

*Proposed changes in Young Bill HR 200*

*Proposed changes in Graves Bill HR 2023 (“To Modernize Recreational Fisheries Management”)*

**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.**

**NOTE: SOME UNCHANGED SECTIONS ARE NOT INCLUDED IN THIS DOCUMENT.**

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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.
- (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. 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<sup>1</sup>.~~
- (4) 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) 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) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild ~~overfished~~ <sup>depleted</sup><sup>2</sup> stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.
- (7) 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) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States. Fisheries management is most effective when it incorporates information provided by governmental and nongovernmental sources, including State and Federal agency staff, fishermen, fishing communities, universities, and research institutions. As appropriate, such information should be considered the best scientific information available and form the basis of conservation and management measures as required by this Act.<sup>3</sup>
- (9) 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 re-

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1 HR 2023, page 3

2 HR 1335 and HR 200. "Overfished" is changed to "depleted" throughout.

3 HR 200 page 42.

ceive increased attention for the conservation and management of fishery resources of the United States.

- (10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.
- (11) A number of the Fishery Management Councils have demonstrated are demonstrating significant progress in integrating ecosystem considerations in fisheries management using the existing authorities provided under this Act.
- (12) 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.
- (13) While both provide significant cultural and economic benefits to the Nation, recreational fishing and commercial fishing are fundamentally different activities, therefore requiring management approaches adapted to the characteristics of each sector<sup>4</sup>.

**(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 resources[, and fishery resources in the special areas];
- (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 and subsistence<sup>5</sup> 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 management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;
- (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, 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

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4 HR 2023, page 2

5 HR 200 page 36

- (7) to promote the protection of essential fish habitat in the review of projects 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;
- (3) 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 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 to avoid bycatch, that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective.
- (4) to permit foreign fishing consistent with the provisions of this Act;
- (5) 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;
- (6) to foster and maintain the diversity of fisheries in the United States; and
- (7) 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*

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.
- (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.<sup>6</sup>
- (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.
- (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;
    - (i) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and
    - (i) 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* 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’ 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.<sup>7</sup>
- (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 coterminous 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.
- (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.
- (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
  - (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
- (A) 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.
- (29) 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.
- (30) The term “national standards” means the national standards for fishery conservation and management set forth in section 301.
- (31) 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.
- (32) 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.
- (33) 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 by any relevant economic, social, or ecological factor; and
  - (C) in the case of an ~~overfished~~ **depleted** fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.
- (34) The terms “~~overfishing~~” and “~~overfished~~” 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.<sup>8</sup>

- (35) 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.
- (36) 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, local, or foreign government or any entity of any such government.
- (37) The term “recreational fishing” means fishing for sport or pleasure.
- (38) 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.
- (39) The term “Secretary” means the Secretary of Commerce or his designee.
- (40) 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.
- (41) 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.
- (42) The term “stock of fish” means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.
- (43) The term ‘stock assessment’ means an evaluation of the past, present, and future status of a stock of fish, that includes—
  - (A) a range of life history characteristics for such stock, including—
    - (i) the geographical boundaries of such stock; and
    - (ii) information on age, growth, natural mortality, sexual maturity and reproduction, feeding habits, and habitat preferences of such stock; and
  - (B) fishing for the stock.<sup>9</sup>
- (44) (was 43) The term “treaty” means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.
- (43a)
  - (A) 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 con-

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8 HR 200 page 9

9 HR 200 page 39. This is new (not in HR 1335).

sumption; 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.<sup>10</sup>

- (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.
- (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.

## 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. 2018 through 2022.<sup>11</sup>

## **SEC. 5. ENSURING CONSISTENT FISHERIES MANAGEMENT UNDER CERTAIN 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 1906 (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.<sup>12</sup>

## **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 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.]\*

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- ing 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;
  - (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

### SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

*16 U.S.C. 1851*

- (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.

**(b) 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 the Gulf of Mexico may only be traded by sale or lease within the same commercial fishing sector.<sup>13</sup>

## SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

*16 U.S.C. 1852*

**(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~~19<sup>14</sup> 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<sup>15</sup>.
  - (B) **MID-ATLANTIC COUNCIL.**—The Mid-Atlantic Fishery Management Council shall consist of the States of 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, as provided in paragraph (3)). The Mid-Atlantic Council shall have ~~21~~22<sup>16</sup> voting members, including ~~13~~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<sup>17</sup>.

