

109TH CONGRESS
1ST SESSION

H. R. 3278

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

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2005

Mr. ALLEN (for himself, Mr. SIMMONS, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on Resources

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fishing Quota Stand-
5 ards Act of 2005”.

6 **SEC. 2. AMENDMENT REFERENCES.**

7 Except as otherwise expressly provided, whenever in
8 this Act an amendment or repeal is expressed in terms
9 of an amendment to, or repeal of, a section or other provi-
10 sion, the reference shall be considered to be made to such

1 section or other provision of the Magnuson-Stevens Fish-
2 ery Conservation and Management Act (16 U.S.C. 1801
3 et seq.).

4 **SEC. 3. DEFINITIONS.**

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

7 “(48) The term ‘fishing quota system’—

8 “(A) means any limited access system that
9 requires a person to acquire a permit under this
10 Act to harvest fish in a fishery, that specifies
11 a percentage of the total allowable catch of a
12 fishery that may be received or held for exclu-
13 sive use by the person or a definable group of
14 persons, during each fishing season for which
15 the permission is granted; and

16 “(B) includes any area or community
17 quota program, sector quota program, fishing
18 cooperative program, or individual fishing quota
19 program.

20 “(49) The term ‘quota share’ means a permit
21 under a fishing quota system to harvest a quantity
22 of fish, expressed as a percentage of the total allow-
23 able catch of a fishery that may be received or held
24 for exclusive use by a person, during each fishing
25 season for which the permission is granted.”.

1 **SEC. 4. GENERAL REQUIREMENTS FOR LIMITED ACCESS**
2 **SYSTEMS FOR FISHERIES.**

3 (a) **CONDITIONS FOR AUTHORITY TO ESTABLISH**
4 **LIMITED ACCESS SYSTEMS.**—Section 303(b)(6) (16
5 U.S.C. 1853(b)(6)) is amended by striking subparagraphs
6 (A) through (F) and inserting the following:

7 “(A) the conservation requirements of this
8 Act with respect to the fishery;

9 “(B) the breadth of the present and his-
10 toric participation in the fishery;

11 “(C) the economics of the fishery;

12 “(D) the cultural and social framework rel-
13 evant to the fishery and any affected fishing
14 communities;

15 “(E) the fair and equitable distribution of
16 a fishery as a public trust resource; and

17 “(F) any other relevant considerations.”.

18 (b) **REQUIREMENTS FOR THE FISHERY.**—Section
19 303(d) (16 U.S.C. 1853(d)) is amended—

20 (1) by striking paragraph (5);

21 (2) by redesignating paragraphs (2), (3), and
22 (4) as paragraphs (7), (8), and (9), respectively;

23 (3) by striking so much as precedes paragraph
24 (7), as so redesignated, and inserting the following:

25 “(d) **FISHING QUOTA SYSTEMS.**—

1 “(1) IN GENERAL.—A fishery management plan
2 or plan amendment that establishes a fishing quota
3 system for a fishery after the date of the enactment
4 of the Fishing Quota Standards Act of 2005 shall—

5 “(A) include management measures de-
6 signed to ensure the sustainability of the fishery
7 and provide additional and substantial con-
8 servation benefits, social benefits, and economic
9 benefits to the fishery and fishing communities;

10 “(B) be effective for a period of a fixed du-
11 ration, not to exceed 7 years;

12 “(C) provide for administration of the sys-
13 tem by the Secretary in accordance with the
14 terms of the plan;

15 “(D) establish procedures for the Council
16 having authority over the fishery, or the Sec-
17 retary in the case of a fishery management plan
18 developed by the Secretary, to review the quota
19 system at least 1 year prior to the end of the
20 effective period of the plan;

21 “(E) allocate, review, and limit or termi-
22 nate quota shares in accordance with this sub-
23 section;

1 “(F) provide a fair and equitable process
2 to appeal to the Secretary decisions made by a
3 Council on—

4 “(i) eligibility to participate in the ref-
5 erendum required under this subsection
6 and eligibility to receive an allocation of
7 quota shares; and

8 “(ii) limitations, restrictions, and rev-
9 ocations of quota shares;

10 “(G) minimize, to the maximum extent
11 practicable, negative social and economic im-
12 pacts of the system on local coastal commu-
13 nities including historic fishing communities;

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

16 “(I) ensure adequate enforcement, man-
17 agement, and data collection, including the use
18 of observers where appropriate at a level of cov-
19 erage that yields statistically significant results;
20 and

21 “(J) not require that quota shares be held
22 by a person engaged in personal-use fishing, in-
23 cluding any recreational or subsistence fishing,
24 if the fishery management plan designates a

1 separate portion of the total allowable catch for
2 personal-use fishing.

