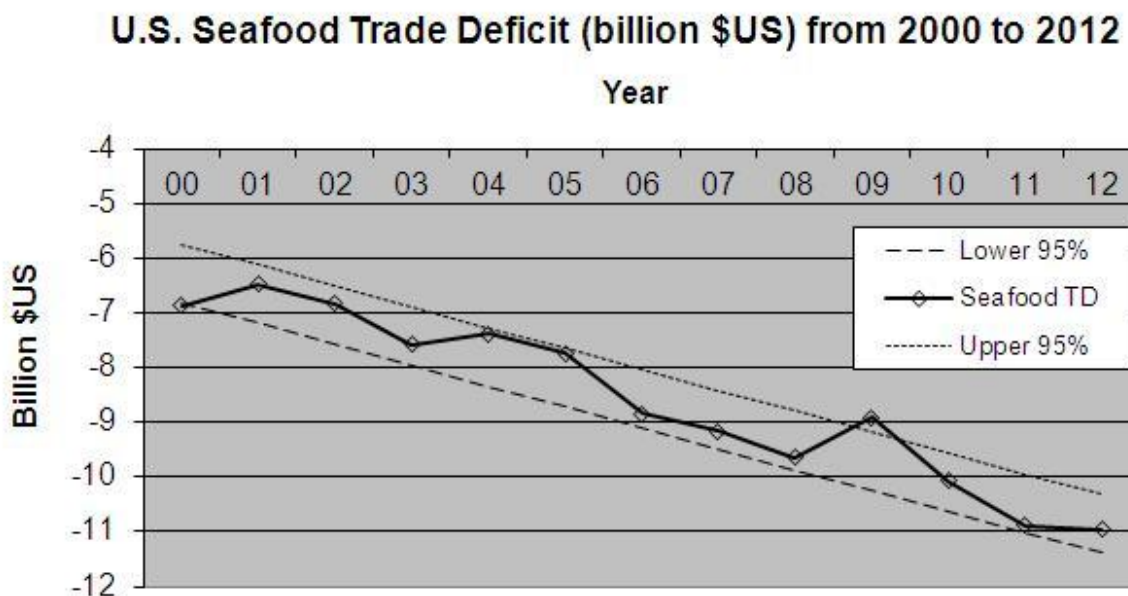
US vessels are highly monitored, strictly regulated and enforced by the Regional Fishery Management Councils, National Marine Fisheries Service and US Coast Guard (USCG).

The waters around the Pacific Remote Islands Marine Monument are equally important to US fishermen and to the nation. As noted in the publication of the USCG’s *Protecting America’s Fisheries*, “With its great distance from the mainland, it is easy to ignore issues that are specific to the region.” Many Americans are unaware that Honolulu consistently ranks within the top ten commercial fishing ports in the US by value landed^{vi}.

The President also acknowledged that US fisheries management is ending overfishing and rebuilding fish stocks. Limiting US fishermen from their nation’s waters and disregarding the spectacular success of many management measures already being implemented does not best serve US fishermen.

US Fisheries Lose Foreign Competitive Advantage

In its press release, the White House acknowledges that “Americans all over the country depend on the ocean for food, jobs and recreation,” but speaks little of the foreign trade dimensions of this issue. About 90 percent of the seafood consumed in the United States is imported from foreign countries and results in a nearly \$11 billion seafood trade deficit. Banning US fishermen from nearly a million square miles of US waters will only exacerbate this situation, keeping Americans from domestically produced seafood and jobs.



The US seafood trade deficit in 2012 was valued at \$10.96 billion (trade data by the US Census Bureau).
[Source: Michigan Aquaculture Association; <http://michiganaquaculture.org/>]

The US purse-seine fleet is currently facing record license fees under the South Pacific Tuna Treaty, which is negotiated by the US Department of State. This means that the US Pacific Remote Islands offer needed, accessible fishing areas, especially for US seiners that operate out of American Samoa and predominately in the central Pacific. American Samoa's limited economy is highly dependent on the tuna processing industry, and any negative impacts to the US tuna vessels that operate out of American Samoa will likewise have a negative impact on the American Samoa economy.

The US EEZ around Palmyra outside of 50 nm is fished by the Hawaiian longline fleet. It is an important area for Hawaiian fishing vessels targeting bigeye tuna without competition from foreign fleets. As much as 12 percent of the annual Hawaiian longline catch has been produced out of the EEZ around Palmyra, according to the National Marine Fisheries Service. There is significant fishing effort by the Hawaiian longline fleet around Johnston as well. Bigeye tuna stocks in the Western and Central Pacific Ocean are predicted to shift eastward as a result of climate change impacts^{vii}. US longline fishermen will be unable to access bigeye stocks in the equatorial US Pacific Remote Islands waters if these are completely closed to fishing. It imposes a disadvantage relative to other Pacific Island nations that will keep their EEZs open to fishing.

Because US fishing vessels are equipped with vessel monitoring systems (VMSs) and closely monitored by the National Marine Fisheries Service and United States Coast Guard, a monument expansion would prohibit their entry into US waters while foreign vessels, which are not required to have VMS on the high seas, could illegally operate in our waters. Without the presence of US fishing vessels to act as sentinels, illegal foreign fishing is likely to increase^{viii}. Such a scenario is a betrayal to US fishermen in the US Pacific Islands.

Hawaiian longline fishermen will not be allowed to fish the US EEZ around the Pacific Remote Islands. However, foreign and domestic purse seine vessels can fish these waters indirectly by deploying fish aggregation devices (FADS), which are not required to be marked. Charles Daxboeck, Chair of the Scientific and Statistical Committee that advises the Western Pacific Regional Fisheries Management Council (WPRFMC), notes that such foreign fishermen can deploy FADS on the high seas adjacent to the PRIA EEZs, with the intention that these FADS will drift through the PRIA EEZs accumulating fish as they go, to be fished in the high seas on the other side.

Limited Ecological Benefit

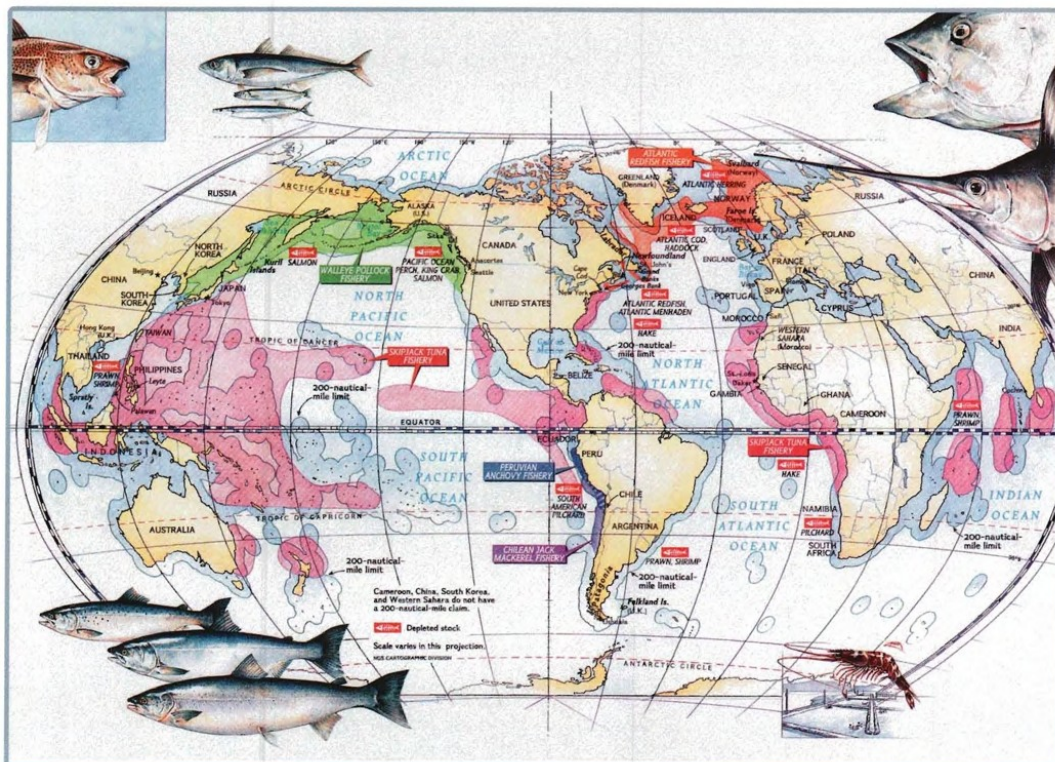
For highly migratory species, like tuna, overfishing is better addressed through catch limits and capacity limits. Closing off fishing areas does not work, as it might with fish that show high-site fidelity. As demonstrated by the closures of two high seas pockets, established in 2008 under a WCPFC conservation and management measure, restricted areas have little impact. The closures resulted in no change to tuna stock status and no reduction in fishing mortality because fishing effort and catches of the same stocks shifted into other areas of high seas and EEZs in the Western and Central Pacific Ocean.

Other species would experience limited benefits from the proposed monument expansion as well. Seabirds that nest on the Pacific Remote Islands are migratory and forage well beyond the waters of the US EEZ. There is no scientific evidence indicating that the US purse seine and longline fishing vessels operating in the offshore waters surrounding the existing 0 to 50 nm Pacific Remote Islands

Marine Monument are impacting seabird populations, either through direct or indirect interaction, such as reducing the availability of seabird forage^{ix}.

Likewise, expanding the Monument will provide no meaningful conservation benefit to sharks. There are no directed shark fisheries occurring in the waters surrounding the US Pacific Remote Islands or other US Pacific Islands. Purse seine fishing on FADS sometimes incidentally encounter sharks. However, existing WCPFC and domestic measures prohibit retention of these species. The Hawaiian longline fleet incidentally catches sharks, predominantly blue sharks. However, more than 95 percent of these sharks are released alive and catch is predominantly in waters far north of the Pacific Remote Islands. Oceanic sharks are highly migratory and prohibiting fishing within the US EEZ around the Pacific Remote Islands will not impact stock status of depleted shark species.

The US EEZ around Howland, Baker and Jarvis Islands are fished by the US purse seine fleet. In El Nino years these areas become more important. For example, in 1998 approximately 20 percent of US purse seine fishing effort occurred in the US EEZ around the Pacific Remote Island Areas (predominately in the waters around Howland and Baker). During El Nino years, the western warm pool (preferred skipjack habitat) shifts eastward several thousand kilometers, with skipjack following the movement. El Nino frequency is predicted to increase in the future as a result of climate change, indicating the US EEZ will be more important in terms of fishing area in the future^x. Moreover, the WCPFC is reducing high seas fishing effort, and closing high seas completely under the WCPFC has been proposed. The United States should not close its waters around the US Pacific Remote Islands, as these areas will be important to the US tuna industry.



[Source: USCG Protecting America's Fisheries. <http://www.uscg.mil/history/articles/Fisheries.pdf>]

As for ocean acidification, fishermen are impacted by this change in ocean chemistry, which is primarily caused by fossil fuel emissions from cars, airplanes, power plants and factories, and not by fishing operations.

SUGGESTED ACTION

To support the US Pacific Islands and the US fishing industry, and to reduce the nation's seafood deficit and thus provide stronger food security to our nation, the WPRFMC calls upon President Obama to exempt commercial fishing by US vessels in the US EEZ should any marine monuments be created or expanded, and urges that the management of the fisheries remain under the Regional Fishery Management Council process with the Magnuson-Stevens Act given precedence.

The WPRFMC further supports amendments to the Antiquities Act to ensure that no more waters are taken from US fishermen in the Pacific Islands in the name of conservation and for the legacy of a President.

In his book *Dreams from My Father: A Story of Race and Inheritance*, President Obama wrote: "The study of law can be disappointing at times, a matter of applying narrow rules and arcane procedure to an uncooperative reality; a sort of glorified accounting that serves to regulate the affairs of those who have power--and that all too often seeks to explain, to those who do not, the ultimate wisdom and justness of their condition. But that's not all the law is. The law is also memory; the law also records a long-running conversation, a nation arguing with its conscience."

The implementation of the Antiquities Act has been a long-running conversation between the Congressional and Executive Branches.

The US government should not enact a plan that further complicates an historic and economically vital industry. From a global to local perspective, the economic prosperity of American Pacific Islanders is a paramount responsibility for President Obama and his Administration. As it stands, current plans for this most recently proposed marine monument will achieve the opposite by unfairly burdening commercial fisheries that already operate under the world's most stringent regulations. Our government should seek to preserve the livelihoods of American fishermen and provide waters that exclusively serve and provide an advantage for the regulated US fishing industry in the global market. Working to fight illegal fishing and encouraging our own domestic fisheries in accordance with the regulatory guidelines by which they already abide is our best solution to maintaining the sustainable fisheries that President Obama himself praised in his recent remarks.

i <https://www.youtube.com/watch?v=QTLDfGQKxA0>

ii <http://www.whitehouse.gov/the-press-office/2014/06/17/fact-sheet-leading-home-and-internationally-protect-our-ocean-and-coasts>

iii http://www.marine-conservation.org/media/filer_public/filer_public/2014/06/17/primnm_expansion_report.pdf

iv <http://www.papahanaumokuakea.gov/about/welcome.html>

v http://www.fpir.noaa.gov/MNM/mnm_index.html

vi NOAA U.S. Commercial Landings, Commercial Fishing Landings & Value at Major U.S. Ports 2011-2012

vii Lehodey, P. "Preliminary forecasts of Pacific bigeye tuna population trends under the A2 IPCC scenario." Progress in Oceanography. 2010.

viii There is a long history of US purse seine and longline fishermen assisting the US Coast Guard and NOAA Office of Law Enforcement in detecting illegal foreign fishing.

ix http://www.marine-conservation.org/media/filer_public/2012/11/08/seabird-tuna-workshop-report-2012.pdf

x http://www.spc.int/DigitalLibrary/Doc/FAME/Meetings/SCTB/13/RG_1.pdf



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promoting sustainable fisheries to feed the world

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Adak Community Development
Corporation

Alaska Bering Sea Crabbers

Alaska Longline Co.

Alaska Whitefish Trawlers
Association

Alaska Groundfish Data Bank
*International Seafoods of Alaska, North Pacific
Seafoods, Trident Seafoods, Western Alaska Fisheries*

Alaska Scallop Association

Aleutian Pribilof Island
Community Development
Association

*Akutian, Atka, False Pass, Nelson Lagoon, Nikolski, St.
George*

Arctic Storm Management
Group

Bristol Bay Economic
Development Corporation

*Aleknagik, Clark's Point, Dillingham, Egegik, Ekwik,
Eliwuk, King Salmon, Levelock, Manokotak, Naknek,
Pilot Point, Port Heiden, Portage Creek, South Naknek,
Togiak, Twin Hills, Ugashik*

Central Bering Sea Fishermen's
Association

St. Paul

City of Unalaska

Glacier Fish Company

Groundfish Forum

*Fishermen's Finest, Iqique US, Ocean Peace, O'Hara
Corporation, United States Seafoods*

High Seas Catchers

Ocean Harvester, Sea Storm, Neahkahnie

Icicle Seafoods

Norton Sound Economic
Development Corporation

*Brevig Mission, Diomedes, Elm, Gambell, Golovin,
Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik,
Stebbins, Teller, Unalakleet, Wales, White Mountain*

Pacific Seafood

Pacific Seafood Processors
Association

*Alaska General Seafoods, Alyeska Seafoods, Golden
Alaska Seafoods, North Pacific Seafoods, Peter Pan
Seafoods, Phoenix Processor Limited Partnership,
Trident Seafoods, UniSea, Westward Seafoods*

United Catcher Boats

*Akutian Catcher Vessel Association
Mothership Fleet Cooperative
Northern Victor Fleet
Peter Pan Fleet Cooperative
Unalaska Co-op
Unisea Fleet Cooperative
Westward Fleet Cooperative*

July 30, 2014

Mr. Michael Boots, Acting Chair
Council on Environmental Quality

RE: Proposed Pacific Remote Islands Marine National Monument Expansion

Dear Mr. Boots,

Thank you for considering our letter regarding the expansion of the Pacific Remote Islands Marine National Monument (the monument). The Marine Conservation Alliance is comprised of fishery harvesters, seafood processors, and fishing dependent communities with interests in the Bering Sea, Aleutian Islands, and Gulf of Alaska. Collectively our membership is involved in the majority of seafood harvested from federal waters off the coast of Alaska, generating hundreds of millions of dollars of economic activity and thousands of jobs in Alaska, the Pacific Northwest, and beyond. Our mission is to seek practical, science-based solutions that support sustainable management of fisheries.

We appreciate the Administration's willingness to solicit comments on the proposed expansion of the monument. We firmly believe that good public policy should involve robust public process that is informed by analysis and public comment, and that this process should ultimately result in a decision that is a fair balance of conservation and utilization. It is vitally important that fishery management matters be subjected to robust public process due to the complexities involved with the utilization, conservation, and management of our nation's fisheries resources. Fisheries remain an important economic engine in many of our nation's coastal communities. In addition, fisheries resources hold tremendous cultural and subsistence value in many U.S. coastal areas. Successfully threading the needle between fishery conservation and utilization demands that policy makers understand important nuances of fishery management, including economic and social needs of stakeholders. It is for this reason that we ask the Administration to take a step back from the monument designation process and utilize the existing Fishery Management Council process for achieving conservation goals.

The proposed monument expansion is alarming, both because of the process involved to date and the immense size of the proposed expansion. Apparently little or no public outreach or dialog occurred before the proposal was announced. Furthermore, the proposal was apparently developed in close consultation with the Marine Conservation Institute, an advocacy organization with a track record that shows little interest in the well-being of marine resource users, nor in understanding the importance of robust public process for effective fishery management (see report titled "Expansion of the U.S. Pacific Remote Islands Marine National Monument - The largest ocean legacy on Earth" May 2014). The result is a proposed monument expansion that appears to be justified by several unproven assumptions about fisheries in the area and a lack of

understanding regarding the effect that ongoing fisheries have on the area's ecosystem. For instance, the document authored by the Marine Conservation Institute claims that little to no fishing activity occurs in the proposed monument expansion area, yet it is clear from comments of the Western Pacific Fishery Management Council (WPFMC) that such a conclusion would be erroneous. Why didn't the Administration consult with the WPFMC regarding fishing activity in the area and the impact of those fishing activities on the marine ecosystem?

What is implied by the use of the Antiquities Act to expand the monument is that available public processes would not result in adequate levels of conservation. A review of U.S. fishery management will show that substantial conservation gains have been made by our nation's Fishery Management Councils, especially in recent years. Our Fishery Management Councils continue to advance conservation initiatives where they are necessary. Measures enacted by our Councils have nearly halted overfishing; have resulted in substantial protections for coral and other vulnerable marine ecosystems; and are increasingly invoking broader ecosystem-level protections. For example, The North Pacific Fishery Management Council has developed measures resulting in over 100,000 square nautical miles of habitat conservation in the Bering Sea and Gulf of Alaska. These measures were developed after considering the available science and after considering substantial public input. Measures ultimately developed were tailored in a way that accomplishes conservation objectives while minimizing socioeconomic impacts to resource users.

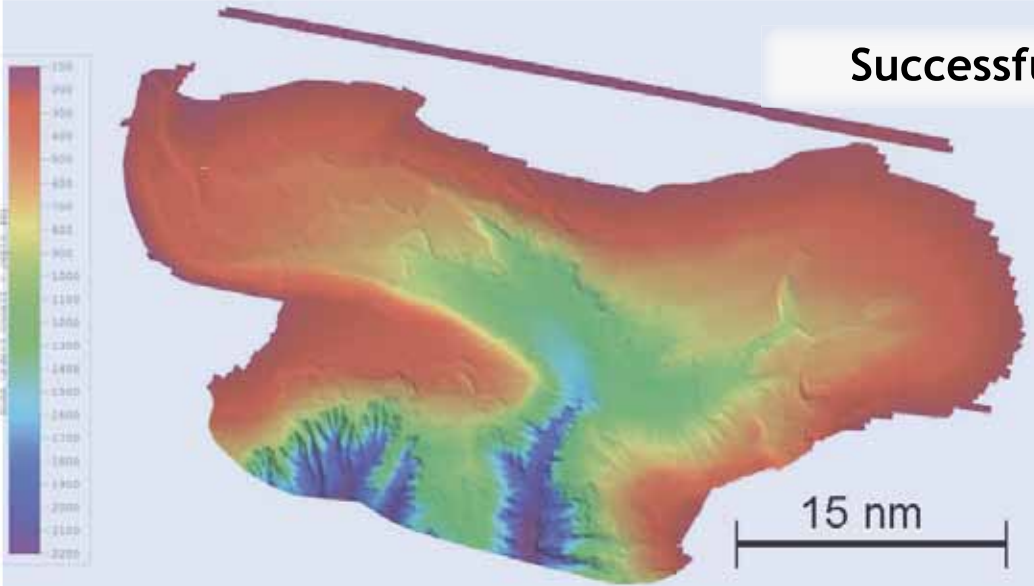
Outcomes such as those in the North Pacific show that available public processes can result in significant degrees of conservation while minimizing socioeconomic impacts to marine resource users. The proposal to expand the Pacific Remote Islands Marine monument cannot claim this same type of robust process.

The membership of the Marine Conservation Alliance appreciates the difficult task involved in balancing conservation and utilization of marine resources; however fisheries management is – by necessity – an extraordinarily complex task with implications that matter a great deal to our domestic fishing industry, subsistence users, coastal communities, support businesses, and long standing traditional and cultural practices. We strongly urge the Administration to use the existing Fishery Management Council process for developing fishery-related conservation measures in the West Pacific and in other regions where appropriate. The Fishery Management Council process has shown that it is adept at developing fishery management measures that appropriately balance conservation and utilization.

Sincerely,

Merrick Burden
Executive Director

Successful North Pacific Fisheries Management



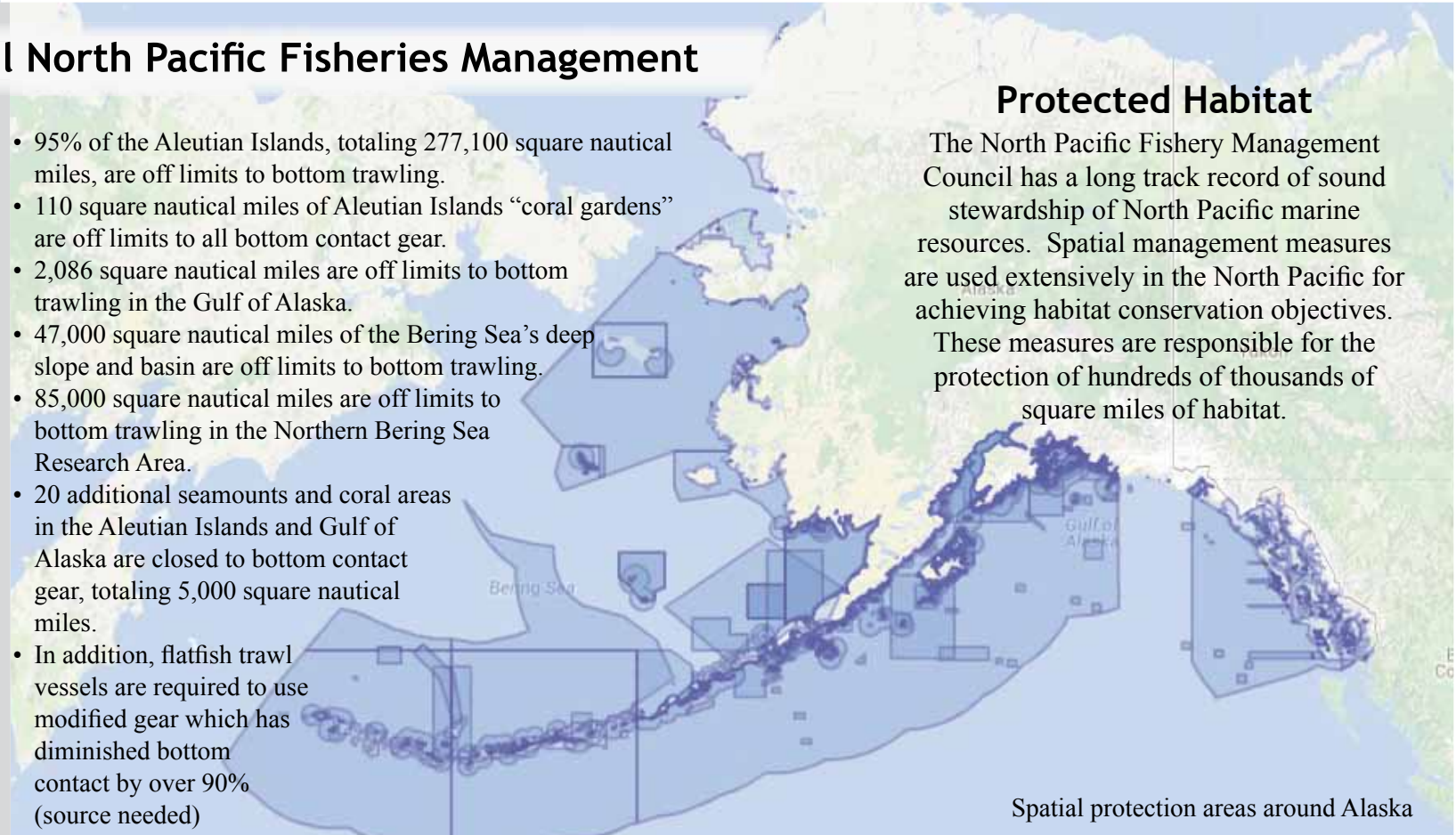
Bering Sea Canyons

The North Pacific Fishery Management Council is contemplating conservation measures for Bering Sea canyons and deep sea coral. Conservation measures will be informed by scientific research currently underway by the Alaska Fisheries Science Center.

http://www.fisheries.noaa.gov/stories/2014/06/6_03_14faq_bering_sea_canyons.html

Backscatter image of Pribilof Canyon

- 95% of the Aleutian Islands, totaling 277,100 square nautical miles, are off limits to bottom trawling.
- 110 square nautical miles of Aleutian Islands “coral gardens” are off limits to all bottom contact gear.
- 2,086 square nautical miles are off limits to bottom trawling in the Gulf of Alaska.
- 47,000 square nautical miles of the Bering Sea’s deep slope and basin are off limits to bottom trawling.
- 85,000 square nautical miles are off limits to bottom trawling in the Northern Bering Sea Research Area.
- 20 additional seamounts and coral areas in the Aleutian Islands and Gulf of Alaska are closed to bottom contact gear, totaling 5,000 square nautical miles.
- In addition, flatfish trawl vessels are required to use modified gear which has diminished bottom contact by over 90% (source needed)



Spatial protection areas around Alaska

Protected Habitat

The North Pacific Fishery Management Council has a long track record of sound stewardship of North Pacific marine resources. Spatial management measures are used extensively in the North Pacific for achieving habitat conservation objectives. These measures are responsible for the protection of hundreds of thousands of square miles of habitat.