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- (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 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, or the commercial or recreational, or subsistence<sup>18</sup> fishing, 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.
  - (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 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 fishing interests of the State, and in the case of the Governor of Alaska with the subsistence fishing interests of the State<sup>19</sup>, regarding those individuals.

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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 Management Council 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 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 mem-**

bers 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 nonvoting 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 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, bycatch, 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.*<sup>20</sup> 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.
- (C) 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.
- (D) 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).
- (E) 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.
- (F) 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 another fishery substantially affect the fishery for which such plan was developed);
- (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 over 50 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) in developing a fishery management plan, including extraction rates, fishing mortality targets, and harvest control rules, ~~or traditional or cultural practices of native communities~~<sup>21</sup>, in developing a fishery management plan, plan amendment, or proposed regulations.<sup>22</sup>
- (9) (~~previously 8~~) 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 meeting 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

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21 HR 2023, page 6 - essentially the same language as HR 200 but with the green added. Also adds “Within 180 days after the date of the enactment of this Act, the Secretary of Commerce shall transmit a summary to Congress that describes actions to implement this subsection.”

22 HR 200 page 46, from S 1403 (Rubio)

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) (G) [Should be 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 Co-ordination Committee established under subsection (l), that is not closed in accordance with paragraph (3); and
  - (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) [Should be 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) of subparagraph (G).<sup>23</sup>

(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 email 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.

- (3) 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 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.
- (4) 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.
- (5) At any time when a Council determines it appropriate to consider new information from a State or Federal agency 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
  - (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 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.
- (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.
- (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 REQUIRE-**

## MENTS.—

- (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<sup>24</sup>.
- (3) RELATIONSHIP TO INTERNATIONAL EFFORTS.—
  - (A) Each annual catch limit may, consistent with section 302(h)(6)—
    - (i) may take into account management measures under international agreements in which the United States participates; and
    - (ii) in the case of an annual catch limit developed by a Council for a species, shall take into account fishing for the species outside the exclusive economic zone and the life-history characteristics of the species that are not subject to the jurisdiction of the Council<sup>25</sup>.
  - (B) EXCEPTION TO ANNUAL CATCH LIMIT REQUIREMENT.— If fishery management activities by another country with respect to fishing 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, and for which there is no informal transboundary agreement with that country in effect, then—
    - (i) notwithstanding subsection (h)(6), no annual catch limit is required to be developed for the species by a Council; and
    - (ii) if an annual catch limit is developed by a Council for the species, the catch limit shall take into account fishing for the species outside the exclusive economic zone that is not subject to the jurisdiction of the Council<sup>26</sup>.
- (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

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24 HR 200 page 6

25 HR 200 page 7. This one of the only areas where HR 200 is different than HR 1335.

26 HR 200 pages 7-8

in duration.<sup>27</sup>

(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 management measures.<sup>28</sup>

**(n) [Should be (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 subsection (h)(6), consider changes in an ecosystem and the economic needs of 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;

(C) *a stock of fish for which—*

*(i) fishing mortality is below the fishing mortality target; and*

*(i) a peer-reviewed stock survey and stock assessment have not been performed during the preceding 5-year period;*

(D) *the Secretary determines that overfishing is not occurring; or*

(E) *for a sector of a fishery that is not monitored by a data collection system determined by the Secretary to be adequate for the development, implementation, and enforcement of annual catch limits specific to that sector, based on the evaluation recommended by the National Academy of Sciences in its report entitled ‘Review of the Marine Recreational Information Program (2017)’ of whether the design of a Marine Recreational Information Program for the purposes of stock assessment and the determination of stock management reference points is compatible with the needs of in-season management of annual catch limits.*

(3) 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

(A) annual catch limits for each year in any continuous period that is not more than three years in duration.

(4) ECOSYSTEM-COMPONENT SPECIES DEFINED.—In this subsection the term ‘ecosystem-component species’ means—

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27 HR 200 page 8

28 HR 200 pages 8-9

- (A) a stock of fish that is a non-target, incidentally harvested stock of fish in a fishery; or
- (B) a nontarget, incidentally harvested stock of fish that a Council or the Secretary has determined—
  - (i) is not subject to overfishing, approaching a depleted condition, or depleted; and
  - (ii) is not likely to become subject to overfishing or depleted in the absence of conservation and management measures.<sup>29</sup>

## 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 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;
- (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;<sup>30</sup>~~
- (10) 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 depleted~~, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;
- (11) 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) 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) include a description of the commercial, recreational, and charter fishing sectors 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;
- (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, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter, and subsistence fishing sectors in the fishery and
- (15) establish a mechanism 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;
- (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

