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109TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
109–567

# AMERICAN FISHERIES MANAGEMENT AND MARINE LIFE ENHANCEMENT ACT

JULY 17, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources, submitted the following

## R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 5018]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 5018) to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes, 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 all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE: AMENDMENT REFERENCES.**

(a) SHORT TITLE.—The Act may be cited as the "American Fisheries Management and Marine Life Enhancement Act".

(b) AMENDMENT OF MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed as 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-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq).

**SEC. 2. TECHNICAL CORRECTIONS TO DEFINITIONS.**

(a) EXECUTION OF PRIOR AMENDMENTS.—

(1) CONTINENTAL SHELF FISHERY RESOURCES.—Section 102(2) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3561) is amended—

(A) by striking "COELENTERATA" and inserting "**COELENTERATA**";

(B) by striking "CNIDARIA" and inserting "**CNIDARIA**"; and

(C) by striking "CRUSTACEA" and inserting "**CRUSTACEA**".

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(2) UNITED STATES HARVESTED FISH.—Section 102(11) of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3563) is amended by striking "(42)" and inserting "(43)".

(3) EFFECTIVE DATE.—This subsection shall take effect on the effective date of section 102 of Public Law 104–297.

(b) CORRECTIONS RELATING TO SPECIAL AREAS.—Section 3 (16 U.S.C. 1802) is amended—

(1) by striking paragraphs (35) and (36);

(2) by redesignating paragraphs (37) through the last paragraph (relating to the definition of "waters of a foreign nation") in order as paragraphs (35) through (44);

(3) by inserting "(a) GENERAL DEFINITIONS.—" before "As used in this Act"; and

(4) by adding at the end the following:

"(b) TERMS RELATING TO AGREEMENT WITH THE FORMER SOVIET UNION.—As used in this Act the term 'special areas' means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

**SEC. 3. SCIENCE-BASED IMPROVEMENTS TO MANAGEMENT.**

(a) HARVEST LEVEL CAPS.—

(1) MECHANISM.—Section 303(a) (16 U.S.C. 1853(a)) is amended by striking "and" after the semicolon at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a semicolon, and by adding at the end the following:

"(15) provide a mechanism for specifying the total allowable catch or another annual catch limit under the plan (including for a multiyear plan) for each fishery for which an annual catch limit can be established, that—

"(A) is based on the best scientific information available; and

"(B) in the case of a plan issued by a Council, does not exceed the acceptable biological catch level recommended by the scientific and statistical committee of the Council;".

(2) REQUIREMENT TO ADOPT.—Section 302(h) (16 U.S.C. 1852(h)) is amended by striking "and" after the semicolon at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting a semicolon, and by adding at the end the following:

"(7) adopt a total allowable catch limit or other annual harvest effort control limit for each of the fisheries for which such a limit can be established, after considering the recommendation of the scientific and statistical committee of the Council having jurisdiction over the fishery, which shall not exceed the recommendation for the acceptable biological catch as recommended by such scientific and statistical committee; and".

(3) CONFORMING AMENDMENT.—Section 303(b)(11) (16 U.S.C. 1853(b)(11)) is amended by striking "allowable biological catch" and inserting "acceptable biological catch".

(b) BEST SCIENTIFIC INFORMATION AVAILABLE.—Section 303 (16 U.S.C. 1853) is amended by adding at the end the following:

"(d) BEST SCIENTIFIC INFORMATION AVAILABLE.—The Secretary shall develop guidelines for the Councils to use in determining what is the best scientific information available. The Secretary shall base these guidelines on the recommendations for guidelines developed by the Ocean Studies Board of the National Research Council in its report titled 'Improving the Use of the Best Scientific Information Available, Standard in Fisheries Management'.".

(c) SCIENTIFIC AND STATISTICAL COMMITTEES.—Section 302(g)(1) (16 U.S.C. 1852(g)(1)) is amended by inserting "(A)" before "Each Council", and by adding at the end the following:

"(B) Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch and for the maximum sustainable yield for each fishery under the jurisdiction of the Council, and reports on stock status and health, bycatch, habitat status, socio-economic impacts of management measures, and sustainability of fishing practices.

"(C) Members appointed to the scientific and statistical committees shall be Federal employees, State employees, academicians, or independent experts with strong scientific or technical credentials and experience.