A Vital Engine for Coastal Economies

The North Pacific generates over half of the nation’s domestic seafood production, accounting for 5.2 billion pounds in 2012 and over \$1.7 billion in value at the dock. In 2012 the North Pacific seafood industry employed an estimated 55,890 individuals.

Gulf of Alaska fishing vessel

Firm, Science-Based Catch Limits to Attain Sustainability

Fisheries off Alaska are known for the use of precautionary, science based catch limits to prevent overfishing. The result is that no stocks of groundfish are classified as “overfished”. One stock of crab is classified as overfished; however this is largely attributed to environmental factors.

School of Walleye Pollock

Maintaining Ecosystem Productivity

The North Pacific Fishery Management Council has been a leader in the development of ecosystem approaches to fishery management. These approaches include a ban on fishing for forage fish in Federal waters, the development of the Aleutian Islands Fishery Ecosystem Plan, and an Arctic Ocean Fishery Management Plan that takes a precautionary approach to fishing by banning Federal waters fisheries until more is known about the Arctic ecosystem.

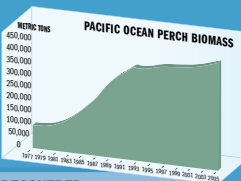
Seals in the Bering Sea

The Alaska Model

Key Findings through 2006

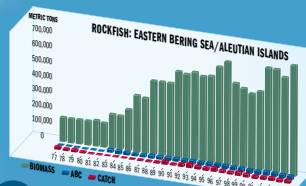
RECOVERED: PACIFIC OCEAN PERCH

Beaten down by foreign overfishing during the 1960s and 70s, Pacific Ocean perch in the Bering Sea and Aleutians has rebounded under the North Pacific Council's conservative catch limits. Estimated biomass has nearly quadrupled. Data source: NMFS SAFE reports for 2004 and 2005.



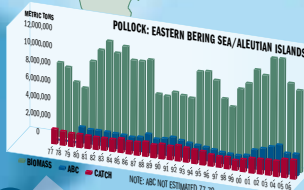
THRIVING: ROCKFISH

Total rockfish biomass has expanded in the Eastern Bering Sea during three decades of Council management. The secret? Once again, catches are kept well below the limit for sustainable harvests (blue bars for Acceptable Biological Catch).



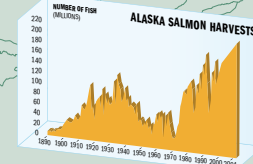
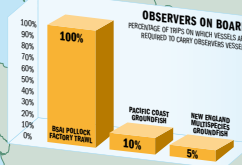
CAUTIOUS CATCH LIMITS: POLLOCK

Alaska's enormous pollock resource in the Bering Sea and Aleutians is harvested at the lowest exploitation rate of all fisheries of its kind in the world. Biomass (green) towers above the permitted catch (red). The catch is kept well below the limit, known as the Acceptable Biological Catch (blue), that scientists believe could be safely caught.



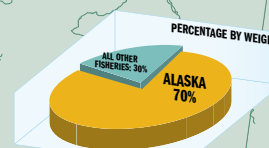
KEEPING WATCH: INDEPENDENT OBSERVERS

Alaska's fisheries are among the most thoroughly monitored in the world. In Alaska's most prolific fishery, Bering Sea and Aleutians pollock, observers directly track 76% of the catch as it comes aboard. Sources: APA, NMFS, NEFMC.



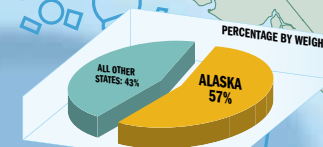
BIGGER THAN EVER: SALMON RUNS

Alaska's salmon populations are at record levels, generating the largest harvests in history. That's no coincidence. Stung by overfishing in the past, Alaskans mandated sustainable resource management in their constitution when they achieved statehood.



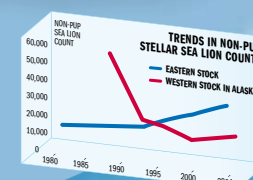
ALASKA'S SHARE OF WORLD'S MSC-CERTIFIED CATCH

By weight, Alaska produces more than two-thirds of the seafood approved by the world's leading seafood "ecolabel" authority, the Marine Stewardship Council. Alaska salmon, pollock, cod, halibut and black cod all passed rigorous review to earn this mark of ecological soundness.



ALASKA'S SHARE OF US SEAFOOD PRODUCTION

Alaska's fish-rich waters produce 57% of America's seafood catch.

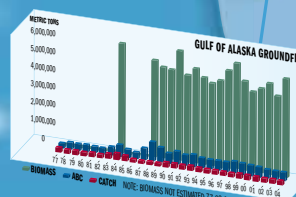


ON THE MEND? STELLER SEA LIONS

Alaska's endangered western Steller sea lions appear to be bouncing back. Surveys showed an 11.12% increase in adults and juveniles between 2000 and 2004—reversing a long decline. The 2006 survey failed to produce a complete count, leaving the current trend uncertain. Alaska commercial fishermen stopped shooting and ended nearly all accidental entanglement of sea lions by the early 1990s.

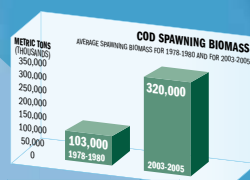
SAFE & STRONG: GULF GROUNDFISH

Gulf of Alaska groundfish are harvested (red) at only a fraction of the Acceptable Biological Catch (blue), leaving most of the biomass (green) untouched.



TRIPLED IN THREE DECADES: COD

The Bering Sea and Aleutians cod stock off Alaska has more than tripled its spawning biomass since the North Pacific Council took over management responsibility. The key? Extremely cautious catch limits leave plenty of fish in the water to multiply.



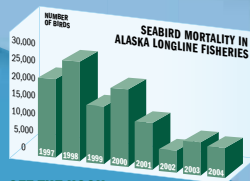
TOUGH LOVE: CRAB STOCKS

Alaska's fishery regulators followed science and closed fisheries when crab stocks declined. Today, the crabs are safe from overfishing. Alaska's crab fisheries are managed conservatively, and several are under strict rebuilding plans or closed entirely to protect crab populations.



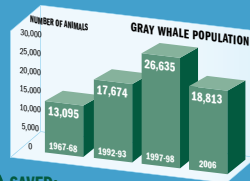
PROTECTED

Year-round and seasonal fishing closures (indicated by the light blue shaded areas) protect more than 395,000 square miles of marine waters off Alaska—preserving corals and other sea life.¹



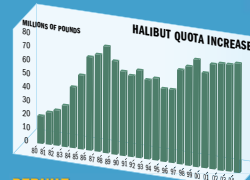
OFF THE HOOK: SEABIRDS

New seabird avoidance procedures have enabled Alaska longliners to prevent entanglement of thousands of fulmars, albatrosses, and other marine birds. Seabird mortality has dropped by 77 percent since 1997.



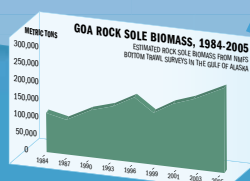
SAVED: THE GRAY WHALE

Gray whales have recovered to historic population levels off Alaska and the North American coast. In 1994, the gray whale was removed from the endangered species list, no longer threatened by extinction. Since the mid-1990s the population has fluctuated normally at high levels.



REBUILT: PACIFIC HALIBUT

Alaskans and Canadians teamed up to end overfishing of halibut in the 1920s. Their conservation culture still pays dividends: The allowable halibut catch has more than tripled since 1980.



DOUBLED IN 20 YEARS: ROCK SOLE

Rock sole, prized for its valuable roe, has thrived under careful catch limits and favorable ocean conditions. Its biomass in the Gulf of Alaska has nearly doubled since the mid 1980s.

Protected Abundant Sustainable

Poster available through MCA (907) 523-0731

The White House

Office of the Press Secretary

Agenda Item I.2.a

Attachment 6

September 2014

For Immediate Release

June 17, 2014

Presidential Memorandum -- Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud

The United States is a global leader in sustainable seafood. Over the course of the last 6 years, the United States has largely ended overfishing in federally managed waters and successfully rebuilt a record number of stocks depleted by the excesses of the past. At the same time, effective domestic management and enforcement of fishing regulations have supported near record highs in both landings and revenue for our domestic fishing industry. As a result, the U.S. management scheme is recognized internationally as a model for other countries as they work to end overfishing.

Nevertheless, illegal, unreported, and unregulated (IUU) fishing continues to undermine the economic and environmental sustainability of fisheries and fish stocks, both in the United States and around the world. Global losses attributable to the black market from IUU fishing are estimated to be \$10-23 billion annually, weakening profitability for legally caught seafood, fueling illegal trafficking operations, and undermining economic opportunity for legitimate fishermen in the United States and around the world.

It is in the national interest of the United States to promote a framework that supports sustainable fishing practices and combats seafood fraud and the sale of IUU fishing products. To achieve these objectives, the United States will need to enhance the tools it has available to combat IUU fishing and seafood fraud, including by implementing the United Nations Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; strengthening coordination and implementation of existing authorities to combat IUU fishing and seafood fraud; working with the Congress to strengthen and harmonize the enforcement provisions of U.S. statutes for implementing international fisheries agreements; and working with industry and foreign partners to develop and implement new and existing measures, such as voluntary, or other, traceability programs, that can combat IUU fishing and seafood fraud, and ensure accurate labeling for consumers.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure that seafood sold in the United States is legally and sustainably caught and to combat the negative impacts of seafood fraud on the United States, I hereby direct the following:

Section 1. Policy. (a) It shall be the policy of the United States for all executive departments and agencies (agencies) to combat IUU fishing and seafood fraud by strengthening coordination and implementation of relevant existing authorities and, where appropriate, by improving the transparency and traceability of the seafood supply chain. All agencies and offices charged with overseeing the seafood supply chain and verifying the authenticity of its products shall implement and enforce relevant policies, regulations, and laws to ensure that seafood sold in the United States is legally caught and accurately labeled.

(b) It shall also be the policy of the United States to promote legally and sustainably caught and accurately labeled seafood

and to take appropriate actions within existing authorities and budgets to assist foreign nations in building capacity to combat IUU fishing and seafood fraud. In addition, agencies shall identify opportunities to enhance domestic and international efforts to combat global IUU fishing and seafood fraud.

Sec. 2. Establishment. There is established, as a subcommittee reporting to the National Ocean Council established by Executive Order 13547 of July 19, 2010 (Stewardship of the Ocean, Our Coasts, and the Great Lakes), a Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (Task Force), to be co-chaired by the Secretaries of State and Commerce, or their designees. The Task Force shall meet not later than 60 days from the date of this memorandum and at least quarterly thereafter.

Sec. 3. Membership. In addition to the Co-Chairs, the Task Force shall include designated senior-level representatives from:

- (a) the Department of Defense;
- (b) the Department of Justice;
- (c) the Department of the Interior;
- (d) the Department of Agriculture;
- (e) the Department of Commerce;
- (f) the Department of Health and Human Services;
- (g) the Department of Homeland Security;
- (h) the Office of Management and Budget;
- (i) the Council on Environmental Quality;
- (j) the Office of Science and Technology Policy;
- (k) the Office of the United States Trade Representative;
- (l) the United States Agency for International Development; and
- (m) such agencies and offices as the Co-Chairs may, from time to time, designate.

Sec. 4. Functions. Consistent with the authorities and responsibilities of member agencies, the Task Force shall perform the following functions:

- (a) Not later than 180 days after the date of this memorandum, the Task Force shall report to the President through the National Ocean Council, with recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need. The Task Force should consider a broad range of strategies, including implementation of existing programs, and, if appropriate, development of new, voluntary or other, programs for seafood tracking and traceability. In providing these recommendations, the Task Force shall identify:
 - (i) existing regulatory authorities and make recommendations regarding further authorities that may be warranted;

- (ii) enforcement best practices and challenges;
 - (iii) benefits provided by such a framework, as well as potential impacts on the U.S. fishing industry;
 - (iv) opportunities to address these issues at the international level through the regional fisheries management organizations as well as bilateral efforts, such as technical assistance and capacity building;
 - (v) priority actions that will be taken by agencies, including strengthening coordination between Federal, State, local, and foreign agencies; and
 - (vi) industry approaches that contribute to efforts to combat IUU fishing and seafood fraud, including with respect to seafood traceability and ways to minimize any costs and reporting burdens on small businesses.
- (b) Upon receiving guidance from the President on the recommendations developed pursuant to subsection (a) of this section, the Task Force shall begin its implementation of those recommendations and, within 1 year, report to the President, through the National Ocean Council, on its progress.
- (c) The Task Force shall also consider the need for other strategies for addressing IUU fishing and seafood fraud and may provide recommendations on the development and enhancement of those strategies.
- (d) In undertaking these efforts, the Task Force shall coordinate its efforts with other Presidential initiatives focused on related issues, including the work of the Presidential Task Force on Wildlife Trafficking established in Executive Order 13648 of July 1, 2013 (Combating Wildlife Trafficking), and activities being conducted pursuant to Executive Order 13659 of February 19, 2014 (Streamlining the Export/Import Process for America's Businesses).
- (e) The Task Force shall, as applicable, consult with governments at State, local, tribal, and regional levels to achieve the goals and objectives of this memorandum, as well as the private sector, nongovernmental organizations, and academia.
- Sec. 5. General Provisions. (a) This memorandum shall be implemented consistent with applicable domestic and international law, and subject to the availability of appropriations.
- (b) Nothing in this memorandum shall be construed to impair or otherwise affect:
- (i) the authority granted by law to an executive department, agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (c) Nothing in this memorandum shall be construed to require the disclosure of confidential business information or trade secrets, classified information, law enforcement sensitive information, or other information that must be protected in the interest of national security or public safety.
- (d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD402

Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings; request for comments.

SUMMARY: On June 17, 2014, the White House released a Presidential Memorandum entitled “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.” Among other actions, the Memorandum established a Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of State and Commerce and made up of a broad range of other federal agencies. The Task Force is directed to report to the President within 180 days with “recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need.” The public meetings and request for comments initiates a public engagement process aimed at gaining broad input and expertise from key stakeholders and interest groups to inform and advise the Task Force in developing recommendations in compliance with the Memorandum.

DATES: Comments must be received by September 2, 2014. The public meetings will be held in August. For specific dates, times, format or location, see “Public Meetings” under SUPPLEMENTARY INFORMATION.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-0214-0090, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Laurel Bryant, 1315 East-West Hwy., Rm.

- 14556, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Federal Task Force. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. The Task Force will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Chief for External Affairs, Office of Communications, National Marine Fisheries Service, 301-427-8032.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a global leader in sustainable seafood. Over the course of the last 6 years, the United States has largely ended overfishing in federally managed waters and successfully rebuilt a record number of overfished stocks, with both overfishing and overfished fish stocks at all-time lows. This level of effective management and enforcement of domestic fishing regulations has supported near record highs in both landings and revenue for our domestic fishing industries. As a result, the United States scheme of science-based fisheries management is recognized internationally as a model for other countries as they work to end overfishing and implement sustainable practices.

However, fisheries are a global resource, and achieving sustainable fisheries management requires strong international commitment. One of the biggest global threats to sustainable fisheries is illegal, unreported, and unregulated (IUU) fishing. Impacts of IUU fishing undermine the environmental and economic sustainability of fisheries both domestically and abroad. By circumventing conservation and management measures and cutting or avoiding the operational costs associated with sustainable fishing practices and harvesting levels, entities engaged in IUU fishing undermine the sustainability of fish stocks and the broader ecosystem, and create an unfair advantage in the marketplace over legitimate fishing operations and legally caught seafood. Global losses attributable to IUU fishing have been estimated to be \$10-23 billion annually. And while it is difficult to know the extent of seafood fraud, some surveys have found notable levels of mislabeling in retail operations across the U.S. The occurrence of seafood fraud through species substitution threatens consumer confidence, serving to further undermine the reputation and market competitiveness of our domestic seafood industry.

It is in the national interest of the United States to promote a framework that supports sustainable fishing practices and combats the sale of IUU fishing products and seafood fraud. To achieve these objectives, the United States will need to enhance the tools it has available to combat IUU fishing and seafood fraud. The Task Force has been established to achieve these objectives. These public meetings initiate the process for informing and advising the Task Force on identifying the priorities and opportunities to accomplish these objectives. The meetings are intended as listening sessions for the Task Force to hear from and engage with the public, and the communities of stakeholders and interest groups involved with these issues. For more information related to the Task Force and these issues, go to: http://www.nmfs.noaa.gov/ia/iuu/iuu_overview.html.

II. Topics for Comment and Discussion

Comment is particularly sought in response to the following questions:

1. How can the government better coordinate its efforts across the full suite of activities related to the seafood supply chain?
2. What existing authorities and tools should be enhanced to combat IUU fishing and seafood fraud?
3. What are the key opportunities at the international level to address these issues through the regional fishery management organizations and bilateral efforts, such as technical assistance and capacity building?
4. What existing authorities should be better coordinated or streamlined to strengthen and harmonize enforcement provisions of U.S. statutes for implementing international fisheries agreements?

5. What existing authorities should be better coordinated or streamlined to strengthen and harmonize efforts between agencies, including Federal, State and local?
6. What opportunities are there, whether existing or new, to work with industry and other partners, including foreign partners, to develop and implement measures such as traceability programs to combat IUU fishing and seafood fraud?
7. How prevalent are mislabeling and species substitution within the domestic and foreign seafood supply in general? Where in the seafood supply chain is species substitution most likely to occur, and what role or actions can the federal government provide or enhance to address it?
8. To what extent is the comingling of seafood products from different origins an issue? Where along the supply chain does it occur?
9. What specific actions need to be taken to improve the transparency and traceability of seafood in the supply chain?
10. What are the actions and issues the Task Force should prioritize in developing its recommendations for addressing IUU fishing? What about seafood fraud?
11. What other topics related to IUU fishing and seafood fraud should the Task Force be aware of in developing and prioritizing recommendations?

III. Public Meetings

- August 13, 2014, 3-5 p.m. Eastern Daylight Time – Webinar/Conference Call
Conference Call Number: 888-324-0793, passcode: IUU Fishing.
- August 20, 2014, 3-5 p.m. Pacific Daylight Time – In-person meeting
Mayflower Park Hotel, 405 Olive Way, Seattle, Washington.
- August 27, 2014, 3-5 p.m. Eastern Daylight Time – Webinar/Conference Call
Conference Call Number: 888-324-0793, passcode: IUU Fishing.
- August 28, 2014, 1-3 p.m. Eastern Daylight Time – In-person meeting
Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue NW,
Washington, DC 20001.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Samantha (Sam) Guidon, 301-427-8532 or e-mail Samantha.guidon@noaa.gov at least 5 days prior to the meeting date.

Dated: July 28, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

Pacific Council Comments on Final Meeting with Presidential Task Force on IUU Fishing and Seafood Fraud

In response to an email from Ms. Laurel Bryant on behalf of NOAA Fisheries dated August 25, 2014 regarding notice of final scheduled public meetings on the Presidential Task Force on IUU fishing and seafood fraud (see email below), Council staff submitted an electronic comment. The submitted comment is as follows:

To whom it may concern:

The Pacific Fishery Management Council (Council) is deeply concerned about illegal, unreported, and unregulated (IUU) fishing. At the conclusion of our June 2014 Council meeting, the issue was placed on the agenda of the Council's September 12-17 meeting in Spokane, Washington. However, the short comment period, announced after the Council had already placed the issue on the September agenda, pre-empts the opportunity for the Council to provide meaningful, consensus comments.

We request an extension of the deadline to September 19, 2014, thereby allowing the Council to further consider the issue of IUU fishing and to develop comments. Please notify us by September 11 if the deadline will be extended.

In closing, we thank you for focusing on this extremely important issue, and we look forward to future involvement. This important issue will require a dedicated, ongoing effort, and we hope there will be future opportunities for engagement by the Council. Thank you for considering these comments submitted on behalf of the Pacific Fishery Management Council. Any questions should be directed to Ms. Jennifer Gilden, at 503-820-2280.

From: **NOAA Fisheries** <laurel.bryant@noaa.gov>

Date: Mon, Aug 25, 2014 at 2:33 PM

Subject: Reminder - Final Meetings with Presidential Task Force on IUU Fishing and Seafood Fraud To: donald.mcisaac@noaa.gov



August 25, 2014

Reminder - Final Public meetings with Task Force This Week

Dear Donald,

Just a reminder this week are the final two public listening sessions scheduled with members of the Task Force, beginning with a webinar/conference call on Wednesday, August 27, 3-5pm EDT, and concluding with an in-person meeting on Thursday, August 28, 1-3pm EDT in Washington, D.C. Details are below.

Webinar/conference call: When you call in, you will give your name and affiliation. When we open the meeting, you will be given instruction on how to get into the cue for making comments [press *1]. Based on the number of individuals in the cue, we will divide the time. The conference call will be recorded and transcribed as part of the record keeping process. If you have trouble accessing the webinar portion, I've attached the [pdf](#) of the power point which is also posted [online](#).

In-person meeting: When you arrive at the meeting, you will sign-in and, if you intend to make comments, you will fill out an index card with your name and affiliation. We will divide the time based on the number of cards. All comments will be recorded and transcribed. NOTE: Although we have an RSVP option on-line it is not mandatory that you RSVP. This is merely a means for us to gauge the level of participation in terms of meeting space accommodations.

On-line public comment: Regardless of whether or not you participate in one of the public sessions, we hope you will take the opportunity to send us your comments on-line through the [Regulations.gov](#). We have all information related to this initiative posted [here](#). All comments must be received by September 2, 2014

Wednesday, August 27, 3-5 pm EDT

Dial-In: [888-324-0793](#) or for International [1-312-470-7121](#)

Passcode: IUUFishing

MyMeetings Webinar: PW8081346, [click here](#)

Thursday, August 28, 1-3 pm EDT Washington

Court Hotel on Capitol Hill, Springwood Room 525 New
Jersey Avenue NW, Washington DC
20001

We look forward to your participation.

Warm Regards,

Laurel Bryant
Chief, External Affairs
NOAA Fisheries Communications
www.nmfs.noaa.gov

At White House, Pacific Island Delegation Warns that the President's Proposed Marine Monument Expansion Will Fail American Fishermen

At an hour-long West Wing meeting yesterday, fisheries managers and commercial fishing industry representatives from the U.S. Pacific Islands spoke with Counselor to the President, John Podesta, and senior officials from the White House Council on Environmental Quality to express concerns regarding the President's proposed expansion of the Pacific Remote Islands Marine National Monument, which they contend will harm U.S. fishermen in the region without benefiting the surrounding environment.

HONOLULU (10 September 2014) A delegation from the U.S. Pacific islands, including fisheries managers and commercial fishing industry representatives, met yesterday with the White House Council on Environmental Quality (CEQ), including Counselor to the President John Podesta. The group conveyed its concerns for an Executive proposal that would bar fishermen from nearly 700,000 miles of vitally historic fishing grounds.

The delegation from the Pacific islands included leaders from Hawai'i, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI) and the [Western Pacific Regional Fishery Management Council](#) (WPRFMC). They expressed their opposition to President Obama's proposal to expand the Pacific Remote Islands Marine National Monument (PRIMNM). Arnold Palacios, CNMI Secretary of the Department of Lands and Natural Resources and WPRFMC chair, described the meeting as "a frank discussion," at which the delegation from the Western Pacific shared "concerns that the current proposal is destined to fail our fishermen and environment." According to the WPRFMC and others at the meeting, the proposed Monument expansion would unfairly penalize the U.S. Pacific islands and American fishermen and fail at its conservation objectives.

“Kitty Simonds, Executive Director of the WPRFMC, explained, “Our current management systems are a global guide and a living legacy for responsible resource management. Our regulations are the strictest in the world.””

The meeting was an important opportunity for Executive officials to hear firsthand about these issues. In addition to Mr. Podesta, Acting Chair of the Council on Environmental Quality Michael Boots, Director of the U.S. Fish and Wildlife Service Daniel Ashe, and Senior Advisor to the Undersecretary of the National Oceanic and Atmospheric Administration (NOAA) Dr. Christine Blackburn were in attendance, among other senior officials.

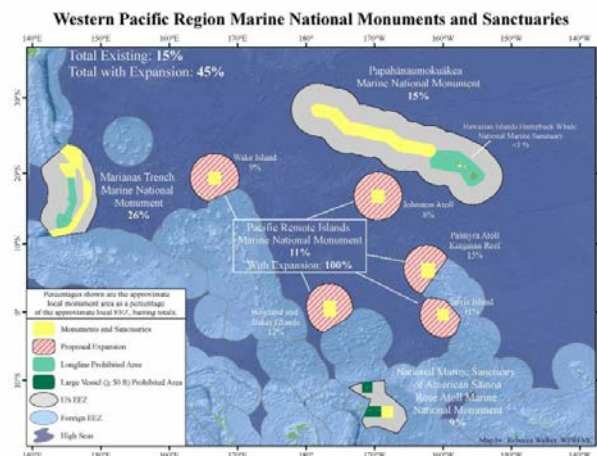
According to the WPRFMC, the Administration overlooked key local stakeholders and regional fishery managers in the original planning of the proposal, which in turn produced a plan that neglects the needs and concerns of the region and its vitally important fishing industry.

Sean Martin, of the Hawai'i Longline Association, remarked that "this attempt at crafting an environmental legacy for our nation will ultimately prove to accomplish the opposite by disenfranchising our own fishermen and outsourcing domestic seafood demand to nations whose standards for environmental protections pale in comparison to our own."

