

FISHERY CONSERVATION AND MANAGEMENT
AMENDMENTS OF 1995

JUNE 30, 1995.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

[To accompany H.R. 39]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 39) to amend the Magnuson Fishery Conservation and Management Act to improve fisheries management, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fishery Conservation and Management Amendments of 1995".

SEC. 2. AMENDMENT OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 3. FINDINGS, PURPOSES, AND POLICY.

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

(1) in paragraph (2)—

(A) by striking "and (B)" and inserting "(B)"; and

(B) by inserting before the period at the end the following: "; and (C) losses of essential fishery habitat can diminish the ability of stocks of fish to survive";

(2) in paragraph (6) by inserting after "to insure conservation," the following: "to provide long-term conservation of essential fishery habitat,"; and

(3) by adding at the end the following:

“(9) Continuing loss of essential fishery habitat poses a long-term threat to the viability of commercial and recreational fisheries of the United States. To conserve and manage the fishery resources of the United States, increased attention must be given to the protection of this habitat.”.

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

(1) by striking “and” after the semicolon at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting a semicolon; and

(3) by adding at the end the following:

“(7) to promote the conservation of essential fishery habitat in the review of projects that affect essential fishery habitat; and

“(8) to ensure that conservation and management decisions with respect to the Nation’s fishery resources are made in a fair and equitable manner.”.

(c) POLICY.—Section 2(c)(3) (16 U.S.C. 1801(c)(3)) is amended by inserting after “practical measures that” the following: “minimize bycatch and”.

SEC. 4. DEFINITIONS.

(a) EXECUTION OF PRIOR AMENDMENTS TO DEFINITIONS.—Notwithstanding section 308 of the Act entitled “An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary”, approved March 9, 1992 (Public Law 102-251; 106 Stat. 66), section 301(b) of that Act (adding a definition of the term “special areas”) shall take effect on the date of the enactment of this Act.

(b) NEW AMENDMENTS.—Section 3 (16 U.S.C. 1802) is amended—

(1) in paragraph (4)—

(A) by striking “COLEENTERATA” from the heading of the list of corals and inserting “CNIDARIA”; and

(B) in the list appearing under the heading “CRUSTACEA”, by striking “Deep-sea Red Crab—Geryon quinquedens” and inserting “Deep-sea Red Crab—Chaceon quinquedens”;

(2) in paragraph (16) by striking “of one and one-half miles” and inserting “of two and one-half kilometers”;

(3) in paragraph (17) by striking “Pacific Marine Fisheries Commission” and inserting “Pacific States Marine Fisheries Commission”;

(4) by amending paragraph (21) to read as follows:

“(21) The term ‘optimum’, with respect to yield from a fishery, means the amount of fish—

“(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

“(B)(i) which, subject to clause (ii), is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor; or

“(ii) which, in the case of a fishery which has been classified by the Secretary as overfished, is prescribed as such on the basis of the maximum sustainable yield as reduced to allow for the rebuilding of the fishery to a level consistent with producing maximum sustainable yield on a continuing basis.”;

(5) in paragraph (31) (as redesignated by the amendments made effective by subsection (a) of this section) by striking “for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented” and inserting “regulated under this Act”; and

(6) by adding at the end the following:

“(34) The term ‘bycatch’ means fish which are harvested by a fishing vessel, but which are not sold or kept for personal use, including economic discards and regulatory discards.

“(35) The term ‘economic discards’ means fish which are the target of a fishery, but which are not retained by the fishing vessel which harvested them because they are of an undesirable size, sex, or quality, or for other economic reasons.

“(36) The term ‘regulatory discards’ means fish caught in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

“(37) The term ‘essential fishery habitat’ means those waters necessary to fish for spawning, breeding, or growth to maturity.

“(38) The term ‘overfishing’ means a level or rate of fishing mortality that jeopardizes the ability of a stock of fish to produce maximum sustainable yield on a continuing basis.

“(39) The term ‘rebuilding program’ means those conservation and management measures necessary to restore the ability of a stock of fish to produce maximum sustainable yield on a continuing basis.

“(40) The term ‘total allowable catch’ means the total amount of fish in a fishery that may be harvested in a fishing season, as established in accordance with a fishery management plan for the fishery.”.

SEC. 5. FOREIGN FISHING.

(a) **TRANSSHIPMENT PERMITS.—**

(1) **AUTHORITY TO OPERATE UNDER TRANSSHIPMENT PERMITS.—**Section 201(a)(1) (16 U.S.C. 1821(a)(1)) is amended to read as follows:

“(1) is authorized under subsection (b) or (c) or under a permit issued under section 204(d);”.

(2) **AUTHORITY TO ISSUE TRANSSHIPMENT PERMITS.—**Section 204 (16 U.S.C. 1824) is amended by adding at the end the following:

“(d) **TRANSSHIPMENT PERMITS.—**

“(1) **AUTHORITY TO ISSUE PERMITS.—**The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish products at sea from a point within the boundaries of any State or the exclusive economic zone to a point outside the United States to any person who—

“(A) submits an application which is approved by the Secretary under paragraph (3); and

“(B) pays a fee imposed under paragraph (7).

“(2) **TRANSMITTAL.—**Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any interested State.

“(3) **APPROVAL OF APPLICATION.—**The Secretary may approve an application for a permit under this section if the Secretary determines that—

“(A) the transportation of fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this Act;

“(B) the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application;

“(C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and

“(D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

“(4) **WHOLE OR PARTIAL APPROVAL.—**The Secretary may approve all or any portion of an application under paragraph (3).

“(5) **FAILURE TO APPROVE APPLICATION.—**If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

“(6) **CONDITIONS AND RESTRICTIONS.—**The Secretary shall establish and include in each permit under this subsection conditions and restrictions which shall be complied with by the owner and operator of the vessel for which the permit is issued. The conditions and restrictions shall include the requirements, regulations, and restrictions set forth in subsection (b)(7).

“(7) **FEES.—**The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit.”.

(b) **FOREIGN FISHING FOR ATLANTIC MACKEREL AND ATLANTIC HERRING.—**

(1) **RESTRICTION ON ALLOCATIONS.—**Section 201(e)(1)(A) (16 U.S.C. 1821(e)(1)(A)) is amended by adding at the end the following new sentence: “No allocation may be made for a fishery that is not subject to a fishery management plan prepared under section 303.”.

(2) **COUNCIL RECOMMENDATION REQUIRED TO APPROVE APPLICATION.—**Section 204(b)(6) (16 U.S.C. 1824(b)(6)) is amended—

(A) in subparagraph (A) by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”; and

(B) by adding at the end the following new subparagraph:

“(C)(i) The Secretary may not approve an application which proposes harvest of Atlantic mackerel or Atlantic herring by one or more foreign fishing vessels unless the appropriate Council has recommended that the Secretary approve

the portion of the application making that proposal and the Secretary includes the appropriate conditions and restrictions recommended by the Council.

“(ii) For purposes of this subparagraph, the term ‘appropriate Council’ means the Mid-Atlantic Fishery Management Council with respect to Atlantic mackerel and the New England Fishery Management Council with respect to Atlantic herring.”

(c) PERIOD FOR CONGRESSIONAL REVIEW OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—Section 203 (16 U.S.C. 1823) is amended—

(1) in subsection (a) by striking “60 calendar days of continuous session of the Congress” and inserting “120 calendar days (excluding any days in a period for which the Congress is adjourned sine die)”;

(2) by striking subsection (c); and

(3) by redesignating subsection (d) as subsection (c).

(d) TECHNICAL CORRECTION.—

(1) CORRECTION.—Section 201(e)(1)(E)(iv) (16 U.S.C. 1821(e)(1)(E)(iv)) is amended by inserting “or special areas” after “the exclusive economic zone”.

(2) APPLICATION.—The amendment made by paragraph (1) shall take effect on the date it would take effect if it were enacted by section 301(d)(2) of the Act entitled “An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary”, approved March 9, 1992 (Public Law 102-251; 106 Stat. 63).

SEC. 6. LARGE-SCALE DRIFT NET FISHING.

Section 206(e) (16 U.S.C. 1826(e)) is amended to read as follows:

“(e) REPORT.—Not later than March 17th of each year, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a list of those nations whose nationals or vessels conduct, and of those nations that authorize their nationals to conduct, large-scale drift net fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of, or is inconsistent with, any international agreement governing large-scale drift net fishing to which the United States is a party or otherwise subscribes.”

SEC. 7. NATIONAL STANDARD FOR FISHERY CONSERVATION AND MANAGEMENT TO MINIMIZE BYCATCH.

Section 301(a) (16 U.S.C. 1851(a)) is amended by adding at the end the following:

“(8) Conservation and management measures shall, to the maximum extent practicable, minimize bycatch.”

SEC. 8. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) MEMBERSHIP OF NORTH CAROLINA ON MID-ATLANTIC FISHERY MANAGEMENT COUNCIL.—Section 302(a)(2) (16 U.S.C. 1852(a)(2)) is amended—

(1) by striking “and Virginia” and inserting “Virginia, and North Carolina”;

(2) by striking “19” and inserting “21”; and

(3) by striking “12” and inserting “13”.

(b) VOTING MEMBERS, GENERALLY.—Section 302(b) (16 U.S.C. 1852(b)) is amended—

(1) in paragraph (2)(B) in the first sentence by inserting before the period the following: “, and of other individuals selected for their fisheries expertise as demonstrated by their academic training, marine conservation advocacy, consumer advocacy, or other affiliation with nonuser groups”; and

(2) by adding at the end the following new paragraph:

“(6) The Secretary shall remove any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) if the member violates section 307(1)(O).”

(c) COMPENSATION.—

(1) AMENDMENT.—Section 302(d) (16 U.S.C. 1852(d)) is amended in the first sentence—

(A) by striking “each Council,” and inserting “each Council who are required to be appointed by the Secretary and”; and

(B) by striking “shall, until January 1, 1992,” and all that follows through “GS-16” and inserting the following: “shall receive compensation at a daily rate equivalent to the lowest rate of pay payable for GS-15.”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(B) shall take effect on January 1, 1996.

(d) TRANSACTION OF BUSINESS.—Section 302(e) (16 U.S.C. 1852(e)) is amended by adding at the end the following:

“(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 required under subsection (j)(2)(E) 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.”.

(e) COMMUNICATIONS WITH FEDERAL AGENCIES REGARDING ESSENTIAL AND OTHER FISHERY HABITAT.—Section 302(i) (16 U.S.C. 1852(i)) is amended—

(1) in paragraph (1), by striking “and” after the semicolon at the end of subparagraph (A) and striking the period at the end of subparagraph (B) and inserting “; and”;

(2) by adding at the end of paragraph (1) the following:

“(C) shall notify the Secretary regarding, and may comment on and make recommendations to any State or Federal agency concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may have a detrimental effect on the essential fishery habitat of a fishery under the authority of the Council.”; and

(3) by amending paragraph (2) to read as follows:

“(2) Within 15 days after receiving a comment or recommendation under paragraph (1) from a Council regarding the effects of an activity on essential fishery habitat, a Federal agency shall provide to the Council a detailed response in writing. The response shall include a description of measures being considered 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 Council, the Federal agency shall explain its reasons for not following the recommendations.”.

(h) PROCEDURAL MATTERS.—Section 302(j)(2) (16 U.S.C. 1852(j)(2)) is amended—

(1) by striking “guidelines” in the matter preceding subparagraph (A) and inserting “shall”;

(2) in subparagraph (C), by inserting after “fishery)” the following: “sufficiently in advance of the meeting to allow meaningful public participation in the meeting.”;

(3) by adding at the end of subparagraph (D) the following: “The written statement or oral testimony shall include a brief description of the background and interests of the person on the subject of the written statement or oral testimony.”;

(4) by amending subparagraph (E) to read as follows:

“(E) Detailed minutes of each meeting of the Council 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 reports received, issued, or approved by the Council. The Chairman shall certify the accuracy of the minutes of each meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.”; and

(5) by adding at the end the following:

“(G) A Council member may add an item to the agenda of a meeting of a Council or of a committee or advisory panel of a Council by presenting to the Chairman of the Council, committee, or panel, at least 21 days before the date of the meeting, a written description of the item signed by 2 or more voting members of the Council.”.

(i) DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.—Section 302(k) (16 U.S.C. 1852(k)) is amended—

(1) in the heading by inserting “AND RECUSAL” before the period;

(2) in paragraph (1)—

(A) in subparagraph (A) by inserting “or” after the semicolon at the end;

(B) in subparagraph (B) by striking “; or” at the end and inserting a period; and

(C) by striking subparagraph (C);

(3) in paragraph (3)(B) by striking “or (C)”;

(4) in paragraph (5)—

(A) in subparagraph (A) by striking “and” at the end;

(B) in subparagraph (B) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(C) be kept on file by the Secretary for use in reviewing Council actions and made available by the Secretary for public inspection at reasonable hours.”;

(5) in paragraph (6) by striking “or (C)”;

(6) in paragraph (7) by striking “or (C)”;

(7) by adding at the end the following:

“(8) The Secretary, in consultation with the Councils, and by not later than 1 year after the date of the enactment of the Fishery Conservation and Management Amendments of 1995, shall establish rules which prohibit an affected individual from voting on a matter in which the individual or any other person described in paragraph (2) with respect to the individual has an interest that would be significantly affected. The rules may include provisions which take into account the differences in fisheries.

“(9) A voting member of a Council shall recuse himself or herself from voting if—

“(A) voting by the member would violate the rules established under paragraph (8); or

“(B) the General Counsel of the National Oceanic and Atmospheric Administration (or a designee of the General Counsel under paragraph (10)(C)(ii)) determines under paragraph (10) that voting by the member would violate the rules established under paragraph (8).

“(10)(A) Before any vote held by a Council on any matter, a voting member of the Council may, at a meeting of the Council, request the General Counsel of the National Oceanic and Atmospheric Administration (or a designee of the General Counsel under subparagraph (C)(ii)) to determine whether voting on the matter by the member, or by any other member of the Council, would violate the rules established under paragraph (8).

“(B) Upon a request under subparagraph (A) regarding voting on a matter by a member—

“(i) the General Counsel of the National Oceanic and Atmospheric Administration (or a designee of the General Counsel under subparagraph (C)(ii)) shall determine and state whether the voting would violate the rules established under paragraph (8), at the meeting at which the request is made; and

“(ii) no vote on the matter may be held by the Council before the determination and statement are made.

“(C) The General Counsel of the National Oceanic and Atmospheric Administration shall—

“(i) attend each meeting of a Council; or

“(ii) designate an individual to attend each meeting of a Council for purposes of this paragraph.

“(11) For the purposes of this subsection, the term ‘an interest that would be significantly affected’ means a personal financial interest which would be augmented by voting on the matter and which would only be shared by a minority of other persons within the same industry sector or gear group whose activity would be directly affected by a Council’s action.”.

(j) CONFORMING AMENDMENT.—Section 302(k)(1)(A) (16 U.S.C. 1852(k)(1)(A)) is amended to read as follows:

“(A) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2) or is designated by the Governor of a State under subsection (b)(1)(A) and is not an employee of the State; or”.

SEC. 9. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) REQUIRED PROVISIONS.—

(1) NEW REQUIREMENTS.—Section 303(a) (16 U.S.C. 1853(a)) is amended—

(A) in paragraph (5) by striking “and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors,” and inserting the following: “the amount and species of bycatch taken on board a fishing vessel based on a standardized reporting methodology established by the Council for that fishery, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;”;

(B) by amending paragraph (7) to read as follows:

“(7) include a description of essential fishery habitat for a fishery based on the guidelines established by the Secretary under section 304(h)(1);”;

(C) in paragraph (8) by striking “and” after the semicolon at the end;

(D) in paragraph (9) by striking the period at the end and inserting a semicolon; and

(E) by adding at the end the following:

“(10) include a measurable and objective determination of what constitutes overfishing in that fishery, and a rebuilding program in the case of a plan for any fishery which the Council or the Secretary has determined is overfished;

“(11) include conservation and management measures necessary to minimize bycatch to the maximum extent practicable;

“(12) to the extent practicable, minimize mortality caused by economic discards and regulatory discards in the fishery;

“(13) take into account the safety of human life at sea; and

“(14) in the case of any plan which under subsection (b)(8) requires that observers be carried on board vessels—

“(A) be fair and equitable to all fishing vessels and fish processing vessels, that are vessels of the United States and participate in fisheries covered by the plan;

“(B) be consistent with other applicable laws;

“(C) take into consideration the operating requirements of the fishery and the safety of observers and fishermen; and

“(D) establish a system of fees to pay the costs of the observer program.”.

(2) AMENDMENT OF PLANS.—Not later than 18 months after the date of enactment of this Act, each Regional Fishery Management Council established under the Magnuson Fishery Conservation and Management Act shall submit to the Secretary of Commerce an amendment to each fishery management plan in effect under that Act to comply with the amendments made by paragraph (1).

(3) FISH WEIGHING.—By January 1, 1997, the North Pacific Fishery Management Council shall require all fish processors that process fish species under the management of the Council to weigh those fish to ensure an accurate measurement of the total harvest of each species.

(b) AMENDMENTS RELATING TO DISCRETIONARY PROVISIONS, GENERALLY.—Section 303(b) (16 U.S.C. 1853(b)) is amended—

(1) in paragraph (8) in the matter preceding the first semicolon, by striking “require that observers” and inserting “require that one or more observers”;

(2) in paragraph (9) by striking “and” after the semicolon;

(3) by redesignating paragraph (10) as paragraph (15); and

(4) by inserting after paragraph (9) the following:

“(10) assess and specify the effect which conservation and management measures of the plan will have on stocks of fish in the ecosystem of the fishery which are not part of the fishery;

“(11) include incentives and harvest preferences within fishing gear groups to promote the avoidance of bycatch;

“(12) specify gear types allowed to be used in the fishery and establish a process for evaluating new gear technology that is proposed to be used in the fishery;

“(13) reserve a portion of the allowable biological catch of the fishery for use for scientific research purposes;

“(14) establish conservation and management measures necessary to minimize, to the extent practicable, adverse impacts on essential fishery habitat described in the plan under subsection (a)(7) caused by fishing; and”.

(c) REQUIREMENT TO SUBMIT FISHERY IMPACT STATEMENTS TO AFFECTED STATES AND THE CONGRESS.—Section 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853), as amended by section 16(b), is further amended by adding at the end the following new subsection:

“(h) SUBMISSION OF FISHERY IMPACT STATEMENTS TO INTERESTED STATES AND THE CONGRESS.—Not later than the date a fishery management plan prepared by a Council or the Secretary takes effect under section 304, the Council or the Secretary, respectively, shall submit the fishery impact statement required in the plan under subsection (a)(9) to—

“(1) the Governor of each State that might be affected by the plan, who may use information in the statement to assist persons in applying for loans and grants for economic relief; and

“(2) the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.”.

SEC. 10. AMENDMENTS RELATING TO MISCELLANEOUS DUTIES OF SECRETARY.

(a) SAFETY AT SEA.—Section 304(a)(2)(C) (16 U.S.C. 1854(a)(2)(C)) is amended by striking “to fishery access” and all that follows through the period and inserting “with respect to the provisions of sections 303(a)(6) and (13).”.

(b) HIGHLY MIGRATORY SPECIES.—Section 304(f) (16 U.S.C. 1854(f)) is amended—

(1) by striking the subsection heading and inserting the following: “FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—”;

(2) in paragraph (3)(C)(ii) by inserting before the semicolon the following: “and the plan development team established under paragraph (4)”;

(3) in paragraph (3)(E), strike “allocation or quota” each place it appears and insert “allocation, quota, or fishing mortality level”;

(4) in paragraph (3)(F)(ii) by inserting “and the plan development team established under paragraph (4)” before the semicolon;

(5) by adding at the end the following:

“(4)(A) The Secretary shall establish a plan development team for each highly migratory species fishery over which the Secretary has authority under paragraph (3)(A), to advise the Secretary on and participate in the development of each fishery management plan or amendment to a plan for the fishery under this subsection.

“(B) The plan development team shall—

“(i) consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species and from other interested persons;

“(ii) be balanced in its representation of commercial, recreational, and other interests; and

“(iii) participate in all aspects of the development of the plan or amendment.

“(C) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any plan development team established under this paragraph.”; and

(6) in paragraph (3)(D) by striking clauses (ii) and (iii) and inserting the following:

“(ii) be fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose;

“(iii) promote international conservation;

“(iv) minimize the establishment of regulations that require the discarding of Atlantic highly migratory species which cannot be returned to the sea alive; and

“(v) promote the implementation of scientific research programs that include to the extent practicable, the tag, and release of Atlantic highly migratory species.”.

(c) LIMITED ACCESS.—Section 304(c)(3) (16 U.S.C. 1854(c)(3)) is amended by inserting “or advisory committee appointed under laws implementing relevant international fishery agreements to which the United States is a party” before the period at the end.