3 “(2) ALLOCATION OF QUOTA SHARES.—

4 “(A) IN GENERAL.—The Council having
5 authority over the fishery shall make a fair and
6 equitable allocation of all, or a portion, of the
7 total allowable catch limit as quota shares
8 among categories of vessels and among fishing
9 gear types or other appropriate qualifiers. In al-
10 locating quota shares for a fishery, the Council
11 shall—

12 “(i) take into account present and his-
13 toric participation in the fishery;

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

18 “(iii) to the maximum extent prac-
19 ticable, preserve the percentage of the total
20 quota shares available at the inception of
21 the program to vessels for which the quota
22 share holder is onboard during fishing op-
23 erations;

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

1 “(v) prevent any person from control-
2 ling an excessive share of quota shares
3 under a fishing quota system and establish
4 any other limits, measures, or financial re-
5 porting requirements necessary to prevent
6 inequitable concentration of quota shares
7 and to prevent significant adverse impacts
8 on any person that holds a permit author-
9 izing fishing in the fishery or fishing com-
10 munity; and

11 “(vi) create incentives in successive al-
12 locations for fishermen who increase their
13 use of gear that more selectively captures
14 target species or increase protection of es-
15 sential fish habitat, by increasing the allo-
16 cation for those fishermen.

17 “(B) TRANSFER TO FAMILY MEMBERS.—

18 (i) The Secretary may allow the transfer of a
19 quota share allocated under subparagraph (A),
20 on a case-by-case basis, from the holder of the
21 quota share to a member of the holder’s imme-
22 diate family who would otherwise not be eligible
23 for quota share under the program, due to
24 death or disablement of the holder.

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

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

8 “(C) COMMUNITIES HOLDING QUOTAS.—
9 The Council having authority over the fishery
10 may authorize geographically discrete commu-
11 nities to hold quota shares.

12 “(3) TERMINATION OR LIMITATION OF FISHING
13 QUOTA SYSTEM.—

14 “(A) IN GENERAL.—A fishing quota sys-
15 tem established for a fishery may be limited or
16 terminated at any time in accordance with this
17 paragraph if necessary for the conservation and
18 management of the fishery, including if the
19 quota system has been found to have jeopard-
20 ized the sustainability of the stock.

21 “(B) PROCEDURE.—A fishing quota sys-
22 tem may be limited or terminated under this
23 paragraph by—

24 “(i) the Council that has authority
25 over the fishery for which the system is es-

1 tablISHED, through a fishery management
2 plan or amendment;

3 “(ii) the Secretary, through repeal or
4 revocation in accordance with section
5 304(h) of the fishery management plan
6 that established the system;

7 “(iii) the Secretary, in the case of any
8 fishing quota system established by a fish-
9 ery management plan developed or ap-
10 proved by the Secretary; or

11 “(iv) the Secretary, if—

12 “(I) the Secretary finds that the
13 system is not meeting or exceeding
14 the requirements of the Act, including
15 the requirement under paragraph
16 (1)(A) to provide additional and sub-
17 stantial conservation benefits; and

18 “(II) the Council or Secretary
19 does not make the changes necessary
20 to ensure compliance with this sub-
21 section.

22 “(C) OTHER AUTHORITY OF SECRETARY
23 NOT DIMINISHED.—This paragraph does not di-
24 minish the authority of the Secretary under any
25 other provision of this Act.

1 “(4) TERMINATION, RENEWAL, OR LIMITATION
2 OF QUOTA SHARES.—A quota share issued under a
3 fishing quota system—

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

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

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

20 “(5) REFERENDUM PROCEDURE.—

21 “(A) IN GENERAL.—(i) A Council may
22 submit a fishery management plan or plan
23 amendment that establishes a fishing quota sys-
24 tem only if the submission of such plan or plan

1 amendment is approved in a referendum con-
2 ducted in accordance with this paragraph.

3 “(ii) The Secretary may prepare a fishery
4 management plan or plan amendment that es-
5 tablishes a fishing quota system only if the de-
6 velopment and approval of such plan or plan
7 amendment is approved in a referendum con-
8 ducted in accordance with this paragraph.

9 “(B) CONDUCT.—The Secretary shall con-
10 duct the referendum required under subpara-
11 graph (A). The Secretary shall develop guide-
12 lines to determine procedures to conduct such
13 referendum in a fair and equitable manner.
14 Prior to the referendum, the Secretary shall
15 identify and notify all persons who are eligible
16 to vote in the referendum, and make available
17 to all such persons information concerning the
18 schedule, procedures, and eligibility require-
19 ments for the referendum process and the pro-
20 posed fishing quota system.