Opposition to the proposed Monument expansion centers around arguments that it disregards already effective marine protections, unfairly harms hard working American fishermen, and outsources domestic seafood demand to nations with poor records of environmental stewardship. Kitty Simonds, Executive Director of the WPRFMC, explained, "Our current management systems are a global guide and a living legacy for responsible resource management. Our regulations are the strictest in the world."

Added to that, say representatives from the WPRFMC, is the unfortunate reality that the size of an expanded Monument would be too large to enforce, likely leading to exploitation of the Monument by foreign competitors for illegal fishing. Currently, 91 percent of seafood consumed in the United States is imported, with up to one-third potentially sourced from illegal, unregulated and unreported (IUU) fishing.

The delegates from the U.S. Pacific islands also say that the marine species for which protections are sought are highly migratory and will not gain protections from an expanded PRIMNM. For our fishermen, they argue, the expansion will mean substantial cost increases, both in terms of fuel to travel further out to sea and for entry to other nations' fishing grounds, for which our fishermen are required to pay large fees. They noted that fishing access to the high seas is also restricted by international fishery management organizations, to which the United States is a party. Representatives from the WPRFMC further explained that U.S. Pacific island fishermen are also being squeezed out of U.S. waters by other existing marine national monuments, national marine sanctuaries, large fishing vessel exclusion zones and no-access military areas.



Map illustrating the vast expanse of ocean that would be off limits to fishermen with the proposed Monument expansion.

Claire Poumele, Director of the American Samoa Port Authority and a WPRFMC member, said the Monument expansion would have catastrophic consequences to the territory's tuna canning operations, which employs one-third of the population.

But at the meeting, government officials reaffirmed their support for the Monument's expansion, however, they did not explain their rationale or expound upon any supporting facts. Mr. Podesta expressed his opinion that large marine protected areas are valuable to the nation's conservation objectives.

The WPRFMC is a regional fishery management council established by the Magnuson-Stevens Fishery Conservation and Management Act in 1976. The Council has successfully implemented innovations in fisheries management and conservation for 35 years, including ecosystem-based fishery management plans and vessel monitoring systems. WPRFMC emphasizes public participation and the involvement of local communities in science-based fisheries management.

An Ocean Legacy

The US Pacific Island Way



**Prepared by the Western Pacific Regional Fishery Management Council
for the White House Council on Environmental Quality
September 9, 2014**



Broad Opposition to Expansion of Pacific Remote Islands Marine National Monument



Governor Lolo Moliga, American Samoa

Governor Eddie Balza Calvos, Guam

Governor Eloy Inos, Commonwealth of the Northern Mariana Islands (CNMI)

American Samoa Legislature

CNMI Legislature

CNMI Mayors of Saipan, Northern Islands, Rota, and Tinian and Aguiguan

Democratic Party of American Samoa

American Samoa Chamber of Commerce

Guam Fishermen's Cooperative Association

Tuatai o Samoa Longline & Fishing Association

United Fishing Agency

Hawaii Longline Association

Pacific Islands Fisheries Group

Hawaii Fishermen's Alliance for Conservation and Tradition

America Tuna Boat Association

Tri Marine Group

StarKist

Bumble Bee Seafoods

Garden and Valley Isle Seafood

Marine Conservation Alliance

National Fisherman

Waialua Boat Club

Alii Holo Kai

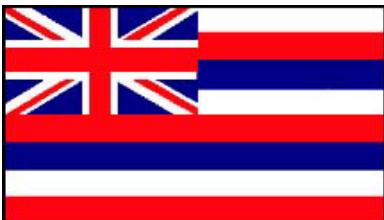
Na Koa Ikaika o Ka Lahui Hawaii (Affiliate of Indigenous World Association)

Professor Ray Hilborn, University of Washington

Western Pacific Regional Fishery Management Council

Pet Industry Joint Advisory Council

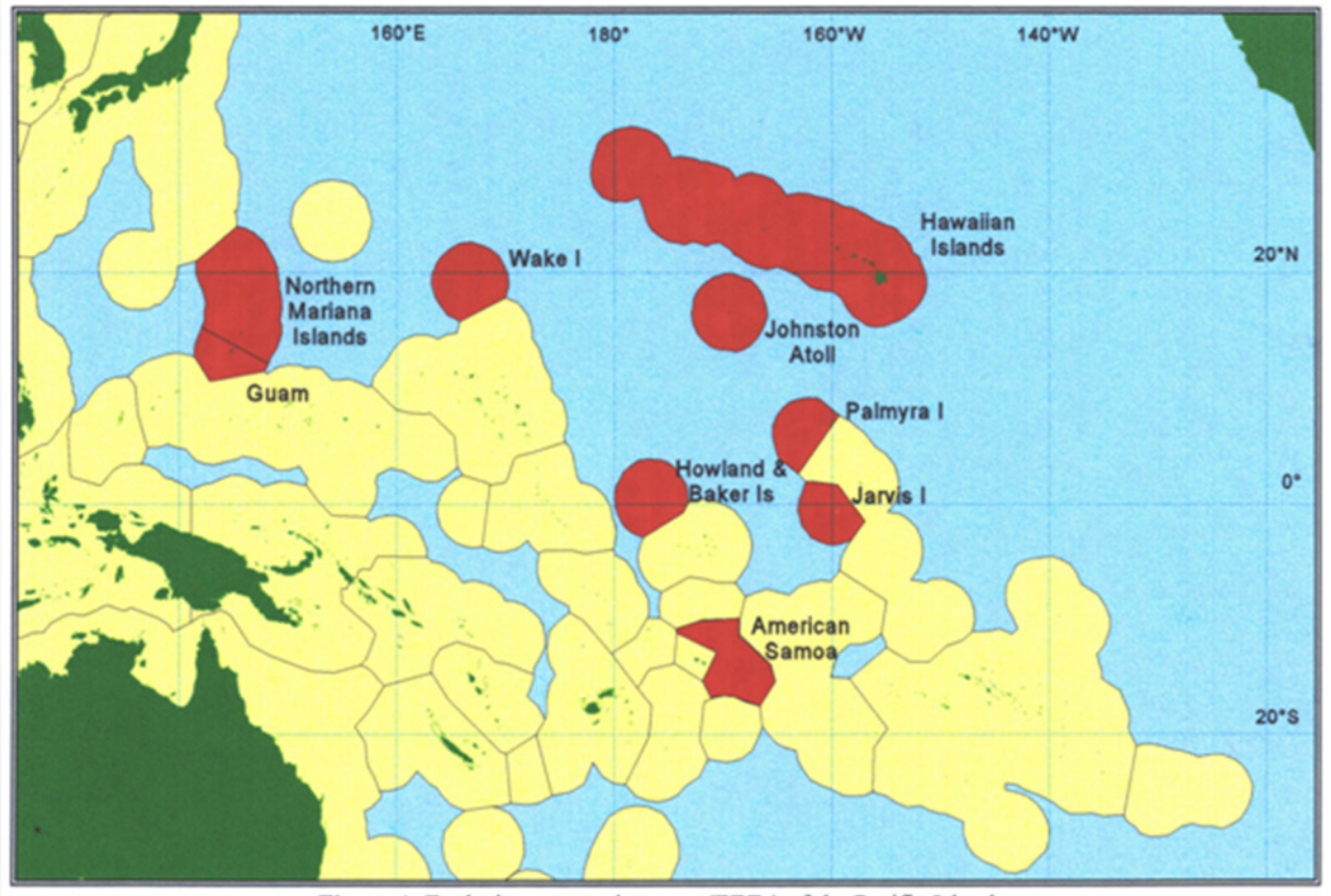
General public



Concerns also raised by US Senator Brian Schatz and US Representative

Colleen Hanabusa

Why the US Pacific Islands Oppose Monument Expansion



1. **Negatively impacts US Pacific Islands and US fisheries**
2. **Lacks conservation benefits**
3. **US and international ocean policy and laws already exist**
4. **Well managed, sustainable fisheries is a better ocean legacy**
– the US Pacific Island Way

“Fishing Is the Ocean and Fishing Is Life ...”

Lt. Gov. Lemanu Peleti Mauga
American Samoa

“I also request that the National Ocean and Atmospheric Administration (NOAA) extend Town Hall meetings to American Samoa and other U.S. Territories that will be affected by any expansion of the PRIMNM.”

---US Congressman Eni F. H. Faleomavaega, American Samoa (July 18, 2014)

“Policy on oceans should come through Congress. This is really an example of the administration simply not giving information on what it is doing.”

---Doc Hastings, Chairman, US House Committee on Natural Resources

“Mr. President, the available data affirms the fact that the loss of fishing grounds due to the proposed expansion will translate to fisheries related economic loss caused by the decline in the supply of fish to the canneries which will no doubt trigger an economic recession for the Territory of American Samoa’s economy. The cannery employs 1/3 of the American Samoa workforce. It means that a total of 2,177 jobs will be lost within the tuna cannery industry if this expansion goes through.”

---Governor Lolo Moliga, Territory of American Samoa (August 14, 2014)

“Alaskans know what happens when the President unilaterally closes millions of acres of public lands---it means a loss of jobs and a hit to the economy.”

---US Senator Lisa Murkowski, Alaska,

“It is also demoralizing and quite disturbing that the proponents for the expansion of the Pacific Remote Islands Marine National Monument are individuals who have no basic understanding of what such actions will do to the lives of the people who will be shattered by these ‘feel good’ national initiatives.”

--Governor Lolo Moliga, Territory of American Samoa (July 21, 2014)

“As Governor, I hope you will appreciate my perspective on how implementing an advocacy-based conservation agenda under the Antiquities Act can negatively affect the island communities in the Western Pacific. The Marianas archipelago is home of the Marianas Trench Mariana National Monument, a paper park that has been mostly neglected since it was designated in 2009. ... I find it ironic that the primary purpose of Congress for passing the Antiquities Act was specifically to protect the culture and heritage of Native American Indians. Now, one hundred and eight years later, this very same law is being used to threaten the culture and heritage of native Pacific Islanders.”

---Governor Eloy S. Inos, Commonwealth of the Northern Mariana Islands (August 15, 2014)

“Conservationists describe the water as pristine, which implies that any human activity that has taken place over the years has had no deleterious effect. And you’ve banning fishing ... why?”

---*National Fisherman* (August 28, 2014)

“Given the good condition and low use of the marine resources in the PRIMNM area, the Nation should manage the PRIA [Pacific Remote Island Area] using the best contemporary marine resource management practices, as described in the *Final Recommendations of the Interagency Ocean Policy Taskforce*. Therefore, I humbly request that the expansion of the current Monument boundaries be tabled,”

---Governor Eddie Baza Calvo, Territory of Guam

“Our government should seek to preserve the livelihoods of our fishermen and provide waters that exclusively serve to provide an advantage for the regulated US and local fishing industry in the global market.”

---Senate Concurrent Resolution 33-20, American Samoa 33rd Legislature (August 14, 2014)

“The director general of the Forum Fisheries Agency, James Movick, says the U.S. move could drive longliners into the southern seas, further depleting the very stock the small island states are trying to conserve. ... It’s hard to see what precise management benefit would be obtained by that.”

---islandbusiness.com

“The Obama Administration’s proposed monument expansion joins a lengthy list of historical restrictions on US Pacific Island fishermen.”

---Na Koa Ikaika o Ka Lahui Hawaii (Affiliate of Indigenous World Association)

“The key question with respect to the expanded protections proposed by President Obama is what will they do to aid solutions to the problems facing oceans. I am afraid the answer to this is they will do nothing! Closing additional areas to fishing will have no impact on ocean acidification or ocean pollution, and the impact of these closures on overfishing will almost certainly be negligible.”

---Professor Ray Hilborn, School of Aquatic and Fishery Sciences, University of Washington
(August 4, 2014)

Pelagic Fisheries Are Important to the US Pacific Islands and the Nation

Hawaii Longline Fishery

A major domestic fish producer

- 80% of US bigeye tuna
- 50% of US swordfish
- 50% of US yellowfin tuna

A major supplier to total US market including imports

- 60% of US bigeye tuna market
- 14% of US swordfish market
- 4% of US yellowfin tuna market



Only 2% of Hawaii longline landings are exported.

Hawaii seafood consumption three times national average per capita.

Hawaii fishery is fresh (iced, not frozen) resulting in highest quality.

Honolulu harbor ranks 5th in the nation in landed seafood value (\$100 M).

US Purse Seine Fishery

All US Purse Seine vessels offload in American Samoa for canning at StarKist Samoa and Tri Marine

The fleet delivers approximately \$60 million in tuna annually to American Samoa canneries

American Samoa is considered a Small Island Developing State (SIDS)

- Per capita income: \$8,000
- US poverty level: ~\$13,000 (HI)



The local economy and approximately 5,000 jobs are dependent on tuna processing

Approximately 65% of American Samoa government revenue comes from federal grants, which will increase if fish landings decrease.

Guam and CNMI Tuna Fisheries

Guam and CNMI are located three to four hours flying time from every East and Southeast Asian countries and have a history of US tuna fisheries, including pole-and-line fishing, purse seining, longlining and transshipment. Guam and CNMI are Small Island Developing States.

While other Pacific Islndads are actively developing their tuna fisheries with strong support from their governments, the US has undertaken policies such as closing off fishing waters that undermine rather than support fisheries in Guam and the CNMI.

Monument Expansion Will Increase US Seafood Trade Deficit and Decrease US Food Security

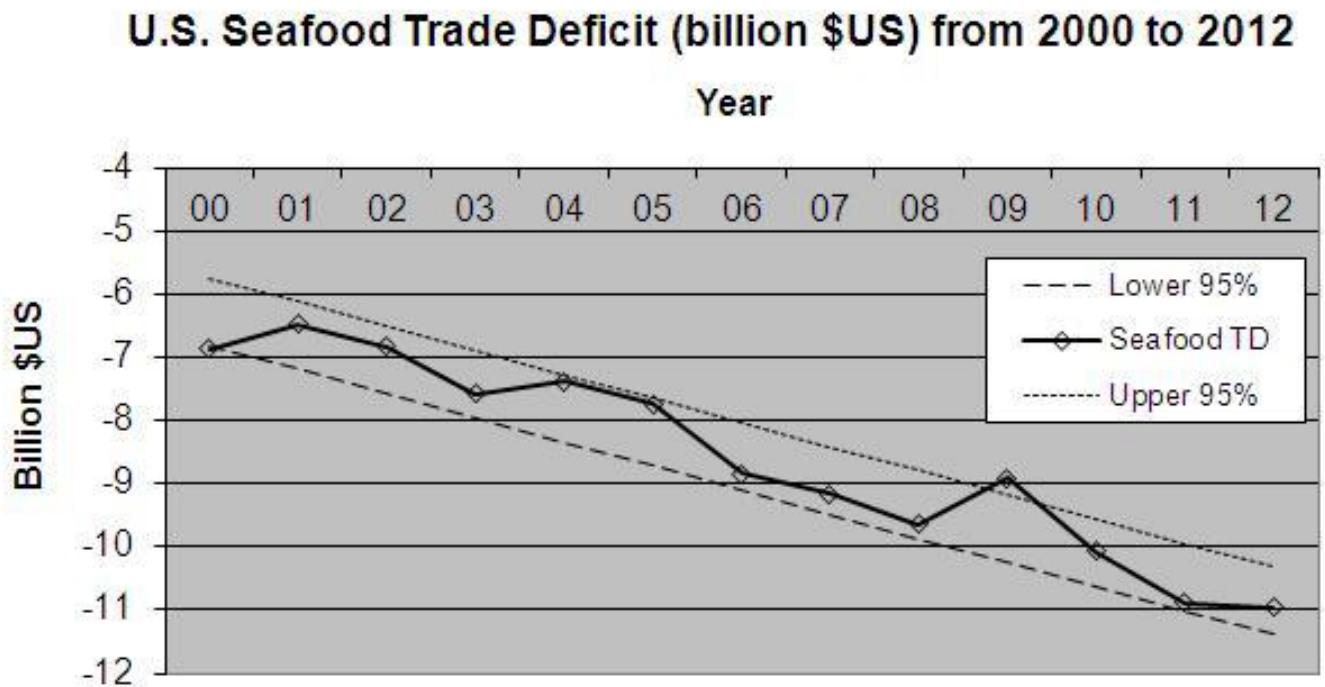
The US seafood trade deficit is estimated at \$11 billion

91% of seafood consumed in US is already from foreign sources

Monument expansion will reduce domestic tuna production and exacerbate the US seafood trade deficit

Monument expansion will weaken US national and local food security

US Pacific Island seafood consumption is several times the national per capita average



The US seafood trade deficit in 2012 was valued at \$10.96 billion (US Census Bureau trade data). [Source: Michigan Aquaculture Association]

Highly Migratory Tuna Fisheries Are Dynamic

Location of Fish and Fishing Effort in US Pacific Remote Island Waters Fluctuates, depending on climatic, political and economic factors

US PURSE SEINE IN THE PACIFIC REMOTE ISLANDS

YEAR	VOLUME	% of CATCH
1997	29,929 - 144,484	21 percent
1998	17,126 - 174,156	10 percent
1999	10,440 - 174,692	6 percent

The Pacific Remote Island waters are important to the US purse seine fleet in El Nino years. Due to climate change, the frequency of El Nino years is expected to double

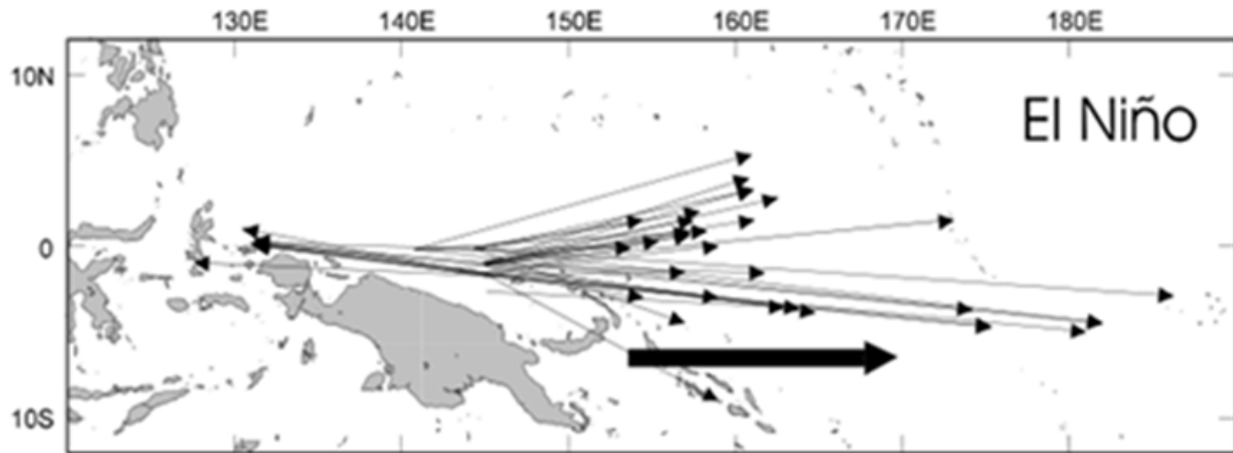


HAWAII LONGLINE CATCH IN THE PACIFIC REMOTE ISLANDS

YEAR	% of Effort (Hooks)
2000	16 percent
2001	13 percent
2002	14 percent

The importance of the US exclusive economic zone (EEZ) around the Pacific Remote Islands to US fishermen is expected to increase due to climate change as fish stocks move eastward and due to increased fishing restrictions on high seas by international regional fishery management organizations.

Climate Change Will Move Fish and Fishing Effort Eastward

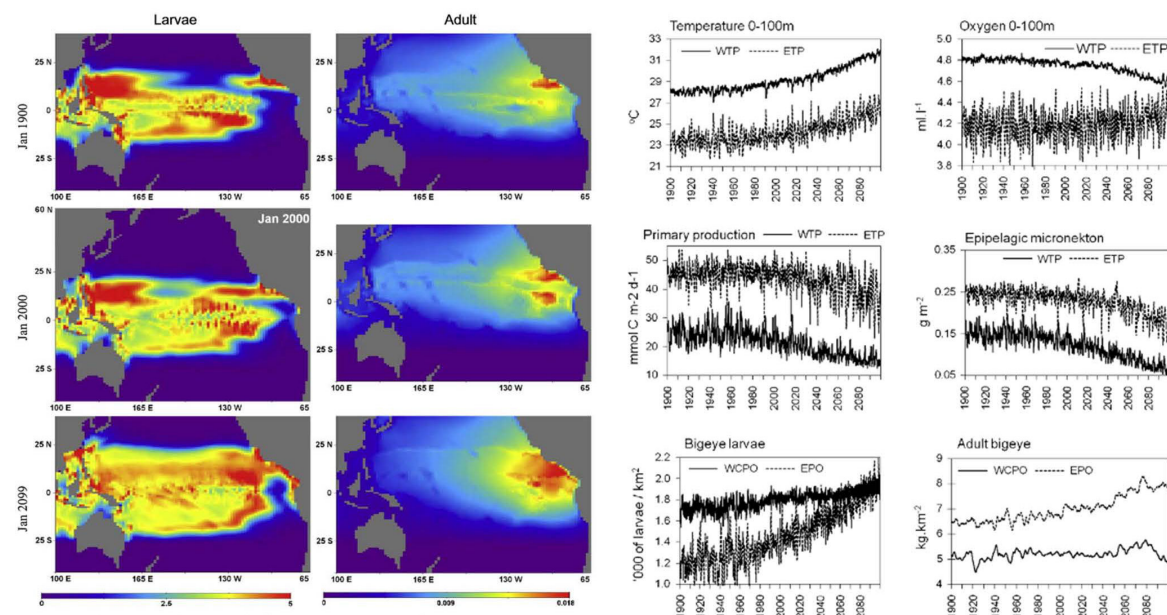


During El Nino periods, skipjack move east, increasing US purse seine reliance on US Pacific Remote Islands waters.

Climate change will double the frequency of El Nino periods.

Climate change will shift bigeye tuna populations eastward, increasing Hawaii longline reliance on the Pacific Remote Island waters.

Predicted Shift in bigeye population from climate change



Lehodey P, Senina I, Sibert J, Bopp L, Calmettes B, Hampton J, Murtugudde R (2010) Preliminary forecasts of Pacific bigeye tuna population trends under the A2 IPCC scenario. Prog Oceanogr 86(1–2):302–315

Hawaii Longline and US Purse Seine Fisheries Cannot Move Effort Elsewhere and Remain Profitable



Closing the US Pacific Remote Island waters to fishing will benefit the Parties to the Nauru Agreement (PNA) cartel and weaken US fisheries

- 8 member tuna cartel
- 80% of Western & Central Pacific Ocean tuna catch is from their exclusive economic zones
- 40% of global tuna supply is in their exclusive economic zones
- Supports domestic fisheries development with 100 PNA flagged purse seine vessels, operated mostly under joint venture with China, Taiwan, Korea, Philippines
- Undertaking efforts to limit access to high seas and increase fishing access fees to their EEZs (\$10K/day)

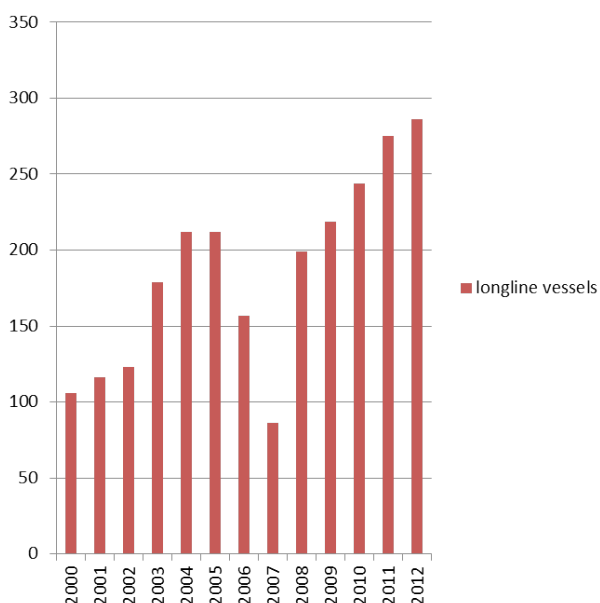
Monument Expansion Enhances China's Control Over Oceania

- Monument expansion weakens US fisheries which weakens US influence in region
- China is aggressive player in Oceania in search of natural gas, minerals, fish, and other raw materials
- China funds major capital improvement projects in Pacific Islands and provides other financial benefits
- Little US foreign aid to region reduces ability of US to counterbalance China

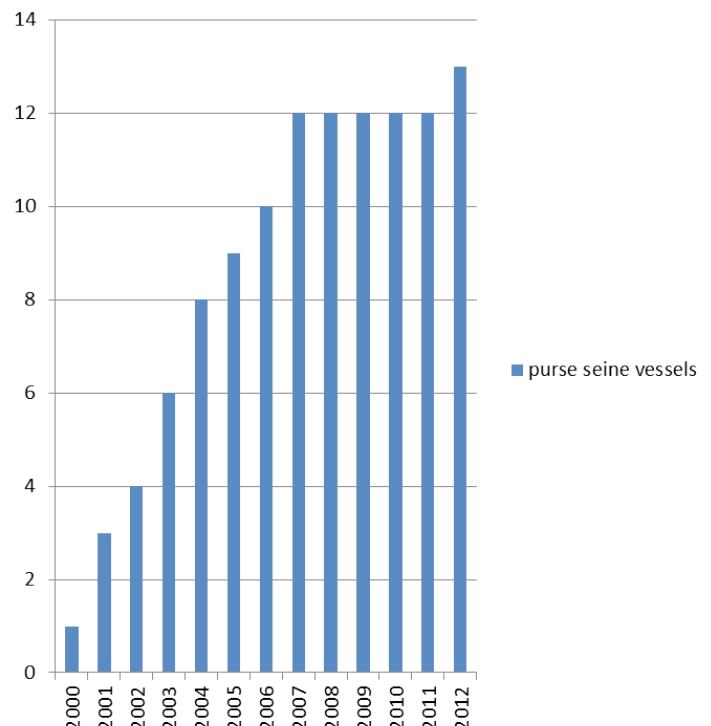
Monument Expansion Will Increase IUU Fishing