(d) INCIDENTAL HARVEST RESEARCH.—Section 304(g) (16 U.S.C. 1854(g)) is amended—

(1) in paragraph (1) by striking “3-year”;

(2) by striking paragraph (4) and inserting the following:

“(4) No later than 12 months after the enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall, in cooperation with affected interests and based upon the best scientific information available, complete a program to—

“(A) develop technological devices and other changes in fishing operations to minimize the incidental mortality of nontargeted fishery resources in the course of shrimp trawl activity to the extent practicable from the level of mortality at the date of enactment of the Fishery Conservation and Management Amendments of 1990;

“(B) evaluate the ecological impacts and the benefits and costs of such devices and changes in fishing operations; and

“(C) assess whether it is practicable to utilize those nontargeted fishery resources which are not avoidable.”;

(3) in paragraph (6)(B) by striking “April 1, 1994” and inserting “the submission under paragraph (5) of the detailed report on the program described in paragraph (4)”;

(4) by adding at the end the following new paragraph:

“(7) Any measure implemented under this Act to reduce the incidental mortality of nontargeted fishery resources in the course of shrimp trawl fishing shall apply to such fishing throughout the range of the nontargeted fishery resource concerned.”.

(e) ESSENTIAL FISHERY HABITAT; OVERFISHING.—Section 304 (16 U.S.C. 1854) is further amended by adding at the end the following:

“(h) ACTIONS BY THE SECRETARY ON ESSENTIAL FISHERY HABITAT.—(1) Within one year after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall—

“(A) establish guidelines to assist the Councils in the description of essential fishery habitat in fishery management plans; and

“(B) establish a schedule for the amendment of fishery management plans to describe essential fish habitats.

“(2) The Secretary, in cooperation with the Secretary of the Interior, shall identify the essential fishery habitat for each fishery for which a fishery management plan is in effect. The identification shall be based on the description of essential fishery habitat contained in the plan.

“(3) Each Federal agency shall consult with the Secretary with respect to any action proposed to be authorized, funded, or carried out by such agency that the head of the agency has reason to believe, or the Secretary believes, may result in the destruction or adverse modification of any essential fishery habitat identified by the Secretary under paragraph (2). If the Secretary finds that the proposed action would result in destruction or adverse modifications of such essential fishery habitat, the Secretary shall comment on and make recommendations to the agency concerning that action.

“(4) Within 15 days after receiving recommendations from the Secretary under paragraph (3) with respect to a proposed action, the head of a Federal agency shall provide a detailed, written response to the Secretary which describes the measures proposed by the agency to avoid, mitigate, or offset the adverse impact of the proposed action on the essential fishery habitat. In the case of a response that is inconsistent with the recommendation of the Secretary, the agency shall explain its reasons for not following the recommendations.

“(5) The Secretary shall review programs administered by the Department of Commerce to ensure that any relevant programs further the conservation and enhancement of essential fishery habitat identified by the Secretary under paragraph (2). The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fishery habitat identified by the Secretary under paragraph (2).

“(6) Nothing in this subsection shall have the effect of amending or repealing any other law or regulation or modifying any other responsibility of a Federal agency with respect to fisheries habitat.

“(i) ACTION BY THE SECRETARY ON OVERFISHING.—(1) In addition to the authority granted to the Secretary under subsection (c), if the Secretary finds at any time that overfishing is occurring or has occurred in any fishery, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to establish a rebuilding program for the fishery. The Secretary shall publish each notice under this paragraph in the Federal Register.

“(2) If the Council does not submit to the Secretary before the end of the 1-year period beginning on the date of notification under paragraph (1) a fishery management plan, or an amendment to the appropriate existing fishery management plan, which is intended to address overfishing in the fishery and to establish any necessary rebuilding program, then the Secretary shall within 9 months after the end of that period prepare under subsection (c) a fishery management plan, or an amendment to an existing management plan, to end overfishing in the fishery and to establish any necessary rebuilding program.

“(3) If the Secretary finds that overfishing is occurring in any fishery for which a fishery management plan prepared by the Secretary is in effect, the Secretary shall—

“(A) within 1 year act under subsection (c) to amend the plan to end overfishing in the fishery and to establish any necessary rebuilding program; and

“(B) in the case of a highly migratory species fishery, pursue international rebuilding programs.

“(4) Any rebuilding program under this subsection shall specify the time period within which the fishery is expected to be rebuilt. The time period shall be as short as possible, taking into account the biology and natural variability of the stock of fish, other environmental factors or conditions which would affect the rebuilding program, and the needs of the fishing industry. The time period may not exceed 10 years, except in cases where the biology of the stock of fish or other environmental factors dictates otherwise.

“(5) If the Secretary finds that the action of any Federal agency has caused or contributed to the decline of a fishery below maximum sustainable yield, the Secretary shall notify the agency of the Secretary’s finding and recommend steps that can be taken by the agency to reverse that decline.

“(6)(A) The Secretary shall review the progress of any rebuilding program required under this subsection beginning in the third year in which the plan is in effect, and annually thereafter.

“(B) If the Secretary finds as a result of the review that the rebuilding program is not meeting its specified goals due to reasons related to the reproductive capacity, productivity, life span, or natural variability of the fish species concerned or other

environmental conditions or factors beyond the control of the rebuilding program, the Secretary shall—

“(i) reassess the goals of the program;

“(ii) determine, based on the best available scientific information, whether revision to the program is needed; and

“(iii) if the Secretary determines under clause (ii) that such revisions are needed, direct the Council that established the program to make revisions to the program, or in the case of a program established by the Secretary, make such revisions.

“(C) If the Secretary finds as a result of the review that the rebuilding program is not meeting its specified goals for reasons other than those described in subparagraph (B), the Secretary shall direct the Council that established the program to make revisions to the program, or in the case of a program established by the Secretary, make such revisions.

“(7)(A) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council’s geographic area of authority and identify those fisheries that are approaching a condition of being overfished.

“(B) For each fishery that is subject to a fishery management plan, the status of the fishery shall be determined for purposes of subparagraph (A) in accordance with the determination of what constitutes overfishing in the fishery included in the plan under section 303(a)(10).

“(C) The Secretary shall identify a fishery under subparagraph (A) as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary determines that the fishery is likely to become overfished within 2 years.

“(D) For any fishery that the Secretary identifies under subparagraph (A) as approaching the condition of being overfished, the report shall—

“(i) estimate the time frame within which the fishery will reach that condition; and

“(ii) make specific recommendations to the appropriate Council regarding actions that should be taken to prevent that condition from being reached.”.

(f) ACTION ON CERTAIN IMPLEMENTING REGULATIONS PROPOSED BY COUNCILS.—Section 304 (16 U.S.C. 1854) is further amended by adding at the end the following:

“(j) ACTION ON COVERED IMPLEMENTING REGULATIONS PROPOSED BY A COUNCIL.—(1) After the receipt date of a covered implementing regulation submitted by a Council, the Secretary shall—

“(A) immediately commence a review of the covered implementing regulation to determine whether it is consistent with the fishery management plan it would implement, the national standards, the other provisions of this Act, and any other applicable law; and

“(B) immediately publish the covered implementing regulation in the Federal Register and provide a period of not less than 15 days and not more than 45 days for the submission of comments by the public.

“(2) Not later than 75 days after the receipt date of a covered implementing regulation submitted by a Council, the Secretary shall—

“(A) publish a final regulation on the subject matter of the covered implementing regulation; or

“(B) decline to publish a final regulation.

“The Secretary shall provide to the Council in writing an explanation of the reasons for the Secretary’s action.

“(3) For the purposes of this subsection, the term—

“(A) ‘receipt date’ means the 5th day after the day on which a Council submits to the Secretary a covered implementing regulation that the Council characterizes as a final covered implementing regulation; and

“(B) ‘covered implementing regulation’—

“(i) means a proposed amendment to existing regulations implementing a fishery management plan in effect under this Act, which does not have the effect of amending the plan; and

“(ii) does not include any proposed regulation submitted with a plan or amendment to a plan under section 303(c).”.

(g) PACIFIC REGION STOCK ASSESSMENT.—Section 304 (16 U.S.C. 1854) is further amended by adding at the end the following:

“(k) PACIFIC REGION STOCK ASSESSMENT.—(1) Not later than 120 days after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall, in consultation with the Pacific Fishery Management Council and the States of California, Oregon, and Washington, establish a Pacific Region Scientific Review Group (in this subsection referred to as the ‘Group’) consisting of representatives of the National Marine Fisheries Service, each of the

States of California, Oregon, and Washington, universities located in those States, commercial and recreational fishermen and shore-based processors located in those States, and environmental organizations. Individuals appointed to serve on the Group shall be selected from among individuals who are knowledgeable or experienced in the harvesting, processing, biology, or ecology of the fish stocks of fish that are managed under the Pacific Fisheries Management Council Pacific Coast Groundfish Plan (in this subsection referred to as the 'covered Pacific stocks').

"(2) Not later than 180 days after the date of establishment of the Group, the Group shall transmit to the Secretary a research plan of at least 3 years duration to assess the status of the covered Pacific stocks, including the abundance, location, and species, age, and gender composition of those stocks. The plan shall provide for the use of private vessels to conduct stock surveys.

"(3) Immediately upon receiving the plan transmitted under paragraph (2), the Secretary shall take action necessary to carry out the plan, including, subject to the availability of appropriations, chartering private vessels, arranging for the deployment of scientists on those vessels (including the payment of increased insurance costs to vessel owners), and obtaining the assistance of shore-based fish processors.

"(4) The Secretary may offset the cost of carrying out the plan by entering into agreements with vessel owners or shore-based fish processors to provide vessel owners or shore-based fish processors with a portion of the total allowable catch reserved for research purposes under section 303(b)."

SEC. 11. EMERGENCY ACTIONS.

Section 305(c) (16 U.S.C. 1855(c)) is amended—

(1) in paragraph (2)(A), by inserting "under section 302(b)(1)(A) and (C)" after "voting members";

(2) by amending paragraph (3)(B) to read as follows:

"(B) shall remain in effect for not more than 180 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council and after notice and an opportunity for submission of comments by the public, be effective for 1 additional period of not more than 180 days; and"; and

(3) by adding at the end the following:

"(4) The Secretary may promulgate emergency regulations under this subsection to protect the public health. Notwithstanding paragraph (3), regulations promulgated under this paragraph shall remain in effect until withdrawn by the Secretary. The Secretary shall promptly withdraw regulations under this paragraph when the circumstances requiring the regulations no longer exist. The Secretary shall provide an opportunity for submission of comments by the public after regulations are promulgated under this paragraph.

"(5) An emergency regulation promulgated under this subsection that closes an area to fishing shall not remain in effect for an additional period under paragraph (3)(B) unless before the beginning of the additional period the Council having jurisdiction over the area, in conjunction with the Secretary, publishes a report on the status of the fishery in the area that includes an analysis of the costs and benefits of the closure."

SEC. 12. STATE JURISDICTION.

(a) REPORTS.—Section 306(c)(1) (16 U.S.C. 1856(c)(1)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following:

"(C) the owner or operator of the vessel submits to the appropriate Council and the Secretary, in a manner prescribed by the Secretary, periodic reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested."

(b) STATE AUTHORITY.—Section 306(b) (16 U.S.C. 1856(b)) is amended by adding at the end the following:

"(3) For any fishery occurring off the coasts of Alaska for which there is no Federal fishery management plan approved and implemented pursuant to this Act, or pursuant to delegation to a State in a fishery management plan, a State may enforce its laws or regulations pertaining to the taking of fish in the exclusive economic zone off that State or the landing of fish caught in the exclusive economic zone providing there is a legitimate State interest in the conservation and management of that fishery, until a Federal fishery management plan is implemented. Fisheries currently managed pursuant to a Federal fishery management plan shall not be removed from Federal management and placed under State authority without the

unanimous consent (except for the Regional Director of the National Marine Fisheries Service) of the Council which developed the fishery management plan.”.

SEC. 13. PROHIBITED ACTS.

(a) PROHIBITION ON DAMAGING GEAR.—Section 307(1)(K) (16 U.S.C. 1857(1)(K)) is amended by striking “to knowingly steal, or without authorization, to” and inserting “to steal, or to negligently”.

(b) FAILURE TO DISCLOSE FINANCIAL INFORMATION.—Section 307(1) (16 U.S.C. 1857(1)) is amended—

(1) by striking “or” at the end of subparagraph (M);

(2) by striking the period at the end of subparagraph (N) and inserting “; or”; and

(3) by adding at the end the following:

“(O) to knowingly and willfully fail to disclose or falsely disclose any financial interest as required under section 302(k) or to knowingly violate any rule established under section 302(k)(8).”.

(c) PROHIBITED FISHING.—

(1) IN GENERAL.—Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is amended to read as follows:

“(B) in fishing, except recreational fishing permitted under section 201(j), within the exclusive economic zone or within the special areas, or for any anadromous species or Continental Shelf fishery resources beyond such zone or areas, or in fishing consisting of transporting fish products from a point within the boundaries of any State or the exclusive economic zone or the special areas, unless such fishing is authorized under, and conducted in accordance with, a valid and applicable permit issued under section 204, except that this subparagraph shall not apply to fishing within the special areas before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States; or”.

(2) CONFORMING AMENDMENT.—Section 301(h)(2)(A) of the Act entitled “An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary”, approved March 9, 1992 (Public Law 102-251; 106 Stat. 64), is repealed.

SEC. 14. HAROLD SPARCK BERING SEA COMMUNITY DEVELOPMENT QUOTA PROGRAM.

Section 313 (16 U.S.C. 1862) is amended by adding at the end the following new subsection:

“(f) BERING SEA COMMUNITY DEVELOPMENT QUOTA PROGRAM.—(1) The North Pacific Fishery Management Council and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to western Alaska communities that participate in the program.

“(2) To be eligible to participate in the western Alaska community development quota program under paragraph (1), a community must—

“(A) be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea;

“(B) not be located on the Gulf of Alaska coast of the north Pacific Ocean;

“(C) meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register;

“(D) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act to be a Native village;

“(E) consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea and Aleutian Islands management area; and

“(F) not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.”.

SEC. 15. OBSERVERS.

Title III (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

“SEC. 315. RIGHTS OF OBSERVERS.

“(a) CIVIL ACTION.—An observer on a vessel (or the observer’s personal representative) under the requirements of this Act or the Marine Mammal Protection Act of

1972 (16 U.S.C. 1361 et seq.) that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

“(b) EXCEPTION.—Subsection (a) does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.”.

SEC. 16. INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS.

(a) AUTHORITY TO ESTABLISH INDIVIDUAL QUOTA SYSTEMS.—Section 303(b)(6) (16 U.S.C. 1853(b)(6)) is amended to read as follows:

“(6) establish a limited access system for the fishery in order to achieve optimum yields, if—

“(A) in developing such system, the Councils and the Secretary take into account—

“(i) the need to promote conservation;

“(ii) present participation in the fishery,

“(iii) historical fishing practices in, and dependence on, the fishery,

“(iv) the economics of the fishery,

“(v) the capability of fishing vessels used in the fishery to engage in other fisheries,

“(vi) the cultural and social framework relevant to the fishery and local coastal communities, and

“(vii) any other relevant considerations; and

“(B) in the case of such a system that provides for the allocation and issuance of individual quotas (as that term is defined in subsection (g)), the plan complies with subsection (g).”.

(b) REQUIREMENTS.—Section 303 is further amended by adding at the end the following new subsection:

“(g) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA SYSTEMS.—(1) A fishery management plan which establishes an individual quota system for a fishery—

“(A) shall provide for administration of the system by the Secretary in accordance with the terms of the plan;

“(B) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested;

“(C) shall include provisions which establish procedures and requirements for each Council having authority over the fishery, for—

“(i) reviewing and revising the terms of the plan that establish the system; and

“(ii) renewing, reallocating, and reissuing individual quotas if determined appropriate by each Council;

“(D) shall include provisions to—

“(i) provide for fair and equitable allocation of individual quotas under the system, and minimize negative social and economic impacts of the system on local coastal communities;

“(ii) ensure adequate enforcement of the system, including the use of observers where appropriate; and

“(iii) provide for monitoring the temporary or permanent transfer of individual quotas under the system; and

“(E) include provisions that prevent any person from acquiring an excessive share of individual quotas issued for a fishery.

“(2) An individual quota issued under an individual quota system established by a fishery management plan—

“(A) shall be considered a grant, to the holder of the individual quota, of permission to engage in activities permitted by the individual quota;

“(B) may be revoked or limited at any time by the Secretary or the Council having authority over the fishery for which it is issued, if necessary for the conservation and management of the fishery (including as a result of a violation of this Act or any regulation prescribed under this Act);

“(C) if revoked or limited by the Secretary or a Council, shall not confer any right of compensation to the holder of the individual quota;

“(D) may be received, held, or transferred in accordance with regulations prescribed by the Secretary under this Act;

“(E) shall, except in the case of an individual quota allocated under an individual quota system established before the date of enactment of the Fishery Conservation and Management Amendments of 1995, expire not later than 7

years after the date it is issued, in accordance with the terms of the fishery management plan; and

“(F) upon expiration under subparagraph (E), may be renewed, reallocated, or reissued if determined appropriate by each Council having authority over the fishery.

“(3)(A) Except as provided in subparagraphs (B) and (C), any fishery management plan that establishes an individual quota system for a fishery may authorize individual quotas to be held by or issued under the system to fishing vessel owners, fishermen, crew members, other persons as specified by the Council, and United States fish processors.

“(B) An individual who is not a citizen of the United States may not hold an individual quota issued under a fishery management plan.

“(C) A Federal agency or official may not hold, administer, or reallocate an individual quota issued under a fishery management plan, other than the Secretary and the Council having authority over the fishery for which the individual quota is issued.

“(4) Any fishery management plan that establishes an individual quota system for a fishery may include provisions that—

“(A) allocate individual quotas under the system among categories of vessels; and

“(B) provide a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, or crewmembers who do not hold or qualify for individual quotas.

“(5) An individual quota system established for a fishery may be limited or terminated at any time by the Secretary or through a fishery management plan or amendment developed by the Council having authority over the fishery for which it is established, if necessary for the conservation and management of the fishery.

“(6) As used in this subsection:

“(A) The term ‘individual quota system’ means a system that limits access to a fishery in order to achieve optimum yields, through the allocation and issuance of individual quotas.

“(B) The term ‘individual quota’ means a grant of permission to harvest or process a quantity of fish in a fishery, during each fishing season for which the permission is granted, equal to a stated percentage of the total allowable catch for the fishery.”

(c) FEES.—Section 304(d) is amended—

(1) by inserting “(1)” before “The Secretary shall”; and

(2) by adding at the end the following new paragraph:

“(2)(A) Notwithstanding paragraph (1), the Secretary shall collect from a person that holds or transfers an individual quota issued under a limited access system established under section 303(b)(6) fees established by the Secretary in accordance with this section and section 9701(b) of title 31, United States Code.

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

“(i) An initial allocation fee in an amount, determined by the Secretary, equal to 1 percent of the value of fish authorized to be harvested in one year under an individual quota, which shall be collected from the person to whom the individual quota is first issued.

“(ii) An annual fee in an amount, determined by the Secretary, not to exceed 4 percent of the value of fish authorized to be harvested each year under an individual quota share, which shall be collected from the holder of the individual quota share.

“(iii) A transfer fee in an amount, determined by the Secretary, equal to 1 percent of the value of fish authorized to be harvested each year under an individual quota share, which shall be collected from a person who permanently transfers the individual quota share to another person.

“(C) In determining the amount of a fee under this paragraph, the Secretary shall ensure that the amount is commensurate with the cost of managing the fishery with respect to which the fee is collected, including reasonable costs for salaries, data analysis, and other costs directly related to fishery management and enforcement.

“(D) The Secretary, in consultation with the Councils, shall promulgate regulations prescribing the method of determining under this paragraph the value of fish authorized to be taken under an individual quota share, the amount of fees, and the method of collecting fees.

“(E) Fees collected under this paragraph from holders of individual quotas in a fishery shall be an offsetting collection and shall be available to the Secretary only for the purposes of administering and implementing this Act with respect to that fishery.

“(F) The Secretary may not assess or collect any fee under this paragraph with respect to an individual quota system established before the date of enactment of the Fishery Conservation and Management Amendments of 1995, during the 5-year period beginning on that date of enactment.”.

(d) APPROVAL OF FISHERY MANAGEMENT PLANS ESTABLISHING INDIVIDUAL QUOTA SYSTEMS.—Section 304 (16 U.S.C. 1854) is further amended by adding after subsection (k) (as added by section 10 of this Act) the following new subsection:

“(l) ACTION ON LIMITED ACCESS SYSTEMS.—(1) In addition to the other requirements of this Act, the Secretary may not approve a fishery management plan that establishes a limited access system that provides for the allocation of individual quotas (in this subsection referred to as an ‘individual quota system’) unless the plan complies with section 303(g).