- (13) (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 decision makers 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 decision making 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 this section are deemed to fulfill the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all related implementing regulations.<sup>31</sup>

## **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 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 overcapacity, 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 a formal and detailed review 5 years after the implementation ~~for the regular monitoring and review by the Council and the Secretary of the operations~~ of the program, and thereafter the regular monitoring and review by the Council and the Secretary of the operations and impacts 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) including—
    - (i) ~~determining progress in meeting the goals of the program and this Act;~~
    - (ii) ~~delineating the positive and negative economic impacts of the program on fishermen and processors who are part of the program and the coastal communities in which they reside; and~~
    - (iii) ~~any necessary modification of the program to meet those goals, including a formal schedule for action to be taken within 2 years~~<sup>32</sup>.
  - (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 infor-

mation 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.—(HR 200 deletes this entire section

and replaces it with colored text below)<sup>33</sup>

- (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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

#### HR 200 REPLACEMENT:

##### (1) 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 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 fishing.
  - (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.
  - (iv) 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.
  - (v) 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 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.

#### END OF HR 200 REPLACEMENT

- (7) **TRANSFERABILITY.**—In establishing a limited access privilege program, a Council shall—
- (A) 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
  - (B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.
- (8) **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).

- (9) **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
  - (3) conservation requirements established under the plan;
  - (4) 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 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.

16 U.S.C. 1853a note, 1854

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 Secretary before January 4, 1995.

**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.<sup>35</sup>
- (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 whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—~~

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—<sup>36</sup>

- (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 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 fishery ecosystem 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 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.
- (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 application 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 Secretary 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.<sup>37</sup>

**(e) REBUILDING ~~OVERFISHED-DEPLETED~~ FISHERIES.—**

- (1) 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 depleted~~ or are approaching a condition of being ~~overfished depleted~~. For those fisheries managed under a 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 depleted~~ 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.<sup>38</sup>
- (2) If the Secretary determines at any time that a fishery is ~~overfished-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

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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, or
  - (B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an ~~overfished~~ 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—
    - (i) shall be as short as ~~possible~~ practicable, taking into account the status and biology of any overfished stock of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and
    - (ii) except where management measures under an international agreement with the United States participates dictate otherwise, shall 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 ~~rebuild to~~ surpass 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.~~<sup>39</sup>
  - (A) specify a time period for rebuilding the fishery that shall—
    - (i) be as short as ~~possible~~ practicable<sup>40</sup>, taking into account the status and biology of any ~~overfished~~ depleted 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 stock of fish within the marine ecosystem; and
    - (ii) ~~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;~~ may not exceed the time stock would be rebuilt without fishing occurring plus one mean generation, 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

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39 HR 2023, page 6-7. Based on S 1403 (Rubio). Changes from Rubio version noted.

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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 and management 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.<sup>41</sup>
- (B) take into account environmental condition including predator/prey relationships<sup>42</sup>
  - (C) (previously B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; ~~and~~
  - (D) (previously C) 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.<sup>43</sup>
- (5) If, within the 2-year period beginning on the date of identification or notification that a fishery is ~~overfished~~ depleted, the Council does not submit to the Secretary a 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 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

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in compliance with the requirements of this Act.<sup>44</sup>

- (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.<sup>45</sup>

**(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.

**(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 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;

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- (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.**—

- (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 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) sic] **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, 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.

*(Did not include notes on interim management of HMS fisheries, comprehensive management for Atlantic pelagic longline fishery, American lobster fishery)*

## **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 concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency 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 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 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 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—
  - (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 not more than 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~~<sup>46</sup> 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.—**

- (1) 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.)<sup>47</sup>, 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.
- (3)
  - (A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition 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.

**THE REMAINDER OF SECTION 305 NOT INCLUDED - NO CHANGES; SECTION DOES NOT APPLY TO PPMC**

## 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
    - (ii) 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
    - (iii) 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.<sup>48</sup>

**(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).
- (4) 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 measured.<sup>49</sup>

**(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 ves-

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49 HR 200 pages 25-26

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tion; 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) DEFINITIONS.—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).

## **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 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)

(i) (Formerly A) natural causes;

(ii) (Formerly B) 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

(iii) (Formerly C) undetermined causes.