- US Coast Guard patrols the Pacific Remote Islands infrequently (about once per quarter)
- US vessels are the “eyes and ears” of USCG and report potential illegal foreign fishing
- Negative impacts to American Samoa canning industry will make US Port States Measures ineffective as foreign fleets move to other ports to offload tuna
- Largest illegal foreign vessel violation in US history caught in American Samoa port (violation occurred in the US EEZ around the Pacific Remote Islands)
- 20-30% of foreign imported fish consumed in US is estimated to be from illegal, unregulated, unreported (IUU) sources
- Percentage likely to increase from weakening US fisheries in Pacific
- China reprocessing is a major problem

Number of Chinese longline vessels in WCPFC area



Number of Chinese purse seine vessels in WCPFC area



Existing US and International Policy & Laws Protect the Pacific Remote Islands

Magnuson-Stevens Fishery Conservation and Management Act (MSA, 1976)

- Nation's primary fisheries management law
- Created 8 fishery management councils
- US fisheries managed under MSA are sustainable and responsible
- National Standards prevent overfishing and require use of best available scientific information
- Requires consistency with other applicable law (e.g., Endangered Species Act, Marine Mammal Protection Act, Highly Migratory Species Act, Migratory Bird Treaty Act, National Environmental Policy Act)



Western Pacific Fishery Management Council Accomplishments

1986- Prohibited drift gill netting and bottom trawling throughout US Pacific Ocean (1.5 million square miles)

1987- Pioneered Vessel Monitoring System for fisheries globally

1990- Fostered inclusion of tuna under MSA

1992- Established spatial management areas for Hawaii longline fishery

1994- Established Hawaii longline limited entry program

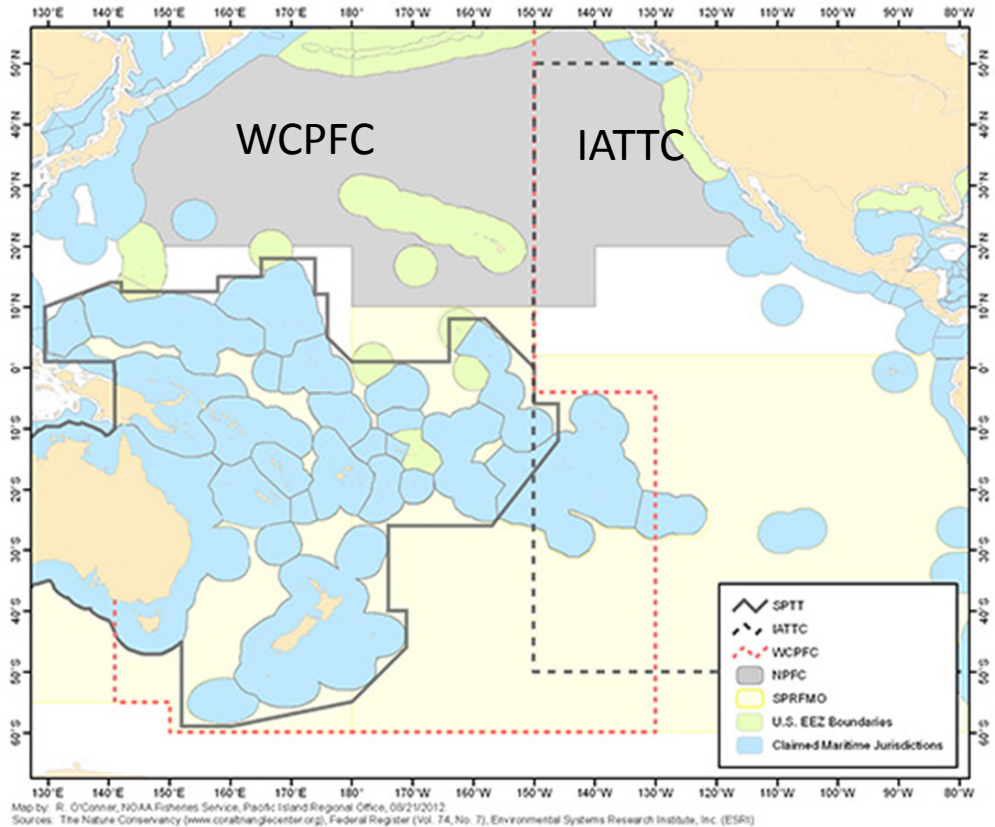
1998- Hosted & supported international meetings leading to formation of the Western & Central Pacific Fisheries Commission

2001- Created the first fishery ecosystem plan in nation (coral reefs)

2004- First in nation to implement sea turtle hard cap

2009- Established place-based Fishery Ecosystem Plans for US Pacific Islands Region

2014- Initiated 100% daily electronic reporting in Hawaii longline fleet---first in Pacific



Proposed Monument Expansion Lacks Additional Conservation Benefits

Seabirds Already Protected

The Council's Pelagic Fishery Ecosystem Plan protects seabirds with gear changes reducing seabird interactions by 90%

No albatrosses are caught by longline vessels fishing in the Pacific Remote Islands

No scientific evidence that longline or purse seines are impacting 14 million nesting seabirds in Pacific Remote Islands



Sea Turtles Already Protected

The Council's Pelagic Fishery Ecosystem Plan and Endangered Species Act protect turtles

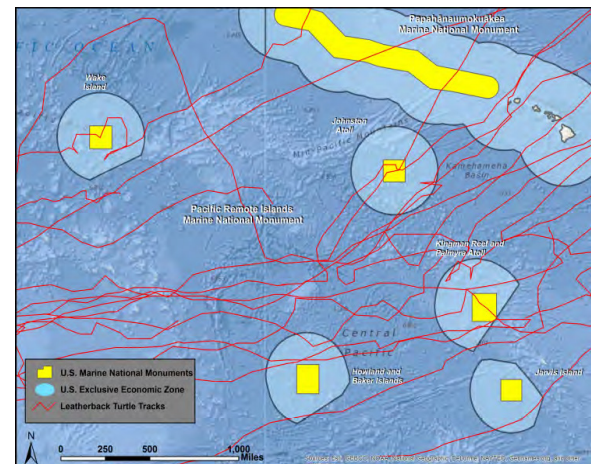
Gear changes reduced sea turtle interactions in the Hawaii longline fishery by 90%

Leatherback sea turtle nests in Papua New Guinea and Indonesian Papua are protected

Leatherbacks cross Pacific to Monterey Bay to feed on jellyfish

They pass within and outside of the Pacific Remote Islands

Longline interaction hotspots are far from the Pacific Remote Islands



Terrestrial and Coral Reef Ecosystems

Habitat and Biodiversity Already Protected

The current Pacific Remote Islands monument encompasses 0 to 50 nautical miles from shore.

There are no corals in the proposed expansion.



Sharks Already Protected

The Council's Pelagic Fishery Ecosystem Plan protects pelagic sharks, with blue sharks the main species

The United States has no directed shark fisheries in Western Pacific

Gear changes reduced shark mortality by 50%

No finning allowed by the United States

No retention of oceanic white-tip, silky or whale sharks allowed in the Western and Central Pacific Ocean by purse seine or longline fisheries

Pelagic sharks migrate great distances



Marine Mammals Already Protected

Council's Pelagic Fishery Ecosystem Plan and Marine Mammal Protection Act protect all marine mammals including monk seals

Monk seals in the Northwestern Hawaiian Islands are doing very badly in a no-fishing Marine National Monument and in the Main Hawaiian Islands doing well with a 10,000 metric tons per year coastal fishery

Monk seals will never be relocated to Palmyra and Johnston as all previously relocated monk seals disappeared

Virtually no interactions (1.2 % of total) with longline vessels and marine mammals in Pacific Remote Islands

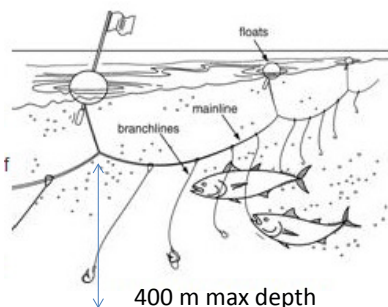
Most marine mammals observed in Pacific Remote Islands are visitors or migrants and not dependent on those islands

Pacific Remote Island Seamounts Already Protected

Council's Pacific Remote Island Areas Fishery Ecosystem Plan provides protection for seamounts.

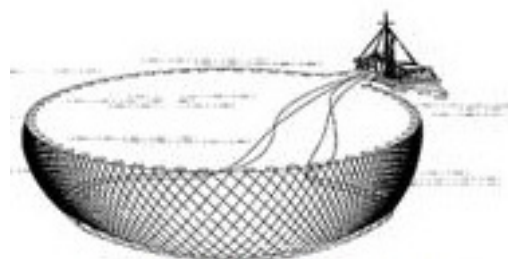
Pelagic fisheries don't impact seamounts. 242 of the 247 seamounts in the Pacific Remote Islands are deeper than the range of pelagic gear at 500 meters or deeper

Longline



Purse Seine

200 m max depth



Monument Expansion Will Not Benefit Tuna Stocks

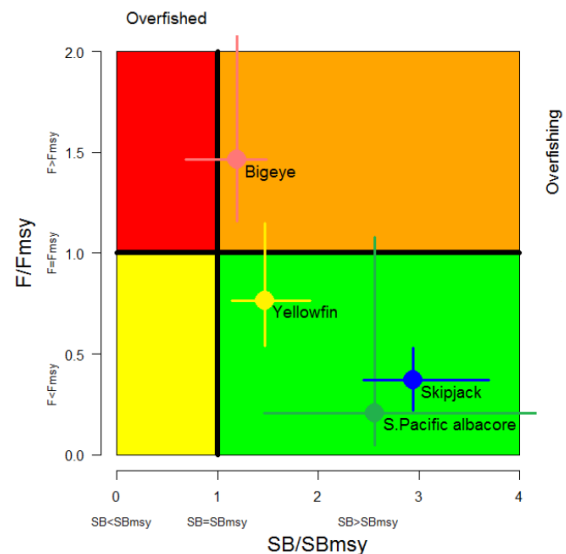
Large High Seas Closures Do Not Conserve Tunas

The 2010 and 2011 Western and Central Pacific Fisheries Commission's high seas pocket closures 1 & 2 did not work. Fishing effort moved from the high seas into adjacent EEZs. In fact total purse seine effort increased by 10% in the surrounding EEZs.

Effective Tuna Management Requires Broad-scale International Cooperation

All tuna stocks are healthy except bigeye overexploited from excessive catch of juveniles by 300 purse seiners operating with 15,000-30,000 Fish Aggregation Devices in Western and Central Pacific.

Tunas move huge distances in their lifetimes and don't stay in any exclusive economic zone. Even skipjack with a 3-year life span move over 1,000 miles and spawn profusely over a wide area.

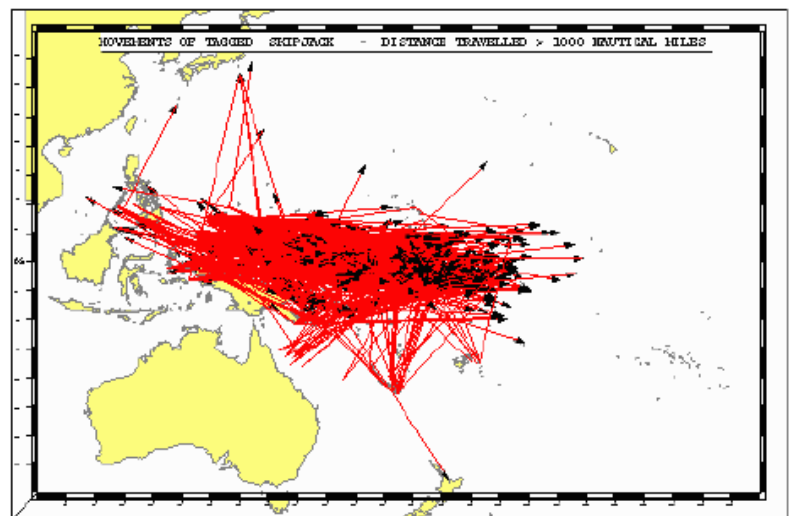


“The areas proposed are too small to impact the stock status of large tuna populations that span the Pacific Ocean. These are token closures and will have no real impact on the fishes of the ocean.”

*---Professor Ray Hilborn,
University of Washington*

“You’d need to close the entire Pacific Ocean.”

*--Professor Carl Walters,
University of British Columbia*



Monument Expansion Will Not Promote Large No-Fishing Marine Preserves in the Pacific

We believe that Kiribati has no intention of closing all fishing in its EEZ around the Phoenix Islands.

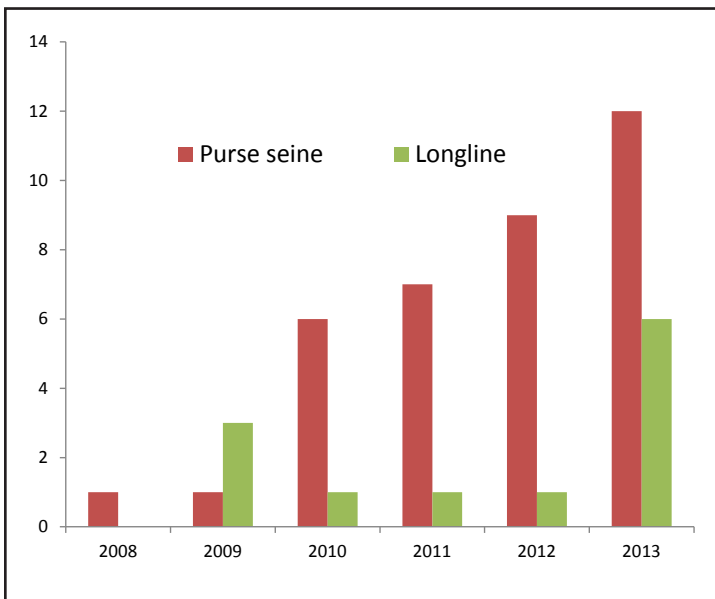
Value of fisheries in 2010 to Kiribati was about \$130 million or 80% of Gross Domestic Product.

Value of foreign vessel access fees ranges from \$30-\$40 million or 18-30% of Gross Domestic Product.

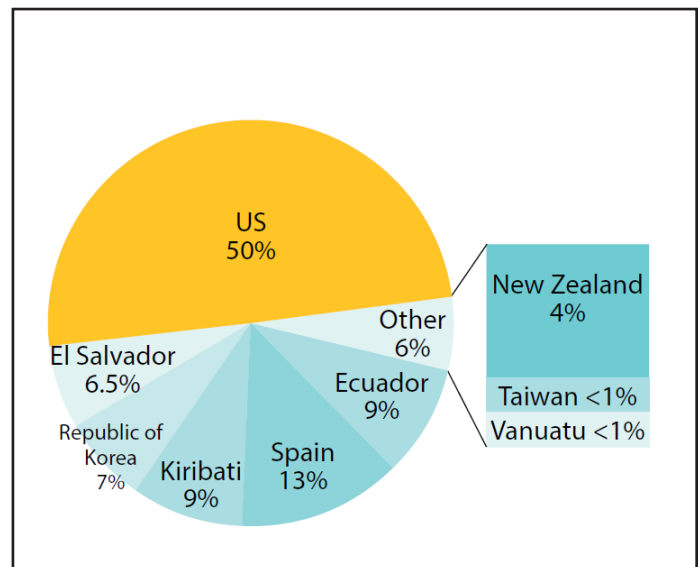
Kiribati continues to license foreign purse seiners (195) and longliners (256) to fish in its EEZ including the Phoenix Islands.

No country this dependent on fishing will close off entirely a major part of its EEZ to fishing.

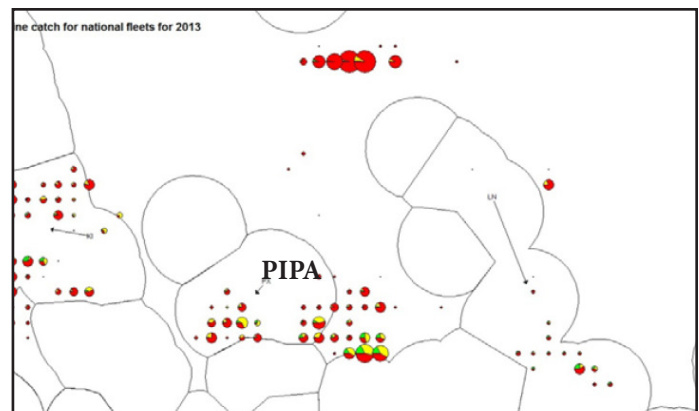
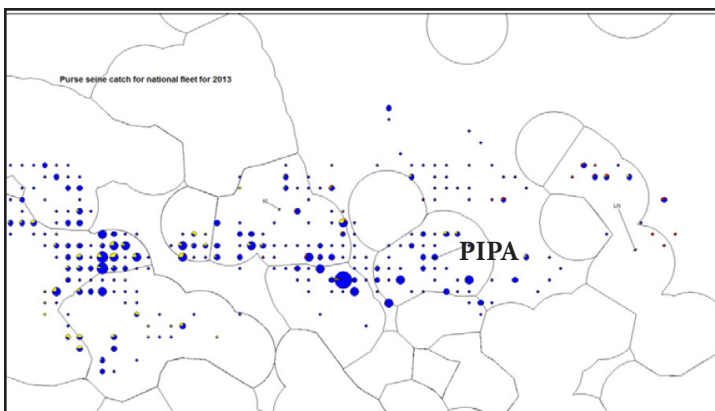
Not even Palau, where fishing is second biggest earner after tourism.



Kiribati Expanding Domestic Fishing Fleet^t



**Purse seine fleets fishing in Phoenix Islands
in 2013 = 76,000 t or 25% of Kiribati total**



Kiribati Vessels Fish in the Phoenix Islands Protected Area.

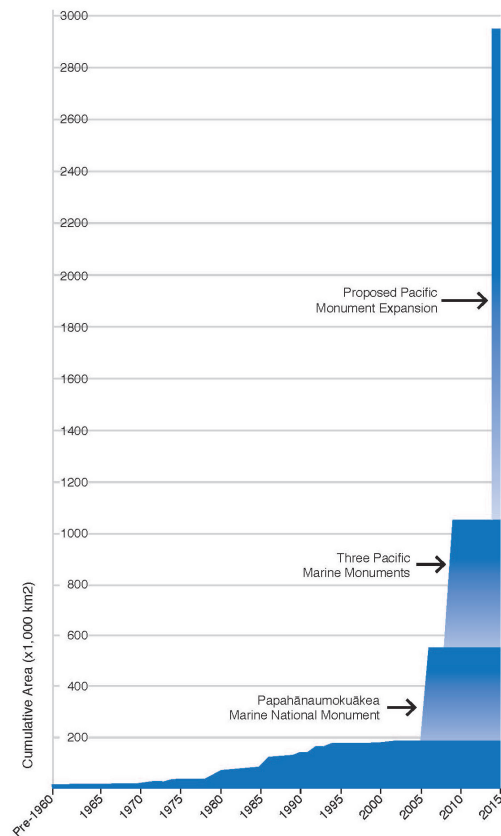
(Left) Purse seine fishing in Pacific Islands Protected Area (PIPA). (Right) Longline fishing in PIPA.

A Better, Fairer Ocean Legacy for the US Pacific Islands Allows Well-Managed, Sustainable Fishing of a Renewable Resource

“Since 2006, unilateral presidential actions have taken the Northwest Hawaiian Islands (Papahānaumokuākea MNM), the northernmost submerged lands surrounding Uracas, Maug and Asuncion Islands in the Marianas archipelago (Marianas Trench MNM), and the only atoll in the Samoan archipelago (Rose Atoll MNM) from the very island communities that have been sustainably managing these resources for the past thousand years or so. Today, we must obtain permission from the federal monument management authorities if we wish to visit our ancestral waters. ... We believe the Western Pacific has given enough of our ocean resources for environmental legacies. We implore you to allow us to continue managing our fishery resources under the Magnuson-Stevens Act.”

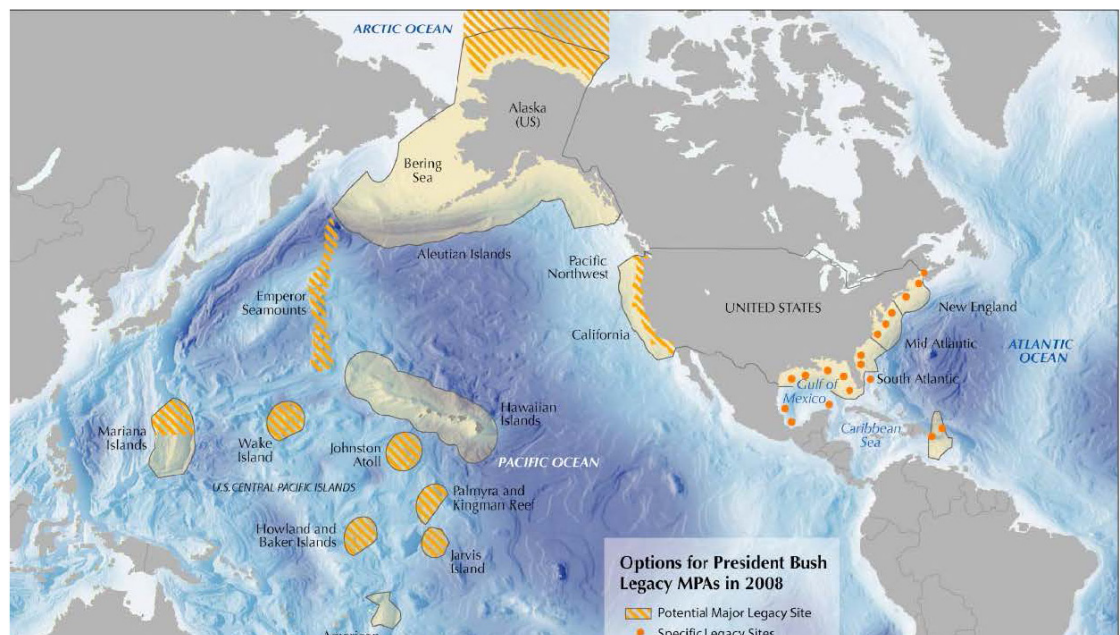
---CNMI Mayors of Saipan, Northern Islands, Rota, and Tinian & Aguiguan

Growth in area of MPAs (in the United States), 1960-2015



Source: “Conserving our Oceans One Place at a Time.”
marineprotectedareas.noaa.gov

Map presented by
Pew Environment
Group during
its campaign
to establish a
Blue Legacy
for President
Bush. Only
the proposed
monuments in
the US Pacific
Islands have been
proclaimed.



Commonly Used Acronyms

CNMI	Commonwealth of the Northern Mariana Islands	NS	National Standard (Magnuson-Stevens Act)
EEZ	Exclusive Economic Zone	NWHI	Northwestern Hawaiian Islands
EPO	Eastern Pacific Ocean	PIC	Pacific Island Country
ESA	Endangered Species Act	PIPA	Phoenix Islands Protected Area
ETP	Eastern Tropical Pacific	PNA	Parties to the Nauru Agreement
ETPO	Eastern Tropical Pacific Ocean	PNG	Papua New Guinea
FAD	Fish Aggregating Device	PRIA	Pacific Remote Island Area
FEP	Fishery Ecosystem Plan	PS	Purse Seine
FKW	False Killer Whale	RFMO	Regional Fisheries Management Organization
FMP	Fishery Management Plan	SPTT	South Pacific Tuna Treaty
HMS	Highly Migratory Species	SST	Sea Surface Temperature
IATTC	Inter-American Tropical Tuna Commission	TRT	Take Reduction Team
IUCN	International Union for Conservation of Nature	UBC	University of British Columbia
IUU	Illegal, Unreported, and Unregulated (Fishing)	USCG	United States Coast Guard
KI	Kiribati	UW	University of Washington
LL	Longline	VMS	Vessel Monitoring System
MHI	Main Hawaiian Islands	WCPFC	Western and Central Pacific Fisheries Commission
MMPA	Marine Mammal Protection Act	WCPO	Western and Central Pacific Ocean
MNM	Marine National Monument	WPRFMC	Western Pacific Regional Fishery Management Council
MSA	Magnuson-Stevens Fishery Conservation and Management Act	WTP	West Tropical Pacific
NMFS	National Marine Fisheries Service		



ECOSYSTEM ADVISORY SUBPANEL REPORT ON
COMMENTS ON EXECUTIVE ACTIONS

The Ecosystem Advisory Subpanel (EAS) discussed the proposed executive action to expand the Pacific Remote Islands Marine National Monument. Within our scope to advise the Council on fishery ecosystem matters we are agreed in general that we do not have the information or expertise to assess whether the expansion represents a sound resource management decision. We are also agreed that inclusive consultative processes are important to making sound resource management decisions. Three of seven members present also expressed support specifically for the Western Pacific Council's position on the issue.

PFMC
09/13/14

GROUNDFISH ADVISORY SUBPANEL REPORT ON EXECUTIVE ACTIONS

The Groundfish Advisory Subpanel (GAP) heard a report by Ms. Jennifer Gilden and offers the following comments on the Executive Actions.

IUU Fishing and Seafood Fraud

The GAP notes that the time period for public comment to the Presidential Task Force on Illegal, Unregulated, and Unreported (IUU) Fishing and Seafood Fraud has expired and it is highly unlikely to be extended. We therefore don't believe that the Council should spend a great deal of time on the issue. However, if the Council does choose to send comments, we recommend that those comments be limited to the issue of IUU fishing and the need to control it.

Seafood fraud is an extremely complex topic with many different facets; it goes far beyond the conservation and management tasks that the Council must address. It can include everything from short weights in packages to substituting tilapia for rockfish, to requiring complete traceability of each fish from point of harvest to point of final retail sale. It involves and affects fishermen, processors, distributors, and retailers. Given the lack of time and analysis available to consider this complex issue, we think the Council would be better served concentrating on IUU fishing, if it intends to comment at all.

Pacific Remote Islands Marine National Monument

While the GAP has no comments specific to the Pacific Remote Islands Marine National Monument, most GAP members agree that Congress and stakeholders should have more input on sweeping designations of marine monuments (please see the GAP report under Agenda Item I.1, Legislative Matters).