“(2) Within 1 year after receipt of recommendations from the review panel established under paragraph (3), the Secretary shall issue regulations which establish requirements for establishing an individual quota system. The regulations shall be developed in accordance with the recommendations. The regulations shall—

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

“(B) ensure that any individual quota system is consistent with the requirements of sections 303(b) and 303(g), and require the collection of fees in accordance with subsection (d)(2);

“(C) provide for appropriate penalties for violations of individual quotas systems, including the revocation of individual quotas for such violations;

“(D) include recommendations for potential management options related to individual quotas, including the authorization of individual quotas that may not be transferred by the holder, and the use of leases or auctions by the Federal Government in the establishment or allocation of individual quotas; and

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

“(3)(A) Not later than 6 months after the date of the enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall establish a review panel to evaluate fishery management plans in effect under this Act that establish a system for limiting access to a fishery, including individual quota systems, and other limited access systems, with particular attention to—

“(i) the success of the systems in conserving and managing fisheries;

“(ii) the costs of implementing and enforcing the systems;

“(iii) the economic effects of the systems on local communities; and

“(iv) the use of limited access systems under which individual quotas may not be transferred by the holder, and the use of leases or auctions in the establishment or allocation of individual quota shares.

“(B) The review panel shall consist of—

“(i) the Secretary or a designee of the Secretary;

“(ii) a representative of each Council, selected by the Council;

“(iii) 3 representatives of the commercial fishing and processing industry; and

“(iv) one at large representative who is selected by reason of occupational or other experience, scientific expertise, or training, and who is knowledgeable regarding the conservation and management or the commercial or recreational harvest of fishery resources.

“(C) Based on the evaluation required under subparagraph (A), the review panel shall, by September 30, 1997, submit recommendations—

“(i) to the Councils and the Secretary with respect to the revision of individual quota systems that were established under this Act prior to June 1, 1995; and

“(ii) to the Secretary for the development of the regulations required under paragraph (2).”.

(e) RESTRICTION ON NEW INDIVIDUAL QUOTA SYSTEMS PENDING REGULATIONS.—

(1) RESTRICTION.—The Secretary of Commerce may not approve any covered quota system plan, and no covered quota system plan shall take effect, under title III of the Magnuson Fishery Conservation and Management Act before the effective date of regulations issued by the Secretary under section 304(l) of that Act, as added by subsection (d).

(2) COVERED QUOTA SYSTEM PLAN DEFINED.—In this subsection, the term “covered quota system plan” means a fishery management plan or amendment to a fishery management plan, that—

(A) proposes establishment of an individual quota system (as that term is used in section 303 of the Magnuson Fishery Conservation and Management Act, as amended by subsection (a) of this section); and

(B) is submitted to the Secretary after May 1, 1995.

SEC. 17. FISHING CAPACITY REDUCTION PROGRAMS.

(a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.) is further amended by adding after section 315 (as added by section 15 of this Act) the following new section:

“SEC. 316. FISHING CAPACITY REDUCTION PROGRAMS.

“(a) AUTHORITY TO CONDUCT PROGRAM.—The Secretary, with the concurrence of the Council having authority over a fishery, may conduct a voluntary fishing capacity reduction program for a fishery in accordance with this section, if—

“(1) the Secretary—

“(A) determines that the program is necessary for rebuilding, preventing overfishing, or generally improving conservation and management of the fishery; or

“(B) is requested to do so by the Council with authority over the fishery; and

“(2) there is in effect under section 304 a fishery management plan that—

“(A) limits access to the fishery through a Federal fishing permit required by a limited access system established under section 303(b)(6); and

“(B) prevents the replacement of fishing capacity eliminated by the program through—

“(i) a moratorium on the issuance of new Federal fishing permits for the duration of the repayment period; and

“(ii) restrictions on fishing vessel capacity upgrading.

“(b) PROGRAM REQUIREMENTS.—Under a fishing capacity reduction program conducted under this section for a fishery, the Secretary shall—

“(1) seek to permanently reduce the maximum effective fishing capacity at the least cost and in the shortest period of time through the removal of vessels and permits from the fishery;

“(2) make payments to—

“(A) scrap or otherwise render permanently unusable for fishing in the United States, vessels that operate in the fishery; and

“(B) acquire the Federal fishing permits that authorize participation in the fishery;

“(3) provide for the funding of those payments by persons that participate in the fishery, by establishing and imposing fees on holders of Federal fishing permits under this Act that authorize that participation;

“(4) establish criteria for determining the types of vessels and permits which are eligible to participate in the program, that—

“(A) assess vessel impact on the fishery;

“(B) minimize program costs; and

“(C) take into consideration—

“(i) previous fishing capacity reduction programs; and

“(ii) the characteristics of the fishery;

“(5) establish procedures for determining the amount of payments under paragraph (1); and

“(6) identify sources of funding for the program in addition to the amounts referred to in subsection (f)(2)(A), (B), (C), and (D).

“(c) PAYMENTS.—

“(1) IN GENERAL.—As part of a fishing capacity reduction program under this section, and subject to paragraph (2) the Secretary shall make payments under subsection (b)(2).

“(2) ESTABLISHMENT OF FEE REQUIRED.—The Secretary may not make any payment under paragraph (1) for a fishery unless there is in effect for the fishery a fee under subsection (d).

“(3) LIMITATION ON TOTAL AMOUNT OF PAYMENTS FOR FISHERY.—The total amount of payments under paragraph (1) for a fishery may not exceed the total amount the Secretary projects will be deposited into the Fund from fees that apply to the fishery under subsection (d).

“(d) FEES.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, with the concurrence of a majority of the voting members of a Council having authority over a fishery for which a fishing capacity reduction program is conducted under this section, may establish an annual fee on holders of Federal fishing permits authorizing participation in the fishery.

“(2) AMOUNT OF FEE.—The amount of a fee established under this subsection for a fishery described in paragraph (1)—

“(A) shall be adequate to ensure that the total amount collected in the form of the fee will not be less than the amount the Secretary determines

is necessary for payments under subsection (b)(2) to reduce fishing capacity in the fishery to a level that will ensure the long-term health of the fishery;

“(B) shall be based on—

“(i) the value of the fishery;

“(ii) the projected number of participants in the fishery;

“(iii) the projected catch in the fishery; and

“(iv) the direct costs of implementing a fishing capacity reduction program under this section for the fishery; and

“(C) may not exceed, for any permit holder, 5 percent of the value of fish harvested under the permit each year.

“(3) EFFECTIVE PERIOD.—A fee under this subsection may not be in effect for more than 15 years.

“(4) USE OF AMOUNTS RECEIVED.—Amounts received by the United States as fees under this subsection—

“(A) shall be deposited into the Fund; and

“(B) may not be used to pay any administrative overhead or other costs not directly incurred in implementing this section with respect to the fishery.

“(e) ADVISORY PANELS.—

“(1) IN GENERAL.—The Secretary shall establish for each fishery for which a fishing capacity reduction program is conducted under this section an advisory panel to advise the Secretary regarding that program.

“(2) MEMBERSHIP.—Each advisory panel under this subsection shall consist of individuals appointed by the Secretary and shall include representatives of—

“(A) the Department of Commerce,

“(B) Councils having authority over fisheries for which the panel is established,

“(C) appropriate sectors of the fishing industry affected by fishing capacity reduction programs under this section, and

“(D) appropriate States affected by such programs.

“(f) FISHERIES CONSERVATION AND RESTORATION FUND.—

“(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate account which shall be known as the Fisheries Conservation and Restoration Fund (in this section referred to as the ‘Fund’).

“(2) DEPOSITS INTO THE FUND.—There shall be deposited into the Fund—

“(A) amounts appropriated under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A)), popularly known as the Saltonstall-Kennedy Act;

“(B) amounts paid to the United States Government as fees established under subsection (d);

“(C) any other amounts appropriated for fisheries disaster that the Secretary determines should be used for fishing capacity reduction programs under this section; and

“(D) any other amounts appropriated for making payments under subsection (b)(2).

“(3) AVAILABILITY.—

“(A) IN GENERAL.—Amounts in the Fund shall be available to the Secretary without fiscal year limitation for making payments under subsection (b)(2).

“(B) MANAGEMENT OF UNNEEDED BALANCE.—Amounts in the Fund that are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

“(g) EXPIRATION OF ACQUIRED PERMITS.—Permits acquired by the Secretary under subsection (b)(2)(B)—

“(1) shall not be effective after the date of that acquisition; and

“(2) may not be reissued or replaced.”.

(b) USE OF AMOUNTS TRANSFERRED UNDER SALTONSTALL-KENNEDY ACT.—Section 2(b)(1) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)), popularly known as the Saltonstall-Kennedy Act, is amended in subparagraph (A) by striking “and” after the semicolon at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “; and”, and by adding at the end the following new clause:

“(iv) to fund fishing capacity reduction programs under section 316 of the Magnuson Fishery Conservation and Management Act, by depositing a portion of amounts transferred into the Fisheries Conservation and Restoration Fund established by that section; and”.

SEC. 18. CONSIDERATION OF ABILITY TO PAY PENALTIES.

Section 308(a) (16 U.S.C. 1858(a)) is amended—

- (1) in the last sentence by striking “ability to pay,”; and
- (2) by adding at the end the following new sentence: “In assessing such penalty, the Secretary may also consider facts relating to the ability of the violator to pay that are established by the violator in a timely manner.”.

SEC. 19. AUTHORIZATION OF APPROPRIATIONS.

- (a) IN GENERAL.—Title IV (90 Stat. 359–361) is amended to read as follows:

“TITLE IV—MISCELLANEOUS PROVISIONS

“SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Secretary, for carrying out this Act, the following:

- “(1) \$114,000,000 for fiscal year 1996.
- “(2) \$118,000,000 for fiscal year 1997.
- “(3) \$122,000,000 for fiscal year 1998.
- “(4) \$126,000,000 for fiscal year 1999.
- “(5) \$130,000,000 for fiscal year 2000.”.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by striking the items relating to title IV (including the items relating to the sections in that title) and inserting the following:

“TITLE IV—MISCELLANEOUS PROVISIONS

“Sec. 401. Authorization of appropriations.”.

SEC. 20. TECHNICAL CORRECTIONS.

(a) CORRECTION.—Section 304 of the Act entitled “An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary”, approved March 9, 1992 (Public Law 102–251; 106 Stat. 65), is repealed.

(b) CONFORMING AMENDMENT.—Section 3(15) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)) is amended to read as follows:

- “(15) The term ‘waters under the jurisdiction of the United States’ means—
 - “(A) the territorial sea of the United States;
 - “(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and
 - “(C) 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, 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, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.”.

SEC. 21. CLERICAL AMENDMENTS.

The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended by striking “Committee on Merchant Marine and Fisheries” each place it appears and inserting “Committee on Resources”.

SEC. 22. PROVISIONS RELATING TO GULF OF MEXICO.

(a) FISHERY ASSESSMENTS.—Section 304(e) (16 U.S.C. 1854(e)) is amended by adding at the end the following new paragraph:

“(5) The Secretary shall develop and implement a systematic program for the assessment and annual reporting to the public of the status of fisheries in the Gulf of Mexico subject to management under this Act. Such program shall—

- “(A) provide for the use of peer-review panels consisting of independent and external experts;
- “(B) not exclude peer-reviewers merely because they represent entities that may have an interest or potential interest in the outcome, if that interest is fully disclosed to the Secretary;

“(C) provide opportunity to become part of a peer-review panel at a minimum by soliciting nominations through the Federal Register; and

“(D) ensure that all comment and opinions of such peer-review panels are made available to the public.”.

(b) FISHERY MONITORING.—Section 304 (16 U.S.C. 1854) is further amended by adding at the end the following new subsection:

“(m) FISHERY MONITORING.—(1) The Secretary shall develop a plan for the Gulf of Mexico region to collect, assess, and report statistics concerning the fisheries in each such region.

“(2) The plan under this subsection shall—

“(A) provide fishery managers and the public with timely and accurate information concerning harvests and fishing effort;

“(B) minimize paperwork and regulatory burdens on fishermen and fish buyers;

“(C) minimize costs to Federal and State agencies;

“(D) avoid duplication and inconsistencies in the collection, assessment, and reporting of fishery statistics; and

“(E) ensure the confidentiality of information.

“(3) The Secretary shall ensure that fishermen, fish buyers, and other individuals potentially impacted by the plan required under this subsection are actively involved in all stages of the development of such plan and that appropriate fishery management agencies are consulted.

“(4) No later than 9 months after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall publish notice of a proposed plan required under this subsection and provide the public with a reasonable opportunity to comment on such proposed plan. The Secretary shall consider such comments before submitting the plan under paragraph (5).

“(5) No later than one year after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall submit a final plan under this subsection to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.”.

(c) GULF OF MEXICO RED SNAPPER STOCK MANAGEMENT STUDY.—

(1) IN GENERAL.—The Secretary of Commerce shall have an independent analysis conducted that will evaluate—

(A) the methods, data, and models used to assess the status of Gulf of Mexico red snapper stock assessments;

(B) the effectiveness of the fishery management plan in effect under the Magnuson Fishery Conservation and Management Act that applies to Gulf of Mexico red snapper, in terms of the appropriateness of the management goal and time frame given the available biological data; and

(C) regulations in effect under that Act that apply to Gulf of Mexico red snapper, in the terms of the effectiveness of fairly controlling fishing mortality.

(2) STUDY REQUIREMENTS.—The study shall—

(A) assess all alternatives that could provide a more balanced and practical approach to managing the red snapper fishery in the Gulf of Mexico;

(B) involve commercial and recreational fishermen from the Gulf of Mexico in the collection of data and information and in the development of an accurate assessment plan; and

(C) be completed and reported to the Congress and the Gulf of Mexico Fishery Management Council within 1 year after the date of the enactment of this Act.

(3) USE OF REPORT.—It is expected for the report on the study under this subsection to be used as the foundation for any future management of red snapper in the Gulf of Mexico by the Gulf of Mexico Fishery Management Council or the National Marine Fisheries Service (or both). It is also expected that the Council will suspend the implementation of any individual fishing quota plan for red snapper in the Gulf of Mexico until the study is completed and until the Secretary of Commerce has completed standards or guidelines.

(4) LIMITED IMMUNITY.—Individuals providing credible information to receive the most accurate assessments shall not be subject to any catch reporting violations.

SEC. 23. STUDY OF CONTRIBUTION OF BYCATCH TO CHARITABLE ORGANIZATIONS.

(a) STUDY.—The Secretary of Commerce shall conduct a study of the contribution of bycatch to charitable organizations by commercial fishermen. The study shall include determination of—

(1) the amount of bycatch that is contributed each year to charitable organizations by commercial fishermen;

(2) the economic benefits to commercial fisherman from those contributions; and

(3) the impact on fisheries of the availability of those benefits.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Commerce shall submit to the Congress a report containing determinations made in the study under subsection (a).

(c) BYCATCH DEFINED.—In this section the term “bycatch” has the meaning given that term in section 3(34) of the Magnuson Fishery Conservation and Management Act, as amended by section 4 of this Act.

PURPOSE OF THE BILL

The purpose of H.R. 39 is to authorize appropriations to carry out the objectives and provisions of the Magnuson Fishery Conservation and Management Act of 1976 (Magnuson Act) through Fiscal Year 2000 and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The primary goals of the Magnuson Act are the conservation and management of the U.S. fishery resources, development of the U.S. domestic fisheries, and the phase-out of foreign fishing activities within the 200-mile fisheries conservation zone adjacent to the U.S. coastline. This area became known as the Exclusive Economic Zone (EEZ) following a 1983 proclamation by President Reagan. The Magnuson Act was last authorized and amended in 1990 (Public Law 101-627). The current authorization expired on September 30, 1993. The Act is administered by the Secretary of Commerce, acting through the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA). Fishery Management Plans are developed for each species of fish by eight Regional Fishery Management Councils, comprised of Federal, State and commercial and recreational fishing representatives.

This reauthorization of the Magnuson Act represents more than two years of work and more than a dozen hearings both in Washington, D.C. and across the country. It also represents a bi-partisan effort to promote sound management and conservation measures; to address the problems in the U.S. fisheries and maintain sustainable harvest levels; and to address the impacts on local coastal communities that are dependent on fishing for their economic and social identities.

The Committee heard testimony that fishery resources are declining worldwide. The effects of declining stocks impact not only the ecosystems which produce food for the people of this country, but also can have a negative effect on the social and economic identity of communities which have a historic dependence on fisheries.

As a result of these hearings the Committee identified several key areas of concern to be addressed in this legislation: bycatch reduction, habitat protection, identification and protection of stocks nearing an overfished condition, the rebuilding of overfished stocks, reform of Fishery Management Councils and disclosure requirements for Council members, establishment of the Bering Sea Community Development Quota Program, establishment of guidelines

for limited access management systems, and a program for fishing capacity reduction.

COMMITTEE ACTION

H.R. 39 was introduced on January 4, 1995, by Chairman Young of Alaska. The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife and Oceans.

On February 23, 1995, the Subcommittee held a hearing on H.R. 39, where a wide range of views were expressed on the Magnuson Act in general and the specific provisions of H.R. 39. Numerous other hearings on the reauthorization of the Magnuson Act were held in the 103rd Congress by the former Committee on Merchant Marine and Fisheries.

On May 10, 1995, the Full Committee met to mark up H.R. 39. The Subcommittee on Fisheries, Wildlife and Oceans was discharged from further consideration of the bill, and Chairman Young offered an amendment in the nature of a substitute to the bill to be considered as original text for purposes of amendment.

An en bloc amendment was offered by Chairman Young and Congressman Studts to make technical and clarifying corrections. The amendment was adopted by voice vote.

Chairman Young then offered an amendment to stipulate that the North Pacific Fishery Management Council shall require all fish processors, whether onshore or offshore, to weigh their harvest to ensure more accurate measurement of the fish by species. A substitute amendment to the Young amendment was offered by Congressman Metcalf to require that the North Pacific Fishery Management Council ensure an accurate measurement of the total harvest of each species by fish processors. The Metcalf amendment was defeated by voice vote, and the Young amendment was adopted by voice vote.

Chairman Young offered an amendment authorizing the State of Alaska to enforce its laws or regulations for a fishery in Federal waters in cases where no Federal or State (for fisheries where the North Pacific Fishery Management Council has delegated management authority to the State) Fishery Management Plan exists, and if there is a legitimate State interest in the conservation and management of the fishery. This authority would exist only until a Federally-approved Plan could be implemented. During discussion of the amendment, Congressman Studts expressed concern that extension of State management authority to 200 miles could cause problems. Chairman Young agreed that if language could be developed to authorize interim Plans or other solutions where no Federal Fishery Management Plan exists, the language of the amendment would be changed at an appropriate time. The amendment was then adopted by voice vote.

Congressman Saxton offered an amendment to exempt highly migratory species managed by the Secretary of Commerce under the Magnuson Act from provisions of the bill dealing with overfishing. After discussion, the amendment was withdrawn.

Congressman Saxton then offered an amendment to promote international conservation of Atlantic highly migratory species; minimize the establishment of regulations which require the dis-

card of Atlantic highly migratory species; and promote scientific research, including tag and release programs, for Atlantic highly migratory species. The amendment was adopted by voice vote.

Congressman Saxton offered an amendment to require the approval of any advisory committee appointed under any law implementing a relevant international fishery agreement to which the United States is a party before the Secretary of Commerce may develop a limited access system in a Management Plan for an Atlantic highly migratory fishery. The amendment was adopted by voice vote.

Congressman Jones offered an amendment to increase the membership of the Mid-Atlantic Fishery Management Council from 19 to 21 by providing the State of North Carolina with two seats. The amendment was adopted by voice vote.

Congressman Gilchrest offered an amendment to change the definition of "optimum" as used in the term "optimum yield" to prohibit Fishery Management Councils from allowing fish to be harvested at a rate that exceeds maximum sustainable yield. The amendment failed by voice vote.

Congressman Gilchrest offered an amendment to require Councils, when setting harvest rates, to provide a margin of safety that would ensure a level of fishing consistent with maximum sustainable yield in cases when there is an uncertainty in the science being used to determine the status of the fish population or bycatch levels. The amendment was defeated by voice vote.

Congressman Gilchrest offered an amendment to authorize a system of fees to pay for the costs of an observer program mandated by a Regional Fishery Management Council. This fee system shall equitably treat all fishing and fish processing vessels. The amendment was adopted by voice vote.

Congressman DeFazio offered an amendment to reduce the sunset period for shares issued in any new Individual Transferable Quotas (ITQ) systems from ten years to seven years. The amendment was adopted by voice vote.

Congressman DeFazio offered an amendment to require the Secretary of Commerce, within one year, to submit to Congress a study and report on the contribution of bycatch by commercial fishermen to charitable organizations. The amendment was adopted by voice vote.

Congressman DeFazio offered an amendment to require the use of observers in a fishery managed under an individual quota system on all vessels which can safely accommodate them and to require that fish processing vessels carry adequate observers to ensure that fishing operations are monitored 24 hours a day. The amendment was withdrawn.

Congressman Torkildsen offered an amendment to require that before an emergency closure can be extended in a fishery, the Council of jurisdiction, with the Secretary of Commerce, must publish a report on the status of the fishery, including an analysis of the costs and benefits associated with the closure. The amendment was adopted by voice vote.

Congressman Torkildsen offered an amendment to require that any fishery impact statement required by the Secretary of Commerce in implementing an approved Fishery Management Plan be

submitted to the Governor of any affected State and appropriate Congressional committees. The amendment was adopted by voice vote.