"(D) In addition to payments authorized by subsection (f)(7), the Secretary shall pay a stipend to members of the scientific and statistical committees who are not employed by the Federal Government or a State government agency.

"(E) A science and statistical committee shall hold its meetings in conjunction with the meetings of the Council, to the extent practicable.".

(d) SCIENTIFIC RESEARCH PRIORITIES.—Section 302(h) (16 U.S.C. 1852(h)) is further amended by adding at the end the following:

"(8) develop, in conjunction with the scientific and statistical committee, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall—

"(A) establish priorities for 5-year periods;

"(B) be updated as necessary; and

"(C) be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service for their consideration in developing research priorities and budgets for the region of the Council.".

(e) COOPERATIVE RESEARCH AUTHORITY.—

(1) DISCRETIONARY PROVISIONS IN FISHERY MANAGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b)) is amended by striking "and" after the semicolon at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting a semicolon, and by adding at the end the following:

"(13) include provisions to create a cooperative research component including the use of commercial fishing, charter fishing, or recreational fishing vessels for the gathering of data on stock abundance, composition, distribution, or other relevant information important for the implementation of the plan;".

(2) COOPERATIVE RESEARCH BY SECRETARY.—Section 404 (16 U.S.C. 1881c) is amended by adding at the end the following:

"(e) COOPERATIVE RESEARCH BY SECRETARY.—The research program under subsection (a) may include cooperative research using commercial fishing, charter fishing, or recreational fishing vessels for the gathering of data on stock abundance, composition, distribution, or other relevant information.".

(3) PRESERVING FISHING PRIVILEGES.—Section 404 (16 U.S.C. 1881c) is further amended by adding at the end the following:

"(f) PRESERVING FISHING PRIVILEGES.—The Secretary shall ensure that—

"(1) fishing vessels participating in research activities conducted pursuant to section 303(b)(13) or title IV do not lose allocated fishing privileges (such as days at sea) based on the research activities, unless loss of such privileges is a part of the research plan under which the vessel participates; and

"(2) catch history of a vessel during such research activities at any time when the vessel is sacrificing fishing time in an open season shall accrue to the vessel, unless loss of such accrual is part of such research plan.".

(f) REGIONAL STOCK ASSESSMENTS.—

(1) IN GENERAL.—Title IV (16 U.S.C. 1881 et seq.) is amended by adding at the end the following:

**"SEC. 408. REGIONAL STOCK ASSESSMENTS.**

"(a) IN GENERAL.—The Secretary shall conduct periodic regional assessments of stocks of fish.

"(b) INDEPENDENT REVIEW.—The Secretary shall ensure that each periodic assessment under this section is independently reviewed in a manner that—

"(1) will not delay the process of providing to Regional Fishery Management Councils current assessments for use in managing fisheries; and

"(2) is as transparent as possible, so that interested members of the public can provide input during the review process.".

(2) CLERICAL AMENDMENT.—The table of contents in the first section is further amended by adding at the end of the items relating to title IV the following:

"Sec. 408. Regional stock assessments.".

(3) REGIONAL STOCK ASSESSMENTS AND PEER REVIEW.—Section 302(g) (16 U.S.C. 1852(g)) is amended by adding at the end the following:

"(6) PEER REVIEW PROCESS.—

"(A) The Secretary and each Council shall establish a peer review process for scientific information used to advise the Secretary or the Council, respectively, about the conservation and management of fisheries.

"(B) The Secretary and each Council shall ensure that the peer review process established under this paragraph—

"(i) to the extent practicable, will not delay the process of providing to the Council or the Secretary, respectively, current information for use in managing fisheries; and

"(ii) is as transparent as possible, so that interested members of the public can provide input during the review process.".

**SEC. 4. DATA COLLECTION.**

(a) AUTHORITY TO REQUIRE VMS.—Section 305 (16 U.S.C. 1855) is amended by adding at the end the following:

"(j) AUTHORITY TO REQUIRE VMS.—The Secretary may require, if requested to do so by a Council, a Vessel Monitoring System or other similar electronic monitoring technology for a fishery or specific sectors of a fishery under the jurisdiction of the Council. To the extent that the technology is required for enforcement or data collection purposes for a limited access privilege management system, the cost of such a system shall be included in the costs that are considered in determining the amount of any fee required under this Act to be paid to participate in the fishery. Any information collected under this subsection shall be treated as confidential and exempt from disclosure under section 402(b).".