PFCM
09/14/14

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON COMMENTS ON EXECUTIVE ORDERS

The Highly Migratory Species Advisory Subpanel (HMSAS) requests the Council to strongly oppose the proposed expansion of the Pacific Remote Islands Marine National Monument proposed by President Obama on June 17, 2014.

The proposed expansion would prohibit legal U.S. fisheries to operate in traditional areas. Nearly 700,000 square miles will be affected. Such fisheries pose no threat to the ecosystems of the proposed closed zones and never have. Fish caught in these areas are generally highly migratory in nature, transcend boundaries, and are managed internationally. Thus, closing down large areas would result in no eco-benefit and may create negative results by forcing fleets to fish in smaller, more crowded areas which would not be beneficial to the stocks of fish.

While the proposed expansion and closures of areas do not directly affect west coast fisheries, it sets a bad precedent as more and more access for U.S. fishermen are being lost. With more closed areas, increased effort could spread to west coast fisheries. The HMSAS recognizes the potential problems when decisions are not based on sound science with little data to support the decisions that are being implemented by political pressure.

Implementation will only further expand outsourcing domestic seafood demand to nations whose standards for environmental protections pale in comparison to our own. The U.S. now imports over 91% of its seafood and this will only help to increase this number.

U.S. fisheries are the best managed in the world and losing access to large areas of production only will create a further gap in the U.S. as an importer of foreign-caught and processed seafood.

The HMSAS asks the Pacific Fishery Management Council, as has the Western Pacific Fishery Management Council to take a firm position and make a statement that this proposal be withdrawn in order to avoid further degradation of the American fishing industry.

PFMC
09/14/14



**Monterey Bay
Aquarium**

886 CANNERY ROW
MONTEREY, CA 93940
831.648.4800

August 31, 2014

The Honorable Kathryn Sullivan
Under Secretary for Oceans and Atmosphere &
NOAA Administrator
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

The Honorable Catherine Novelli
Under Secretary for Economic Growth, Energy, and the Environment
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Re: Recommendations for the Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud

Dear Under Secretary Sullivan and Under Secretary Novelli:

On behalf of the Monterey Bay Aquarium and our Executive Director, Julie Packard, thank you for the opportunity to submit recommendations for action by the newly-formed Presidential Task Force on Combating Illegal, Unreported and Unregulated (IUU) Fishing and Seafood Fraud (Task Force). IUU fishing and the lack of seafood traceability are major drivers of unsustainable fishing practices around the world. A March 2014 report found that Illegal and unreported catches represent 20–32% by weight of U.S. imports of wild-caught seafood.ⁱ These practices not only undermine global food security, they also put well-performing U.S. fisheries at a disadvantage in the global marketplace. In addition, the rise of marine species listings under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) reflects the growing reality that unsustainable and illegal fishing practices are placing an increasing number of ocean wildlife at risk of extinction.

The mission of the Monterey Bay Aquarium is to inspire conservation of the oceans, and for the past fifteen years, our Seafood Watch® program has helped lead what has become a global movement toward seafood sustainability.ⁱⁱ The Aquarium is also committed to studying and improving the health of wildlife species such as sharks and bluefin tuna, which are among the world's most vulnerable marine species to both IUU fishing and the lack of effective enforcement and management controls. We stand ready to assist the Task Force in its efforts to strengthen U.S. leadership in these critical areas and ensure healthy and productive oceans and fisheries for generations to come.

Our recommendations to the Task Force are as follows:



Monterey Bay Aquarium

886 CANNERY ROW
MONTEREY, CA 93940
831.648.4800

Establish key components of traceability.

The U.S. should work with other nations, the NGO community, and the seafood industry to establish a globally-accepted traceability system with clear parameters for seafood, including:

- Common name and scientific name;
- Gear type; and
- Jurisdiction where the seafood was caught or farmed.

Consistent recording and dissemination of this information throughout the global seafood supply chain—from landing to plate—is essential to ensure full seafood traceability. The U.S. should look beyond our borders to assess what type of information can be feasibly collected and how this information currently flows throughout the seafood supply chain. This process can help the U.S. identify key partners in enhancing global seafood traceability.

The Food and Agricultural Organization of the United Nations (FAO) may be an ideal entity to serve as a globally-accepted resource for timely and accurate information on the three key traceability components listed above. To begin, the U.S. should work with the FAO to update its existing information on gear types and fishing area jurisdictions. The U.S. should also work with the FAO to investigate standardized global data parameters.ⁱⁱⁱ

Design systems that work for both wild-caught and farmed seafood.

The Task Force should focus on both wild-caught and farmed seafood, as aquaculture is the fastest growing form of food production in the world and the U.S. is the leading global importer of fish and fishery products. Over 90% of the seafood we eat (by value) originates from abroad, and 50% of all imported seafood is from aquaculture. The lack of traceability for farmed seafood is a serious concern. For example, restaurateurs and seafood distributors report that it is extremely difficult in some cases to trace a shrimp product back to the farm where it was produced. Seafood fraud is also a major challenge associated with farmed seafood products.

The Task Force's recommendations should take into account that wild fisheries and aquaculture are managed differently. Solutions should address how to ensure traceability for both a publicly-managed resource (i.e., fisheries) and privately-held products (i.e., aquaculture). In addition, some fish species, such as bluefin tuna, are both wild-caught and farmed. The Task Force should refer to catch documentation schemes that currently exist for Atlantic bluefin tuna and other species produced from both wild and farmed sources.^{iv}

Align and build transparency and traceability Initiatives with the European Union and Japan.

Due to the global nature of the seafood trade, U.S. leadership at the international level on governance reform and enhanced traceability is essential, especially with the European Union



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(EU) and Japan—the two other major global markets that currently drive seafood sourcing and trade. The U.S. and EU in particular have made significant strides in recent years toward combating IUU fishing as individual nations and in a joint partnership.^v Seizing this moment to align management, compliance, and documentation protocols among these and other dominant seafood markets over the next few years could have a transformative effect on global seafood governance and would be a signature achievement for the U.S., but action must begin now. The Task Force should work with these and other global partners to harmonize data fields, information flow and regulatory requirements among all nations engaged in the global seafood trade. The U.S. should also build from existing assessments of current catch documentation schemes.^{vi} These efforts will help advance the priorities of both the IUU and Seafood Fraud Task Force and the Presidential Task Force on Wildlife Trafficking.^{vii} In particular, the U.S. should:

- Expand the joint U.S./EU initiative started by former NOAA Administrator Jane Lubchenco and European Commissioner Maria Damanaki to strengthen IUU enforcement and compliance strategies in other nations, including through trade and other agreements and treaties. In August of 2014, current NOAA Administrator Kathryn Sullivan met with Commissioner Damanki to continue the joint effort to continue the fight against IUU fishing.^{viii}
- Work to align a new U.S. traceability scheme with similar EU efforts, including the United Kingdom’s seafood labeling requirements.^{ix}
- Engage with Japan and the EU in their respective efforts to develop systems to distinguish between legally and illegally harvested seafood product to avoid trade enforcement measures. This is an activity ripe for discussion in the international management arena. For example, both Japan and the EU have agreed to a transparent compliance and reporting system for Atlantic bluefin tuna under the International Commission for the Conservation of Atlantic Tunas (ICCAT), as well as an ICCAT electronic bluefin catch documentation (eBCD) scheme.^x There are also existing catch documentation schemes for southern bluefin tuna (established by the Commission for the Conservation of Southern Bluefin Tuna, or CCSBT)^{xi} and for dolphin safe tuna (established by the Inter-American Tropical Tuna Commission, or IATTC).^{xii}
- Work with Japan and the EU to urge development of a catch documentation scheme for Pacific bluefin tuna. The steep decline of Pacific bluefin tuna to 4% of its unfished biomass is finally focusing international attention on harvest cuts this year and next. If adopted, these measures will require establishment of a tracking and enforcement scheme by the Western and Central Pacific Fishery Management Commission (WCPFC) and the IATTC. The U.S. should take advantage of this opportunity to immediately engage in the development of a new scheme for Pacific bluefin tuna based on other international models.



- Expanding on this approach, the U.S., Japan, and EU should establish unified expectations regarding transparency and accountability, both in the context of trade agreement discussions (as discussed below), and by urging all Regional Fishery Management Organizations (RFMOs) to adopt transparency and traceability systems for species at severe risk from high market demand and trade. Examples include systems adopted for bluefin tuna by CCSBT and ICCAT (referred to above), and for Patagonian toothfish by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).^{xiii} Documentation systems that aid compliance and enforcement at the RFMO level will support international efforts to reduce IUU fishing and prevent future crisis-based trade restrictions. It is also a topic on which to confer with the Presidential Task Force on Wildlife Trafficking to ensure trade in marine species is legal and documented, such as for sharks listed under CITES Appendix II.^{xiv} Failure to exercise this leadership at the RFMO level will inevitably lead to future trade enforcement measures under CITES, the Magnuson-Stevens Fishery Conservation and Management Act and related legislation, such as the Lacey Act, and treaties, such as the Port States Measures Agreement and ICCAT.
- The IUU and Seafood Fraud Task Force should work with the Presidential Task Force on Wildlife Trafficking to ensure the U.S. has the tools it needs to implement new regulations regarding the trade in shark and ray species listed under CITES Appendix II. U.S. Fish and Wildlife Service rules for these species take effect on September 14, 2014. For these listings to be meaningful, the U.S. should work to ensure marine species listed under CITES Appendix II that are imported to the U.S. are legally documented under CITES, including if harvested outside of areas of national jurisdiction. The two Task Forces should work together to institute a model tracking and documentation scheme and DNA screening tool that can be used to help implement the new rules, while also serving to combat illegal trade in multiple other vulnerable marine species. The Monterey Bay Aquarium and our partners would be pleased to assist in these efforts by providing technical support (see section on “Technology” below), convening meetings, and other activities.

Build from existing efforts.

Today, many industry, NGO, and government leaders are engaged in collaborative and coordinated efforts to combat IUU fishing and improve global seafood traceability.^{xv} The Task Force should identify ways in which strengthened U.S. leadership can help enhance existing efforts to achieve shared goals. Specifically, the Task Force should:

- Conduct a global audit of existing IUU and traceability efforts by the U.S. and other global seafood nations, RFMOs, reputable NGOs, the FAO, and industry. Examples include the National Fisheries Institute’s work with GS1 to improve the ability of the seafood industry to rapidly track and trace product throughout the supply chain^{xvi}, and the International Sustainable Seafood Foundation’s work with RFMOs and major tuna buyers to improve documentation and traceability in the tuna sector.^{xvii}



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- Facilitate consultation between government officials and external experts through the creation of an advisory body or other mechanism. Examples include: a federal advisory committee or working group formed under an existing external advisory body (i.e., the President's Council of Advisors on Science and Technology), or a marine-focused Advisory Council to help implement the President's 2013 Executive Order on Combating Wildlife Trafficking working with the existing Advisory Council on Wildlife Trafficking that is focused on terrestrial species.

The Monterey Bay Aquarium would welcome the opportunity to provide additional background information, host meetings and otherwise facilitate joint communications, information sharing, and relationship building between the Task Force and external expert groups, as well as with the Presidential Task Force on Wildlife Trafficking and RFMOs. We also recommend that the Task Force investigate the use of Corporate Social Responsibility pledges by private financial and other institutions to leverage change in the seafood market and global efforts to address IUU fishing.

Promote greater international accountability.

The U.S. should work with like-minded nations and organizations to promote greater international accountability in combating IUU fishing and improving seafood traceability. The U.S. should work to ensure stronger governance and enforcement across all international trade agreements and among RFMOs. The U.S. can also improve technical assistance and knowledge transfer to other nations to help improve sustainability standards, increase traceability, and enhance enforcement. Specifically, the U.S. should:

- Use planned negotiations surrounding the decline of Pacific bluefin tuna at WCPFC and IATTC to expand compliance reporting and the electronic bluefin catch documentation (eBCD) scheme established for Atlantic bluefin tuna under ICCAT to cover all bluefin tuna populations worldwide.
- Investigate an enhanced role for the FAO (beyond data sharing and reporting) in using its authority in countries with rampant IUU fishing and that engage in underreporting.
- Work closely with the Office of the U.S. Trade Representative and key leadership within the Executive Office of the President to prioritize tracking and transparent data sharing and reporting in trade agreements such as the Trans-Pacific Partnership (TPP) and Trans-Atlantic Trade and Investment Partnerships (TTIP).
- Support international efforts to obtain more accurate information about fishing activities that can be used in any traceability system, including enhanced collection of vessel, catch, location, and gear data at RFMOs.



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- In countries where governance is limited, support innovative ways to directly collect these data from fishing vessels and integrate them into catch documentation schemes that will help individual fisheries meet traceability requirements in advance of national systems (see “Technology” section below).
- Strengthen international impact by leveraging key areas of alignment and potential partnerships with non-governmental conservation and industry group efforts designed to promote accountability, transparency, traceability, and compliance in international resource management and trade agreements. This includes work by the ISSF^{xviii} and others to promote transparency in RFMO negotiations, catch reporting and compliance systems.
- Support unique vessel identifiers like IMO numbers and the creation of a Global Record of Fishing Vessels. A Global Record with consistent and validated vessel, company and owner information, underpinned by an International Maritime Organization (IMO) number as a unique vessel identifier (UVI), is a practical, feasible and cost-effective step to combat IUU fishing by increasing transparency and traceability throughout the seafood supply chain.

Improve coordination and alignment among U.S. authorities.

The U.S. should improve alignment among federal agencies and authorities to harmonize U.S. efforts to improve seafood tracking and combat IUU fishing. Specifically, the U.S. should:

- Conduct an audit of existing U.S. legislation, regulations and requirements among government agencies to identify opportunities, minimize redundancies and ensure more informed decision-making.^{xix}
- Develop a joint effort between the Task Force and Presidential Task Force on Wildlife Trafficking focused on immediate action, transparent reporting, monitoring and enforcement for marine species at risk from unsustainable demand and illegal fishing, including sharks and bluefin tuna.
- Require chain of custody documentation and align agencies responsible for setting chain of custody requirements, inspection and enforcement.
- Identify transferable strategies associated with agriculture traceability systems and existing wildlife trade and trafficking efforts, such as bar coding, DNA testing, and electronic document systems.
- Require the seafood importer to demonstrate that a seafood product is legal and traceable. This process will help incentivize proper documentation throughout the supply chain and address well-documented challenges experienced by enforcement officials and regulatory inspectors, including the U.S. Food and Drug Administration (FDA).



- Develop an improved “Critical Control Point” approach (such as the Hazard Analysis & Critical Control Points, or HACCP, used by the FDA and the NOAA Seafood Inspection Program) to help prioritize interventions and focus on the highest-risk enforcement needs.
- Be aware of the types of supply chain systems that may pose challenges to traceability, including “segregated”, “book and claim” and “mass balance” systems.^{xx}

Additional recommendations are included in the “Aligning Authorities and Tools” box below.

Aligning Authorities and Tools

The most relevant authorities and tools for combating IUU fishing and improving seafood traceability will be contingent on solutions developed by the Task Force. In general, these solutions can incorporate the following:

U.S. Customs and Border Protection

- Build on current inspection processes to increase focus on seafood imports.

U.S. Department of Commerce and U.S. Department of Interior

- Enhance the NOAA Seafood Inspection Program.
- Build on and align existing reporting and compliance systems and catch documentation schemes, including the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and ICCAT.
- Help develop new schemes for other RFMOs. Examples of existing catch reporting and documentation systems that are used by U.S. fisheries include: U.S. Fish and Wildlife Service’s administration of CITES provisions, including CITES Appendix II import documentation; and NOAA’s Bluefin Tuna Catch Documentation Program and “Dolphin-Safe” Tuna Tracking Program.

U.S. Department of Agriculture

- Examine existing food labeling requirements, including Country of Origin Labeling (COOL), and barcoding for agricultural products.

Food and Drug Administration

- Enhanced FDA inspections could address both health-related requirements as well as new traceability criteria.
- Develop an improved “Critical Control Point” approach like the HACCP process used by the FDA and the NOAA Seafood Inspection Program.



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Promote innovative technology to address IUU fishing and seafood traceability.

The U.S. should tap efforts within the tech community to develop new and innovative information tracking technologies that will be needed to address challenges of tracking fishing activity and determining the legal status of seafood products. For example, this community came out in force to support the U.S. State Department's "Fishackathon" in June of 2014.^{xxi} The Monterey Bay Aquarium hosted the winning team from the University of California, Berkeley that designed a mobile app to facilitate the collection of data on fish caught off the coast of West Africa. Through this experience, we discovered that technology experts have a strong interest in tackling these kinds of data problems.

In addition, the Aquarium and our partners, including those that are part of our Tuna Research and Conservation Center^{xxii}, who also work closely with NOAA scientists, have significant technological expertise in tagging and tracking marine wildlife, as well as DNA and eDNA identification and tracking that could be useful in devising innovative solutions to enforcement challenges. As the number of marine species listed under CITES continues to grow, the U.S. should take advantage of these and other opportunities to partner on enforcement solutions and environmental intelligence.

Thank you for your leadership on these urgent and important issues that have direct impact on the future of global ocean health. Please do not hesitate to contact me or a member of my team for further clarification of the points above, or in convening future meetings of the Task Force, including advisory meetings with NGOs and key seafood industry groups.

Sincerely,

A handwritten signature in black ink that reads "Margaret Spring".

Margaret Spring
Vice President for Conservation & Science
Chief Conservation Officer



ⁱ **Estimates of illegal and unreported fish in seafood imports to the USA**

Marine Policy Journal

<http://www.sciencedirect.com/science/article/pii/S0308597X14000918>

ⁱⁱ **About Seafood Watch®**

www.seafoodwatch.org

Seafood Watch® Criteria for Fisheries

http://www.seafoodwatch.org/cr/cr_seafoodwatch/content/media/mba_seafoodwatch_capturefisheries_methodology.pdf

Seafood Watch® Criteria for Aquaculture

http://www.seafoodwatch.org/cr/cr_seafoodwatch/content/media/mba_seafoodwatch_aquaculturecriteria_methodology.pdf

ⁱⁱⁱ **Labeling and Certification**

Fisheries and Aquaculture Department, FAO

<http://www.fao.org/fishery/topic/13293/en>

^{iv} **Atlantic Bluefin Tuna (ICCAT)**

<http://www.iccat.int/Documents%5CRecs%5Ccompendiopdf-e%5C2007-10-e.pdf>

^v **NOAA's Priorities to Combat Global IUU Fishing in 2013**

<http://www.nmfs.noaa.gov/ia/iuu/ltpf.pdf>

European Commission: IUU Fishing

http://ec.europa.eu/fisheries/cfp/illegal_fishing/index_en.htm

Joint Statement Between the European Commission and the United States Government on Efforts to Combat Illegal, Unreported and Unregulated Fishing

http://www.nmfs.noaa.gov/stories/iuu/docs/statement_online_handout.pdf

^{vi} **An Assessment of RFMO Catch Documentation Schemes**

Shelley Clarke

<https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Energy,%20Environment%20and%20Development/020212clarke.pdf>

Harmonization of Catch Documentation Schemes

FAO Committee on Fisheries

<ftp://ftp.fao.org/docrep/fao/meeting/013/k2250e.pdf>

Review of the Current Status of Catch Certification and Catch Documentation

FAO Corporate Document Repository

<http://www.fao.org/docrep/005/y8252e/y8252e04.htm#TopOfPage>



vii **2013 Executive Order on Combating Wildlife Trafficking**
<http://www.whitehouse.gov/the-press-office/2013/07/01/executive-order-combating-wildlife-trafficking>

viii **“Commissioner Damanki’s visit to Washington, DC and meeting with Dr. Kathryn Sullivan”**
http://ec.europa.eu/commission_2010-2014/damanaki/headlines/press-releases/2014/07/20140806_en.htm

ix **UK Fish Traceability Requirements**
Seafish
<http://www.seafish.org/industry-support/legislation/traceability-and-labelling/fish-traceability-requirements>

x **ICCAT Electronic Catch Documentation Scheme for Bluefin Tuna**
<http://www.iccat.int/Documents/Recs/compendiopdf-e/2010-11-e.pdf>
http://www.nmfs.noaa.gov/sfa/hms/advisory_panels/hms_ap/meetings/sept_2013/documents/ebcd_update_sept_2013_ap_final.pdf

xi **Southern Bluefin Tuna (CCSBT)**
http://www.ccsbt.org/userfiles/file/docs_english/operational_resolutions/Resolution_CDS.pdf

xii **Dolphin-Safe Tuna**
<http://www.nmfs.noaa.gov/pr/dolphinsafe/docs/noaa370.pdf>

xiii **Patagonian Toothfish (CCAMLR)**
<http://www.ccamlr.org/en/compliance/compliance>
www.traffic.org/species-reports/traffic_species_fish31.pdf

xiv **Sharks and Rays (CITES App II)**
<http://www.fws.gov/forms/3-200-31.pdf> (introduction from the sea)
<http://www.cites.org/eng/prog/shark/>
<http://cites.org/eng/prog/shark/traceability.php>
<http://www.traffic.org/home/2013/7/30/new-study-gets-its-teeth-into-shark-trade-regulations.html>

xv **Without a Trace: A Summary of Traceability Efforts in the Seafood Industry**
FishWise
<http://www.sustainablefishery.org/traceability-support-2>

Looking at Labels: Traceability in the Seafood Industry
Oceana
http://darc.cms.udel.edu/SGSFR/Looking_at_Labels_Traceability_in_the_Seafood_Industry.pdf

xvi **Traceability for Seafood: U.S. Implementation Guide**
National Fisheries Institute, GS1
http://www.aboutseafood.com/sites/all/files/FINAL%20Seafood%20Trace%20Guide_v1.1.pdf



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xvii **Promoting Compliance in Tuna RFMOs**

ISSF

<http://www.wcpfc.int/system/files/WCPFC-TCC9-2013->

[OP03_ISSF%20paper%20on%20promoting%20compliance%20in%20tuna%20RFMOs.pdf](http://www.wcpfc.int/system/files/WCPFC-TCC9-2013-OP03_ISSF%20paper%20on%20promoting%20compliance%20in%20tuna%20RFMOs.pdf)

<http://iss-foundation.org/2013/10/20/assessing-the-compliance-process-of-atlantic-tuna-fisheries/>

xviii The Monterey Bay Aquarium is a member of the Environmental Stakeholder Group of the ISSF.

xix **The State of Traceability Policy**

From 2014 Future of Fish report

http://futureoffish.org/sites/default/files/docs/resources/fof-traceability_report-final.pdf

xx **Supply Chain Systems Overview**

Roundtable on Sustainable Palm Oil (RSPO)

[http://www.nestle.com/asset-library/documents/media/statements/2012-](http://www.nestle.com/asset-library/documents/media/statements/2012-october/rspo_supply%20chain%20systems%20overview.pdf)

[october/rspo_supply%20chain%20systems%20overview.pdf](http://www.nestle.com/asset-library/documents/media/statements/2012-october/rspo_supply%20chain%20systems%20overview.pdf)

xxi **"Fishackathon"**

<http://www.fishackathon.co/>

xxii **TRCC**

www.tunaresearch.org

FISCAL MATTERS

The Council's Budget Committee will meet on Thursday, September 11, 2014, at 2:30 P.M. to consider budget issues as outlined in the Budget Committee Agenda.

The Budget Committee's Report is scheduled for Council review and approval on Wednesday, September 17.

Council Action:

Consider the report and recommendations of the Budget Committee.

Reference Materials:

1. Agenda Item I.4.b, Supplemental Budget Committee Report.

Agenda Order:

- a. Agenda Item Overview
- b. Report of the Budget Committee
- c. Reports and Comments of Advisory Bodies and Management Entities
- d. Public Comment
- e. **Council Action:** Consider Budget Committee Recommendations

Chuck Tracy
Dave Ortmann

PFMC
8/18/14

BUDGET COMMITTEE REPORT ON FISCAL MATTERS

The Budget Committee (BC) met on Thursday, September 11, 2014 and received the Executive Director's Budget Report for the fifth year of the 2010-2014 Cooperative Agreement. The report covered: (1) status of funding for calendar year (CY) 2014; (2) summary of expenditures through May; and (4) a discussion of potential funding for future years. The BC attendance was as follows:

Members Present: Mr. Dave Ortmann, Chairman, Mr. Bob Turner, Dr. Dave Hanson, Ms. Dorothy Lowman, Mr. Dale Myer, and Mr. Dan Wolford

Members Absent: Ms. Michele Culver

Non-members Present: Mr. Phil Anderson, Mr. Corey Niles, Mr. Rod Moore, Dr. Steve Freese, Dr. Caren Braby, Dr. Carrie Simmons, Dr. Ava Lasseter, Mr. Chuck Tracy, Ms. Patricia Crouse, and Dr. Donald McIsaac

Summary of CY 2014 Funding

Dr. McIsaac reported that the Council's final line item funding for FY 2014 of \$3.99M has been received, which is approximately 3.1 percent less funding than the stability target of 2012 level funding. Dr. McIsaac reported the receipt of funds on September 2 was the latest ever, and resulted in discussions with National Marine Fisheries Service (NMFS) headquarters and regional staff to ensure future allocations would not be subject to such delays.

CY 2014 Budget Expenditures

Expenditures of the CY 2014 budget are proceeding within normal expectations for the first eight months of the year.

Preliminary Expectations for Future Funding

Dr. McIsaac reported that the House and Senate have passed Commerce, Justice, and Science appropriations bills with \$32.0M and \$32.8M in the Regional Council and Fisheries Commissions line items, respectively, which are similar to the final amount adopted in 2014. Given the status of Congressional action and NMFS adjustments to Council-dependent line items the past two years, there remains some uncertainty about the Regional Fishery Management Council funding level for 2015 and beyond, as well as when actual funding level will be known; however, current expectations are for funding similar to FY 2014 levels.

Dr. McIsaac noted that future Council funding was likely to be subject to continued reduction from the 3.99 percent Common Use Adjustment as a matter of National Oceanic and Atmospheric Administration policy, and that he would continue to seek clarification or relief from all or part of that reduction.

Budget Committee Recommendations

Noting the assessment that current expenditures are in line with expectations through the first eight months of the year, the BC has no recommendations for Council action; however the BC commended Council staff for the unqualified positive results of the annual audit.