Congresswoman Smith of Washington offered an amendment to establish a Pacific Region Scientific Review Group and require the Group to submit a three year research plan to assess the status of Pacific stocks. The amendment would require the Secretary of Commerce to take action to implement the plan. The amendment also allows the Secretary to enter into agreements with private vessels to charter vessels to assist in the research and to allow those vessels to land their catch to offset the costs of carrying out the plan. A portion of the total allowable catch may be reserved by the Pacific Fishery Management Council for research purposes. The amendment was adopted by voice vote.

Congressman Metcalf offered an amendment to change the Community Development Quota (CDQ) program in the bill from a required to a discretionary authorization for the North Pacific Fishery Management Council. The amendment failed on voice vote.

Congressman Metcalf offered an amendment to exempt the existing ITQ systems from the new statutory guidelines included in H.R. 39 unless the guidelines were adopted as a amendment to the Fishery Management Plan by the appropriate Council. It also clarified that restrictions which exist under current law on ITQ shares continue to apply to shares issued under existing Plans. These include the stipulation that shares are not a property right and the ability of a Council to amend or change an ITQ plan thereby changing the value of the shares. The amendment was withdrawn.

Congressman Metcalf offered an amendment to strike the limited access review panel and require the Secretary of Commerce to issue regulations on ITQ systems within one year of date of enactment of this legislation. The amendment was defeated by voice vote.

Delegate Underwood offered an amendment to allow the Secretary of State, with the Secretary of Commerce, and at the request of a Governor of a Pacific Insular Area, to negotiate a Pacific Insular Area Fishing Agreement (PIAFA) to authorize foreign fishing within the exclusive economic zone of the Pacific Insular Area. The amendment also authorized the collection of fees and enforcement mechanisms for the PIAFAs. This amendment was withdrawn.

Congressman Ortiz on behalf of Congressman Tauzin offered an amendment to require the Secretary of Commerce to establish fishery assessment and monitoring programs for the Gulf of Mexico. The amendment established peer review requirements for evaluation of the fishery assessment and accompanying annual report. The amendment also required the fishery monitoring program to be developed, published, and submitted to the appropriate Congressional committees. The amendment was adopted by voice vote.

Congressman Ortiz on behalf of Congressman Tauzin offered an amendment to require the Secretary of Commerce to implement an independent study in the stock assessment and management of the Gulf of Mexico red snapper fishery. It is expected that the Gulf of Mexico Fishery Management Council will use this study as the basis for future Management Plans and that no individual fishing quota plan will be implemented until the study has been completed

and the Secretary has completed guidelines. The amendment was adopted by voice vote.

Congressman Ortiz on behalf of Congressman Tauzin offered an amendment to require the Secretary of Commerce to complete a program to develop technological devices and other changes in the fishery to minimize incidental mortality of non-target fishery resources in the course of shrimp trawl activity; to evaluate the ecological impacts and the costs and benefits of these devices; and to assess whether it is practicable to utilize the non-target resources when the harvest is unavailable. The amendment bars the Secretary of Commerce from implementing any measures to reduce incidental mortality of non-target fishery resources in the shrimp trawl fishery until this program is submitted to Congress. The amendment was adopted on a roll call vote of 18–9, as follows:

Rollcall No. 1.

Bill No. H.R. 39.

Short title—Magnuson Act.

Amendment or matter voted on: Tauzin amendment No. 3.

Total—Yeas 18; Nays 9.

	Yeas	Nays	Present		Yeas	Nays	Present
Mr. Young (Chairman)	X			Mr. Miller		X	
Mr. Hansen	X			Mr. Rahall		X	
Mr. Saxton				Mr. Vento		X	
Mr. Gallegly				Mr. Kildee		X	
Mr. Duncan				Mr. Williams			
Mr. Hefley	X			Mr. Gejdenson			
Mr. Doolittle				Mr. Richardson			
Mr. Allard				Mr. DeFazio		X	
Mr. Gilchrest		X		Mr. Faleomavaega			
Mr. Calvert				Mr. Johnson			
Mr. Pombo	X			Mr. Abercrombie		X	
Mr. Torkildsen	X			Mr. Studts		X	
Mr. Hayworth	X			Mr. Tauzin	X		
Mr. Cremeans	X			Mr. Ortiz	X		
Mrs. Cubin	X			Mr. Dooley	X		
Mr. Cooley				Mr. Romero-Barceló			
Mrs. Chenoweth	X			Mr. Deal			
Mrs. Smith	X			Mr. Hinchey		X	
Mr. Radanovich				Mr. Underwood			
Mr. Jones	X			Mr. Farr			
Mr. Thornberry	X						
Mr. Hastings	X						
Mr. Metcalf	X						
Mr. Longley	X						
Mr. Shadegg							

Congressman Tauzin offered an amendment to make discretionary a requirement in H.R. 39 that the Councils establish conservation and management measures to minimize adverse impacts on habitat caused by fishing as a part of Fishery Management Plans and modified the requirement by adding the phrase “to the extent practicable.” The amendment was adopted on a roll call vote of 14–9, as follows:

Rollcall No. 2.

Bill No. H.R. 39.

Short title—Magnuson Act.

Amendment or matter voted on: Tauzin amendment No. 4.

Total—Yeas 14; Nays 9.

	Yeas	Nays	Present		Yeas	Nays	Present
Mr. Young (Chairman)	X	.....	.....	Mr. Miller .....	.....	.....	.....
Mr. Hansen	X	.....	.....	Mr. Rahall .....	.....	X	.....
Mr. Saxton .....	.....	.....	.....	Mr. Vento .....	.....	X	.....
Mr. Gallegly .....	.....	.....	.....	Mr. Kildee .....	.....	X	.....
Mr. Duncan .....	.....	.....	.....	Mr. Williams .....	.....	.....	.....
Mr. Hefley	X	.....	.....	Mr. Gejdenson .....	.....	X	.....
Mr. Doolittle .....	.....	.....	.....	Mr. Richardson .....	.....	.....	.....
Mr. Allard .....	.....	.....	.....	Mr. DeFazio .....	.....	X	.....
Mr. Gilchrest .....	.....	.....	.....	Mr. Faleomavaega .....	.....	.....	.....
Mr. Calvert .....	.....	.....	.....	Mr. Johnson .....	.....	.....	.....
Mr. Pombo .....	.....	.....	.....	Mr. Abercrombie .....	.....	X	.....
Mr. Torkildsen .....	.....	X	.....	Mr. Studds .....	.....	X	.....
Mr. Hayworth	X	.....	.....	Mr. Tauzin	X	.....	.....
Mr. Cremeans	X	.....	.....	Mr. Ortiz	X	.....	.....
Mrs. Cubin	X	.....	.....	Mr. Dooley	X	.....	.....
Mr. Cooley .....	.....	.....	.....	Mr. Romero-Barceló .....	.....	.....	.....
Mrs. Chenoweth	X	.....	.....	Mr. Deal .....	.....	.....	.....
Mrs. Smith	X	.....	.....	Mr. Hinchey .....	.....	X	.....
Mr. Radanovich .....	.....	.....	.....	Mr. Underwood .....	.....	.....	.....
Mr. Jones	X	.....	.....	Mr. Farr .....	.....	.....	.....
Mr. Thornberry .....	.....	.....	.....	.....	.....	.....	.....
Mr. Hastings	X	.....	.....	.....	.....	.....	.....
Mr. Metcalf	X	.....	.....	.....	.....	.....	.....
Mr. Longley .....	.....	.....	.....	.....	.....	.....	.....
Mr. Shadegg .....	.....	.....	.....	.....	.....	.....	.....

Congressman Tauzin offered an amendment to rescind \$6 million of the funds made available under Public Law 103-317; to prohibit implementation of the 1994 Biological Opinion on Shrimp Trawling in the Southeastern United States under the Sea Turtle Conservation Regulations; and to deem that the Biological Opinion dated August 19, 1992, on shrimp fishing in the Southeastern United States satisfies the requirements of Section 7 of the Endangered Species Act as to the use of turtle excluder devices. The amendment was ruled nongermane to H.R. 39.

The Young amendment in the nature of a substitute, as amended, was adopted by voice vote, and H.R. 39 was ordered favorably reported to the House of Representatives in the presence of a quorum by voice vote.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section cites the bill as the “Fishery Conservation and Management Amendments of 1995”.

SECTION 2. AMENDMENT OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

This section specifies that amendments in the bill are to the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

SECTION 3. FINDINGS, PURPOSES, AND POLICY

This section amends the findings, purposes, and policy of the Magnuson Act to give greater emphasis to conserving essential fishery habitat and minimizing bycatch, and to make clear that

fisheries management decisions are to be made in a fair and equitable manner.

SECTION 4. DEFINITION

Subsections (b)(1), (b)(2), and (b)(3) make technical changes to existing definitions of “fish”, “driftnet fishing”, and “Commission”.

Subsections (b)(4), (b)(5), and (b)(6) add new definitions or modify existing definitions for “bycatch”, “economic discards”, “regulatory discards”, “essential fishery habit”, “optimum” (with respect to yield from a fishery), “overfishing”, “rebuilding program”, and “total allowable catch”.

Section 4(b)(4) amends the definition of optimum yield. The Committee recognizes that, while maximum sustainable yield (MSY) should normally serve as the upper limit of harvest in a fishery, the original drafters of the Magnuson Act believed that there could be circumstances that dictate a harvest above MSY to achieve management goals. For this reason, the language of the Magnuson Act as first enacted in 1976 allowed optimum yield to be modified below or above MSY for social, economic, or ecological factors. While the Committee debate this issue and expressed concern about the consequences of exceeding MSY, the flexibility of the optimum yield definition was not changed, except in the case of fisheries classified as overfished. The Committee is concerned that exceeding MSY in these fisheries could exacerbate the biological problems conforming these fish stocks. For this reason, the bill requires that, in the case of an overfished stock, harvest levels should not be allowed to exceed the MSY level.

Section 4(b)(6) adds a definition of overfishing which is identical to that provided in the guidelines for Fishery Management Plans found 50 Code of Federal Regulations 602. It recognizes that fisheries management is imprecise and that harvests do occur above or below levels set under Fishery Management Plans. However, these fluctuations in harvest levels should be accounted for to ensure that the ability of a fishery to produce MSY on a continuing basis is not jeopardized.

SECTION 5. FOREIGN FISHING

Subsection (a) makes a technical change to reference new permits being required for transshipment of fish at sea. It also authorizes the Secretary of Commerce to issue permits allowing foreign vessels to transport unprocessed fish to a foreign country from a point in Federal or State waters (other than internal waters). In doing so, it requires that the Secretary first determine that U.S. vessels that are comparable in function and cost have not indicated an interest in performing the transshipment.

Subsection (b) requires that a Fishery Management Plan be prepared under section 303 before any allocation to harvest fish may be made to a foreign fishing vessel under section 201. It also stipulates that the Secretary of Commerce may not approve a foreign fishing vessel application for a permit to fish for Atlantic mackerel or herring unless the appropriate Council has recommended that the Secretary approve the application.

Subsection (c) changes the time required for Congressional review of a Governing International Fishery Agreement from 60 days

of continuous session to 120 calendar days, not counting those days when Congress has adjourned sine die.

Subsection (d) makes a technical correction regarding “special areas” in the Bering Sea.

SECTION 6. LARGE-SCALE DRIFTNET FISHING

This section deletes the requirement for an annual report on driftnet fishing but maintains the requirement that the Secretary of Commerce supply annually to Congress a list of those nations engaged in driftnet fishing.

SECTION 7. NATIONAL STANDARD FOR FISHERY CONSERVATION AND MANAGEMENT TO MINIMIZE BYCATCH

This section adds a new national standard to the Magnuson Act requiring that conservation and management measures, to the maximum extent practicable, minimize bycatch.

The issue of bycatch reduction and the reduction of discard mortality have been identified by the Committee as one of the most important challenges facing fisheries managers today. There has been a dramatic reduction in the population levels of stocks of fish worldwide. One identifiable cause in the U.S. fisheries has been bycatch and the needless waste of commercially harvestable fish and the disposal of juvenile and other fish.

The Committee intends that reduction of bycatch should be a goal of all Fishery Management Plans. It is unlikely, however, that any fishery—recreational or commercial—can occur without some bycatch being taken. The amendment contained in this section thus requires that bycatch be minimized to the maximum extent practicable, not eliminated. While the Committee recognizes that it will be very difficult to eliminate all bycatch, it is clear that Councils and fishermen should continually look for innovative ways to make significant reductions in bycatch and in the mortality of discards.

SECTION 8. REGIONAL FISHERY MANAGEMENT COUNCILS

Subsection (a) adds North Carolina to the Mid-Atlantic Fishery Management Council. This provision adds two new seats to the Council, increasing the number of voting members from 19 to 21.

The rest of section 8 contains provisions intended to reform the Council process and minimize conflicts of interest. Subsection (b) provides for mandatory expulsion from the Council for a knowing violation of conflict of interest provisions, failure to file a disclosure form, or filing a false financial disclosure form, and clarifies that Council appointments should be made from a balance of qualified individuals from commercial or recreational industry groups and other interested parties.

Subsection (c) provides that only public and tribal members of a Council will be paid for serving. The Committee is aware that in some cases States are designating as their representative on the Council individuals who are not State employees. While this is a matter of State discretion, it is not, and never has been the intent of the Magnuson Act that State representatives or their designee receive compensation, regardless of their affiliation with the State. This language clarifies that fact. It also reduces the compensation

rate of Council members to the daily rate of GS-15, Step 1, effective January 1, 1996, as the current rate of GS-16 no longer exists.

Subsection (d) requires a Council to hold a roll call vote at the request of any voting member. It also requires official Council records to identify roll call votes and specify how each member voted.

Subsection (e) expands the requirement of Councils to comment on and make recommendations regarding activities affecting essential fishery habitat and requires timely response from Federal agencies. This legislation maintains the Councils' ability to provide comments and recommendations to State or Federal agencies on actions or proposed actions which may affect identified essential fishery habitat. In the past, however, Councils' comments to State and Federal agencies frequently have not been given the attention that they deserved. To address this, the Councils will still be the first entity to identify any potential threats to essential habitat, but the bill requires that they also notify the Secretary of Commerce of their findings. The Secretary must then notify and comment to the appropriate Federal agency head on the agency's action.

Subsection (h) expands the procedural requirements for Councils to allow greater public notice of meetings, clarifies the information that must be provided with public testimony, requires that detailed minutes of meetings, be kept, and allows additions to the Council agenda. These requirements are similar to those under the Federal Advisory Committee Act and are intended to improve the Council process.

Subsection (i) increases the financial information that must be reported on financial disclosure forms; deletes the requirement that Council executive directors file financial disclosure forms; and subjects them to penalties for conflict of interest.

Provisions within this section to minimize conflicts of interest on the Councils and to reform the Council process were difficult issues for the Committee to resolve. Addressing the potential conflict of interest by Council members was particularly difficult. While the Magnuson Act requires that members of the Councils be selected for their expertise in fishery-related fields, including recreational and commercial fishing, it is not clear when they should be precluded from voting on issues that enhance their own financial position.

Many industry representatives expressed concern with Congress altering the current Council composition or recusal requirements. They felt that those who have the greatest knowledge of the fishery and the fishing industry should continue to have a voice on the Councils which govern their activities. Many witnesses also testified that recusal requirements could be used by one industry or gear group to challenge the voting ability of opponents of their viewpoint.

As an example, concern was raised that recreational fishermen might use this recusal requirement to challenge the vote of commercial fishermen and change the voting ratios on some Councils. Recreational fishermen have raised similar concerns against members of the Council representing commercial interests. It is not the intention of the Committee to prevent Council members from voting unless there is a legitimate conflict to keep them from exercis-

ing their expertise. It is also not the intent of the Committee that a member who has been recused from voting cannot take part in the debate on an issue.

The Committee sought to maintain a balance which allowed representatives of the fishing industry to be represented on the Councils, but prohibit them from voting on those issues which would clearly give a member a personal financial gain which would not be comparably shared by others. Subsection (i) clarifies that recusal of a member should take place when the member has a personal interest which would be significantly affected and would only be shared by a minority of person within his industry or gear group.

This subsection requires the Secretary of Commerce, in consultation with the Councils, to establish rules that would prohibit a Council member from voting on a matter in which the member has an interest that would be "significantly affected" by a Council decision. This subsection establishes a procedure by which a Council member can determine whether he or she should refrain from voting on an issue, and establishes a means by which a Council member can challenge another member's right to vote, based on recusal rules. In each case, the determination on the right to vote would be made by the General Counsel of NOAA or the General Counsel's designee.

Subsection (i) also requires a Council member to recuse himself if not doing so would violate the rules, or if the General Counsel determines the Council member cannot vote.

This subsection also defines "an interest that would be significantly affected" as a personal financial benefit which would only be shared by a minority of other persons within the same industry sector or gear group whose activity would be directly affected by the Council's action.

It is important to note that the Committee continues to support the existing Regional Fishery Management Council system. The Council system has participated in fishery management and conservation since the inception of the Magnuson Act. Every time Congress has reauthorized the Magnuson Act, new tools are given to the Councils to make their management and conservation duties clearer and more defined. This section is intended to address concerns that Council members are making decisions which could potentially benefit them financially, and improve and reform the Council process, but not to fundamentally change the existing Council system.

SECTION 9. CONTENTS OF FISHERY MANAGEMENT PLANS

Subsection (a)(1) adds a new requirement that bycatch be recorded and reported by standardized reporting methods as developed by the Councils.

This subsection also adds requirements that Fishery Management Plans include a measurable and objective definition of overfishing, and mandates the implementation of rebuilding programs if necessary.

The subsection adds that Councils should, when drafting Fishery Management Plans, include measures which consider the safety of life at sea, minimize bycatch to the maximum extent practicable,

and reduce the mortality caused by the economic and regulatory discards in the fishery.

Subsection (a)(1) also requires a description of essential habitat in Fishery Management Plans. This reauthorization, for the first time, defines and establishes an identification process in the Magnuson Act for "essential fishery habitat." While the Committee believes that it is within the responsibility of the Councils and the Secretary of Commerce to identify and protect habitat that is essential for the long-term productivity of the fishery, the bill does not grant the Councils or the Secretary predominant management authority over the use of areas that have been identified as essential fishery habitat. Instead, the essential fishery habitat language provides resource management agencies with the information on which to base decisions on actions which have the potential to effect that habitat.

The bill establishes a process which relies upon the Councils and the data and personnel of the Department of Commerce to describe and identify essential fishery habitat. The Secretary of Commerce will publish guidelines for the Councils to follow when describing the essential habitat for each fishery. In each Fishery Management Plan, Councils will describe "essential fishery habitat" for the fishery based on the guidelines developed by the Secretary. The Secretary, with the Secretary of Interior (acting through the U.S. Fish and Wildlife Service), will then identify specific essential habitat for that fishery.

Subsection (a)(1) also requires that those Fishery Management Plans which require observers, be fair and equitable to all fishing vessels and fish processing vessels, be consistent with other applicable laws, and take into account the safety of both observers and fishermen. This subsection authorizes Councils to establish fees to cover the costs of observers.

Subsection (a)(2) requires Councils to amend existing Fishery Management Plans, no later than 18 months after date of enactment, to include the new requirements stated above.

Subsection (a)(3) requires the North Pacific Fishery Management Council, by January 1, 1997, to require all onshore and offshore fish processors that process species under management of the Council to weigh the fish to ensure accurate measure of harvest.

Subsection (b)(4) allows Councils to use incentives and harvest preferences within gear groups to promote the avoidance of bycatch. The Committee has included this provision as a discretionary provision that Councils can use to innovatively reduce bycatch.

While it is clear that every fishery will be managed differently, it is the view of the Committee that incentives allow the Councils the flexibility to address bycatch concerns in different ways and can offer a financial reason for fishermen to voluntarily reduce their bycatch rather than penalizing those who do not follow the rules.

Subsection (b)(4) authorizes Councils to specify the allowable gear types for each fishery and establishes a process for evaluating new gear technologies. It is the Committee's intent to encourage the Councils to take a proactive approach to limiting gear types that may harm fisheries or essential fishery habitat or increase

bycatch. At the same time, the Committee does not wish to discourage the development of innovative gear types that could minimize bycatch and other negative impacts on the fishery.

Subsection (b)(4) also authorizes the assessment and specification of the effects which conservation and management measures will have on other fish stocks in the ecosystem. The subsection also authorizes Councils to reserve a portion of the total allowable catch to be used for research purposes.

The Committee recognizes that cooperation between the fishing industry and the Federal Government may be an efficient and cost-effective way to obtain good data on the status of fish stocks. For this reason, the Committee encourages the use of private vessels to gather data. In order to help reduce cost of data gathering programs, the Committee intends that the Councils be allowed to make available a portion of the allowable biological catch which could be harvested as part of a cooperative research effort.

Finally, the subsection authorizes Councils to establish conservation and management measures which, to the extent practicable, minimize effects on essential fishery habitat caused by fishing.

Subsection (c) requires the fishery impact statements required for each Fishery Management Plan be submitted to the Governors of affected States and to the House Committee on Resources and the Senate Committee on Commerce, Science, and Transportation.

SECTION 10. AMENDMENTS RELATING TO MISCELLANEOUS DUTIES OF SECRETARY

Subsection (a) requires the Secretary of Commerce to consult with the Coast Guard regarding Fishery Management Plan provisions to ensure that they take into account the safety of human life at sea.