(B) The Secretary shall publish the estimated cost of 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.<sup>50</sup>

(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.<sup>51</sup>

- (3) (previously 2) 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, fishing community, or by the Secretary in cooperation with the affected State 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 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.
- (4) (previously 3) 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.
- (5) (previously 4) 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.

**(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

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 the Fishery Management Plan for Fish Resources of the Arctic Management Area issued by such Council, that makes available to commercial fishing, and establishes a sustainable harvest level, for any part of such zone, the Council shall set aside not less than 10 percent of the total allowable catch therein as a community development quota for coastal villages located north and east of the Bering Strait.<sup>52</sup>

## 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 socioeconomic 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)).

*(Did not include fisheries hurricane assistance program)*

## 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*

- (1) 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 unlawful 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 projects.<sup>53</sup>

### (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.<sup>54</sup>—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;

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- (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 and satellite tracking systems such as vessel monitoring devices<sup>55</sup>
- (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.
- (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 permit 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 established 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 established pursuant to 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) **STATE 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.<sup>56</sup>

(E) **FUNDING.**—A portion of the funds appropriated to the Marine Recreational Information Program shall be provided for implementation of this section<sup>57</sup>.

(5) (previously (4)) **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.

*Related section:*

(6) **STUDY ON PROGRAM IMPLEMENTATION—**

(A) **IN GENERAL.**—Not later than 60 days after the date of 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 entitled “Review of Recreational Fisheries Survey Methods (2006)”

(ii) evaluate the extent to which the recommendations made in that report were imple-

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56 HR 200 page 29 and HR 2023 page 15-16.

57 HR 2023 page 16.

mented pursuant to subsection (g)(3)(B) and

- (iii) examine any limitations of the Marine Recreational Fishery Statistics Survey and the marine recreational information program established under paragraph (1)
- (7) 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)<sup>58</sup>

## 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 to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person.
  - (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 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 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)).
- (2) Any observer information 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.
- (3) 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 for 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 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, 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, Council, or Marine Fisheries Commission.

(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.
- (4) The Secretary shall, to the extent practicable, when hiring individuals to collect information regarding marine recreational fishing under this subsection, give preference to students studying fisheries conservation and management, water resource issues, or other relevant subjects at an institute of higher learning in the United States.<sup>59</sup>

## 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

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<sup>59</sup> HR 200 pages 37-38. Added to HR 1335 in committee. HR 200 broadened eligibility a bit.

- (2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.
- (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, tribal governments, 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 vessel 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) STOCK ASSESSMENT PLAN.—**

- (1) **IN GENERAL.—**The Secretary shall develop and publish in the Federal Register, on the same schedule as required for the strategic plan required under subsection (b) of this section, 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; or
      - (II) within such other time period specified and justified by the Secretary in the plan;
  - (B) for each 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 within 3 years after 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 such data and analysis could be provided by fishermen, fishing communities, universities, and research institutions.

- (3) **WAIVER OF STOCK ASSESSMENT REQUIREMENT.**—Notwithstanding subparagraphs (A)(ii) and (B)(ii), a stock assessment is not required for a stock of fish in the plan if the Secretary determines that such a stock assessment is not necessary and justifies such determination in the Federal Register notice required by this subsection.

**DEADLINE.**—Notwithstanding paragraph (1) of section 404(f) of the Magnuson-Stevens Fishery Conservation and Management Act, as added by this section, the Secretary of Commerce shall issue the first stock assessment plan under such section by not later than 2 years after the date of the enactment of this Act.<sup>60</sup>

**(f) IMPROVING DATA COLLECTION AND ANALYSIS.—**

- (1) **IN GENERAL.**—The Secretary, in consultation with the Councils acting in reliance on their scientific and statistical committees 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 by not later than 1 year after the date of the enactment of the Modernizing Recreational Fisheries Management Act of 2017 a report...]<sup>61</sup> and publish in the Federal Register guidelines that will facilitate greater incorporation of data, analysis, and stock assessments from nongovernmental sources, including fishermen, fishing communities, universities, and research institutions, into fisheries management decisions.
- (2) **NONGOVERNMENTAL SOURCES**—Nongovernmental sources referred to in paragraph (1) are the following:
  - (A) Fishermen,
  - (B) Fishing communities
  - (C) Universities
  - (D) Research institutions.<sup>62</sup>
- (3) [Should be 2] **CONTENT.**—The guidelines shall—
  - (A) identify types of data and analysis, especially concerning recreational fishing, that can be reliably used as the basis for establishing conservation and management measures as required by section 303(a)(1), including setting standards for the collection and use of such data and analysis in stock assessments and for other purposes;<sup>63</sup> and
  - (B) provide specific guidance for collecting data and performing analyses identified as necessary to reduce the uncertainty [in and improve the accuracy of future stock assessments, including whether such data and analysis could be provided by nongovernmental sources, including fishermen, fishing communities, universities, and research institutions<sup>64</sup>] referred to in section 404(e)(2)(C).