21 “(C) REQUIRED VOTE.—Each referendum
22 shall be decided by the affirmative vote of a
23 two-thirds majority of the votes cast by persons
24 who the Secretary determines are eligible to
25 vote in the referendum.

1 “(D) ELIGIBILITY TO PARTICIPATE.—A
2 person shall be eligible to participate in a ref-
3 erendum under this paragraph with respect to
4 a fishery only if the person—

5 “(i) holds a permit to fish in the fish-
6 ery; or

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

13 “(6) COUNCIL PROGRAM REVIEW COM-
14 MITTEE.—

15 “(A) IN GENERAL.—Each Council, upon
16 deciding to develop a fishing quota system for
17 a fishery, shall establish, maintain, and appoint
18 members of a review committee to make rec-
19 ommendations to the Council and the Secretary
20 for development, evaluation, and necessary
21 changes to such system to ensure that it meets
22 the requirements of this subsection.

23 “(B) GUIDELINES FOR MEMBERS.—The
24 Council, in consultation with the Secretary,
25 shall develop guidelines that will ensure that re-

1 view committee members are qualified for ap-
2 pointment and are subject to conflict of interest
3 rules.

4 “(C) SELECTION OF MEMBERS.—The
5 Council shall select the members of each review
6 committee from a list of individuals submitted
7 by the Secretary. The Secretary may not sub-
8 mit the names of individuals to the Council for
9 appointment unless the Secretary has deter-
10 mined that each such individual is qualified
11 under the guidelines developed under with sub-
12 paragraph (B).

13 “(D) APPOINTMENTS.—The members of a
14 review committee established by a Council
15 under this paragraph shall be appointed by the
16 Council in such a manner as to provide fair rep-
17 resentation to all groups that would be affected
18 by a fishing quota system for a fishery, includ-
19 ing commercial, recreational, and subsistence
20 fishing interests, fishing communities, sci-
21 entists, and conservation organizations and
22 other public interest groups.

23 “(E) RESTRICTION ON VOTING.—A mem-
24 ber of a review committee established under
25 this paragraph shall not vote on any decision

1 pertaining to a fishing quota system under
2 which the member holds a quota share or will
3 hold a quota share in the subsequent 5-year pe-
4 riod.

5 “(F) REVIEWS AND RECOMMENDATIONS
6 REGARDING SYSTEMS.—Each review committee
7 shall, every 7 years, review fishing quota sys-
8 tems, determine whether such systems meet the
9 requirements of this Act, and evaluate whether
10 each such system has improved management,
11 conservation, and safety in the fishery to which
12 it applies. Pursuant to such review, the com-
13 mittee shall recommend to the Secretary and
14 the Council any changes to a fishing quota sys-
15 tem necessary to ensure it meets those require-
16 ments and standards of improvement including
17 revoking, limiting, or reallocating quota shares.

18 “(G) REPORTS.—The Council shall trans-
19 mit to the Congress a report containing the re-
20 sults of each review under subparagraph (F)
21 within 90 days after the review is completed.”;

22 (4) in paragraph (7)(A) (as so redesignated) by
23 striking “individual fishing quota programs” and in-
24 serting “a fishing quota system”;

1 (5) in paragraph (7)(B) by striking “individual
2 fishing quota programs” and inserting “fishing
3 quota systems”; and

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

5 “(11) DEFINITIONS.—For the purposes of this
6 subsection—

7 “(A) the term ‘additional and substantial
8 conservation benefits to the fishery’—

9 “(i) except as provided in clause (ii),
10 means scientifically measurable conserva-
11 tion benefits to the fishery at the time of
12 establishment of a fishing quota system,
13 that substantially—

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

16 “(II) prevent highgrading;

17 “(III) reduce overfishing (includ-
18 ing localized depletions) and rebuild
19 overfished stocks; and

20 “(IV) protect essential fish habi-
21 tat; or

22 “(ii) if it is not possible to directly
23 measure conservation benefits, means ac-
24 tions taken under a fishing quota system

1 that are considered necessary to provide
2 such benefits;

3 “(B) the term ‘control’ means owns, leases,
4 or otherwise directs fishing operations under a
5 fishing quota system;

6 “(C) the term ‘excessive share’ means
7 more than 1 percent of the total allowable catch
8 in a fishery, except that a Council may increase
9 such percentage—

10 “(i) to no more than 5 percent, if the
11 Council can demonstrate that such an in-
12 crease will not be detrimental to other indi-
13 vidual holders of quota shares under a
14 fishing quota system;

15 “(ii) to no more than 15 percent, if
16 there are an average of 20 or fewer partici-
17 pants in the fishery during the 3-year pe-
18 riod prior to the implementation of the
19 control date for the fishing quota system
20 or, if there is no control date, from the
21 date of implementation of the fishing quota
22 system, and the Council can demonstrate
23 that such an increase will not be detri-
24 mental to other individual holders of quota
25 shares under the system; or