Subsection (b) requires the Secretary of Commerce to establish Plan development teams to participate in the development of plans and amendments for management of highly migratory species. The teams shall consist of seven individuals who are knowledgeable about the particular fishery and are selected from members of the advisory committees and species working groups appointed under status implementing the relevant international fishery agreements and other interested persons.

Subsection (c) clarifies that the advisory committees appointed under laws implementing relevant international fishing agreements to which the United States is a party must approve any limited access system before it can be included in a Plan or Plan amendment developed by the Secretary of Commerce for Atlantic highly migratory species. The Committee agrees that the Secretary of Commerce has jurisdiction over Atlantic highly migratory species and this legislation does not return management of these species to any Council.

Subsection (d) requires the Secretary of Commerce to complete a program to develop technological devices and other changes in the fishery to minimize incidental mortality of non-target fishery resources in the course of shrimp trawl activities, to evaluate ecological impacts and the cost/benefit of such devices and to assess utilization of these non-target resources when harvest is unavoidable. It also requires that the Secretary not implement any measures to

reduce incidental mortality of non-target fishery resources in the course of shrimp trawl fishery until a detailed report on this is completed.

Subsection (e) establishes the Secretarial duties under new provisions dealing with essential habitat protection and overfishing. H.R. 39 requires the Secretary of Commerce, within one year, to establish guidelines to assist the Councils with the descriptions of essential fishery habitat, and to establish a schedule for the amendment of Fishery Management Plans to describe essential fishery habitat. The Secretary is also required, in cooperation with the Secretary of the Interior, to identify essential habitat for each fishery, based on the description supplied by a Council.

Other Federal agencies are required to consult the Secretary of Commerce on any action which the head of the agency has a reason to believe will result in the destruction or adverse modification of essential fishery habitat identified by the Secretary.

The Secretary of Commerce is required to comment on, or make recommendations regarding, Federal activities that may result in the destruction or adverse modification of essential habitat, and any Federal agency contacted by the Secretary regarding the destruction of essential fishery habitat must respond in writing within 15 days. The Secretary is also required to review and coordinate activities within the Department of Commerce and to coordinate with and provide information to other Federal agencies regarding essential fishery habitat conservation and enhancement.

The subsection clarifies that these requirements in the Magnuson Act do not absolve a Federal agency of other statutory obligations.

The subsection also amends section 304(i) of the Magnuson Act to add additional responsibilities for the Secretary of Commerce in identifying and addressing overfishing in the Nation's fisheries. This subsection requires the Secretary to report annually to Congress and the Councils on the status of fisheries and identify those fisheries which are "approaching a condition of being overfished." It also includes a definition of what constitutes a stock approaching a condition of being overfished.

If a fishery is approaching a condition of being overfished, the Secretary of Commerce shall estimate the time frame within which this will occur and make recommendations on what the Council should do to keep the stock from being overfished. The Secretary is also required to notify a Council if overfishing is occurring in a fishery under the Council's jurisdiction and request that action be taken to end overfishing and establish a rebuilding program. If the Council takes no action in one year to effectively address the problem, the Secretary, within nine months, is required to prepare an amendment to the Fishery Management Plan, or prepare a Plan if none exists, under existing procedures in the Magnuson Act.

If overfishing is occurring in a fishery managed under a Plan developed by the Secretary of Commerce, the Secretary must take action within one year to amend the Plan to end overfishing in the fishery and to establish any necessary rebuilding program.

The Secretary of Commerce is required to review the progress of any rebuilding program during the third year it is in effect and annually thereafter. If the rebuilding program is not meeting its

goals, the Secretary shall direct the Council to reassess the goals of the program and take action to correct the problem. Rebuilding programs may take into consideration those environmental factors which care beyond the control of the Council.

Subsection (f) adds a new subsection 304(j) to the Magnuson Act which establishes a time frame for Secretarial review of "covered implementing regulations" submitted by a Council. A covered implementing regulation is a proposed regulation to amend existing Federal regulations implementing a Fishery Management Plan, which does not have the effect of amending the Plan. The subsection also requires the Secretary of Commerce, after a public comment period, to either publish final regulations or notify the Council as to why the regulations have been changed or have not been published.

Subsection (g) requires the Secretary of Commerce to form the Pacific Region Scientific Review Group with the purpose of designing a three-year research plan to assess the status of Pacific fisheries stocks. The Secretary will carry out the research plan, including the use of chartered fishing boats, and may off-set the costs of the program by allowing vessel owners to retain and sell the catch. It is the Committee's intention that the research plan submitted by the Group to the Secretary shall also be available for review by Congress and the Pacific Fishery Management Council. The Committee is concerned that the Secretary consult with the Pacific Fishery Management Council in implementing the research plan and that the latitude of the Secretary to implement the plan be clarified and may address this during future consideration of the bill.

The Committee is aware that the West Coast commercial fishing industry, in an effort to obtain better data and reduce costs, has advocated the use of private vessels and facilities in a cooperative program with the Federal Government. To date, the National Marine Fisheries Service has not fully embraced this cooperative approach. This section requires the Secretary of Commerce to work with the commercial fishing industry in developing a research plan which would include the use of private vessels and facilities. The Committee intends that this research plan could serve as a model for similar plans in other parts of the country.

SECTION 11. EMERGENCY ACTIONS

This section amends section 305(c) of the Magnuson Act to allow emergency regulations to remain in effect for 180 days and allows an extension, following notice and public comment, for an additional 180 days if necessary. The extension of emergency regulations which mandate an area closure is allowed only if the Council, in conjunction with the Secretary, publishes a report on the status of the fishery, including a cost/benefit analysis of the closure. The Committee does not intend to prevent the extension of a closure. Instead, it intends to require Councils to supply data that supports the need for extension of the emergency regulations.

This section also allows the Secretary of Commerce to issue emergency regulations to protect public health.

SECTION 12. STATE JURISDICTION

Subsection (a) amends section 306(c)(1) of the Magnuson Act to require foreign vessels engaged in processing fish within internal waters to report on the amount of fish taken on board and the location where such fish were caught.

Subsection (b) authorizes the State of Alaska to enforce its laws or regulations for a fishery in Federal waters off its coast in cases where no Federal or State (for fisheries where the council has delegated management authority to the State) Fishery Management Plan exists, and if there is a legitimate State interest in conservation and management of the fishery. This authority would exist only until a federally approved Plan could be implemented. Fisheries currently managed pursuant to a Federal Plan could not be placed under State authority without the unanimous consent of the Council.

SECTION 13. PROHIBITED ACTS

Subsection (a) makes it a violation to steal, negligently damage, remove, or tamper with fishing gear owned by another person or fish contained in that fishing gear.

Subsection (b) makes it a violation for Council members to knowingly or willingly fail to disclose financial information.

Subsection (c) makes it clear that transshipment of fish without a permit is prohibited.

SECTION 14. HAROLD SPARCK BERING SEA COMMUNITY DEVELOPMENT QUOTA PROGRAM

This section codifies the existing Community Development Quota (CDQ) system for the Bering Sea and requires that an allocation of the total allowable catch will be reserved for the CDQ program. It also codifies the existing criteria for approval as a qualified CDQ community.

Western Alaska is one of the poorest, most underdeveloped areas in the United States. Sitting alongside the Bering Sea, the residents of this area, predominantly Alaska Natives—Yupik and Inupiat Eskimos and Aleuts—have watched the marine resources being exploited, first by foreign fleets and later by American distant water fleets. Due to lack of capital and opportunity, however, residents of Western Alaska communities had been unable to share any of the benefits of these resources.

These communities are isolated and have few natural resources other than fisheries with which to develop a solid, diversified economic base and stable, long-term employment. Unemployment rates are high, resulting in substantial social problems. The fisheries of the Bering Sea provide a means to develop the local economies, but the ability to participate in these fisheries is difficult because of the high capital investment needed for entry. CDQ allocations provide the means to initiate or support commercial fisheries activities which will result in sustainable, regionally-based commercial fisheries economies.

In 1991, the North Pacific Fishery Management Council (NPFMC) established the western Alaska CDQ program as part of the pollock Fishery Management Plan, which was implemented in

1992. The Council included the CDQ provision in the Management Plan, based on the determination that CDQs could spur economic development in nearby economically depressed coastal communities without greatly impacting the existing fishing industry.

The NPFMC allocated a total of 7.5 percent of the total allowable catch of Bering Sea pollock for the CDQ program. Fifty-six Bering Sea coastal communities are eligible to participate in the CDQ program and share this allocation.

In 1992, the NPFMC, in conjunction with a limited access plan for halibut and sablefish, expanded the CDQ program to authorize communities participating in the program to harvest 20 percent of the total allowable catch of Bering Sea sablefish and approximately 20 percent of Bering Sea halibut. The Secretary of Commerce adopted implementing regulations for this plan in 1993, but implementation did not occur until March of 1995.

The approved development projects which are being funded through the current CDQ program include: community services, fisheries and education training programs, processing and dock construction, fishing vessel procurement, and real income to participants. In 1994, benefits to the communities involved in the pollock CDQ program included: 45 people employed in management/administrative positions; 268 people employed in CDQ pollock fishing; 347 employed in other fisheries; 460 employed in other employment; approximately 100 educational scholarships awarded and more than 326 people receiving vocational training.

Because of these benefits, the Committee determined that it was important to continue the CDQ program and that, in addition to pollock, sablefish and halibut, the program should be expanded to allow communities participating in the program the opportunity to harvest a percentage of the total allowable catch of each Bering Sea fishery.

To accomplish that objective, section 14 of H.R. 39 amends section 313 of the Magnuson Act to require the NPFMC to establish, and the Secretary of Commerce to adopt, regulations implementing the western Alaska CDQ program as a permanent, stand-alone program. The subsection also requires the North Pacific Fishery Management Council to allocate the opportunity to harvest a percentage of the total allowable catch of each Bering Sea fishery to communities, or groups of communities, eligible to participate in the program.

The Committee expects that, for each Bering Sea fishery, the NPFMC, with the final approval of the Secretary, will allocate to the communities participating in the program a percentage that is adequate to ensure their significant and sustainable economic participation in the fishery.

SECTION 15. OBSERVERS

This section clarifies the rights of observers to bring civil action against the vessel or the vessel owner under the Magnuson Act and the Marine Mammal Protection Act for any illness, disability, injury, or death while serving as an observer on a vessel.

SECTION 16. INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS

The Committee believes that there are many tools available to Fishery Management Councils to use in the conservation and management of a fishery. This includes the use of limited access management systems. Recent efforts by the National Marine Fisheries Service to promote the development and implementation of Individual Transferable Quota (ITQ) systems above any other type of limited access system concern the Committee and are inappropriate. While ITQs may be a tool for managing fisheries, this is a decision that should be left to the Councils, and NMFS should not be forcing Councils to adopt this approach. It is also clear that ITQ systems are being implemented with no direction from Congress on how these systems should be developed and with no review of existing systems to evaluate their merits and pitfalls.

Because ITQ systems have the potential to fundamentally alter fisheries management in the U.S., the Committee believes they must be used with great caution. The Committee also believes that further evaluation and analysis of the impacts of these systems must be conducted before additional ITQ plans are adopted.

While H.R. 39 does not prohibit the Councils from establishing individual quota systems for the management of the fisheries under their jurisdiction, it is clear the Committee intends to provide some direction and guidance if this relatively new management system is to be employed in the future.

Subsection (a) expands the Councils' discretionary authority to establish limited access systems to include quota systems only if the quota systems meet the requirements of section 303(g), as added by this bill.

Subsection (b) adds a new subsection 303(g) to the Magnuson Act which establishes criteria for the establishment of individual quota systems; establishes who may hold a quota issued under an individual quota system; and establishes that quota shares issued under an individual quota system are a harvest privilege, not a property right, and may be revoked or limited by the Secretary of Commerce or the Councils at any time and without compensation. This subsection also requires that individual quota shares issued after enactment of this Act will sunset no later than seven years after date issued and upon expiration may be renewed, reallocated, or reissued as determined appropriate by the Council. It also clarifies that no other Federal agency may hold, administer, or reallocate quota shares under an individual quota system.

The Committee feels that it is important to make it clear that shares issued under an individual quota system are a harvest privilege only. Allocation of a quota share issued by a Council or the Secretary of Commerce under a Fishery Management Plan does not grant the holder with any rights to the resource. If, for conservation or management reasons, a Council determines that the total allowable catch in an individual quota system fishery should be reduced, even to zero, the holder of a quota share under this plan is not eligible for any compensation.

As has always been the case under the Magnuson Act, the Council may also amend, modify or replace a Fishery Management Plan at any time for the purpose of conservation and management of the

fishery. This authority applies to Plans which include a limited access provisions as well as any other Fishery Management Plan. If a Council determines that a Plan which includes an individual quota system needs to be repealed, replaced, or modified, no compensation would be due to shareholders.

Subsection (c) amends section 304(d) to authorize fees to be collected by the Secretary of Commerce for individual quota systems. Fees collected shall be used to directly offset implementation, management and enforcement costs of that system. Individual quota systems established prior to June 1, 1995, are exempt from fees for five years after the date of enactment of this bill.

Subsection (d) adds a new subsection 304(l) to the Magnuson Act which requires the Secretary of Commerce to establish a review panel to evaluate all limited access systems and develop recommendations for new and existing limited access systems. The review must be completed no later than September 30, 1997. The review panel will also issue recommendations to the Secretary and Councils with respect to appropriate revisions of individual quota systems established prior to June 1, 1995. Based on the recommendations of the review panel and the guidelines in this bill, the Secretary shall issue regulations on individual quota systems within one year of receipt of the review panel's recommendations.

In establishing the review panel required by this paragraph, the Committee intends that the Secretary take reasonable steps to obtain a geographic balance on the panel, a balance between harvesters and processors of seafood, and a balance of views regarding limited access systems.

Subsection (e) prohibits the Secretary from approving any new individual quota system until regulations on individual quota systems have been issued and unless they meet the guidelines established in 303(g).

SECTION 17. FISHING CAPACITY REDUCTION PROGRAMS

Subsection 17(a) adds a new section 316, Fishing Capacity Reduction Programs, to the Magnuson Act. The Committee recognizes that many fisheries in the U.S. have become overcapitalized and, as a result, are becoming increasingly difficult to conserve and manage. This section seeks to provide a tool for reducing overcapitalization in a fishery without cost to the General Treasury.

The new subsection 316(a) authorizes the Secretary of Commerce, with the concurrence of the Council that has jurisdiction over a fishery, to conduct a voluntary program to reduce fishing capacity in that fishery if the program is necessary for rebuilding, preventing overfishing, or generally improving the conservation or management of the fishery, or if requested to do so by the Council. To conduct such a program, a limited access plan must be in place for the fishery.

Subsection 316(b) specifies the requirements of any program implemented under Section 316. These include the reduction of fishing effort through the permanent removal from the fishery of vessels and permits; payments to scrap or otherwise render permanently unusable for fishing in the United States any vessels that are removed from the fishery; the establishment of a fee on participants in the fishery to fund the costs of the program; the establish-

ment of criteria to determine the types of vessels and permits that are eligible to participate in the program; and the identification of other sources of funding in addition to those specified under this section.

Subsection 316(c) authorizes the Secretary of Commerce to make payments to carry out an effort reduction program if a fee has been established in the fishery for which the program will take place. The total amount of payments by the Secretary cannot exceed the amount that the Secretary projects will be deposited in fees from the fishery.

Subsection 316(d) authorizes the Secretary of Commerce, with the concurrence of the majority of voting members of the Council with authority over the fishery, to establish an annual fee on participants in the fishery for which the fishing capacity reduction program is implemented. The amount of the fee shall be based on the value of the fishery; the projected number of participants and projected catch; and the direct cost of implementing the effort reduction program. Fees collected under this section shall be deposited into the Fisheries Conservation and Restoration Fund established under subsection 316(f).

Subsection 316(e) authorizes the establishment of an advisory panel, for any fishery for which a fishing capacity program is implemented, to advise the Secretary of Commerce regarding the program. Members of the panel will include Council and fishing industry representatives, as well as representatives from the Department of Commerce and the States affected by such program. Members on the panel will receive no compensation for their participation.

Subsection 316(f) establishes the Fisheries Conservation and Restoration Fund in the Treasury for the purposes of financing fishing capacity reduction programs. Deposits into the fund shall include fees assessed under this section; monies, subject to appropriation, from tariffs on fisheries imports; amounts appropriated for fisheries disasters; and any other amounts appropriated for the purposes of carrying out fishing capacity reduction programs.

Subsection 316(g) specifies that permits acquired under a fishing effort reduction program shall not be effective after the date of acquisition and shall not be reissued or replaced.

Subsection (b) of section 17 amends the Saltonstall-Kennedy Act to allow funds appropriated under that Act to be deposited into the Fishery Conservation and Restoration Fund to be used for fishing capacity reduction programs.

SECTION 18. CONSIDERATION OF ABILITY TO PAY PENALTIES

This section clarifies the Secretary's duty to assess a violator's ability to pay when assessing fines under the civil penalties section of the Magnuson Act.

SECTION 19. AUTHORIZATION OF APPROPRIATIONS

This section amends Title IV to authorize the Magnuson Act through FY 2000 and repeals obsolete provisions.

SECTION 20. TECHNICAL CORRECTIONS

When the United States and the USSR entered into an agreement delineating the maritime boundary in the Bering Sea between the two countries, they identified "special areas" which are located within the Russian EEZ but are inside the U.S. maritime boundary. The agreement specified that the U.S. would have authority to enforce the Magnuson Act and the Marine Mammal Protection Act in these special areas. Both Acts were amended to clarify this point, but provided that the authority would not be granted until the maritime boundary agreement went into effect. The U.S. is still waiting for Russia, as the successor to the USSR, to ratify the agreement.

In the interim, subsequent amendments to the Marine Mammal Protection Act inadvertently redesignated paragraph numbers in the definition section. As a result, when the maritime boundary agreement comes into force, key definitions in the Magnuson Act will be deleted. This section addresses this problem.

SECTION 21. CLERICAL AMENDMENTS

This section amends the Magnuson Act to replace "Committee on Merchant Marine and Fisheries" which was abolished at the beginning of the 104th Congress with "Committee on Resources" in each place it appears.

SECTION 22. PROVISIONS RELATING TO THE GULF OF MEXICO

Subsection (a) requires the Secretary of Commerce to develop and implement a systematic program for the assessment and annual reporting of the status of the fisheries in the Gulf of Mexico. It also provides guidelines for selecting participants for this program.

Subsection (b) requires the Secretary to develop a plan for the Gulf of Mexico region to collect, assess, and report statistics concerning fisheries. This subsection also provides guidelines for developing the plan.

Subsection (c) requires the Secretary to have an independent analysis conducted to assess the stock assessments and management of the Gulf of Mexico red snapper fishery. It provides guidelines for conducting this assessment and requires that the assessment is to be completed within one year of enactment of this Act. It is expected that the assessment will be used as the foundation for future management of this fishery and that any individual fishing quota plan for red snapper will be suspended until this assessment is completed.

SECTION 23. STUDY OF CONTRIBUTION OF BYCATCH TO CHARITABLE ORGANIZATIONS

This section requires the Secretary of Commerce to study the contribution of bycatch by commercial fishermen to charitable organizations. It provides guidelines for the study and requires a report to Congress within one year of the date of enactment of this Act. The Committee is concerned that the financial benefit associated with charitable contribution of bycatch may provide a disincentive

to reduce bycatch. The amendment seeks to provide the Committee with the data necessary to determine if this is actually the case.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 39 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 39. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 39 does not contain any new budget authority, credit authority, or a decrease in revenues or increase or decreases in tax expenditures. The bill does contain new spending authority and an increase in revenues to the Federal Government.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 39.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 39 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 28, 1995.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 39, the Fishery Conservation and Management Amendments of 1995.

Enactment of H.R. 39 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them,

Sincerely,

JAMES L. BLUM
 (For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 39.
2. Bill title: Fishery Conservation and Management Amendments of 1995.
3. Bill status: As ordered reported by the House Committee on Resources on May 10, 1995.
4. Bill purpose: H.R. 39 would amend the Magnuson Fishery Conservation and Management Act, which governs federal regulation of commercial and recreational fishing within the exclusive economic zone of the United States. The bill would authorize funding for fisheries management programs and other activities carried out under the Magnuson Act through fiscal year 2000. In addition, the bill would make a number of changes in the way the act is currently implemented by: (1) reforming certain practices of the eight regional fishery councils that are responsible for local fisheries management, and (2) expanding the authorities and responsibilities of the National Oceanic and Atmospheric Administration (NOAA), which oversees the fisheries management program nationally. Other sections of H.R. 39 would address fishery conservation issues such as overfishing and damage to essential habitat. Major provisions would establish:

additional requirements that the regional councils must incorporate into existing fisheries management plans, including programs to rebuild depleted fish stocks and measures to minimize harm to non-targeted species;

fees on foreign vessels that transport fish product from point within U.S. federal or state waters to foreign ports; and

specifications for limited access systems and other optional plan elements, including special rules for implementing individual fishery quota systems (IFQs).