PFMC
9/16/14

MEMBERSHIP APPOINTMENTS

During this agenda item, the Council has the opportunity to consider Administrative appointment issues with regard to the Council Membership Roster, including Council Members, advisory body membership, and also any relevant changes in Council Operating Procedures (COP) or the Council's Statement of Organization, Practices, and Procedures (SOPP).

Council Members and Designees

Mr. Phil Anderson has notified the Council that Mr. Corey Niles will be one of his designees for the Washington Department of Fish and Wildlife Agency seat (Closed Session A.1.a, Attachment 1).

Ms. Cora Campbell has notified the Council that the new designees for the Alaska Fish and Game Agency seat are Ms. Stephanie Morland (Primary), Ms. Karla Bush, Ms. Nicole Kimball, and Ms. Dani Evenson (Closed Session A.1.a, Attachment 2)

Council Advisory Body Appointments

Groundfish Management Team (GMT)

Mr. Phil Anderson has nominated Ms. Jessie Doeringhaus to replace Mr. Corey Niles as one of the Washington Fish and Wildlife representatives on the GMT (Closed Session A.1.a, Attachment 4).

Highly Migratory Species Advisory Subpanel (HMSAS)

As of the advertised deadline, the Council received three nominations for the vacant Southern Processor seat, which should be appointed at this meeting:

- Mr. Steve Foltz submitted a nomination (Closed Session A.1.a, Attachment 5).
- Mr. Donald Alber has been nominated (Closed Session A.1.a, Attachment 6).
- Mr. Dave Rudie was nominated by Ms. Kathy Fosmark (Closed Session A.1.a, Attachment 10).

Coastal Pelagic Species Advisory Subpanel (CPSAS)

As of the advertised deadline, the Council received two nominations for the vacant Sport/Charter seat, which should be appointed at this meeting:

- Mr. Steve Crooke was nominated by Mr. Ken Franke, President of the Sportfishing Association of California, and Ms. Diane Pleschner-Steele, Executive Director of the California Wetfish Producers, supported his nomination (Closed Session A.1.a, Attachment 7).
- Mr. Robert Kurz was nominated by Mr. Jason Schratwieser, Conservation Director, International Game Fish Association (Closed Session A.1.a, Attachment 8)

Scientific and Statistical Committee (SSC)

Dr. Michelle McClure has notified the Council that Dr. Vladlena Gertseva will resign from her at-large seats following the September 2014 meeting (Closed Session A.1.a, Attachment 9). The Council should solicit for nominations and fill the vacant seat at its November meeting if possible.

Changes to Council Operating Procedures

COP 9 has been updated with Council direction from the last year or so (Agenda Item I.5.a, Attachment 1); however, there remain some discrepancies with current practices and management schedules for CPS (Agenda Item I.5.a, Attachment 2). The Council should consider updating COP 9 to reflect the current practices.

Council Action:

- 1. Consider any appointment and membership issues.**
- 2. Consider updates to COP 9.**

Reference Materials:

1. Closed Session A.1.a, Attachment 1: Notice of appointment of Mr. Corey Niles as a designee to the Washington Department of Fish and Wildlife agency Council seat.
2. Closed Session A.1.a, Attachment 2: Notice of appointment of designees to the Alaska Department of Fish and Game agency Council seat.
3. Closed Session A.1.a, Attachment 3: Resignation of Ms. Marija Vojkovich from the Commissioner seat on the United States delegation to the Western and Central Pacific Fisheries Commission.
4. Closed Session A.1.a, Attachment 4: Nomination of Ms. Jessie Doerpinghaus to one of the Washington Fish and Wildlife seats on the GMT.
5. Closed Session A.1.a, Attachment 5: Nomination of Mr. Steve Foltz for the South of Cape Mendocino Processor seat on the HMSAS.
6. Closed Session A.1.a, Attachment 6: Nomination of Mr. Donald Alber for the South of Cape Mendocino Processor seat on the HMSAS.
7. Closed Session A.1.a, Attachment 7: Nomination of Mr. Steve Crooke for the Sport/Charter seat on the CPSAS.
8. Closed Session A.1.a, Attachment 8: Nomination of Mr. Robert Kurz for the Sport/Charter seat on the CPSAS.
9. Closed Session A.1.a, Attachment 9: Resignation of Dr. Vladlena Gertseva from an at-large seat on the SSC.
10. Closed Session A.1.a, Attachment 10: Nomination of Mr. Dave Rudie for the South of Cape Mendocino Processor seat on the HMSAS.
11. Agenda Item I.5.a, Attachment 1: Current COP 9.
12. Agenda Item I.5.a, Attachment 2: Staff Recommended Updates to COP 9.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Consider Appointments to Advisory Bodies and Changes to Council Operating Procedures

Chuck Tracy

PFMC
08/19/14

COUNCIL OPERATING PROCEDURE

Management and Activity Cycles

Approved by Council: 07/10/85

Revised: 09/16/87, 04/06/95, 11/03/99, 03/11/05, **11/06/13, 04/10/14**

PURPOSE

To establish management and activity cycles conducted by the Pacific Fishery Management Council (Council), its advisory entities, staff for the groundfish, salmon, coastal pelagic species, halibut, and highly migratory species fisheries, and administrative matters.

MANAGEMENT AND ACTIVITY CYCLES

- Schedule 1 Biennial management cycle and activities related to groundfish management.
- Schedule 2 Annual management cycle and activities related to salmon management.
- Schedule 3 Annual management cycle and activities related to coastal pelagic species management.
- Schedule 4 Annual management cycle and activities related to halibut management.
- Schedule 5 Biennial management cycle and activities related to highly migratory species management.
- Schedule 6 Annual administrative management cycle and activities.

SCHEDULE 1. Biennial management cycle and activities related to groundfish management.

Year	Month	Entity and Management Activity
Year 1	September	To begin development of specifications for the next biennial management period (Years 3 and 4), the <i>Groundfish Management Team (GMT) and Scientific and Statistical Committee (SSC)</i> review and incorporate new impact assessment methodologies, including new observer data from January through December of the previous year, approve stock assessments completed in Year 1, and recommend appropriate harvest specifications. <i>GMT and Groundfish Advisory Subpanel (GAP)</i> meet to review current fishery status to inform <i>Council</i> action on routine inseason management recommendations ¹ , as necessary for Year 1.

¹ Routine management measures have been previously analyzed and are defined in regulation and include adjustments to rockfish conservation area boundaries and most trip limits, bag limits and size limits. Routine measures may be changed after a single Council meeting.

SCHEDULE 1. Biennial management cycle and activities related to groundfish management.

Year	Month	Entity and Management Activity
Year 1 (cont)		<p>GMT and GAP provide recommendations to inform Council action on harvest specifications and management measures for Years 3 and 4.</p> <p>Council adopts final modeling methodologies, stock assessments for the next biennial period for Years 3 and 4, final preferred overfishing limits (OFLs) and sigmas, as recommended by the SSC.² The Council will also adopt a range of P*/acceptable biological catches (ABCs), if applicable, including preliminary preferred values.</p> <p>Council will provide initial fishery management guidance, including a preliminary range of management measures necessary to keep catch within or attain a specification or to address a habitat or protected resources concern for analysis and implementation in Years 3 and 4.</p>
	October	<p>SSC Groundfish Subcommittee meets to review overfished species rebuilding analyses as well as any stock assessments approved for further review by the Council at the “mop-up” stock assessment review panel for Years 3 and 4.</p> <p>GMT meets to review new stock assessments and rebuilding analyses. GMT drafts a recommended range of ACLs and preliminary management measures for consideration at the November Council meeting for Years 3 and 4.</p>
	November	<p>Coastal treaty tribes initiate allocations and/or regulations specific to the tribes by written request to the Council and NOAA’s Regional Administrator prior to the November Council meeting for Years 3 and 4.</p> <p>GMT and GAP meet to review current fishery status and develop routine inseason management recommendations to inform Council action, as necessary for Years 1 and 2.</p> <p>GMT and GAP provide recommendations to inform Council action on harvest specifications and management measures for Years 3 and 4.</p>

² Council action could be postponed from September to November for any stock assessments recommended for further review by the SSC.

SCHEDULE 1. Biennial management cycle and activities related to groundfish management.

Year	Month	Entity and Management Activity
Year 1 (cont)		<p>Council adopts rebuilding analyses and any assessments sent to the SSC Groundfish Subcommittee for review as recommended by the SSC. Council adopts final preferred P*/ABCs; preliminary preferred non-overfished species ACLs, and, if necessary; a range of overfished species ACLs and preliminary preferred ACLs for overfished species for Years 3 and 4.</p> <p>Council selects a range of 2-year allocations, final range of management measures for detailed analysis necessary to keep catch within or attain a specification or to address a habitat or protected resources concern, and preliminary exempted fishing permit (EFP) applications for Years 3 and 4.</p>
Year 2	January	<p>GMT meets to review and analyze Council actions relative to harvest specifications and management measures provided in Year 1, if necessary, for Years 3 and 4.</p>
	March	<p>GMT and GAP meet to review current fishery status and routine inseason management recommendations to inform Council action, as necessary for Year 2.</p> <p>GMT and GAP provide recommendations to inform Council action on harvest specifications and management measures for Years 3 and 4, if necessary.</p> <p>Council receives an informational briefing on selected results of the harvest specifications and management measures analysis for Years 3 and 4, if requested. The Council may be asked to provide guidance or take action on emerging issues, as necessary.</p>
	April	<p>GMT and GAP meet to review Pacific whiting harvest specifications and management measures as well as current fishery status and routine inseason management recommendations for Year 2.</p> <p>GMT and GAP provide recommendations to inform Council action on harvest specifications and management measures for Years 3 and 4.</p> <p>Council recommends routine inseason management adjustments as necessary for Year 2.</p>

SCHEDULE 1. Biennial management cycle and activities related to groundfish management.

Year	Month	Entity and Management Activity
Year 2 (cont)		Consistent with the U.S./Canada agreement, the Council considers the harvest specifications recommended by the Joint Management Committee and confirms or recommends a lower U.S. TAC. The Council recommends set-asides and any adjustments to management measures for the Pacific Whiting fishery in Year 2.
		Council adopts preliminary management measures for public review and final harvest specifications for Years 3 and 4.
	June	Coastal treaty tribes refine requests for allocations and/or regulations specific to the tribes by written notice to the Council and NOAA's Regional Administrator prior to the June Council meeting for Years 3 and 4.
		GMT and GAP meet to review current fishery status and routine inseason management recommendations, as necessary for Year 2.
		GMT and GAP provide recommendations to inform Council action on harvest specifications and management measures for Years 3 and 4.
		Council recommends routine inseason management adjustments, as necessary for Year 2.
		Council adopts final EFP applications and management measures as well as any corrections to harvest specifications for implementation by NMFS for Years 3 and 4.
		Council adopts a draft calendar and prioritized list of new management measures ³ to be analyzed outside of the harvest specifications and management measures process. This process occurs biennially.
	July	Council staff and GMT complete analyses and NEPA documents, as necessary, for biennial management specifications and submit them to NOAA Years 3 and 4.
	September	GMT, GAP, and Council participate in routine inseason management activities and off-year activities, as appropriate for Year 2.
	November	GMT, GAP, and Council participate in routine inseason management activities and off-year activities, as appropriate for Years 2 and 3.

³ New management measures are those not previously analyzed and implemented in regulation.

SCHEDULE 1. Biennial management cycle and activities related to groundfish management.

Year	Month	Entity and Management Activity
Year 3 ¹	January	<i>U.S. Department of Commerce</i> implements harvest level specifications and management measures for next biennial management period (Years 3 and 4).
	March	<i>GMT, GAP, and Council</i> participate in routine inseason management activities and off-year activities, as appropriate for Year 3.
	April	<i>GMT and GAP</i> meet to review Pacific whiting harvest specifications and management measures as well as current fishery status and routine inseason management recommendations for <i>Council</i> action, as necessary for Year 3. Consistent with the U.S./Canada agreement, the <i>Council</i> considers the harvest specifications recommended by the Joint Management Committee and confirms or recommends a lower U.S. TAC. The <i>Council</i> recommends set-asides and any adjustments to management measures for the Pacific Whiting fishery in Year 3.
	June	<i>GMT, GAP, and Council</i> participate in routine inseason management activities and off-year activities, as appropriate for Year 3.
	September	Repeat management activities of September in Year 1 to begin development of next biennial cycle.

¹ GMT generally meets in January, July, and October to review and discuss groundfish management issues, including stock assessments and STAR Panel reviews.

SCHEDULE 2. Annual management cycle and activities related to salmon management.¹

Month	Entity and Management Activity
January	<i>Salmon Technical Team (STT)</i> meets to draft annual fishery review for the previous season.
February	<i>STT</i> meets to draft the report providing projected stock abundances and potential management measure impacts.
March	<i>Council</i> meets to adopt no more than three annual salmon fishery management alternatives and conducts public hearings (hearings may extend into April). <i>Salmon Advisory Subpanel (SAS)</i> meets with the Council to develop initial annual management alternative recommendations.

SCHEDULE 2. Annual management cycle and activities related to salmon management. ¹

Month	Entity and Management Activity
March (cont)	<i>STT</i> meets to develop impact analyses of the Council's proposed annual management alternatives, identifies management concerns, and participates in public hearings.
April	<i>Council</i> meets to adopt final annual salmon fishery management measures. <i>STT and SAS</i> meet with Council to assist in selection and analysis of final annual management measures. <i>SSC</i> meets to identify methodology issues which merit review, informs the Council of methodologies selected for review, and establishes a review schedule. <i>U.S. Department of Commerce</i> reviews and implements the Council's recommendations in time for May 1 season opening.
May through October	<i>Council, STT, and National Marine Fisheries Service (NMFS)</i> monitor fisheries to implement inseason management provisions, as necessary.
October or November	<i>SSC, STT, and SAS</i> meet with Council to provide direction as needed, especially with regard to the review of prediction and harvest impact modeling procedures, conservation objectives, and the annual management measure process.

¹ For additional detail, see operating procedure for "Annual Salmon Management Process."

SCHEDULE 3. Annual management cycle and activities related to coastal pelagic species management.

Month	Entity and Management Activity
PACIFIC MACKEREL	
Pacific mackerel assessments will be conducted on a rotating cycle. Every four years, a full assessment is conducted, and in the intervening four years an update assessment is conducted. Annual specifications are set on a biennial basis. In assessment years (either full or update), the following schedule will be followed:	
April	<i>Assessment authors</i> prepare draft assessment documents.
May	<i>Coastal Pelagic Species Management Team (CPSMT), Coastal Pelagic Species Advisory Subpanel (CPSAS), and public</i> review draft assessments, executive summaries, and recommended harvest guidelines.

SCHEDULE 3. Annual management cycle and activities related to coastal pelagic species management.

Month	Entity and Management Activity
June	<p><i>Assessment authors</i> submit final assessments, executive summaries, and recommended harvest guidelines to Council staff for inclusion in June Council meeting briefing book.</p> <p><i>SSC</i> reviews assessments, executive summaries, and recommended harvest guidelines.</p> <p><i>Council</i> adopts annual harvest level specifications and management measures.</p> <p><i>U.S. Department of Commerce</i> implements annual harvest level specifications and management measures. Pacific mackerel season opens July 1.</p>
PACIFIC SARDINE	
February	<i>Assessment authors</i> prepare draft assessment documents.
March	<i>CPSMT, CPSAS, and public</i> review draft assessment, executive summary, and recommended harvest guideline.
April	<p><i>SSC</i> reviews assessment, executive summary, and recommended harvest guideline.</p> <p><i>Council</i> adopts annual harvest level specification and management measures.</p> <p><i>U.S. Department of Commerce</i> implements annual harvest level specification and management measures. Pacific sardine season opens July 1.</p>

MONITORED SPECIES

The CPS FMP characterizes monitored stock management as tracking trends in landings, and qualitative comparison to available abundance data, but without periodic stock assessments or periodic adjustments to target harvest levels. After harvest specifications have been established, they will remain in place until the Council takes action to adjust the harvest specifications, or to move a monitored species to active management. If the Council wishes to adjust harvest level specifications or management measures, the process will follow that for Pacific mackerel and Pacific sardine. Assessment authors will present a draft stock assessment in advance of a review by the CPSMT, CPSAS, and the public. Final assessments and recommended harvest specifications and management measures will be included in the appropriate briefing book, for review by the SSC. The Council adopts final specifications, and

SCHEDULE 3. Annual management cycle and activities related to coastal pelagic species management.

Month	Entity and Management Activity
	the U.S. Department of Commerce implements the harvest specifications and management measures.
	NOTE: The Stock Assessment and Fishery Evaluation (SAFE) document for coastal pelagic species will be prepared and presented in two sections. The main section will be submitted at the June Council meeting. This portion of the SAFE will include the annual Pacific mackerel and Pacific sardine assessments, evaluation of the fisheries based on the calendar year, and the status of monitored species. The second (supplemental) section will include any relevant information regarding the status of the CPS fisheries. The supplemental section, when compiled, will be presented at the November Council meeting.

The coastal pelagic species management cycle does not provide for inseason changes to management specifications that are specified at the beginning of the season and/or in the fishery management plan except through emergency action.

SCHEDULE 4. Annual management cycle and activities related to Pacific halibut management.

Year	Month	Entity and Management Activity
Year 1	September	Council receives a report on the status of the current Pacific halibut fishery. With regard to next year's season (Year 2), the Council hears management recommendations from the states and public; and, if necessary, adopts for public review proposed changes to recreational season structuring, Federal regulations, and minor changes to the Pacific halibut catch sharing plan for fisheries in Year 2 (e.g., opening dates, days per week, early season/late season ratios, and port/area sharing). SSC reviews proposed halibut bycatch estimates or other halibut estimation methodologies as necessary prior to NMFS submission to the International Pacific Halibut Commission (IPHC).
	September or October	States conduct public workshops on the proposed changes to the catch sharing plan or sport fishery measures, as appropriate.
	October or November	Council receives a report on the status of the current Pacific halibut fishery. Within the scope of the proposed changes formulated at the September meeting and with further public input, the Council adopts recommendations for management changes to be implemented by NMFS in the catch sharing plan and Federal regulations governing Pacific halibut fisheries in the coming season (Year 2).

SCHEDULE 4. Annual management cycle and activities related to Pacific halibut management.

Year	Month	Entity and Management Activity
Year 1 (cont)	November through January	<i>IPHC</i> staff distributes draft documents that impact Area 2A to the Council office and NMFS.
Year 2	January	<i>IPHC</i> meets to establish quotas for each management area.
	February	<i>NMFS</i> publishes proposed rule to implement catch sharing plan and prepares appropriate NEPA documents.
	March	<p><i>Council</i> adopts, for public review, a range of landing restrictions for incidental halibut harvest in the non-Indian troll salmon fishery for the May 1-April 30 period. If necessary, the Council recommends inseason action to modify previously set April 1-30 landing restrictions.</p> <p>If necessary, the Council adopts final incidental landing restrictions for the commercial longline sablefish fishery north of Point Chehalis, Washington.</p> <p><i>Council</i> holds public hearings to receive input on salmon fishing alternatives and incidental halibut landing limit options in the non-Indian salmon troll fishery for the May 1 to April 30 period.</p>
	April	<p><i>NMFS</i> publishes final rule to implement catch sharing plan and for incidental retention of Pacific halibut in the commercial non-Indian troll fishery and the longline sablefish fishery north of Point Chehalis as appropriate.</p> <p><i>Council</i> adopts final recommendations for incidental harvest in the non-Indian troll salmon fishery for the May 1 to April 30 period.</p>
	May through September	<i>NMFS</i> regional director makes inseason adjustments to sport seasons, the non-Indian commercial troll salmon fishery, and the directed fixed gear sablefish fishery north of Point Chehalis, as necessary. The <i>IPHC</i> closes the non-Indian directed commercial halibut fisheries when quotas are projected to be met.

SCHEDULE 5. Biennial management cycle and activities related to highly migratory species management.

Year	Month	Entity and Management Activity
Year 1	June	<i>Highly Migratory Species Management Team (HMSMT)</i> provides update to the Council on status of the HMS fisheries and, as appropriate, proposed adjustments to the numerical estimates of MSY, OY, and SDC in a preliminary SAFE report. If necessary, Council directs HMSMT to prepare draft regulatory analysis to implement revised estimates of reference point values, ACLs or other harvest objectives and/or management measures.
Year 1 (cont)	September	<i>HMSMT</i> presents annual SAFE document to Council. If necessary, Council directs HMSMT to prepare a draft regulatory analysis to implement revised estimates of reference point values, ACLs or other harvest objectives and/or management measures. Council adopts for public review proposed actions addressing concerns from current and previous SAFE reports.
	November	Council adopts final action and submits to NMFS for approval
Year 2	April	If approved by <i>NMFS</i> , measures become effective, and stay in effect for at least two years.

As detailed above the HMS FMP established a biennial management cycle with the regulatory/statistical year April 1 to March 31, which provides sufficient time for data analysis, provides for timely response to fishery problems, and allows most fishers adequate access to the management process, as scheduled.

The cycle is repeated biennially, with new actions considered in September and becoming effective in April every other year. The Council would schedule HMS for the June, September, and November Council meetings.

Under this biennial cycle, the HMSMT would conduct ongoing reviews of HMS fisheries and stock status. The HMSMT would prepare an annual SAFE document for the Council's September meeting.

This management cycle may be altered to a different annual or multi-year management cycle by majority vote of the Council without necessity of an FMP amendment, provided the Council gives six-month advance notice to the public of any intent to alter the management cycle.

SCHEDULE 6. Annual administrative management cycle and activities.

Month	Management Activity
Year-Round	Review any needed changes in the Council's policies and procedures for revisions to the Statement of Organizations, Practices, and Procedures. Fill vacancies in advisory body positions as necessary. Plan staff workload and Council meeting agendas.
June	Elect Council Chair and Vice Chair., effective August 11.
September	Every third year, review composition of the SSC and advisory subpanels and request nominations to fill the next three-year term. Provide guidance on administrative and programmatic budget issues.
November	Every third year, appoint membership of the SSC and advisory subpanels for three-year terms beginning January 1. Annually provide guidance on administrative and programmatic budget issues.

Staff Recommended Updates to COP 9
DRAFT: COUNCIL OPERATING PROCEDURE
Management and Activity Cycles

9

Approved by Council: 07/10/85
Revised: 09/16/87, 04/06/95, 11/03/99, 03/11/05, **11/06/13, 04/10/14**

SCHEDULE 3. ~~Annual~~ Management cycles and activities related to coastal pelagic species management.

Month	Entity and Management Activity
PACIFIC MACKEREL	
Pacific mackerel assessments will be conducted on a rotating cycle. Every four years, a full assessment is conducted, and in the intervening four years an update assessment is conducted. Annual specifications are set on a biennial basis. In assessment years (either full or update), the following schedule will be followed:	
April	<i>Assessment authors</i> prepare draft assessment documents.
May	<i>Coastal Pelagic Species Management Team (CPSMT), Coastal Pelagic Species Advisory Subpanel (CPSAS), and public</i> review draft assessments, executive summaries, and recommended harvest guidelines.
June	<i>Assessment authors</i> submit final assessments, executive summaries, and recommended harvest guidelines to Council staff for inclusion in June Council meeting briefing book.
	<i>SSC</i> reviews assessments, executive summaries, and recommended harvest guidelines.
	<i>Council</i> adopts annual harvest level specifications and management measures.
	<i>U.S. Department of Commerce</i> implements annual harvest level specifications and management measures. Pacific mackerel season opens July 1.
<u>March</u>	<u><i>Council</i> may consider inseason action to transfer unused incidental set-aside to the directed fishery.</u>
PACIFIC SARDINE	
February	<i>Assessment authors</i> prepare draft assessment documents.

SCHEDULE 3. ~~Annual in~~ Management cycles and activities related to coastal pelagic species management.

Month	Entity and Management Activity
March	<i>CPSMT, CPSAS, and public</i> review draft assessment, executive summary, and recommended harvest guideline.
April	<i>SSC</i> reviews assessment, executive summary, and recommended harvest guideline. <i>Council</i> adopts annual harvest level specification and management measures. <u>Annual harvest level specifications for Pacific mackerel are adopted for two consecutive fishing years. Harvest specifications for monitored stocks are adopted per the CPS FMP</u> <i>U.S. Department of Commerce</i> implements annual harvest level specification and management measures <u>for two consecutive years.</u> Pacific sardine season opens July 1.

MONITORED SPECIES

The CPS FMP characterizes monitored stock management as tracking trends in landings, and qualitative comparison to available abundance data, but without periodic stock assessments or periodic adjustments to target harvest levels. After harvest specifications have been established, they will remain in place until the Council takes action to adjust the harvest specifications, or to move a monitored species to active management. If the Council wishes to adjust harvest level specifications or management measures, the process will follow that for Pacific mackerel and Pacific sardine. Assessment authors will present a draft stock assessment in advance of a review by the CPSMT, CPSAS, and the public. Final assessments and recommended harvest specifications and management measures will be included in the appropriate briefing book, for review by the SSC. The Council adopts final specifications, and the U.S. Department of Commerce implements the harvest specifications and management measures.

NOTE: The Stock Assessment and Fishery Evaluation (SAFE) document for coastal pelagic species will be prepared and presented in two sections. The main section will be submitted at the June Council meeting. This portion of the SAFE will include the annual Pacific mackerel and Pacific sardine assessments, evaluation of the fisheries based on the calendar year, and the status of monitored species. The second (supplemental) section will include any relevant information regarding the status of the CPS fisheries. The supplemental section, when compiled, will be presented at the November Council meeting.

~~The coastal pelagic species management cycle does not provide for inseason changes to management specifications that are specified at the beginning of the season and/or in the fishery management plan except through emergency action.~~

Staff Recommended Updates to COP 9 - Revised
DRAFT: COUNCIL OPERATING PROCEDURE
Management and Activity Cycles

9

Approved by Council: 07/10/85
Revised: 09/16/87, 04/06/95, 11/03/99, 03/11/05, **11/06/13, 04/10/14**

SCHEDULE 3. ~~Annual~~ Management cycles and activities related to coastal pelagic species management.