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60 HR 200, pages 39-42. This was first included in S 1403 (Rubio). It was not included in HR 1335.

61 HR 2023 page 12. Similar text to Rubio's.

62 HR 2023 page 13

63 Also included in HR 2023 (slight language differences)

64 HR 2023 page 13-14

- (4) ACCEPTANCE AND USE OF DATA AND ANALYSES—The Secretary and Regional Fishery Management Councils shall—
- (A) use all data and analyses that meet the guidelines published under paragraph (1) as the best scientific information available for purposes of this Act in fisheries management decisions, unless otherwise determined by the science and statistical committee of the Councils established pursuant to section 302(g) of the Act; and
  - (B) explain in the Federal Register notice announcing the fishery management decision how such data and analyses have been used to establish conservation and management measures.

[DEADLINE.—The Secretary of Commerce shall develop and publish guidelines under the amendment made by paragraph (2) by not later than 1 year after the date of enactment of this Act.<sup>65</sup>

## 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.
- (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 ecosystem 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.

**SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH**

*16 U.S.C. 1883*

This entire section is repealed by both [HR 200](#) and [HR 2023](#).<sup>66</sup>

**(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.

## SEC. 408. DEEP SEA CORAL RESEARCH AND TECHNOLOGY PROGRAM

16 U.S.C. 1884

- (e) **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.
- (7) **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.

## 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.<sup>67</sup>

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).**

- (1) 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.

### **REPORTING AND DATA COLLECTION PROGRAM.**

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 and allocated to this region under section 2 of the Act of August 11, 1939 (commonly known as the “Saltonstall-Kennedy Act”) (15 U.S.C. 713c–3).<sup>69</sup>

### **FISHERIES COOPERATIVE RESEARCH PROGRAM.**

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.<sup>70</sup>

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69 HR 200 page 23-24

70 HR 200 page 24

## **STOCK SURVEYS AND STOCK ASSESSMENTS.**

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.<sup>71</sup>

## **USE OF FISHERIES INFORMATION IN STOCK ASSESSMENTS.**

The Southeast Science Center Director shall ensure that fisheries information made available through fisheries programs 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.<sup>72</sup>

## **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.<sup>73</sup>

## **LIMITATION ON HARVEST IN NORTH PACIFIC DIRECTED POLLOCK FISHERY**

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.<sup>74</sup>

## **PROHIBITION ON CONSIDERING RED SNAPPER KILLED DURING REMOVAL OF OIL RIGS**

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71 HR 200 pages 24-25

72 HR 200 page 25

73 HR 200 page 26

74 HR 200 page 28

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 red snapper has been reached.<sup>75</sup>

## **PROHIBITION ON CONSIDERING FISH SEIZED FROM FOREIGN FISHING**

Any fish that are seized from a foreign vessel engaged in illegal fishing activities in the Exclusive Economic Zone shall not be considered in determining under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) the total allowable catch for that fishery.<sup>76</sup>

## **COST REDUCTION REPORT**

Within 1 year after the date of enactment of this Act, the Secretary of Commerce, in consultation with the Regional Fishery Management Councils, shall submit a report to Congress that, with respect to each fishery governed by a fishery management plan in effect under the Magnuson-Stevens Fishery Conservation and Management Act—

- (1) identifies the goals of the applicable programs governing monitoring and enforcement of fishing that is subject to such plan;
- (2) identifies methods to accomplish those goals, including human observers, electronic monitoring, and vessel monitoring systems;
- (3) certifies which such methods are most cost effective for fishing that is subject to such plan; and
- (4) explains why such most-cost-effective methods are not required, if applicable.<sup>77</sup>

## **STUDY OF ALLOCATIONS IN MIXED-USE FISHERIES**

**(a) Not later than 60 days after the date of the enactment of this Act, the Secretary of Commerce shall enter into an arrangement with the National Academy of Sciences to conduct a study of the South Atlantic and Gulf of Mexico mixed-use fisheries—**

- (1) to provide guidance to the South Atlantic Fishery Management Council and Gulf of Mexico Fishery Management Council 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; and
- (3) to develop procedures for allocation reviews and potential adjustments in allocations based on the guidelines and requirements established by this section.