Finally, H.R. 39 would authorize the Secretary of Commerce to institute fishing capacity reduction programs to ameliorate overfishing in certain areas. Such programs would enable the Secretary to reduce permanently the number of fishing concerns oper-

ating in eligible fisheries by purchasing fishing vessels or federal permits from voluntary sellers. Payments to local fishing concerns would be financed through a newly created Fisheries Conservation and Restoration Fund (FCRF), which would receive: (1) grants from the Promote and Develop Fisheries Fund, (2) amounts appropriated for fisheries disasters, (3) other federal appropriations made for the program, and (4) fees collected from businesses that remain in the market. (FCRF) balances would be invested, but the bill makes no provision for deposit or spending of any interest that may be earned.) Spending from the fund would not be subject to appropriation action but in practice would be limited by the requirement that total payments for any particular fishery could not exceed the Secretary's estimate of fees that would be collected over the following 15 years from remaining businesses. The fees would have to be set at a level sufficient to cover the total amount estimated to be necessary for capacity reduction payments but could not exceed five percent of the harvested value of fish for any permit holder.

5. Estimated cost to the Federal Government: Although authorizations for funding under the Magnuson Act expired in 1992, Congress has continued to appropriate between \$98 million and \$127 million a year for ongoing fisheries management programs. H.R. 39 would authorize new appropriations totaling \$610 million for these activities over the next five years. Also, section 17 of the bill would implicitly authorize additional appropriations to capitalize the FCRF. Other provisions would create new federal revenues, new offsetting receipts, and new mandatory spending authority from those revenues and offsetting receipts. The following table summarizes the estimated budgetary effects of the bill.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
SPENDING SUBJECT TO APPROPRIATIONS ACTION						
Spending under current law:						
Budget authority ¹	127					
Estimated outlays	104	41	15	8		
Proposed changes:						
Estimated authorizations		164	118	122	126	130
Estimated outlays		93	127	113	124	128
Spending under H.R. 39:						
Authorization level ¹	127	164	118	122	126	130
Estimated outlays	104	134	142	121	124	128
ADDITIONAL REVENUES AND MANDATORY SPENDING²						
Estimated revenues		2	3	3	3	3
Direct spending:						
Spending of revenues:						
Estimated budget authority		2	3	3	3	3
Estimated outlays						
Offsetting receipts:						
Estimated budget authority		(³)	(³)	-2	-4	-5
Estimated outlays		(³)	(³)	-2	-4	-5
Spending from offsetting receipts:						
Estimated budget authority				2	4	4
Estimated outlays				2	4	4

¹ The 1995 level is the amount appropriated for that year.

² The revenues and direct spending created by the bill are new; no such revenues and spending exist under current law.

³ Less than \$500,000.

The costs of this bill fall within budget function 300.

6. Basis of estimate: Authorizations of Appropriations. For purposes of this estimate, CBO has assumed that H.R. 39 would be enacted by the end of fiscal year 1995 and that the entire amounts specifically authorized or estimated to be necessary would be appropriated for each fiscal year. Outlays have been estimated on the basis of historical spending patterns for ongoing fisheries programs and on information provided by NOAA.

For fiscal years 1997 through 2000, the authorization level is equal to the amounts specified by section 19. The estimated authorization for 1996 includes \$114 million specified by section 19 and \$50 million estimated for payments to New England fishing concerns under section 17.

CBO expects that the Northeast groundfish fishery would be the only area to adopt a capacity reduction program over the next several years, in conjunction with ongoing plans to scale back groundfish landings by as much as 80 percent in 1996. The total cost of reducing fishing capacity to a level consistent with these plans is highly uncertain and could exceed \$100 million. Because section 17(c) would limit buyout payments to total projected fees collected from remaining businesses, however, the maximum amount that the government could spend for this purpose would be about \$50 million, which is five percent of the estimated value of the anticipated allowable catch over the 1997–2011 period. In order to implement this first capacity reduction program, the \$50 million would have to be provided from federal funds. The majority of buyouts in the Northeast would have to occur soon after the new harvest levels are implemented in 1996—well before any permit fee collections would be available for that purpose. Therefore, CBO has assumed that the \$50 million needed for such payments would be appropriated for fiscal year 1996 and spent over the following 18 months. The \$50 million would then be recouped by the fund through groundfish permit fees collected over the next 15 years. Because these fees would then be available to finance buyouts in other fisheries that may adopt programs in the future, CBO estimates that no other federal appropriations for that purpose would be necessary.

This estimate is based on information provided by NOAA regarding the projected tonnage and value of groundfish landings in the New England region. We have also relied on information provided by the regional councils regarding their present fisheries management plans. CBO has assumed that no other fishery would adopt a capacity reduction program under section 17 in the near future. We have further assumed that all of the cost of making buyout payments initially would have to be financed by new appropriations because funds from other authorized federal sources would not be available. Some funding for payments could be obtained by transferring money from the Promote and Develop Fisheries Fund, but there is no basis for assuming that NOAA would divert these funds from other ongoing projects. It also appears unlikely that the agency would use previously appropriated disaster funds for payments under section 17 because such funds—if available—may already be used for similar assistance payments under less restrictive programs. If either of these sources of funds were used, CBO estimates that there would be no resulting increase in mandatory

outlays because new direct spending from the FCRF would be offset by spending reductions in the other accounts. To the extent that any funds would be diverted from these other programs, the need for discretionary appropriations would be reduced accordingly.

Revenues. Section 17 would require NOAA to impose an annual fee on holders of federal fishing permits who continue operating in a fishery subject to a reduced capacity program. CBO estimates that permit fees imposed for Atlantic groundfish (the only fishery likely to adopt a buyout program in the near future) would generate additional annual federal revenues, beginning in 1997. Assuming that the fee would be set at five percent of the harvested value of fish, the maximum allowed under the bill, we estimate that revenues would total about \$2 million in 1997, and would rise to about \$4 million by fiscal year 2005.

Direct Spending. Several provisions would result in changes in direct spending: Fees collected from fishing concerns in the Northeast would be deposited to the FCRF, from which they would be available without further appropriation for capacity reduction programs in other fisheries. These fees would result in new budget authority of between \$2 million and \$4 million annually beginning in 1997. But, because CBO does not anticipate that other fisheries would adopt such programs over the next five years, no outlays associated with the new spending authority are shown in the table.

Section 5 of H.R. 39 would amend section 204 of the Act, which governs the regulation of foreign fishing vessels operating in United States jurisdictional waters. Specifically, this section would authorize NOAA to issue permits to foreign vessel operators that transport fish products from United States waters to foreign ports. Vessel operators would pay fees to cover the costs of issuing transshipment permits. Like other fees imposed under section 204, transshipment fees would be deposited as offsetting receipts in the general fund of the U.S. Treasury. Based on information obtained from NOAA, we estimate that fee collections would total about \$200,000 annually beginning in fiscal year 1996. Spending to process the applications would be subject to appropriation action within the overall authorization levels.

Section 16 would establish new requirements, restrictions, and fees for IFQs, which are used to limit access to a particular fishery by allocating shares of the total allowable catch among the participating businesses. This section would require that fees be imposed to cover the management and enforcement costs of any fishery that becomes subject to an IFQ system after enactment of this bill. There are three types of IFQ fees, each of which would be based on the value of fish authorized to be harvested each year under an IFQ system: an initial allocation fee of one percent; an annual fee of up to four percent; and a transfer fee equal to one percent. Based on information provided by NOAA, CBO estimates that the federal government would collect new fees totalling about \$2 million in fiscal year 1999, the first year that the new IFQ system would be implemented. Fee collections would rise to about \$5 million in fiscal year 2000 and would continue to grow as more councils adopt the system. Under H.R. 39, CBO believes that the fees from IFQ fisheries would likely be treated as offsetting receipts and would be available for spending without further appropriation action. Be-

cause the estimated increase in offsetting receipts would be offset by additional direct spending, this provision would have no net impact on the federal budget.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 39 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill. For direct spending, we estimate increased offsetting receipts and spending from some of those receipts so that the net outlay change would be less than \$500,000 in each year. Fees imposed under section 17 would generate additional revenues. The following table shows the estimated pay-as-you-go impact of this bill.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998
Change in outlays	0	0	0	0
Change in receipts	0	0	2	3

8. Estimated cost to State and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Rachel Robertson and Deborah Reis.

12. Estimate approved by: Robert A. Sunshine for Paul N. Van de Water, Assistant Director for Budget Analysis.

DEPARTMENTAL REPORTS

The Committee has received the following departmental report on H.R. 39.

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 10, 1995.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This presents the views of the Department of Justice on H.R. 39, the "Fishery Conservation and Management Amendments of 1995." This bill would amend the Magnuson Fishery Management Act ("Act"), which establishes a number of regional federal fishery management councils ("FMCs"). These FMCs are unique creations within the federal government and present very difficult constitutional questions regarding their structure and functions. Foremost among the relevant constitutional considerations is the Appointments Clause, which requires that any official within the federal government who exercises significant authority be appointed by one of the constitutionally prescribed methods. See U.S. Const. art. II, §2, cl. 2. FMCs are federal entities, see e.g., Litigating Authority of the Regional Fishery Management Councils, 4B Op. O.L.C. 778 (1980); Personal Tort Liability of regional Fishery Management Council Members and Staff, 1 Op. O.L.C. 239 (1977), but they comprise members who are not appointed in conformity with the Appointments Clause. Therefore, they may not be

delegated significant authority. See *Buckley v. Valeo*, 424 U.S. 1, 124–41 (1976) (en banc); *United States v. Germaine*, 99 U.S. 508 (1879).

Two provisions of H.R. 39 threaten this delicate constitutional equipoise of the FMCs. First, § 11 would strip regional directors of their authority to vote in connection with emergency actions. Regional directors act as agents of the Secretary. As the statute currently operates, the Secretary, through the regional directors, has the authority to veto any emergency action with which he disagrees and to approve any action with which he concurs. From a constitutional standpoint, then, it can be said that the FMC plays only an advisory function and that ultimate authority is vested in the Secretary. For this reason, the FMC's role is constitutionally permissible. Because the amendment contained in H.R. 39 would deprive the regional directors of their vote, it could no longer be said that the FMCs play a merely advisory role. H.R. 39 would vest the FMCs with significant authority with respect to emergency actions. As explained above, this would violate the Appointments Clause.

A second troubling provision is found in § 16(b), which would establish that “[a]n individual quota system . . . may be revoked, limited, or terminated at any time by the Secretary or the Council having authority over the fishery for which it is issued. . . .” The power to revoke, limit, or terminate an individual quota system represents significant authority within the cognizance of the Appointments Clause. See *Buckley*, 424 U.S. at 138–41. To avoid violating the Constitution, we suggest that this provision be redrafted to subject any action by an FMC to approval by the Secretary or to authorize FMCs only to recommend revocation, limitation, or termination and vest exclusive authority to take such action in the Secretary.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

KENT MARKUS,
Acting Assistant Attorney General.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

AN ACT To provide for the conservation and management of the fisheries, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Magnuson Fishery Conservation and Management Act”.

TABLE OF CONTENTS

- Sec. 2. Findings, purposes, and policy.
- Sec. 3. Definitions.

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

* * * * *

[TITLE IV—MISCELLANEOUS PROVISIONS

- [Sec. 402. Repeals.
- [Sec. 403. Fishermen's Protective Act amendments.
- [Sec. 404. Marine Mammal Protection Act amendment.
- [Sec. 405. Atlantic Tunas Convention Act amendment.
- [Sec. 406. Authorization of appropriations.]

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Authorization of appropriations.

SEC. 2. FINDINGS, PURPOSES AND POLICY.

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

(1) * * *

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, [and] (B) other such stocks have been so substantially reduced in number that they could become similarly threatened, and (C) losses of essential fishery habitat can diminish the ability of stocks of fish to survive.

* * * * *

(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 stocks, to insure conservation, to provide long-term conservation of essential fishery habitat, and to realize the full potential of the Nation's fishery resources.

* * * * *

(9) Continuing loss of essential fishery habitat poses a long-term threat to the viability of commercial and recreational fisheries of the United States. To conserve and manage the fishery resources of the United States, increased attention must be given to the protection of this habitat.

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

(1) * * *

* * * * *

(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; [and]

(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[.];

(7) to promote the conservation of essential fishery habitat in the review of projects that affect essential fishery habitat; and

(8) to ensure that conservation and management decisions with respect to the Nation's fishery resources are made in a fair and equitable manner.

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

(1) * * *

* * * * *

(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; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that *minimize bycatch* and avoid unnecessary waste of fish; and is workable and effective;

* * * * *

SEC. 3. DEFINITIONS.

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

(1) * * *

* * * * *

(4) The term "Continental Shelf fishery resources" means the following:

[COLEENTERATA] 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—*Geryon quinquedens*] *Deep-sea Red Crab—Chaceon quinquedens*.

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*.

* * * * *

(16) 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 one and one-half miles] 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.

(17) The term “Marine Fisheries Commission” means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the [Pacific Marine Fisheries Commission] *Pacific States Marine Fisheries Commission*

* * * * *

[(21) The term “optimum”, with respect to the yield from a fishery, means the amount of fish—

[(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

[(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.]

(21) *The term “optimum”, with respect to yield from a fishery, means the amount of fish—*

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B)(i) which, subject to clause (ii), is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor; or

(ii) which, in the case of a fishery which has been classified by the Secretary as overfished, is prescribed as such on the basis of the maximum sustainable yield as reduced to allow for the rebuilding of the fishery to a level consistent with producing maximum sustainable yield on a continuing basis.

* * * * *

(31) The term “United States harvested fish” means fish caught, taken, or harvested by vessels of the United States

within any fishery [for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented] regulated under this Act.

* * * * *

(34) The term "bycatch" means fish which are harvested by a fishing vessel, but which are not sold or kept for personal use, including economic discards and regulatory discards.

(35) The term "economic discards" means fish which are the target of a fishery, but which are not retained by the fishing vessel which harvested them because they are of an undesirable size, sex, or quality, or for other economic reasons.

(36) The term "regulatory discards" means fish caught in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

(37) The term "essential fishery habitat" means those waters necessary to fish for spawning, breeding, or growth to maturity.

(38) The term "overfishing" means a level or rate of fishing mortality that jeopardizes the ability of a stock of fish to produce maximum sustainable yield on a continuing basis.

(39) The term "rebuilding program" means those conservation and management measures necessary to restore the ability of a stock of fish to produce maximum sustainable yield on a continuing basis.

(40) The term "total allowable catch" means the total amount of fish in a fishery that may be harvested in a fishing season, as established in accordance with a fishery management plan for the fishery.

* * * * *

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

SEC. 201. FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, within the special areas, or for anadromous species or Continental Shelf fishery resources beyond such zone or areas, unless such foreign fishing—

[(1) is authorized under subsection (b) or (c);]

(1) is authorized under subsection (b) or (c) or under a permit issued under section 204(d);

* * * * *

(e) ALLOCATION OF ALLOWABLE LEVEL.—(1)(A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States. *No allocation may be made for a fishery that is not subject to a fishery management plan prepared under section 303.*

* * * * *

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) * * *

* * * * *

(iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone *or special areas* for its domestic consumption;

* * * * *

SEC. 203. CONGRESSIONAL OVERSIGHT OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a) **IN GENERAL.**—No governing international fishery agreement shall become effective with respect to the United States before the close of the first [60 calendar days of continuous session of the Congress] *120 calendar days (excluding any days in a period for which the Congress is adjourned sine die)* after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) **REFERRAL TO COMMITTEES.**—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on [Merchant Marine and Fisheries] *Resources*, and in the Senate to the Committees on Commerce, Science, and Transportation and on Foreign Relations.

[(c) **COMPUTATION OF 60-DAY PERIOD.**—For purposes of subsection (a)—

[(1) continuity of session is broken only by an adjournment of Congress sine die; and

[(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.]

[(d)] (c) **CONGRESSIONAL PROCEDURES.**—

(1) * * *

(2) **DEFINITION.**—For purposes of this subsection, the term “fishery agreement resolution” refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on [Merchant Marine and Fisheries] *Resources* of the House of Representatives or the Committee on Commerce, Science, and Transportation or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which

the document described in subsection (a) relating to that agreement is transmitted to the Congress.

* * * * *

SEC. 204. PERMITS FOR FOREIGN FISHING.

(a) * * *

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—

(1) * * *

* * * * *

(6) APPROVAL.—(A) After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to [subparagraph (B)] *subparagraphs (B) and (C)*, the application, if he determines that the fishing described in the application will meet the requirements of this Act, or he may disapprove all or any portion of the application.

* * * * *

(C)(i) The Secretary may not approve an application which proposes harvest of Atlantic mackerel or Atlantic herring by one or more foreign fishing vessels unless the appropriate Council has recommended that the Secretary approve the portion of the application making that proposal and the Secretary includes the appropriate conditions and restrictions recommended by the Council.

(ii) For purposes of this subparagraph, the term “appropriate Council” means the Mid-Atlantic Fishery Management Council with respect to Atlantic mackerel and the New England Fishery Management Council with respect to Atlantic herring.

* * * * *

(d) TRANSSHIPMENT PERMITS.—

(1) AUTHORITY TO ISSUE PERMITS.—*The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish products at sea from a point within the boundaries of any State or the exclusive economic zone to a point outside the United States to any person who—*

(A) submits an application which is approved by the Secretary under paragraph (3); and

(B) pays a fee imposed under paragraph (7).

(2) TRANSMITTAL.—*Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any interested State.*

(3) *APPROVAL OF APPLICATION.*—The Secretary may approve an application for a permit under this section if the Secretary determines that—

(A) the transportation of fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this Act;

(B) the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application;

(C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and

(D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

(4) *WHOLE OR PARTIAL APPROVAL.*—The Secretary may approve all or any portion of an application under paragraph (3).

(5) *FAILURE TO APPROVE APPLICATION.*—If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

(6) *CONDITIONS AND RESTRICTIONS.*—The Secretary shall establish and include in each permit under this subsection conditions and restrictions which shall be complied with by the owner and operator of the vessel for which the permit is issued. The conditions and restrictions shall include the requirements, regulations, and restrictions set forth in subsection (b)(7).

(7) *FEES.*—The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit.

* * * * *

SEC. 206. LARGE-SCALE DRIFTNET FISHING.

(a) * * *

* * * * *

[(e) *REPORT.*—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

[(1) describing the steps taken to carry out the provisions of this section, particularly subsection (c);

[(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

[(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize

any additional measures that are needed if those are considered ineffective;

[(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;

[(5) containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

[(6) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.]

(e) REPORT.—Not later than March 17th of each year, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a list of those nations whose nationals or vessels conduct, and of those nations that authorize their nationals to conduct, large-scale drift net fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of, or is inconsistent with, any international agreement governing large-scale drift net fishing to which the United States is a party or otherwise subscribes.

* * * * *

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

(1) * * *

* * * * *

(8) Conservation and management measures shall, to the maximum extent practicable, minimize bycatch.

* * * * *

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) ESTABLISHMENT.—There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(1) * * *

(2) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, [and Virginia] *Virginia, and North Carolina* and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in section 304(f)(3)). The Mid-Atlantic Council shall have [19] *21* voting members, including [12] *13* appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

* * * * *

(b) VOTING MEMBERS.—(1) * * *

(2)(A) * * *

(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, *and of other individuals selected for their fisheries expertise as demonstrated by their academic training, marine conservation advocacy, consumer advocacy, or other affiliation with nonuser groups.* 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] *Resources* 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) * * *

* * * * *

(6) *The Secretary shall remove any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) if the member violates section 307(1)(O).*

* * * * *

(d) COMPENSATION AND EXPENSES.—The voting members of [each Council,] *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, until January 1, 1992, receive compensation at the daily rate for GS-18 of the General Schedule, and after December 31, 1991, at the daily rate for GS-16] shall receive compensation at a daily rate equivalent to the lowest rate of pay payable for GS-15, of the General Schedule, when engaged in the actual performance of duties for such Council.* The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

(e) TRANSACTION OF BUSINESS.—

(1) * * *

* * * * *

(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 required under subsection (j)(2)(E) 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.

* * * * *

(i) FISHERY HABITAT CONCERNS.—(1) Each Council—

(A) may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; **[and]**

(B) shall comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction**【.】**; *and*

(C) shall notify the Secretary regarding, and may comment on and make recommendations to any State or Federal agency concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may have a detrimental effect on the essential fishery habitat of a fishery under the authority of the Council.

【(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity on such habitat.】

(2) Within 15 days after receiving a comment or recommendation under paragraph (1) from a Council regarding the effects of an activity on essential fishery habitat, a Federal agency shall provide to the Council a detailed response in writing. The response shall include a description of measures being considered 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 Council, the Federal agency shall explain its reasons for not following the recommendations.

(j) PROCEDURAL MATTERS.—(1) * * *

(2) The following **【guidelines】** shall apply with respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels of a Council:

(A) * * *

* * * * *

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) *sufficiently in advance of the meeting to allow meaningful public participation in the meeting*, and such notice may be given by such other means as will result in wide publicity. Timely

notice of each regular meeting shall also be published in the Federal Register.

(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings. *The written statement or oral testimony shall include a brief description of the background and interests of the person on the subject of the written statement or oral testimony.*

[(E) Minutes of each meeting shall be kept and shall contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.]