Month	Entity and Management Activity
PACIFIC MACKEREL	
Pacific mackerel assessments will be conducted on a rotating cycle. Every four years, a full assessment is conducted, and in the every <u>intervening alternating</u> four years an update assessment is conducted. Annual specifications are set on a biennial basis. In assessment years (either full or update), the following schedule will be followed:	
April	<i>Assessment authors</i> prepare draft assessment documents.
May	<i>Coastal Pelagic Species Management Team (CPSMT), Coastal Pelagic Species Advisory Subpanel (CPSAS), and public</i> review draft assessments, executive summaries, and recommended harvest guidelines.
June	<i>Assessment authors</i> submit final assessments, executive summaries, and recommended harvest guidelines to Council staff for inclusion in June Council meeting briefing book. <i>SSC</i> reviews assessments, executive summaries, and recommended harvest guidelines. <i>Council</i> adopts annual harvest level specifications and management measures. <u>Annual harvest level specifications for Pacific mackerel are adopted for two consecutive fishing years.</u> <i>U.S. Department of Commerce</i> implements annual harvest level specifications and management measures, <u>for two consecutive fishing years</u> . Pacific mackerel season opens July 1.
<u>March</u>	<u><i>Council</i> may consider inseason action to transfer unused incidental set-aside to the directed fishery.</u>
PACIFIC SARDINE	
February	<i>Assessment authors</i> prepare draft assessment documents.

SCHEDULE 3. ~~Annual in~~ Management cycles and activities related to coastal pelagic species management.

Month	Entity and Management Activity
March	<i>CPSMT, CPSAS, and public</i> review draft assessment, executive summary, and recommended harvest guideline.
April	<i>SSC</i> reviews assessment, executive summary, and recommended harvest guideline. <i>Council</i> adopts annual harvest level specification and management measures. Annual harvest level specifications for Pacific mackerel are adopted for two consecutive fishing years. Harvest specifications for monitored stocks are adopted per the CPS FMP <i>U.S. Department of Commerce</i> implements annual harvest level specification and management measures for two consecutive years. Pacific sardine season opens July 1.

MONITORED SPECIES

The CPS FMP characterizes monitored stock management as tracking trends in landings, and qualitative comparison to available abundance data, but without periodic stock assessments or periodic adjustments to target harvest levels. After harvest specifications have been established, they will remain in place until the Council takes action to adjust the harvest specifications, or to move a monitored species to active management. If the Council wishes to adjust harvest level specifications or management measures, the process will follow that for Pacific mackerel and Pacific sardine. Assessment authors will present a draft stock assessment in advance of a review by the CPSMT, CPSAS, and the public. Final assessments and recommended harvest specifications and management measures will be included in the appropriate briefing book, for review by the SSC. The Council adopts final specifications, and the U.S. Department of Commerce implements the harvest specifications and management measures.

NOTE: The Stock Assessment and Fishery Evaluation (SAFE) document for coastal pelagic species will be prepared and presented in two sections. The main section will be submitted at the June Council meeting. This portion of the SAFE will include the annual Pacific mackerel and Pacific sardine assessments, evaluation of the fisheries based on the calendar year, and the status of monitored species. The second (supplemental) section will include any relevant information regarding the status of the CPS fisheries. The supplemental section, when compiled, will be presented at the November Council meeting.

~~The coastal pelagic species management cycle does not provide for inseason changes to management specifications that are specified at the beginning of the season and/or in the fishery management plan except through emergency action.~~

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON
MEMBERSHIP APPOINTMENTS AND COPS

The Scientific and Statistical Committee (SSC) discussed the needs in filling the At-Large Seat due to the resignation of Dr. Vladlena Gertseva. The SSC recognizes that in November 2016 the Council will re-solicit nominations for a two-year term commitment; therefore, we have listed our short-term and long-term needs.

In the short-term, with the groundfish stock assessment cycle approaching, the need for an experienced groundfish representative is needed. The desire would be for this individual to be experienced in groundfish data and stock assessment methods.

In the long-term, an ecosystem modeler would be an asset to the SSC. Ecosystem modeling expertise will be needed to evaluate refinements to the Atlantis model and to evaluate and recommend improvements to annual Integrated Ecosystem reports to inform Council management decisions. Additionally, an economist/social scientist would also be beneficial to SSC discussions. The SSC's Economics Subcommittee will be especially busy in this next year reviewing socioeconomic models and Dr. Lee, the Northwest Fisheries Science Center representative, must often recuse himself from decisions involving the Input-Output Model for Pacific Coast Fisheries (IO-PAC) given his involvement in developing the model.

Another SSC seat that remains open is the Southwest Fisheries Science Center (SWFSC) seat. We anticipate someone will soon be appointed by the SWFSC who will assist our additional long-term needs for highly migratory species expertise on the SSC.

PPMC
09/16/14

FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

This agenda item is intended to refine general planning for future Council meetings, especially in regard to finalizing the proposed agenda for the November 2014 Council Meeting. The following primary attachments are intended to help the Council in this process:

1. An abbreviated display of potential agenda items for the next full year (Attachment 1).
2. A preliminary proposed November 2014 Council meeting agenda (Attachment 2).

The Executive Director will assist the Council in reviewing the proposed agenda materials and discuss any other matters relevant to Council meeting agendas and workload. After considering supplemental material provided at the Council meeting, and any reports and comments from advisory bodies and public, the Council will provide guidance for future agenda development, a proposed November Council meeting agenda, workload priorities for Council staff and advisory bodies, and priorities for groundfish omnibus regulation issues.

Council Action:

- 1. Review pertinent information and provide guidance on potential agenda topics for future Council meetings.**
- 2. Provide final guidance on a proposed agenda for the November Council meeting.**
- 3. Identify priorities for advisory body considerations at the next Council meeting.**

Reference Materials:

1. Agenda Item I.6.a, Attachment 1: Pacific Council Workload Planning: Preliminary Year-at-a-Glance Summary.
2. Agenda Item I.6.a, Attachment 2: Draft Proposed Council Meeting Agenda, November 13-19, 2014 in Costa Mesa, California.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Provide Guidance on Future Meeting Agenda and Workload Planning, and Finalize Groundfish Omnibus Regulation Priorities as Necessary

Don McIsaac

Pacific Council Workload Planning: Preliminary Year-at-a-Glance Summary

(Parenthetical numbers mean multiple items per topic; deletions = strikeout; underline = new; shaded items may be rescheduled pending workload priorities)						8/13/14 10:17
	<u>November 14-19, 2014</u> (Costa Mesa)	<u>March 7-12, 2015</u> (Vancouver)	<u>April 11-16, 2015</u> (Rohnert Park)	<u>June 12-17, 2015</u> (Spokane)	<u>September 11-16, 2015</u> (Sacramento)	<u>Acronyms</u>
CPS	NMFS Rpt EFP Notice of Intent for 2015 Sardine Harvest Fraction FPA Method Rev.--Identify Topics	Final EFP Approval Pacific Mackerel Set Aside Method Rev: Final Approval	NMFS Rpt Sardine Asmnt & Mgmt Meas.	NMFS Rpt Pacific Mackerel Assment and Management Measures		ACL: Annual Catch Limits AMP: Adaptive Management Program CCC: Council Coordination Committee COP: Council Operating Procedure CPS: Coastal Pelagic Species CSP: Catch Sharing Plan DGN: Drift Gillnet EFH: Essential Fish Habitat EFP: Exempted Fishing Permit EFT: Electronic Fish Ticket EM: Electronic Monitoring ESA: Endangered Species Act FPA: Final Preferred Alternative GF: Groundfish HMS: Highly Migratory Species IEA: Integrated Ecosystem Assessment IPHC: International Pacific Halibut Commission LCN: Lower Columbia Natural MP: Marine Planning (formerly CMSP)
Groundfish	NMFS Report Inseason Mgmt Meth Rev Process COP Economic Data Program Report on Fishery Status Omnibus Reg. Changes ROA <u>EM Phase II</u>	Omnibus Reg. Changes PPA	NMFS Report Inseason Mgmt Meth Rev Process COP Finaliz Pacific Whiting Update Omnibus Reg. Changes FPA <u>Initiate EFH Amendment</u> <u>EFH A-25: ROA</u> <u>ESA Update</u>	NMFS Report Inseason Mgmt Adopt Final Stock Assessments Adopt Spex Process for 2017-18 Omnibus Regulation Changes: Further Consideration Elec Monitoring Regs Update	Inseason Mgmt Adopt Final Stk Assessments 2 Initial Actions for Setting Fisheries in 2017-18 Omnibus Regulation Changes: Further Consideration Plan Science Improvements	
HMS	NMFS Report International Issues Final EFP Approval Routine Mgmt Measures FPA ROA/PPA for DGN Hard Caps	NMFS Report US-Canada Albacore Update International Issues <u>DGN Hard Caps FPA</u>		International Issues Preliminary EFP Approval	International Issues Final EFP Approval	
Salmon	NMFS Rpt Method Rev: Final Approval LCN Coho Final Recommendation 2015 Preseason Mgmt Schd	NMFS Rpt Approve Review (SAFE), Forecasts, SDC, and ACLs 2015 Season Setting (5)	NMFS Rpt 2015 Method Rev.--Identify Topics 2015 Season Setting (3)		Method Rev: Adopt Priorities	
Other	Routine Admin (11) Habitat Issues P. Halibut: Final CSP Changes MP Update Electronic Technology Plan (non-Catch Share) Atlantis Review Report <u>Recreational Policy Update</u> NS2G COP	Routine Admin (10) Habitat Issues Annual USCG Fishery Enf. Rpt P. Halibut: Prelim Incidntl Regs P. Halibut: IPHC Meeting Unmanaged Forage Fish Protection initiative FPA <u>Seabird Protection Update</u> CA Current Ecosystem Rpt Incl. IEA Rpt <u>NS1G Comments</u>	Routine Admin (10) Habitat Issues P. Halibut: Final Incidntl Regs	Routine Admin (11) Habitat Issues Annual NMFS Enforcement Rpt	Routine Admin (11) Habitat Issues Tri-State Enforcement Rpt P. Halibut: CSP Change ROA	
Apx. Floor Time	5.9 days	5.3 days	4.0days	3.3 days	2.8 days	

Agenda Item I.6.a
 Attachment 1
 September 2014

DRAFT PROPOSED PACIFIC COUNCIL MEETING AGENDA, NOVEMBER 13-19, 2014 IN COSTA MESA, CALIFORNIA

Acronyms	Fri, Nov 14	Sat, Nov 15	Sun, Nov 16	Mon, Nov 17	Tue, Nov 18	Wed, Nov 19
<i>BC: Budget Committee</i> <i>COP: Council Operating Procedures</i> <i>CPSAS and CPSMT: Coastal Pelagic Species Advisory Subpanel and Management Team</i> <i>EWG: Ecosystem Work Group</i> <i>EC: Enforcement Consultants</i> <i>ED: Executive Director</i> <i>EFP: Exempted Fishing Permit</i> <i>FPA/PPA: Final/Preliminary Preferred Alternative(s)</i> <i>GAP and GMT: Groundfish Advisory Subpanel and Management Team</i> <i>GEMPAC: Groundfish Elec. Monitoring Policy Committee</i> <i>HC: Habitat Committee</i> <i>HMSAS and HMSMT: Highly Migratory Species Advisory Subpanel and Management Team</i> <i>LC: Legislative Committee</i> <i>ROA: Range of Alternatives</i>	CLOSED SESSION 8 AM Discuss Litigation and Admin. Matters (1 hr) A. CALL TO ORDER 9 AM 1-4. Opening Remarks, Roll Call, ED Report, Approve Agenda (30 min) B. OPEN COMMENT 1. Comments on Non-Agenda Items (30 min) C. SALMON 1. NMFS Report (1 hr) 2. Methodology Review Final Approval (1 hr 30 min) 3. Lower Columbia Coho Harvest Matrix FPA (2 hr) 4. Preseason Salmon Management Schedule for 2015 (15 min) D. ADMINISTRATIVE 1. Marine Planning Update (1 hr) E. HABITAT 1. Current Habitat Issues (45 min)	F. HIGHLY MIGRATORY SPECIES 1. NMFS Report (1 hr) 2. Update on International Activities (1 hr) 3. Final EFP Approval (3 hr) 4. New or Routine Management Measures FPA (3 hr) <div style="border: 2px solid red; padding: 5px; text-align: center;"> Time estimates are approximate; not reliable for planning attendance or participation. </div>	F. HIGHLY MIGRATORY SPECIES 5. Drift Gillnet Hard Caps ROA/PPA (4 hr) D. ADMINISTRATIVE 2. Legislative Matters (1 hr) 3. Recreational Policy Update (1 hr) 4. National Standard 2 Guideline COP (1 hr) G. ECOSYSTEM 1. Atlantis Model Review Report (2 hr)	H. COASTAL PELAGIC SPECIES 1. NMFS Report (1 hr) 2. Methodology Review Identify Topics (1 hr) 3. Sardine Harvest Fraction FPA (2 hr) 4. EFP Notice of Intent for 2015 (1 hr) I. GROUND FISH 1. NMFS Report (1 hr) 3. Electronic Monitoring Regulatory Process Phase II (3 hr)	I. GROUND FISH 3. Omnibus Regulation Changes ROA (4 hr) 4. Economic Data Program Report on Fishery Status (1 hr) 5. Methodology Review Process COP (1 hr 30 min) 6. Consideration of Inseason Adjustments (1 hr)	J. PACIFIC HALIBUT 1. Catch Share Plan Final Changes (2 hr) D. ADMINISTRATIVE 5. Electronic Technology Plan Comments (1 hr) 6. Approve Council Minutes (15 min) 7. Fiscal Matters (15 min) 8. Membership Appointments and COPs (30 min) 9. Future Council Meeting Agenda and Workload Planning (1 hr)
Wed, Nov 12						
1 pm SSC Econ SubCom						
Thu, Nov 13	8.5 hr	8 hr	9 hr	9 hr	7.5 hr	5 hr
11 am Secretariat 8 am SSC 8 am HMSAS & HMSMT 8:30 am HC 1 pm LC 2:30 pm BC	7 am State Delegations 7 am Secretariat 8 am SSC 8 am HMSAS & HMSMT 8 am GEMPAC 3 pm EC 6 pm Chair's Reception	7 am State Delegations 7 am Secretariat 8 am SSC GF SubCom 8 am HMSAS & HMSMT 8 am GAP & GMT 8 am CPSAS & CPSMT Ad hoc EC	7 am State Delegations 7 am Secretariat 8 am GAP & GMT Ad hoc EC	7 am State Delegations 7 am Secretariat 8 am GAP & GMT Ad hoc EC	7 am State Delegations 7 am Secretariat 8 am GAP & GMT Ad hoc EC	7 am State Delegations 7 am Secretariat

**WORKLOAD RESPONSE TO COUNCIL MOTION UNDER J.1
ADJUSTING NMFS PRIORITIES IN AGENDA ITEM J.1.B, NMFS REPORT 2**

This is an initial workload response for Council consideration. After more detailed review further information or efficiencies may be presented at the November Council meeting. However, the action plan descriptions below represent reasonably reliable staffing commitments that will be planned to occur unless changed by the Council.

Original Item #	Sector	Short Title	Action Plan
A. Items Removed or Significantly Delayed by Council Motion			
19	OA	Amendment 22 - Open Access License Limitation	Council lead; can be removed from Future Work Planning via noticed November 2014 CM Agenda Item to reconsider final action.
32	Trawl IFQ, MS, & CP	Five Year Trawl Rationalization Program Review	Delay onset to Nov. 2016
25	Trawl, Non-Trawl, Rec	Amendment 25: Comprehensive Ecosystem-Based Amendment	NMFS lead; assign workload to non-GF staff (Mar 2015)
45	Trawl IFQ, MS & CP	Revise Regulations on At-Sea and Shoreside Flow Scales	NMFS lead; Council defers to NMFS to proceed w/AK model and reduce Council process to regulation deeming; Sept 2015 CM
56	LEFG	Cost Recovery for the Permit Stacking Program	NMFS lead; <i>NMFS will do an initial analysis to determine utility and report to the Council in 2015.</i>
64	Trawl, Non-Trawl, Rec	Management Model Review and Refinement	Address through biennial process (e.g. Trawl IFQ model)
B. Items Added or Adjusted and Accomplishable in the Near Term			
52	Trawl IFQ	Widow Rockfish QS Reallocation	Council staff lead in analysis/NEPA document; ROA at Nov. CM, Final Council Action April 2015
46, 48	Trawl IFQ	Gear Regs Updates [Gear Use - Multiple Gears Onboard & Use; and Remove Certain Restrictions on Trawl Gear Configuration]	NMFS lead; ROA Sept 2015
44	MS & CP	Elim of Prohib on At-Sea Processing S. of 42° N. Lat	Consider EFP during next EFP cycle.

Original Item #	Sector	Short Title	Action Plan
47a ^a , 66,	Trawl, Non-Trawl, and Rec	Area Modifications [Remove Certain Area-Management Restrictions, Create 60-Mile Bank RCA Lines, Other Modifications]	NMFS lead; conduct concurrent w/EFH Amendment process; begins in April 2015;
39, 43, 47b ^a , 70	Trawl and Non-Trawl	Vessel Movement Monitoring [Increase VMS Ping Rates; Fishery Declaration Enhancements (when moving from MS to IFQ); Movement of Pot Gear Across Management Lines; Provide for Retrieval of Derelict Crab Pots in RCAs]	NMFS lead; Council IT staff assistance; combine w/HMS VMS matter; Explore new technologies beyond VMS; schedule as an Enforcement Agenda Item outside both GF and HMS groupings; first report in April 2015
60	Recreational	Mid-water Sport Fishery (OR and CA)	NMFS lead; June 2015

C. Added or Adjusted Matters to be Accomplished after Near Future Expectations Action Plan

35	Trawl, Non-Trawl, Rec	Rebuilding Revision Rules (signal vs. noise)	Include in 2017-2018 Spex, if analysis is ready
67	Trawl, Non-Trawl	Reconsider Blackgill Allocation	Take up as part of the off year management measure cycle specified in COP 9 (June 2016)
68	Trawl, Non-Trawl, Rec	Evaluate Nearshore Management Approaches, Including Deferral	Consider ad hoc committee concept in June 2016
69, 72, 74, 76	LE FG	Misc Sablefish Issues [Combine the Fixed Gear LE DTL Fishery and Tier Fishery; Require Permit Price Reporting for LE FG Permit Transfers; Combine Longline and Fishpot into a Single Fixed Gear Limited Entry Gear Endorsements; Pot Gear Retrieval Requirements]	Consider ad hoc committee concept in June 2016

D. Remaining Items as Potential Future Priorities

36-38, 40-42, 49-51, 53-55, 57-59, 61-63, 65, 71, 75	All	All Remaining	Delayed Until 2017
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^a Item 47 has been split between 47a, area modifications, and v47b, vessel movement monitoring, with the issue of movement of pot gear across management lines placed in the vessel movement monitoring item.

Groundfish staff workload.

Action	2015				2016			
	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
Routine Halibut incidental regulations (#27)								
Routine GF harvest spex inseason actions (#20)								
stock assessments (#21, 28)								
2017-2018 spex process (#29)								
management model review/refinement (#64)	As Part of Biennial Spex Process (see table)							
Rebuilding revision rules (#35)	As Part of the 2017-2018 Spex (see table)							
Routine Whiting specifications								
Whiting season date change (#11)								
Whiting cleanup (#8)								
EM								
EFPs (#6)								
regulations (#30)								
EFH Phase 3/regulations (#24)								
5-year review - trawl program (#32)								
Ecosystem Am 25/regulations (#25)								
Revise at-sea/shoreside flow scale regs (#45)								
Sablefish Program								
regulations from review (#4, 10, 13, 15, 16, 17)								
cost recovery analysis/implementation (#56)								
Am 22 - OA license limitation (#19)								
Widow rockfish QS reallocation (#52)								
Gear reg update								
multiple gear onboard & use (#46)								
remove some trawl gear restrictions (#48)								
Elim Prohib of At-sea Process S. of 42 (#44)								
Area modifications								
RCA modifications (#47)								
60-mile Bank RCA (#66)								
Vessel movement monitoring								
continuous transit vessel monitoring (#39)								
fishery declaration (MS to IFQ only) (#43)								
pot gear across mgmt lines (#47)								
derelect pot gear (#70)								
Mid-water sport fishery (OR, CA) (#60)								
Reconsider Blackgill Allocation (#67)								
Eval Nearshore Mgmt Approaches, Incl Deferral (#68)								
Misc Sablefish lusses (#69,72,74,76)								
					Evaluate as part of the next COP 9 management measure cycle.			

Pacific Council Workload Planning: Preliminary Year-at-a-Glance Summary

(Parenthetical numbers mean multiple items per topic; deletions = strikeout; underline = new; shaded items may be rescheduled pending workload priorities)						9/17/14 9:50
	November 14-19, 2014 (Costa Mesa)	March 7-12, 2015 (Vancouver)	April 11-16, 2015 (Rohnert Park)	June 12-17, 2015 (Spokane)	September 11-16, 2015 (Sacramento)	Acronyms
CPS	NMFS Rpt EFP Notice of Intent for 2015 Sardine Harvest Fraction FPA Method Rev.--Identify Topics	Final EFP Approval Pacific Mackerel Set Aside Method Rev: Final Approval	NMFS Rpt Sardine Asmnt & Mgmt Meas.	NMFS Rpt Pacific Mackerel Assment and Management Measures		ACL: Annual Catch Limits CCC: Council Coordination Committee COP: Council Operating Procedure
Groundfish	NMFS Report Inseason Mgmt Meth Rev Process COP Economic Data Program Report on Fishery Status Omnibus Reg. Changes ROA <u>Widow Reallocation</u> <u>Amendment 22 Reconsideration</u> <u>EM Update</u>	Omnibus Reg. Changes PPA	NMFS Report Inseason Mgmt Meth Rev Process COP Final Pacific Whiting Update Omnibus Reg. Changes FPA <u>Widow Reallocation</u> EFH Amendment Scoping inc. RCA Adjustments <u>ESA Update</u>	NMFS Report Inseason Mgmt Adopt Final Stock Assessments Adopt Spex Process for 2017-18 <u>Omnibus Regulation Changes:</u> <u>Further Consideration</u> <u>Mid-Water Sport Regs</u> Elec Monitoring Regs Update	<u>Gear Changes</u> Inseason Mgmt Adopt Final Stk Assessments 2 Initial Actions for Setting Fisheries in 2017-18 <u>Omnibus Regulation Changes:</u> <u>Further Consideration</u> <u>Trawl IQ 5-Year Review Planning</u> EFH Amendment ROA inc. RCA Adjustments <u>Flow Scale Regs Deeming</u> Plan Science Improvements	CPS: Coastal Pelagic Species CSP: Catch Sharing Plan DGN: Drift Gillnet EEZ: Exclusive Economic Zone EFH: Essential Fish Habitat EFP: Exempted Fishing Permit ESA: Endangered Species Act FPA: Final Preferred Alternative GF: Groundfish HMS: Highly Migratory Species IEA: Integrated Ecosystem Assessment IPHC: International Pacific Halibut Commission LCN: Lower Columbia Natural MP: Marine Planning (formerly CMSP) NSxG: National Standard x Guidelines PPA: Preliminary Preferred Alternative RCA: Rockfish Conservation Area ROA: Range of Alternatives SAFE: Stock Assessment and Fishery Evaluation SDC: Status Determination Criteria
HMS	NMFS Report International Issues Final EFP Approval Bluefin Tuna Mgmt Measures FPA DGN Hard Caps Update & Other Priorities, Workload, etc.	NMFS Report US-Canada Albacore Update International Issues EFP Final Approval <u>DGN Hard Caps FPA</u>		International Issues Preliminary EFP Approval <u>DGN Permit Transition</u> <u>Authorizing Longline Fishery</u> <u>Outside EEZ</u>	International Issues Final EFP Approval	
Salmon	NMFS Rpt Method Rev: Final Approval LCN Coho Final Recommendation 2015 Preseason Mgmt Schd	NMFS Rpt Approve Review (SAFE), Forecasts, SDC, and ACLs 2015 Season Setting (5)	NMFS Rpt 2015 Method Rev.--Identify Topics 2015 Season Setting (3)		Method Rev: Adopt Priorities	
Other	Routine Admin (11) Habitat Issues P. Halibut: Final CSP Changes MP Update Electronic Technology Plan Adopt (non-Catch Share) Atlantis Review Report <u>Recreational Policy Update</u> NS2G COP	Routine Admin (10) Habitat Issues Annual USCG Fishery Enf. Rpt P. Halibut: Prelim Incidntl Regs P. Halibut: IPHC Meeting Unmanaged Forage Fish Protection initiative FPA <u>Seabird Protection Update</u> CA Current Ecosystem Rpt Incl. IEA Rpt	Routine Admin (10) Habitat Issues P. Halibut: Final Incidntl Regs <u>Vessel Movement Monitoring</u> <u>Seabird Protection Update</u> <u>NS1G Comments</u>	Routine Admin (11) Habitat Issues Annual NMFS Enforcement Rpt	Routine Admin (11) Habitat Issues Tri-State Enforcement Rpt P. Halibut: CSP Change ROA <u>CCC Meeting Update</u> <u>Vessel Movement Monitoring</u>	
Apx. Floor Time	5.0 days	4.6 days	5.0 days	3.9 days	4.3 days	

Agenda Item I.6.a
Supplemental Attachment
3
September 2014

DRAFT PROPOSED PACIFIC COUNCIL MEETING AGENDA, NOVEMBER 13-19, 2014 IN COSTA MESA, CALIFORNIA

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Wed, Nov 12						
8 am SSC GF SubCom						
Thu, Nov 13	3.75 hr	7.75 hr	8 hr	8 hr	8.5 hr	4 hr
11 am Secretariat 8 am SSC 8:30 am HC 2:30 pm BC	7 am State Delegations 8 am Secretariat 8 am SSC 8 am CPSAS & CPSMT 8 am SAS 9 am LC	7 am State Delegations 7 am Secretariat 8 am HMSAS & HMSMT 8 am SAS 3 pm EC 6 pm Annual Banquet	7 am State Delegations 7 am Secretariat 8 am GAP & GMT 8 am HMSAS & HMSMT 8 am GEMPAC Ad hoc EC	7 am State Delegations 7 am Secretariat 8 am GAP & GMT 8 am HMSAS & HMSMT Ad hoc EC	7 am State Delegations 7 am Secretariat 8 am GAP & GMT Ad hoc EC	7 am State Delegations 7 am Secretariat

Agenda Item I.6.a
 Supplemental Attachment 4
 September 2014

COASTAL PELAGIC SPECIES MANAGEMENT TEAM REPORT ON
FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

The Coastal Pelagic Species Management Team (CPSMT) anticipates two CPS assessments in the first part of 2015: a full Pacific mackerel assessment, and an update Pacific sardine assessment. These will be used to inform annual management measures starting July 1, 2015, for both species. At the April Council meeting, annual sardine management measures will be set for one year; and at the June Council meeting, annual mackerel management measures will be set for two consecutive years.