1 “(iii) to greater than 15 percent, if
2 there are an average of less than 7 partici-
3 pants in the fishery during the 3-year pe-
4 riod prior to the implementation of the
5 control date for the fishing quota system
6 or, if there is no control date, from the
7 date of implementation of the fishing quota
8 system, and the Council can demonstrate
9 that such an increase will not be detri-
10 mental to other individual holders of quota
11 shares under the system; and

12 “(D) the term ‘fair and equitable alloca-
13 tion’ means initial and subsequent allocation of
14 quota shares based on multiple criteria that
15 provide for consideration of—

16 “(i) conservation performance, includ-
17 ing the use of selective fishing practices
18 that have minimal bycatch, prevent
19 highgrading, and have minimal adverse im-
20 pacts on essential fish habitat;

21 “(ii) owner-operators of fishing ves-
22 sels; and

23 “(iii) long-term participation in the
24 fishery.”.

1 **SEC. 5. ACTION BY SECRETARY.**

2 (a) ESTABLISHMENT OF FEES.—Section 304 (16
3 U.S.C. 1854) is amended—

4 (1) in subsection (c)(3) by striking “individual
5 fishing quota program” and inserting “fishing quota
6 system”;

7 (2) in subsection (d)(2)—

8 (A) by striking “(A)”;

9 (B) by striking “of any—” and all that fol-
10 lows through “community” and inserting “of
11 any community”; and

12 (C) by striking subparagraph (B);

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

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

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

23 “(i) With respect to any initial allocation under
24 a limited access system established after the date of
25 the enactment of the Fishing Quota Standards Act
26 of 2005, an initial allocation fee that shall be col-

1 lected from the person to whom the quota share is
2 first issued.

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

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

10 “(C) In determining the amount of a fee under sub-
11 paragraph (B), the Secretary shall ensure that the total
12 amount collected from all holders of quota shares in a fish-
13 ery subject to a fishing quota system is sufficient to re-
14 cover direct costs related to administering and imple-
15 menting the fishing quota system, including enforcement,
16 management, and collection of ecological and socio-eco-
17 nomic data (including adequate observer coverage).

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

23 “(E) Fees collected under subparagraph (B)(ii) from
24 holders of quota shares in a fishery shall be an offsetting
25 collection and shall be available to the Secretary only for

1 the purposes of administering and implementing this Act
2 with respect to that fishery.”.

3 (b) ACTION ON LIMITED ACCESS SYSTEMS.—Section
4 304 (16 U.S.C. 1854) is amended by adding at the end
5 the following:

6 “(i) ACTION ON LIMITED ACCESS SYSTEMS.—

7 “(1) REQUIREMENT FOR APPROVAL OF PLAN.—

8 The Secretary may not approve a fishery manage-
9 ment plan that establishes a fishing quota system
10 unless the plan complies with section 303(d).

11 “(2) REGULATIONS.—The Secretary shall issue
12 regulations that establish requirements for estab-
13 lishing a fishing quota system. The regulations
14 shall—

15 “(A) specify factors that shall be consid-
16 ered by a Council in determining whether a
17 fishery should be managed under a fishing
18 quota system;

19 “(B) ensure that any fishing quota system
20 is consistent with the requirements of section
21 303(d);

22 “(C) require the collection of fees in ac-
23 cordance with subsection (d)(3) of this section;

24 “(D) provide for appropriate penalties for
25 violations of regulations governing fishing quota

1 systems, including the revocation of quota
2 shares for such violations; and

3 “(E) establish a central lien registry sys-
4 tem for the identification, perfection, and deter-
5 mination of lien priorities, and nonjudicial fore-
6 closure of encumbrances, on fishing quotas.”.

7 **SEC. 6. MISCELLANEOUS CONFORMING AMENDMENTS.**

8 (a) SECTION 305.—Section 305(h)(1) (16 U.S.C.
9 1855(h)(1)) is amended by striking “individual”.

10 (b) SECTION 402.—Section 402(b)(1)(D) (16 U.S.C.
11 1881a(b)(1)(D)) is amended by striking “individual fishing
12 quota program” and inserting “fishing quota system”.

13 (c) SECTION 407.—Section 407 (16 U.S.C. 1883) is
14 amended—

15 (1) in subsection (a)(1)(D) by striking “indi-
16 vidual fishing quota program” and inserting “fishing
17 quota system”; and

18 (2) in subsection (c)(1) by striking “individual
19 fishing quota program” and inserting “fishing quota
20 system”.

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