(E) Detailed minutes of each meeting of the Council 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 reports received, issued, or approved by the Council. The Chairman shall certify the accuracy of the minutes of each meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

* * * * *

(G) A Council member may add an item to the agenda of a meeting of a Council or of a committee or advisory panel of a Council by presenting to the Chairman of the Council, committee, or panel, at least 21 days before the date of the meeting, a written description of the item signed by 2 or more voting members of the Council.

* * * * *

(k) DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.—(1) For purposes of this subsection, the term “affected individual” means an individual who—

[(A) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2);]

(A) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2) or is designated by the Governor of a State under subsection (b)(1)(A) and is not an employee of the State; or

(B) is a voting member of a Council appointed under subsection (b)(2) [; or].

[(C) is the executive director of a Council.]

* * * * *

(3) The disclosure required under paragraph (2) shall be made—

(A) * * *

(B) in the case of an affected individual referred to in paragraph (1)(B) **[or (C)]**, within 45 days of taking office.

* * * * *

(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; **[and]**

(B) be kept on file, and made available for public inspection at reasonable hours, at the Council offices[.]; and

(C) be kept on file by the Secretary for use in reviewing Council actions and made available by the Secretary for public inspection at reasonable hours.

(6) The participation by an affected individual referred to in paragraph (1) (B) [or (C)] 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) Section 208 of title 18, United States Code, does not apply to an affected individual referred to in paragraph (1) (B) [or (C)] during any time in which that individual is in compliance with the regulations prescribed under paragraph (5).

(8) *The Secretary, in consultation with the Councils, and by not later than 1 year after the date of the enactment of the Fishery Conservation and Management Amendments of 1995, shall establish rules which prohibit an affected individual from voting on a matter in which the individual or any other person described in paragraph (2) with respect to the individual has an interest that would be significantly affected. The rules may include provisions which take into account the differences in fisheries.*

(9) *A voting member of a Council shall recuse himself or herself from voting if—*

(A) *voting by the member would violate the rules established under paragraph (8); or*

(B) *the General Counsel of the National Oceanic and Atmospheric Administration (or a designee of the General Counsel under paragraph (10)(C)(ii)) determines under paragraph (10) that voting by the member would violate the rules established under paragraph (8).*

(10)(A) *Before any vote held by a Council on any matter, a voting member of the Council may, at a meeting of the Council, request the General Counsel of the National Oceanic and Atmospheric Administration (or a designee of the General Counsel under subparagraph (C)(ii)) to determine whether voting on the matter by the member, or by any other member of the Council, would violate the rules established under paragraph (8).*

(B) *Upon a request under subparagraph (A) regarding voting on a matter by a member—*

(i) *the General Counsel of the National Oceanic and Atmospheric Administration (or a designee of the General Counsel under subparagraph (C)(ii)) shall determine and state whether the voting would violate the rules established under paragraph (8), at the meeting at which the request is made; and*

(ii) *no vote on the matter may be held by the Council before the determination and statement are made.*

(C) *The General Counsel of the National Oceanic and Atmospheric Administration shall—*

(i) *attend each meeting of a Council; or*

(ii) *designate an individual to attend each meeting of a Council for purposes of this paragraph.*

(11) *For the purposes of this subsection, the term “an interest that would be significantly affected” means a personal financial interest*

which would be augmented by voting on the matter and which would only be shared by a minority of other persons within the same industry sector or gear group whose activity would be directly affected by a Council's action.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) * * *

* * * * *

(5) specify the pertinent data which shall be submitted to the Secretary with respect to 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, [and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors,] *the amount and species of bycatch taken on board a fishing vessel based on a standardized reporting methodology established by the Council for that fishery, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;*

* * * * *

[(7) include readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery;]

(7) include a description of essential fishery habitat for a fishery based on the guidelines established by the Secretary under section 304(h)(1);

(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; [and]

(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 describe the likely effects, if any, of the conservation and management measures on—

(A) participants in the fisheries affected by the plan or amendment; and

(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[.];

(10) include a measurable and objective determination of what constitutes overfishing in that fishery, and a rebuilding program in the case of a plan for any fishery which the Council or the Secretary has determined is overfished;

- (11) include conservation and management measures necessary to minimize bycatch to the maximum extent practicable;
- (12) to the extent practicable, minimize mortality caused by economic discards and regulatory discards in the fishery;
- (13) take into account the safety of human life at sea; and
- (14) in the case of any plan which under subsection (b)(8) requires that observers be carried on board vessels—

- (A) be fair and equitable to all fishing vessels and fish processing vessels, that are vessels of the United States and participate in fisheries covered by the plan;
- (B) be consistent with other applicable laws;
- (C) take into consideration the operating requirements of the fishery and the safety of observers and fishermen; and
- (D) establish a system of fees to pay the costs of the observer program.

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) * * *

* * * * *

[(6) establish a system for limiting access to the fishery in order to achieve optimum yields 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
- [(F) any other relevant considerations;]

(6) establish a limited access system for the fishery in order to achieve optimum yields, if—

- (A) in developing such system, the Councils and the Secretary take into account—
 - (i) the need to promote conservation;
 - (ii) present participation in the fishery,
 - (iii) historical fishing practices in, and dependence on, the fishery,
 - (iv) the economics of the fishery,
 - (v) the capability of fishing vessels used in the fishery to engage in other fisheries,
 - (vi) the cultural and social framework relevant to the fishery and local coastal communities, and
 - (vii) any other relevant considerations; and

(B) in the case of such a system that provides for the allocation and issuance of individual quotas (as that term is defined in subsection (g)), the plan complies with subsection (g).

* * * * *

(8) [require that observers] 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; **[and]**

(10) assess and specify the effect which conservation and management measures of the plan will have on stocks of fish in the ecosystem of the fishery which are not part of the fishery;

(11) include incentives and harvest preferences within fishing gear groups to promote the avoidance of bycatch;

(12) specify gear types allowed to be used in the fishery and establish a process for evaluating new gear technology that is proposed to be used in the fishery;

(13) reserve a portion of the allowable biological catch of the fishery for use for scientific research purposes;

(14) establish conservation and management measures necessary to minimize, to the extent practicable, adverse impacts on essential fishery described in the plan under subsection (a)(7) habitat caused by fishing; and

[(10)] *(15) 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.*

* * * * *

(g) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA SYSTEMS.—(1) A fishery management plan which establishes an individual quota system for a fishery—

(A) shall provide for administration of the system by the Secretary in accordance with the terms of the plan;

(B) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested;

(C) shall include provisions which establish procedures and requirements for each Council having authority over the fishery, for—

(i) reviewing and revising the terms of the plan that establish the system; and

(ii) renewing, reallocating, and reissuing individual quotas if determined appropriate by each Council;

(D) shall include provisions to—

(i) provide for fair and equitable allocation of individual quotas under the system, and minimize negative social and economic impacts of the system on local coastal communities;

(ii) ensure adequate enforcement of the system, including the use of observers where appropriate; and

(iii) provide for monitoring the temporary or permanent transfer of individual quotas under the system; and

- (E) include provisions that prevent any person from acquiring an excessive share of individual quotas issued for a fishery.*
- (2) An individual quota issued under an individual quota system established by a fishery management plan—*
- (A) shall be considered a grant, to the holder of the individual quota, of permission to engage in activities permitted by the individual quota;*
- (B) may be revoked or limited at any time by the Secretary or the Council having authority over the fishery for which it is issued, if necessary for the conservation and management of the fishery (including as a result of a violation of this Act or any regulation prescribed under this Act);*
- (C) if revoked or limited by the Secretary or a Council, shall not confer any right of compensation to the holder of the individual quota;*
- (D) may be received, held, or transferred in accordance with regulations prescribed by the Secretary under this Act;*
- (E) shall, except in the case of an individual quota allocated under an individual quota system established before the date of enactment of the Fishery Conservation and Management Amendments of 1995, expire not later than 7 years after the date it is issued, in accordance with the terms of the fishery management plan; and*
- (F) upon expiration under subparagraph (E), may be renewed, reallocated, or reissued if determined appropriate by each Council having authority over the fishery.*
- (3)(A) Except as provided in subparagraphs (B) and (C), any fishery management plan that establishes an individual quota system for a fishery may authorize individual quotas to be held by or issued under the system to fishing vessel owners, fishermen, crew members, other persons as specified by the Council, and United States fish processors.*
- (B) An individual who is not a citizen of the United States may not hold an individual quota issued under a fishery management plan.*
- (C) A Federal agency or official may not hold, administer, or reallocate an individual quota issued under a fishery management plan, other than the Secretary and the Council having authority over the fishery for which the individual quota is issued.*
- (4) Any fishery management plan that establishes an individual quota system for a fishery may include provisions that—*
- (A) allocate individual quotas under the system among categories of vessels; and*
- (B) provide a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, or crewmembers who do not hold or qualify for individual quotas.*
- (5) An individual quota system established for a fishery may be limited or terminated at any time by the Secretary or through a fishery management plan or amendment developed by the Council having authority over the fishery for which it is established, if necessary for the conservation and management of the fishery.*
- (6) As used in this subsection:*

(A) *The term "individual quota system" means a system that limits access to a fishery in order to achieve optimum yields, through the allocation and issuance of individual quotas.*

(B) *The term "individual quota" means a grant of permission to harvest or process a quantity of fish in a fishery, during each fishing season for which the permission is granted, equal to a stated percentage of the total allowable catch for the fishery.*

(h) *SUBMISSION OF FISHERY IMPACT STATEMENTS TO INTERESTED STATES AND THE CONGRESS.—Not later than the date a fishery management plan prepared by a Council or the Secretary takes effect under section 304, the Council or the Secretary, respectively, shall submit the fishery impact statement required in the plan under subsection (a)(9) to—*

(1) the Governor of each State that might be affected by the plan, who may use information in the statement to assist persons in applying for loans and grants for economic relief; and

(2) the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 304. ACTION BY THE SECRETARY.

(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.—(1)
* * *

(2) In undertaking the review required under paragraph (1)(B), the Secretary shall—

(A) * * *

* * * * *

(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).] *with respect to the provisions of sections 303(a)(6) and (13).*

* * * * *

(c) PREPARATION BY THE SECRETARY.—(1) * * *

* * * * *

(3) Notwithstanding paragraph (1), 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 described in section 303(b)(6), unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council or advisory committee appointed under laws implementing relevant international fishery agreements to which the United States is a party.

(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 shall collect from a person that holds or transfers an individual quota issued under a limited access system established under section 303(b)(6) fees established by the Secretary in accordance with this section and section 9701(b) of title 31, United States Code.

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

(i) An initial allocation fee in an amount, determined by the Secretary, equal to 1 percent of the value of fish authorized to be harvested in one year under an individual quota, which shall be collected from the person to whom the individual quota is first issued.

(ii) An annual fee in an amount, determined by the Secretary, not to exceed 4 percent of the value of fish authorized to be harvested each year under an individual quota share, which shall be collected from the holder of the individual quota share.

(iii) A transfer fee in an amount, determined by the Secretary, equal to 1 percent of the value of fish authorized to be harvested each year under an individual quota share, which shall be collected from a person who permanently transfers the individual quota share to another person.

(C) In determining the amount of a fee under this paragraph, the Secretary shall ensure that the amount is commensurate with the cost of managing the fishery with respect to which the fee is collected, including reasonable costs for salaries, data analysis, and other costs directly related to fishery management and enforcement.

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

(E) Fees collected under this paragraph from holders of individual quotas in a fishery shall be an offsetting collection and shall be available to the Secretary only for the purposes of administering and implementing this Act with respect to that fishery.

(F) The Secretary may not assess or collect any fee under this paragraph with respect to an individual quota system established before the date of enactment of the Fishery Conservation and Management Amendments of 1995, during the 5-year period beginning on that date of enactment.

(e) FISHERIES RESEARCH.—(1) * * *

* * * * *

(4) In developing the plan required under paragraph (2), the Secretary shall consult with relevant Federal 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 [Merchant Marine and Fisheries] Resources of the House of Representatives.

(5) *The Secretary shall develop and implement a systematic program for the assessment and annual reporting to the public of the status of fisheries in the Gulf of Mexico subject to management under this Act. Such program shall—*

(A) *provide for the use of peer-review panels consisting of independent and external experts;*

(B) *not exclude peer-reviewers merely because they represent entities that may have an interest or potential interest in the outcome, if that interest is fully disclosed to the Secretary;*

(C) *provide opportunity to become part of a peer-review panel at a minimum by soliciting nominations through the Federal Register; and*

(D) *ensure that all comment and opinions of such peer-review panels are made available to the public.*

(f) **【MISCELLANEOUS DUTIES.—】** *FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—(1) Except as provided in paragraph (3), if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—*

(A) * * *

* * * * *

(3)(A) * * *

* * * * *

(C) *In preparing or amending any fishery management plan under this paragraph, the Secretary shall—*

(i) * * *

(ii) *consult with and consider the comments and views of commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species and the plan development team established under paragraph (4);*

* * * * *

(D) *Conservation and management measures contained in any fishery management plan under this paragraph shall—*

(i) *take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;*

【(ii) be fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose; and

【(iii) promote international conservation.】

(ii) be fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose;

(iii) promote international conservation;

(iv) minimize the establishment of regulations that require the discarding of Atlantic highly migratory species which cannot be returned to the sea alive; and

(v) promote the implementation of scientific research programs that include to the extent practicable, the tag, and release of Atlantic highly migratory species.

(E) *With respect to a highly migratory species for which the United States is authorized to harvest an [allocation or quota] al-*

location, quota, or fishing mortality level under a relevant international fishery agreement, the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such **[allocation or quota]** *allocation, quota, or fishing mortality level*.

(F) In implementing the provisions of this paragraph, the Secretary shall consult with—

- (i) the Secretary of State;
- (ii) commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species *and the plan development team established under paragraph (4); and*
- (iii) appropriate Councils.

(4)(A) *The Secretary shall establish a plan development team for each highly migratory species fishery over which the Secretary has authority under paragraph (3)(A), to advise the Secretary on and participate in the development of each fishery management plan or amendment to a plan for the fishery under this subsection.*

(B) *The plan development team shall—*

- (i) *consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species and from other interested persons;*
- (ii) *be balanced in its representation of commercial, recreational, and other interests; and*
- (iii) *participate in all aspects of the development of the plan or amendment.*

(C) *The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any plan development team established under this paragraph.*

(g) INCIDENTAL HARVEST RESEARCH.—(1) Within 9 months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, after consultation with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, establish by regulation a **[3-year]** program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils.

* * * * *

[(4) The Secretary shall, in cooperation with affected interests, commence a program to design, and evaluate the efficacy of, technological devices and other changes in fishing technology for the reduction of incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing activity. Such program shall take into account local conditions and include evaluation of any reduction in incidental mortality, as well as any reduction or increase in the retention of shrimp in the course of normal fishing activity.]

(4) No later than 12 months after the enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall, in cooperation with affected interests and based upon the best scientific information available, complete a program to—

- (A) *develop technological devices and other changes in fishing operations to minimize the incidental mortality of nontargeted*

fishery resources in the course of shrimp trawl activity to the extent practicable from the level of mortality at the date of enactment of the Fishery Conservation and Management Amendments of 1990;

(B) evaluate the ecological impacts and the benefits and costs of such devices and changes in fishing operations; and

(C) assess whether it is practicable to utilize those nontargeted fishery resources which are not avoidable.

(5) The Secretary shall, upon completion of the programs required by this subsection, 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 [Merchant Marine and Fisheries] Resources of the House of Representatives.

(6)(A) * * *

(B) The prohibition contained in subparagraph (A) shall cease on [April 1, 1994] the submission under paragraph (5) of the detailed report on the program described in paragraph (4).

* * * * *

(7) Any measure implemented under this Act to reduce the incidental mortality of nontargeted fishery resources in the course of shrimp trawl fishing shall apply to such fishing throughout the range of the nontargeted fishery resource concerned.

(h) ACTIONS BY THE SECRETARY ON ESSENTIAL FISHERY HABITAT.—(1) Within one year after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall—

(A) establish guidelines to assist the Councils in the description of essential fishery habitat in fishery management plans; and

(B) establish a schedule for the amendment of fishery management plans to describe essential fish habitats.

(2) The Secretary, in cooperation with the Secretary of the Interior, shall identify the essential fishery habitat for each fishery for which a fishery management plan is in effect. The identification shall be based on the description of essential fishery habitat contained in the plan.

(3) Each Federal agency shall consult with the Secretary with respect to any action proposed to be authorized, funded, or carried out by such agency that the head of the agency has reason to believe, or the Secretary believes, may result in the destruction or adverse modification of any essential fishery habitat identified by the Secretary under paragraph (2). If the Secretary finds that the proposed action would result in destruction or adverse modifications of such essential fishery habitat, the Secretary shall comment on and make recommendations to the agency concerning that action.

(4) Within 15 days after receiving recommendations from the Secretary under paragraph (3) with respect to a proposed action, the head of a Federal agency shall provide a detailed, written response to the Secretary which describes the measures proposed by the agency to avoid, mitigate, or offset the adverse impact of the proposed action on the essential fishery habitat. In the case of a response that is inconsistent with the recommendation of the Secretary, the agency shall explain its reasons for not following the recommendations.

(5) *The Secretary shall review programs administered by the Department of Commerce to ensure that any relevant programs further the conservation and enhancement of essential fishery habitat identified by the Secretary under paragraph (2). The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fishery habitat identified by the Secretary under paragraph (2).*

(6) *Nothing in this subsection shall have the effect of amending or repealing any other law or regulation or modifying any other responsibility of a Federal agency with respect to fisheries habitat.*

(i) *ACTION BY THE SECRETARY ON OVERFISHING.—(1) In addition to the authority granted to the Secretary under subsection (c), if the Secretary finds at any time that overfishing is occurring or has occurred in any fishery, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to establish a rebuilding program for the fishery. The Secretary shall publish each notice under this paragraph in the Federal Register.*

(2) *If the Council does not submit to the Secretary before the end of the 1-year period beginning on the date of notification under paragraph (1) a fishery management plan, or an amendment to the appropriate existing fishery management plan, which is intended to address overfishing in the fishery and to establish any necessary rebuilding program, then the Secretary shall within 9 months after the end of that period prepare under subsection (c) a fishery management plan, or an amendment to an existing management plan, to end overfishing in the fishery and to establish any necessary rebuilding program.*

(3) *If the Secretary finds that overfishing is occurring in any fishery for which a fishery management plan prepared by the Secretary is in effect, the Secretary shall—*

(A) *within 1 year act under subsection (c) to amend the plan to end overfishing in the fishery and to establish any necessary rebuilding program; and*

(B) *in the case of a highly migratory species fishery, pursue international rebuilding programs.*

(4) *Any rebuilding program under this subsection shall specify the time period within which the fishery is expected to be rebuilt. The time period shall be as short as possible, taking into account the biology and natural variability of the stock of fish, other environmental factors or conditions which would affect the rebuilding program, and the needs of the fishing industry. The time period may not exceed 10 years, except in cases where the biology of the stock of fish or other environmental factors dictates otherwise.*

(5) *If the Secretary finds that the action of any Federal agency has caused or contributed to the decline of a fishery below maximum sustainable yield, the Secretary shall notify the agency of the Secretary's finding and recommend steps that can be taken by the agency to reverse that decline.*

(6)(A) *The Secretary shall review the progress of any rebuilding program required under this subsection beginning in the third year in which the plan is in effect, and annually thereafter.*

(B) *If the Secretary finds as a result of the review that the rebuilding program is not meeting its specified goals due to reasons*

related to the reproductive capacity, productivity, life span, or natural variability of the fish species concerned or other environmental conditions or factors beyond the control of the rebuilding program, the Secretary shall—

- (i) reassess the goals of the program;
- (ii) determine, based on the best available scientific information, whether revision to the program is needed; and
- (iii) if the Secretary determines under clause (ii) that such revisions are needed, direct the Council that established the program to make revisions to the program, or in the case of a program established by the Secretary, make such revisions.

(C) If the Secretary finds as a result of the review that the rebuilding program is not meeting its specified goals for reasons other than those described in subparagraph (B), the Secretary shall direct the Council that established the program to make revisions to the program, or in the case of a program established by the Secretary, make such revisions.

(7)(A) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographic area of authority and identify those fisheries that are approaching a condition of being overfished.

(B) For each fishery that is subject to a fishery management plan, the status of the fishery shall be determined for purposes of subparagraph (A) in accordance with the determination of what constitutes overfishing in the fishery included in the plan under section 303(a)(10).

(C) The Secretary shall identify a fishery under subparagraph (A) as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary determines that the fishery is likely to become overfished within 2 years.

(D) For any fishery that the Secretary identifies under subparagraph (A) as approaching the condition of being overfished, the report shall—

- (i) estimate the time frame within which the fishery will reach that condition; and
- (ii) make specific recommendations to the appropriate Council regarding actions that should be taken to prevent that condition from being reached.