The CPSMT also will continue to track anchovy landings and plans to continue working with the CPS Subcommittee of the Scientific and Statistical Committee (SSC) and the National Marine Fisheries Service (NMFS) Southwest Fisheries Science Center (SWFSC) to address emerging issues regarding data availability and methods for assessing anchovy and other monitored CPS stocks. A brief initial meeting was held in March 2014 to discuss available biological and fishery data on northern anchovy and other CPS stocks, and the CPSMT intends to continue facilitating effort to compile and summarize the limited data that are available across State and Federal agencies.

PFMC
09/17/14

THE ENFORCEMENT CONSULTANTS REPORT ON FUTURE COUNCIL MEETING
AGENDA AND WORKLOAD PLANNING, INCLUDING FINAL J.1, GROUND FISH
OMNIBUS REGULATION PRIORITIZATION

The Enforcement Consultants (EC) has reviewed the motion adopted under Agenda Item J.1, Groundfish Omnibus Regulations Prioritization and has the following comments.

The EC is prepared to develop a range of alternatives for Vessel Continuous Transit Monitoring that addresses Item 39 of the groundfish omnibus management measures (VMS Ping Rate) and Item 70 (Provide for Retrieval of Derelict Crab Pots in the rockfish conservation areas).

The EC asks the Council to provide time on the November Council meeting agenda to review the EC's range of alternatives for Items 39 and 70 and move forward with subsequent rulemaking.

Furthermore, the EC believes the evaluation of the range of alternatives under Item 39 would also inform the response to area management enforcement concerns in other fisheries under this Council's purview.

Finally, the EC discussed Item 43 (Fishery Declaration Enhancements), Item 47 (Remove Certain Area-Management Restrictions), and Item 76 (Pot Gear Retrieval Requirements). Since these items also have a nexus to monitoring vessel activity at sea, the Council may want to consider grouping them with Items 39 and 70, discussed above. However, if all five items are grouped, the EC recommends moving the packaged range of alternatives to March 2015, rather than November 2014.

PFMC
09/16/14

GROUND FISH ADVISORY SUBPANEL REPORT ON FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

The Groundfish Advisory Subpanel (GAP) has reviewed the briefing book materials under this agenda item and offers the following comments.

Ms. Jean Thurston, with the Bureau of Ocean Energy Management (BOEM), made a presentation to the GAP regarding BOEM's permitting process for wind and wave energy development in the Outer Continental Shelf (OCS). She noted that BOEM's fisheries person, Donna Schroeder, plans to come to the November Council meeting and make a presentation to the Habitat Committee. The GAP requests she also make a presentation to the GAP on the studies and work she is doing on fisheries and habitat on the West Coast.

The GAP is concerned about the larger issue of marine spatial planning and seafood industry representation. We believe that, absent a change in the makeup of the Oregon Intergovernmental Task Force to include seafood industry representatives, Council inclusion is essential to represent fishing and seafood industry issues. Therefore, we request the Council approve a Pacific Council member to participate on the Task Force.

Ms. Thurston pointed out that BOEM does do some marine spatial planning on the East Coast, with specific areas identified for potential wind and wave energy use. However, BOEM does not do that on the West Coast because there is very little competition for space from contending renewable energy entities and the energy transmission congestion is not as great. That doesn't negate the fact that energy developers may continue to seek site permits and any new infrastructure or plans for development on the OCS will have an impact on the fishing and seafood industries. The GAP requests the Council remain engaged and actively involved in these issues.

The following recommendations were made prior to any supplemental or revised items under this agenda item, prior to any discussions with Council staff and prior to any Council floor discussion of electronic monitoring (Agenda Item J.3). The GAP was cognizant that several members had made travel arrangements and may not have been included in afternoon discussions.

Regarding J.1, Omnibus Regulation Changes, the GAP appreciates the Council's thoughtful discussion and decision of items to move forward. However, it does not appear that any of the items on the Council's priority list are ripe for comment in November.

Regarding J.3, Electronic Monitoring, the GAP supports moving forward with this issue as it is important to the fleet. It appears – prior to Council discussion – the three hours allotted for this issue on the Council floor under Agenda Item I.6.a, Att. 2, Draft Proposed PFMC Agenda for November, could be reduced.

Items that may require more time in the GAP and on the Council floor include:

- Halibut catch sharing plan; and
- Consideration of inseason adjustments.

Depending on the Council's discussion this week, the range of alternatives sent out for public review could require much more GAP time and Council floor time than is currently scheduled. The GAP also reviewed the Salmon Advisory Subpanel's (SAS) request to be included in the November Council meeting and agrees that it should be. We recommend that if the Council schedules the salmon items at the beginning of the meeting, as is on the draft agenda, that the halibut catch sharing plan also be scheduled at some point near the beginning of the agenda so both SAS and GAP members can participate in the floor discussion.

The GAP also is concerned that inseason management may require more time both in the GAP and on the Council floor, given that implementation of 2015 regulations will be delayed. GAP members want to ensure enough trawl quota and halibut bycatch quota is available to start the fishery in an efficient manner. This may require more time on the GAP agenda.

The GAP also recommends dropping the recreational policy update, D.3, from the November agenda.

Drs. Waldo Wakefield and Michele McClure mentioned during the GAP's essential fish habitat (EFH) discussion that another EFH update will be ready for the November meeting. The GAP feels an update is not necessary and can be put off until March, in preparation for the April meeting. Seafood industry and conservation groups have been working together on the EFH review and are making progress; spending time on an update in November would not provide any significant information. Time is better spent on other issues.

PFGC
09/16/14

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON
FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

The Highly Migratory Species Advisory Subpanel (HMSAS) requests that at a minimum we are scheduled the same amount of consideration in time for Council issues as the Highly Migratory Species Management Team (HMSMT). There were many issues that affect the HMS fishermen that the HMSAS simply could not give adequate consideration due to the limited time allotted.

PFMC
09/13/14

SALMON ADVISORY SUBPANEL REPORT ON
FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

The Salmon Advisory Subpanel (SAS) requests to meet at the November 2014 Council meeting in Costa Mesa, California in anticipation of Council final action on three matters of interest to the SAS; the Lower Columbia River Natural Coho Harvest Matrix, the Pacific Halibut Catch Sharing Plan and 2015 Pacific Halibut Regulations, and the Salmon Methodology Review.

PFMC
09/04/14

COASTAL PELAGIC SPECIES ADVISORY SUBPANEL SUPPLEMENTAL REPORT ON
FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

The Coastal Pelagic Species Advisory Subpanel (CPSAS) reviewed supplemental public comment presented under this agenda item. Stock assessments for anchovy have been limited by available data. The CPSAS supports including northern anchovy on a future agenda to hear an update from NMFS on the status of research for northern anchovy, plans for gathering more scientific data, and any proposed schedule for future assessments of the northern or central subpopulations.

PFMC
09/13/14



Pacific Fisheries Management Council
Dorothy M. Lowman, Chair
7700 N.E. Ambassador Place, Suite 101
Portland, Oregon 97220-1384

August 27, 2014

RE: Anchovy Management, Future Council Meeting Agenda and Workload Planning, Item L.6

Dear Chair Lowman and Council Members:

The Audubon Society of Portland is writing to ask the Council to include northern anchovy management on its November agenda for Coastal Pelagic Species (CPS). In last November's Council meeting, during the discussion to consider adjusting the Maximum Sustainable Yield (MSY) for anchovy, both the National Marine Fisheries Service (NMFS) and the Council stated that information needed to develop an accurate MSY was currently inadequate. Subsequently, the Council asked NMFS to prioritize a stock assessment for both the northern and central northern anchovy subpopulations. The time to act is now to collect the data needed for a robust anchovy stock assessment for three main reasons: 1) anchovies are vital prey for predators (i.e. seabirds, marine mammals, larger fish); 2) anchovy stocks are believed to be declining; and 3) increasing fishing pressure on northern anchovy in the California Current Ecosystem (CCE). Below, we provide further justification citing peer-reviewed studies and other resources supporting these three points.

Anchovies are important prey for seabirds in the CCE

Anchovies are a key prey source for many top ocean predators including commercially important species like Chinook salmon¹ as well as numerous seabird species. In Oregon, anchovies are an important prey item for the most abundant nesting seabird, the Common Murre². In addition, species of conservation concern like the ESA listed Marbled Murrelet and the Tufted Puffin depend on midwater schooling forage fish including the northern anchovy². In addition to the seabirds listed above, other Oregon breeding seabirds that depend on anchovies for one or more season include: Rhinoceros Auklets, Double-crested Cormorants, Caspian Tern, and Brown Pelicans². More broadly, new research indicates anchovies are, in general, the single most important prey species for California Current Ecosystem seabirds^{3,4}.

¹ Thayer, J.A., *et al.* 2013. Changes in California Chinook salmon diet over the past 50 years: Relevance to the recent population crash. *Mar Ecol Prog Ser*.

² See specific species accounts in: Poole, A. (Editor). 2005. The Birds of North America Online: <http://bna.birds.cornell.edu/BNA/>. Cornell Laboratory of Ornithology, Ithaca, NY.

³ Ainley, D., P. Adams, and J. Jahncke. 2014. Towards ecosystem based-fishery management in the California Current System – Predators and the preyscape: a workshop. Unpublished report to the National Fish and Wildlife Foundation. Point Blue Conservation Science, Petaluma, California. Point Blue contribution number 1979.

⁴ Thayer, JA, AI Szoboszlai, WJ Sydeman (In prep) California Current predator diet database.

The connection between anchovy as prey for seabirds is most recently and dramatically exemplified by the Brown Pelican. In recent years researchers have reported range-wide breeding failure in this species from the Gulf of California north to the Channel Islands⁵. Scientists have concluded that prey availability during the breeding season is the primary cause of this catastrophic breeding failure. Breeding pelicans from this region depend heavily on anchovies comprising from 33-100% of their diet⁶. For this reason the reported anchovy declines are strongly suspected to be a key factor in the pelican breeding failure.

Evidence of anchovy stock declines

NMFS data indicates a long-term decline in anchovy abundance in the CCE⁷. As noted previously, both NMFS and the Council recognize that the biomass assessment for this species is based on both outdated (e.g. the central subpopulation was last assessed in 1995) and incomplete information.

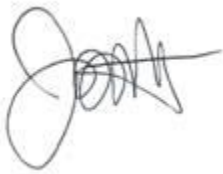
Increased fishing effort and interest on northern anchovies

While landings for anchovies in Oregon are currently small, supporting bait fisheries, there is an emerging food fishery off of both Oregon and Washington⁸. Further south in California, anchovy landings have increased significantly⁹, it is thought largely in response to the collapse of the sardine stock. This information suggests that pressure on northern anchovy stocks will only increase in the coming years.

In conclusion, we again urge the Council to include anchovy management on the agenda for the November 2014 meeting for the reasons we outline above. Thank you for the opportunity to provide comments and for your consideration.

Sincerely,

Joe Liebezeit, Avian Conservation Program Manager



Paul Engelmeier, Coastal IBA Coordinator & 10 Mile Creek Sanctuary manager

⁵ http://news.ucdavis.edu/search/news_detail.lasso?id=10937

⁶ Harvey, L. 2013. California Institute of Environmental Studies. California Brown Pelican reproductive decline on the Channel Islands colonies. Unpublished data.

⁷ NMFS. 2014. Annual State of the California Current Ecosystem Report. A Report of the NMFS Northwest and Southwest Fisheries Science Research Centers.

⁸ http://www.fishwatch.gov/seafood_profiles/species/anchovy/species_pages/northern_anchovy.htm

⁹ <http://pacfin.psmfc.org/>

From: **Carol Long** <cjlong3@sbcglobal.net>
Date: Wed, Aug 27, 2014 at 6:08 PM
Subject: anchovies
To: "pfmc.comments@noaa.gov" <pfmc.comments@noaa.gov>

The population of northern anchovies, like other forage species on the West Coast, is thought to rise and fall dramatically across decades-long climate cycles. Before fishing on anchovies accelerates, fishery managers would be wise to update their assessment of the population and make sure they are leaving enough anchovies in the water to sustain the marine life that depends on them.



September 2, 2014

Ms. Dorothy Lowman, Chair
Pacific Fisheries Management Council
1100 NE Ambassador Place, #101
Portland, OR 97220

Mr. William Stelle, Regional Administrator
NOAA Fisheries, West Coast Region
7600 Sand Point Way NE
Seattle, Washington 98115

Re: Anchovy Management, Future Council Meeting Agenda and Workload Planning, Item L.6

Dear Ms. Lowman, Mr. Stelle, and Council members:

We respectfully request that the Council include northern anchovy management on its November agenda for Coastal Pelagic Species (CPS). Northern anchovy is one of the most important forage species in the California Current ecosystem and fishing pressure is increasing, yet stock status is poorly known and more management safeguards for this species are needed in the CPS Fishery Management Plan (FMP) to ensure adequate forage for dependent predators. Agendizing this topic for November will allow the National Oceanic and Atmospheric Administration's Fisheries Service (NOAA Fisheries) to inform the Council and the public as to the status of the stock

assessment process as well as create an opportunity for public input and discussion. It may also provide the Council with the information needed to generate a motion identifying and prioritizing tasks to advance management of northern anchovy. This attention is critically needed in order to begin the process of putting in place an updated, scientifically sound and legally compliant management framework for this essential forage species.

In 2013, a federal court ordered NOAA Fisheries to establish a maximum sustainable yield (MSY) or MSY proxy for the northern subpopulation of northern anchovy. NOAA Fisheries recommended an MSY fishing mortality rate (F_{msy}) of 0.3 for the northern subpopulation, resulting in an MSY of 26,000 mt. In developing its recommendation to the Council, NOAA Fisheries acknowledged that the information needed to develop an accurate MSY was incomplete and advised “as new information becomes available that this value be reevaluated.”¹ At its November 2013 meeting, the Council adopted the MSY as recommended by NOAA Fisheries. In the discussion preceding the motion, the Council acknowledged the near-complete lack of information on the status of either the northern or the central subpopulation and recommended NOAA Fisheries prioritize stock assessments for both the northern and central subpopulations in the next five years.

Additionally, during the public comment period for the November meeting, our organizations recommended the Council and NOAA Fisheries take steps to implement and update required management measures for both subpopulations.^{2,3} First, we recommended that NOAA Fisheries conduct full stock assessments on both subpopulations, which would support an updated, scientifically sound and legally compliant management framework for northern anchovy. This framework would account for ecosystem needs and the social and economic factors consistent with achieving Optimum Yield (OY), including precautionary management measures such as Annual Catch Limits, Minimum Stock Size Thresholds and other status determination criteria.

Second, we noted that despite specifying ACLs for so-called “monitored” species in the CPS FMP in Amendment 13 adopted in 2010, NOAA Fisheries has yet to promulgate regulations to implement these legally required management measures to prevent overfishing. We reiterate our request for NOAA Fisheries to issue proposed and final regulations to implement ACLs for northern anchovy.

Third, we recommended the Council eliminate the distinction made in the CPS FMP between “Active” and “Monitored” categories for CPS, which is contrary to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, is antiquated, and has resulted in insufficient scientific and management attention paid to monitored stocks including northern anchovy.

We made these recommendations to address three primary scientific and management concerns: (1) the importance of anchovy to predators; (2) the lack of basic information on the status of northern anchovy stocks combined with declining trends in northern anchovy in recent surveys; and (3) increased fishing effort targeting northern anchovy. We provide detailed discussion of these concerns below.

(1) Importance of anchovy to predators. Anchovy are a vitally important prey species for a multitude of predators in the California Current System (CCS). The Council's Fishery Ecosystem Plan notes:

"The greatest proportion of energy flow in the CCS appears to be through krill, market squid, northern anchovy, Pacific sardine, and Pacific herring."

Anchovy are important to managed fish species in the salmon, groundfish, and highly migratory species Fishery Management Plans. For example, the seasonal diet of Chinook salmon in California can be over 90% anchovy.⁴

According to two separate and complementary new analyses, anchovy is the single most important prey species for California Current seabirds,⁵ and the first or second most important for the broader suite of predators, such as humpback whales, Chinook salmon, dolphins, and pinnipeds.⁶ Numerous seabirds including California Brown Pelican; Short-tailed, Sooty, Buller's, Flesh-footed, Pink-footed, and Black-vented Shearwaters;^{7,8,9} Common Murre; Rhinoceros Auklet; Craveri's Murrelet; Scripps's Murrelet; and California Least Tern rely on anchovy for one or more seasons of the year.¹⁰ Newly published analyses of seabird and forage fish distribution and abundance in the CCS show that a substantial decline in seabird abundance in the northern portion of the southern CCS (from around Pt Conception, CA North) – a rate of decline of 2.2% per annum from 1987-2011— is attributable to declines in anchovy abundance and availability. The authors note:

*"We think anchovy decline probably accounts for much of the long term decline in the seabirds in the region."*¹¹

Pacific Brown Pelicans are heavily dependent on abundance and availability of anchovies in close proximity to colonies during the pre-breeding and breeding periods.^{12,13} Anchovies comprised 33% -100% of the diets of breeding pelicans in six years of surveys that took place at the U.S. Channel Islands between 1991-2005, including two years where anchovies comprised 100% of the diet.¹⁴ Since 2010, biologists have noted a general decline in Pacific Brown Pelican reproductive success, culminating in a near-total nesting failure in 2012 and 2013. In 2014, biologists reported the first-ever range-wide breeding failure of Pacific Brown Pelicans, from the Gulf of California through the U.S. Channel Islands.¹⁵ At the Channel Islands, biologists analyzed a range of possible causes, including contaminants, disease, and disturbance effects, and concluded that local prey availability during the breeding season is most likely the primary cause of these reproductive failures.¹⁶

It is important to note that the CPS FMP, which was originally the Northern Anchovy FMP, used to include a broader set of management measures for northern anchovy, including a harvest control rule with a CUTOFF biomass of 300,000 mt (double the CUTOFF in the Pacific sardine Harvest Guideline) under which the catch level was capped at 7,000 mt. This harvest strategy was designed so that fishing only occurred at high levels of abundance, and included the explicit goal of ensuring a forage reserve for marine predators. At the time, NOAA Fisheries and the Council were required to pay special attention to the forage needs of Brown Pelicans in formulating and implementing management measures for northern anchovy.¹⁷

In fact, the U.S. Fish and Wildlife Service based its 2009 decision to remove Brown Pelicans from Endangered Species Act protection in part on the assumption that the CPS FMP would ensure sufficient food for breeding success of the west coast population of Brown Pelicans:

*The CPSMP will continue to ensure that adequate forage is available to pelicans if economic conditions change and northern anchovies become more intensively fished. The CPSFMP will also ensure that other forage fishes used by pelicans, such as Pacific sardines and Pacific mackerel, are also managed to preserve adequate forage reserves.*¹⁸

However, the entire management regime originally established by the Northern Anchovy FMP was eliminated in 1998 when the FMP became the CPS FMP in Amendment 8, and northern anchovy were relegated to “monitored” status. The fact that Brown Pelicans have experienced significant breeding failures for the past five years, and sea lions pups in southern California have experienced high mortality rates due to lack of prey in the past two years, indicate that the forage supply for some marine predators is inadequate. NOAA Fisheries and the Council should re-evaluate the existing fishery management measures for CPS in light of current science and the needs of these predators, and determine whether improvements can be made to ensure adequate forage.

(2) Lack of stock information combined with declining survey trends. The central subpopulation was last assessed in 1995 and the biomass assessment for the northern subpopulation is based on egg, larval and acoustic surveys from the 1970s. At the November 2013 Council meeting, NOAA Fisheries acknowledged that it had incomplete information for both subpopulations, and noted that full stock assessments are tentatively planned for 2015 and 2016 for the northern and central subpopulations, respectively.¹⁹ The urgent need to conduct full stock assessments is underscored by the long-term declining trend in anchovy abundance in the CCS in survey cruises conducted by the NOAA Fisheries Southwest Fishery Science Center, in the range of the central subpopulation.²⁰ Observers have also noted an increasing shoreward contraction of anchovy in certain areas of the CCS.²¹

(3) Existing and increasing landings. As of August 14, 2014, anchovy landings in California are at the highest level since 2008, with 10,158 tons landed, amounting to ex-vessel revenue of \$1,514,340. There were no reported landings in Oregon in 2014.²² Fisheries effort on anchovy may continue to increase in light of the collapse of the sardine stock, which has recently triggered Council action to reduce harvest quotas.²³

Thank you for your time and consideration, and for your work in advancing ecosystem-based fishery management. For the reasons we’ve detailed above, there is a critical need to agendaize northern anchovy for the November Council meeting. We look forward to working with you on this important issue.

Sincerely,



Anna Weinstein
Seabird and Marine Program Director
Audubon California



Andrea Treece
Staff Attorney
Earthjustice



Karen Garrison
Co-Director, Oceans Program
Natural Resources Defense Council



Geoffrey G. Shester, Ph.D.
California Program Director
Oceana



Corey Ridings
Policy Analyst
Ocean Conservancy



Paul Shively
Manager, U.S. Oceans, Pacific
The Pew Charitable Trusts

¹ NMFS. 2013. Potential alternatives for establishing an estimate of MSY for the northern subpopulation of northern anchovy. Agenda Item E.3.a. Supplemental Attachment 1, NMFS Report. November.

² Audubon, Earthjustice, Oceana, Pew Charitable Trusts. 2013. Comment letters and public comment submitted under Agenda Item E.3: Establish MSY Reference Point for Northern Anchovy. November meeting of the PFMC. Costa Mesa, CA.

³ Agenda Item E.3.c, Supplemental Public Comment 3 (Oceana PowerPoint).

⁴ Thayer, J, *et al.* 2013. Changes in California Chinook salmon diet over the past 50 years: Relevance to the recent population crash. *Mar Ecol Prog Ser.*

⁵ Szoboszlai, A. *et al.* (In prep) Data synthesis for understanding predator forage needs: A case study from the California Current. *Ecological Archives.*

⁶ Ainley, D., P. Adams, and J. Jahncke. 2014. Towards ecosystem based-fishery management in the California Current System – Predators and the preyscape: a workshop. Unpublished report to the National Fish and Wildlife Foundation. Point Blue Conservation Science, Petaluma, California. Point Blue contribution number 1979.

⁷ Lyday, S. *et al.* 2013. Shearwaters as ecological indicators: towards predicting fish catch in the California Current. <https://app.box.com/s/o3cf5a2xssm3qvul9r9q/1/1161890651/10450888935/1>

⁸ Szoboszlai *et al.* (i) *ibid.*

⁹ Sydeman, W. *et al.* 2001. Climate change, reproductive performance and diet composition of marine birds in the southern California Current system, 1969–1997. *Progress in Oceanography* 49: 309–329

¹⁰ Thayer, J. *et al.* 2008. Forage fish of the Pacific Rim as revealed by diet of a piscivorous seabird: synchrony and relationships with sea surface temperature *Can. J. Fish. Aquat. Sci.* 65: 1610–1622

¹¹ Sydeman, W. *et al.* 2014. Climate–ecosystem change off southern California: Time-dependent seabird predator–prey numerical responses. *Deep-Sea Research II* <http://dx.doi.org/10.1016/j.dsr2.2014.03.008>

¹² Anderson, D. *et al.* 1980. Brown pelicans as anchovy stock indicators and their relationships to commercial fishing. *CalCOFI Rep.*, Vol. XXI, 1980.

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- ¹³ Anderson, D. et al. 1982. Brown pelicans: influence of food supply on reproduction. *OIKOS* 39: 23-31.
- ¹⁴ Harvey, L. 2013. California Institute of Environmental Studies. California Brown Pelican reproductive decline on the Channel Islands colonies. Unpublished data. March.
- ¹⁵ May 2014. Preliminary data presented by Dan Anderson (Mexico) and Laurie Harvey (Channel Islands) at phone meeting of the Pacific Brown Pelican Rangewide Technical Working Group. Convened by USFWS Region 8. Carlsbad, CA.
- ¹⁶ Harvey, L. 2013. *Ibid.*
- ¹⁷ U.S. Fish and Wildlife Service. 1983. California Brown Pelican Recovery Plan. Portland, OR.
<http://www.fws.gov/arcata/es/birds/brnpelican/documents/1986%20Recovery%20Plan%20for%20the%20Brown%20Pelican.pdf>
- ¹⁸ Federal Register / Vol. 74, No. 220 / Tuesday, November 17, 2009 / Rules and Regulations. 50 CFR 17 Endangered and Threatened Wildlife and Plants; Removal of the Brown Pelican (*Pelecanus occidentalis*) From the Federal List of Endangered and Threatened Wildlife; Final Rule.
- ¹⁹ NMFS. 2013. Agenda Item E.1.c . Supplemental FSC PowerPoint (Werner). November.
- ²⁰ NMFS. 2014. Annual State of the California Current Ecosystem Report. A Report of the NMFS Northwest and Southwest Fisheries Science Research Centers.
- ²¹ Hsieh, C.H., et al. (2005) A comparison of long term trends and variability in populations of larvae of exploited and unexploited fishes in the Southern California region: a community approach. *Prog Ocean* 67:160–185.
- ²² Pacific States Marine Fisheries Commission (PacFin). August 14, 2014.
http://pacfin.psmfc.org/pacfin_pub/all_species_pub/woc_r308.php
- ²³ NMFS. 2014. *Ibid.*