**(b) REPORT—Pursuant to subsection (a), not later than 1 year after the date an arrangement is entered into, the National Academy of Sciences shall submit a report on the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources**

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75 HR 200 page 34

76 HR 200 page 35

77 HR 200 page 45

PROCESS FOR ALLOCATION REVIEW AND ESTABLISHMENT.—The Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council shall—

- (1) notwithstanding the report required pursuant to this section, and any other provision of law, shall each—
  - (A) within 2 years after the date of enactment of this Act, perform an initial review of the allocations to the commercial fishing sector and the recreational fishing sector of all applicable fisheries in the Councils' respective jurisdictions; and
  - (B) every 3 years thereafter, perform a review of such allocations; and
- (2) consider the conservation and socioeconomic benefits of each of the commercial fishing sector and the recreational fishing sector in any allocation decisions.<sup>79</sup>

## **MORATORIUM ON LIMITED ACCESS PRIVILEGE PROGRAMS FOR MIXED-USED FISHERIES.**

For areas under the jurisdiction of the Gulf of Mexico Fishery Management Council or the South Atlantic Fishery Management Council, there shall be a moratorium on the development or consideration of any new limited access privilege program for any mixed-use fisheries consisting of both commercial and recreational fishing sectors<sup>80</sup>.

## **EXEMPTED FISHING PERMITS.**

IN GENERAL.—Before the approval and issuance of any new exempted fishing permit under section 600.745 of title 50, Code of Federal Regulations, or any successor regulations, the Secretary of Commerce shall—

- (1) conduct a joint peer review of the proposed exempted fishing permit by the appropriate regional fisheries science center and State marine fisheries commission; and
- (2) certify that the regional fishery management council or Federal agency with jurisdiction over the affected fishery determined that—
  - (A) the fishing activity conducted under the proposed exempted fishing permit would be consistent with any management measures or conservation objectives included within existing fishery management plans or amendments;
  - (B) the social and economic impacts in both dollar amounts and loss of fishing opportunities on all participants in each sector of the fishery expected to occur as a result of the proposed exempted fishing permit would be minimal;
  - (C) the information collected through fishing activity conducted under the proposed exempted fishing permit will have a positive and direct impact on the conservation, assessment, or management of the fishery; and (D) the Governor of each State, any part of which is located within 100 nautical miles of the proposed activity under the exempted fishing permit has been consulted on the proposed exempted fishing permit.

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78 HR 2023 pages 3-4

79 HR 2023 pages 4-5

80 HR 2023 page 6

DURATION AND RENEWAL.—Any exempted fishing permit—

- (1) shall expire at the end of the 12-month period beginning on the date the permit is issued; and
- (2) may be renewed consistent with this section.<sup>81</sup>

## NATIONAL ACADEMY OF SCIENCES REPORT RECOMMENDATIONS.

The Secretary of Commerce shall take into consideration and, to the extent feasible, implement the recommendations of the National Academy of Sciences in its report entitled “Review of the Marine Recreational Information Program (2017)”, including—

- (1) prioritizing the evaluation of electronic data collection for the Fishing Effort Survey, including smartphone apps, electronic diaries for prospective data collection, and an Internet website option for all or just panel members; and
- (2) evaluating whether the design of the Marine Recreational Information Program for the purposes of stock assessment and the determination of stock management reference points is compatible with the needs of in-season management of annual catch limits and, if such program is incompatible with such needs, determining an alternative method for in-season management.<sup>82</sup>

## ACTION BY THE SECRETARY

ACTION BY SECRETARY.—The Secretary of Commerce shall—

- (1) within 90 days after the date of enactment of this Act, enter into an agreement with the National Academy of Sciences to evaluate, in the form of a report, whether the design of the Marine Recreational Information Program, for the purposes of stock assessment and the determination of stock management reference points, is compatible with the needs of in-season management of annual catch limits under section 303(a)(15) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(a)(1)), including whether in-season management of annual catch limits is appropriate for all recreational fisheries; and
- (2) within 6 months after receiving the report under paragraph (1), submit to Congress recommendations of changes to be made to the Marine Recreational Information Program to make the program compatible with in-season management of annual catch limits and other requirements under such section for those recreational fisheries for which inseason management of annual catch limits is appropriate<sup>83</sup>.

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81 HR 2023 pages 10-12

82 HR 2023 pages 14-15

83 HR 2023 pages 16-17