(j) ACTION ON COVERED IMPLEMENTING REGULATIONS PROPOSED BY A COUNCIL.—(1) After the receipt date of a covered implementing regulation submitted by a Council, the Secretary shall—

(A) immediately commence a review of the covered implementing regulation to determine whether it is consistent with the fishery management plan it would implement, the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish the covered implementing regulation in the Federal Register and provide a period of not less than 15 days and not more than 45 days for the submission of comments by the public.

(2) Not later than 75 days after the receipt date of a covered implementing regulation submitted by a Council, the Secretary shall—

(A) publish a final regulation on the subject matter of the covered implementing regulation; or

(B) decline to publish a final regulation.

The Secretary shall provide to the Council in writing an explanation of the reasons for the Secretary's action.

(3) For the purposes of this subsection, the term—

(A) "receipt date" means the 5th day after the day on which a Council submits to the Secretary a covered implementing regulation that the Council characterizes as a final covered implementing regulation; and

(B) "covered implementing regulation"—

(i) means a proposed amendment to existing regulations implementing a fishery management plan in effect under this Act, which does not have the effect of amending the plan; and

(ii) does not include any proposed regulation submitted with a plan or amendment to a plan under section 303(c).

(k) *PACIFIC REGION STOCK ASSESSMENT.*—(1) Not later than 120 days after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall, in consultation with the Pacific Fishery Management Council and the States of California, Oregon, and Washington, establish a Pacific Region Scientific Review Group (in this subsection referred to as the "Group") consisting of representatives of the National Marine Fisheries Service, each of the States of California, Oregon, and Washington, universities located in those States, commercial and recreational fishermen and shore-based processors located in those States, and environmental organizations. Individuals appointed to serve on the Group shall be selected from among individuals who are knowledgeable or experienced in the harvesting, processing, biology, or ecology of the fish stocks of fish that are managed under the Pacific Fisheries Management Council Pacific Coast Groundfish Plan (in this subsection referred to as the "covered Pacific stocks").

(2) Not later than 180 days after the date of establishment of the Group, the Group shall transmit to the Secretary a research plan of at least 3 years duration to assess the status of the covered Pacific stocks, including the abundance, location, and species, age, and gender composition of those stocks. The plan shall provide for the use of private vessels to conduct stock surveys.

(3) Immediately upon receiving the plan transmitted under paragraph (2), the Secretary shall take action necessary to carry out the plan, including, subject to the availability of appropriations, chartering private vessels, arranging for the deployment of scientists on those vessels (including the payment of increased insurance costs to vessel owners), and obtaining the assistance of shore-based fish processors.

(4) The Secretary may offset the cost of carrying out the plan by entering into agreements with vessel owners or shore-based fish processors to provide vessel owners or shore-based fish processors with a portion of the total allowable catch reserved for research purposes under section 303(b).

(l) *ACTION ON LIMITED ACCESS SYSTEMS.*—(1) In addition to the other requirements of this Act, the Secretary may not approve a fishery management plan that establishes a limited access system that

provides for the allocation of individual quotas (in this subsection referred to as an "individual quota system") unless the plan complies with section 303(g).

(2) Within 1 year after receipt of recommendations from the review panel established under paragraph (3), the Secretary shall issue regulations which establish requirements for establishing an individual quota system. The regulations shall be developed in accordance with the recommendations. The regulations shall—

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

(B) ensure that any individual quota system is consistent with the requirements of sections 303(b) and 303(g), and require the collection of fees in accordance with subsection (d)(2);

(C) provide for appropriate penalties for violations of individual quotas systems, including the revocation of individual quotas for such violations;

(D) include recommendations for potential management options related to individual quotas, including the authorization of individual quotas that may not be transferred by the holder, and the use of leases or auctions by the Federal Government in the establishment or allocation of individual quotas; and

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

(3)(A) Not later than 6 months after the date of the enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall establish a review panel to evaluate fishery management plans in effect under this Act that establish a system for limiting access to a fishery, including individual quota systems, and other limited access systems, with particular attention to—

(i) the success of the systems in conserving and managing fisheries;

(ii) the costs of implementing and enforcing the systems;

(iii) the economic effects of the systems on local communities; and

(iv) the use of limited access systems under which individual quotas may not be transferred by the holder, and the use of leases or auctions in the establishment or allocation of individual quota shares.

(B) The review panel shall consist of—

(i) the Secretary or a designee of the Secretary;

(ii) a representative of each Council, selected by the Council;

(iii) 3 representatives of the commercial fishing and processing industry; and

(iv) one at large representative who is selected by reason of occupational or other experience, scientific expertise, or training, and who is knowledgeable regarding the conservation and management or the commercial or recreational harvest of fishery resources.

(C) Based on the evaluation required under subparagraph (A), the review panel shall, by September 30, 1997, submit recommendations—

(i) to the Councils and the Secretary with respect to the revision of individual quota systems that were established under this Act prior to June 1, 1995; and

(ii) to the Secretary for the development of the regulations required under paragraph (2).

(m) *FISHERY MONITORING.*—(1) The Secretary shall develop a plan for the Gulf of Mexico region to collect, assess, and report statistics concerning the fisheries in each such region.

(2) The plan under this subsection shall—

(A) provide fishery managers and the public with timely and accurate information concerning harvests and fishing effort;

(B) minimize paperwork and regulatory burdens on fishermen and fish buyers;

(C) minimize costs to Federal and State agencies;

(D) avoid duplication and inconsistencies in the collection, assessment, and reporting of fishery statistics; and

(E) ensure the confidentiality of information.

(3) The Secretary shall ensure that fishermen, fish buyers, and other individuals potentially impacted by the plan required under this subsection are actively involved in all stages of the development of such plan and that appropriate fishery management agencies are consulted.

(4) No later than 9 months after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall publish notice of a proposed plan required under this subsection and provide the public with a reasonable opportunity to comment on such proposed plan. The Secretary shall consider such comments before submitting the plan under paragraph (5).

(5) No later than one year after the date of enactment of the Fishery Conservation and Management Amendments of 1995, the Secretary shall submit a final plan under this subsection to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

(a) * * *

* * * * *

(c) *EMERGENCY ACTIONS.*—(1) * * *

(2) If a Council finds that an emergency exists involving any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery—

(A) the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members under section 302(b)(1) (A) and (C), requests the taking of such action; and

* * * * *

(3) Any emergency regulation 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 promulgated under this subsection—

(A) shall be published in the Federal Register together with the reasons therefor;

[(B) shall remain in effect for not more than 90 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council, be promulgated for one additional period of not more than 90 days; and]

(B) shall remain in effect for not more than 180 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council and after notice and an opportunity for submission of comments by the public, be effective for 1 additional period of not more than 180 days; and

* * * * *

(4) The Secretary may promulgate emergency regulations under this subsection to protect the public health. Notwithstanding paragraph (3), regulations promulgated under this paragraph shall remain in effect until withdrawn by the Secretary. The Secretary shall promptly withdraw regulations under this paragraph when the circumstances requiring the regulations no longer exist. The Secretary shall provide an opportunity for submission of comments by the public after regulations are promulgated under this paragraph.

(5) An emergency regulation promulgated under this subsection that closes an area to fishing shall not remain in effect for an additional period under paragraph (3)(B) unless before the beginning of the additional period the Council having jurisdiction over the area, in conjunction with the Secretary, publishes a report on the status of the fishery in the area that includes an analysis of the costs and benefits of the closure.

* * * * *

SEC. 306. STATE JURISDICTION.

(a) * * *

(b) EXCEPTION.—(1) * * *

* * * * *

(3) For any fishery occurring off the coasts of Alaska for which there is no Federal fishery management plan approved and implemented pursuant to this Act, or pursuant to delegation to a State in a fishery management plan, a State may enforce its laws or regulations pertaining to the taking of fish in the exclusive economic zone off that State or the landing of fish caught in the exclusive economic zone providing there is a legitimate State interest in the conservation and management of that fishery, until a Federal fishery management plan is implemented. Fisheries currently managed pursuant to a Federal fishery management plan shall not be removed from Federal management and placed under State authority without the unanimous consent (except for the Regional Director of the National Marine Fisheries Service) of the Council which developed the fishery management plan.

(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); [and]

(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 to the appropriate Council and the Secretary, in a manner prescribed by the Secretary, periodic reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested.

* * * * *

SEC. 307. PROHIBITED ACTS.

It is unlawful—

(1) for any person—

(A) * * *

* * * * *

(K) [to knowingly steal, or without authorization, to] *to steal, or to negligently remove, damage, or tamper with—*

(i) * * *

* * * * *

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation; [or]

(N) to strip pollock of its roe and discard the flesh of the pollock[.]; or

(O) *to knowingly and willfully fail to disclose or falsely disclose any financial interest as required under section 302(k) or to knowingly violate any rule established under section 302(k)(8).*

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

(A) in fishing within the boundaries of any State, except recreational fishing permitted under section 201(j);

[(B) in fishing, except recreational fishing permitted under section 201(j), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone or areas, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204 (b) or (c); or]

(B) *in fishing, except recreational fishing permitted under section 201(j), within the exclusive economic zone or within the special areas, or for any anadromous species or Continental Shelf fishery resources beyond such zone or areas, or in fishing consisting of transporting fish products from a point within the boundaries of any State or the exclusive economic zone or the special areas, unless such fishing is authorized under, and conducted in accordance with, a valid and applicable permit issued under section 204, except that this subparagraph shall not apply to fishing with—*

in the special areas before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States; or

* * * * *

SEC. 308. CIVIL PENALTIES AND PERMIT SANCTIONS.

(a) ASSESSMENT OF PENALTY.—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, [ability to pay,] and such other matters as justice may require. *In assessing such penalty, the Secretary may also consider facts relating to the ability of the violator to pay that are established by the violator in a timely manner.*

* * * * *

SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

(a) * * *

* * * * *

(f) BERING SEA COMMUNITY DEVELOPMENT QUOTA PROGRAM.—(1) The North Pacific Fishery Management Council and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to western Alaska communities that participate in the program.

(2) To be eligible to participate in the western Alaska community development quota program under paragraph (1), a community must—

(A) be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the westernmost of the Aleutian Islands, or on an island within the Bering Sea;

(B) not be located on the Gulf of Alaska coast of the north Pacific Ocean;

(C) meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register;

(D) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act to be a Native village;

(E) consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea and Aleutian Islands management area; and

(F) not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community

can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.

* * * * *

SEC. 315. RIGHTS OF OBSERVERS.

(a) *CIVIL ACTION.*—An observer on a vessel (or the observer's personal representative) under the requirements of this Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

(b) *EXCEPTION.*—Subsection (a) does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

SEC. 316. FISHING CAPACITY REDUCTION PROGRAMS.

(a) *AUTHORITY TO CONDUCT PROGRAM.*—The Secretary, with the concurrence of the Council having authority over a fishery, may conduct a voluntary fishing capacity reduction program for a fishery in accordance with this section, if—

(1) the Secretary—

(A) determines that the program is necessary for rebuilding, preventing overfishing, or generally improving conservation and management of the fishery; or

(B) is requested to do so by the Council with authority over the fishery; and

(2) there is in effect under section 304 a fishery management plan that—

(A) limits access to the fishery through a Federal fishing permit required by a limited access system established under section 303(b)(6); and

(B) prevents the replacement of fishing capacity eliminated by the program through—

(i) a moratorium on the issuance of new Federal fishing permits for the duration of the repayment period; and

(ii) restrictions on fishing vessel capacity upgrading.

(b) *PROGRAM REQUIREMENTS.*—Under a fishing capacity reduction program conducted under this section for a fishery, the Secretary shall—

(1) seek to permanently reduce the maximum effective fishing capacity at the least cost and in the shortest period of time through the removal of vessels and permits from the fishery;

(2) make payments to—

(A) scrap or otherwise render permanently unusable for fishing in the United States, vessels that operate in the fishery; and

(B) acquire the Federal fishing permits that authorize participation in the fishery;

(3) provide for the funding of those payments by persons that participate in the fishery, by establishing and imposing fees on

holders of Federal fishing permits under this Act that authorize that participation;

(4) establish criteria for determining the types of vessels and permits which are eligible to participate in the program, that—

(A) assess vessel impact on the fishery;

(B) minimize program costs; and

(C) take into consideration—

(i) previous fishing capacity reduction programs; and

(ii) the characteristics of the fishery;

(5) establish procedures for determining the amount of payments under paragraph (1); and

(6) identify sources of funding for the program in addition to the amounts referred to in subsection (f)(2)(A), (B), (C), and (D).

(c) PAYMENTS.—

(1) IN GENERAL.—As part of a fishing capacity reduction program under this section, and subject to paragraph (2) the Secretary shall make payments under subsection (b)(2).

(2) ESTABLISHMENT OF FEE REQUIRED.—The Secretary may not make any payment under paragraph (1) for a fishery unless there is in effect for the fishery a fee under subsection (d).

(3) LIMITATION ON TOTAL AMOUNT OF PAYMENTS FOR FISHERY.—The total amount of payments under paragraph (1) for a fishery may not exceed the total amount the Secretary projects will be deposited into the Fund from fees that apply to the fishery under subsection (d).

(d) FEES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, with the concurrence of a majority of the voting members of a Council having authority over a fishery for which a fishing capacity reduction program is conducted under this section, may establish an annual fee on holders of Federal fishing permits authorizing participation in the fishery.

(2) AMOUNT OF FEE.—The amount of a fee established under this subsection for a fishery described in paragraph (1)—

(A) shall be adequate to ensure that the total amount collected in the form of the fee will not be less than the amount the Secretary determines is necessary for payments under subsection (b)(2) to reduce fishing capacity in the fishery to a level that will ensure the long-term health of the fishery;

(B) shall be based on—

(i) the value of the fishery;

(ii) the projected number of participants in the fishery;

(iii) the projected catch in the fishery; and

(iv) the direct costs of implementing a fishing capacity reduction program under this section for the fishery; and

(C) may not exceed, for any permit holder, 5 percent of the value of fish harvested under the permit each year.

(3) EFFECTIVE PERIOD.—A fee under this subsection may not be in effect for more than 15 years.

(4) USE OF AMOUNTS RECEIVED.—Amounts received by the United States as fees under this subsection—

- (A) shall be deposited into the Fund; and
 (B) may not be used to pay any administrative overhead or other costs not directly incurred in implementing this section with respect to the fishery.
- (e) *ADVISORY PANELS.*—
- (1) *IN GENERAL.*—The Secretary shall establish for each fishery for which a fishing capacity reduction program is conducted under this section an advisory panel to advise the Secretary regarding that program.
- (2) *MEMBERSHIP.*—Each advisory panel under this subsection shall consist of individuals appointed by the Secretary and shall include representatives of—
- (A) the Department of Commerce,
 (B) Councils having authority over fisheries for which the panel is established,
 (C) appropriate sectors of the fishing industry affected by fishing capacity reduction programs under this sections, and
 (D) appropriate States affected by such programs.
- (f) *FISHERIES CONSERVATION AND RESTORATION FUND.*—
- (1) *ESTABLISHMENT.*—There is established in the Treasury of the United States a separate account which shall be known as the Fisheries Conservation and Restoration Fund (in this section referred to as the “Fund”).
- (2) *DEPOSITS INTO THE FUND.*—There shall be deposited into the Fund—
- (A) amounts appropriated under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A)), popularly known as the Saltonstall-Kennedy Act;
 (B) amounts paid to the United States Government as fees established under subsection (d);
 (C) any other amounts appropriated for fisheries disaster that the Secretary determines should be used for fishing capacity reduction programs under this section; and
 (D) any other amounts appropriated for making payments under subsection (b)(2).
- (3) *AVAILABILITY.*—
- (A) *IN GENERAL.*—Amounts in the Fund shall be available to the Secretary without fiscal year limitation for making payments under subsection (b)(2).
- (B) *MANAGEMENT OF UNNEEDED BALANCE.*—Amounts in the Fund that are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.
- (g) *EXPIRATION OF ACQUIRED PERMITS.*—Permits acquired by the Secretary under subsection (b)(2)(B)—
- (1) shall not be effective after the date of that acquisition; and
 (2) may not be reissued or replaced.

[TITLE IV—MISCELLANEOUS PROVISIONS

[SEC. 402. REPEALS.

[(a) The Act of October 14, 1966 (16 U.S.C. 1091–1094), is repealed as of March 1, 1977.

[(b) The Act of May 20, 1964 (16 U.S.C. 1081–1086), is repealed as of March 1, 1977.

[SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

[(a) AMENDMENTS.—The Act of August 27, 1954 (22 U.S.C. 1972), is amended—

[(1) by amending section 2 thereof to read as follows:

["SEC. 2. If—

[(1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or

[(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

[(A) are unrelated to fishery conservation and management,

[(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

[(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976), or

[(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—

[(i) for the protection of such vessel and for the health and welfare of its crew;

[(ii) to secure the release of such vessel and its crew; and

[(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act.”; and

[(2) by amending section 3(a) thereof by inserting immediately before the last sentence thereof the following new sentence: “For purposes of this section, the term ‘other direct charge’ means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.”

[(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall take effect March 1, 1977. The amendment made by subsection (a)(2) shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.

[SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

[(a) AMENDMENT.—Section 3(15)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)(B)) is amended by striking out “the fisheries zone established pursuant to the Act of October 14, 1966.” and inserting in lieu thereof “the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.”.

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect March 1, 1977.

[SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

[(a) AMENDMENT.—Section 2(4) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(4)) is amended by striking out “the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091–1094),” and inserting in lieu thereof “the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.”.

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect March 1, 1977.

[SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

[(1) \$5,000,000 for the fiscal year ending June 30, 1976.

[(2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.

[(3) \$25,000,000 for the fiscal year ending September 30, 1977.

[(4) \$30,000,000 for the fiscal year ending September 30, 1978.

[(5) \$30,000,000 for the fiscal year ending September 30, 1979.

[(6) \$33,000,000 for the fiscal year ending September 30, 1980.

[(7) \$40,000,000 for the fiscal year ending September 30, 1981.

[(8) \$47,000,000 for the fiscal year ending September 30, 1982.

[(9) \$59,000,000 for the fiscal year ending September 30, 1983.

[(10) \$64,000,000 for the fiscal year ending September 30, 1984.

- [(11) \$69,000,000 for the fiscal year ending September 30, 1985.
- [(12) \$69,000,000 for fiscal year 1986.
- [(13) \$70,800,000 for fiscal year 1987.
- [(14) \$72,900,000 for fiscal year 1988.
- [(15) \$75,000,000 for fiscal year 1989.
- [(16) \$77,200,000 for the fiscal year ending September 30, 1990.
- [(17) \$94,000,000 for the fiscal year ending September 30, 1991, of which \$6,500,000 shall be used for enforcement and \$5,000,000 shall be used to increase research and assessment efforts.
- [(18) \$98,000,000 for the fiscal year ending September 30, 1992.
- [(19) \$102,000,000 for the fiscal year ending September 30, 1993.]

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, for carrying out this Act, the following:

- (1) \$114,000,000 for fiscal year 1996.
- (2) \$118,000,000 for fiscal year 1997.
- (3) \$122,000,000 for fiscal year 1998.
- (4) \$126,000,000 for fiscal year 1999.
- (5) \$130,000,000 for fiscal year 2000.

ACT OF MARCH 9, 1992

AN ACT To provide for the designation of the Flower Garden Banks National Marine Sanctuary

* * * * *

TITLE III—IMPLEMENTATION OF MARITIME BOUNDARY AGREEMENT AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 301. (a) * * *

* * * * *

(h) PROHIBITED ACTS.—Section 307 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

- (1) * * *
- (2) in paragraph (2)(B)—
 - [(A) by inserting “within the special areas,” immediately after “exclusive economic zone”; and]

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[AMENDMENTS TO MARINE MAMMAL PROTECTION ACT OF 1972

[SEC. 304. Section 3(14) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(14)) is amended to read as follows:

["(14) The term 'waters under the jurisdiction of the United States' means—

["(A) the territorial sea of the United States;

["(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

["(C) 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, 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.".]

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SECTION 2 OF THE ACT OF AUGUST 11, 1939

(POPULARLY KNOWN AS THE SALTONSTALL-KENNEDY ACT)

SEC. 2. (a) * * *

(b) FUND.—(1) The Secretary of Agriculture shall transfer to the Secretary each fiscal year, beginning with the fiscal year commencing July 1, 1954, and ending on June 30, 1957, from moneys made available to carry out the provisions of section 32 of such Act of August 24, 1935, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which shall be maintained in a separate fund only for—

(A) use by the Secretary—

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

(ii) to implement the national fisheries research and development program provided for under subsection (d); [and]

(iii) to implement the Northwest Atlantic Ocean Fisheries Reinvestment Program established under section 314 of the Magnuson Fishery Conservation and Management Act[.]; and

(iv) to fund fishing capacity reduction programs under section 316 of the Magnuson Fishery Conservation and Management Act, by depositing a portion of amounts trans-

ferred into the Fisheries Conservation and Restoration Fund established by that section; and

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SECTION 3 OF THE MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 3. For the purposes of this Act—

(1) * * *

* * * * *

[(15) The term “waters under the jurisdiction of the United States” means—

[(A) the territorial sea of the United States;

[(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

[(C) 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, 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.]

(15) *The term “waters under the jurisdiction of the United States” means—*

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) 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, 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, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet

Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

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