(b) RECREATIONAL DATA COLLECTION.—

(1) ESTABLISHMENT OF PROGRAM.—Within 24 months after the date of enactment of this Act, the Secretary of Commerce shall establish a program to improve the quality and accuracy of information generated by National Marine Fisheries Service recreational fishing data collection programs, with a goal achieving accurate, useful, and improved data for each individual fishery. The program shall include—

(A) an increased number of intercepts above current baselines established by the National Marine Fisheries Service to accurately estimate recreational catch and effort;

(B) use of surveys that target anglers registered at the State level to collect participation and effort data;

(C) collection and analysis of vessel trip report data from for-hire vessels including party, head, and charter fishing vessels;

(D) development of a weather corrective factor that can be applied to recreational catch and effort estimates;

(E) an independent committee composed of recreational fishermen, other stakeholders, academia, persons with expertise in stock assessments and survey design, and appropriate National Marine Fisheries Service personnel, to review data collection estimates and geographic and temporal issues, among other variables, related to intercepts, prior to the finalization of the catch estimates; and

(F) identification of deficiencies in recreational data collection (including with respect to fishing on private property, night-time fishing, and random digit dialing) and develop sampling methods to correct the deficiencies.

(2) PROHIBITION OF FEES.—The Secretary shall not impose any new fees on recreational fishermen for the purposes of data collection.

(3) REPORT.—The Secretary of Commerce shall report to the Congress within 18 months after the date of the enactment of this Act, on—

(A) the progress made in developing such a program;

(B) whether the program has resulted in significantly better data for management of recreational fishing, and if not, plans to correct problems in achieving that result; and

(C) actions to continue to make improvements in data collection.

(4) AUTHORIZATION OF APPROPROIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary of Commerce $5,000,000 for each of fiscal years 2007 through 2011.

(c) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Section 402(b) (16 U.S.C. 1881a(b)) is amended to read as follows:

"(b) CONFIDENTIALITY OF INFORMATION.—

"(1) IN GENERAL.—Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—

"(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

"(B) to State or Marine Fisheries Commission employees—

"(i) as necessary for achievement of the purposes of this Act; and

"(ii) in accordance with a confidentiality agreement between the State or Commission, as appropriate, and the Secretary that prevents public disclosure of the identity or business of any person;

"(C) when required by court order;

"(D) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access privilege program, but only to the extent that such use is consistent with subparagraph (B);

"(E) if such information is required to be submitted to the Secretary for any determination under a limited access program;

"(F) that observer information collected in fisheries under the authority of the North Pacific Council may be released to the public as specified in a fishery management plan or regulation for weekly summary bycatch information identified by vessel, and for haul-specific bycatch information without vessel identification; or

"(G) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.

"(2) PROCEDURES TO PRESERVE CONFIDENTIALITY.—The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of any observer information, information produced by a vessel monitoring system, or information produced by other technology used on-board a vessel for enforcement or data collection purposes, that is submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public—

"(A) any such information that in any aggregate or summary form that does not directly or indirectly disclose the identity or business of any person who submits such information.

"(B) any such information when it is necessary in proceedings to adjudicate observer certifications; and

"(C) any such information as authorized by any regulations issued under paragraph (4) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, for purposes of—

"(i) allowing the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

"(ii) validating the accuracy of the observer information collected.

"(3) USE FOR CONSERVATION AND MANAGEMENT PURPOSES.—Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(F).

"(4) MEMORANDUM OF UNDERSTANDING.—The Secretary may enter into a memorandum of understanding with the heads of other Federal agencies for the sharing of confidential information for purposes of this Act, such as information produced by vessel monitoring systems or other electronic monitoring systems, if the Secretary determines there is a compelling need to do so and if the heads of the other Federal agencies agree to maintain the confidentiality of the information in accordance with the requirements that apply to the Secretary under this section.".

(2) CONFORMING AMENDMENT.—Section 404(c)(4) (16 U.S.C. 1881c(c)(4)) is amended by striking "under section 401".

(3) DEFINITIONS.—Section 3 (16 U.S.C. 1802) is further amended in subsection (a)—

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

"(4A) The term 'confidential information' means—

"(A) trade secrets; or

"(B) commercial or financial information the disclosure of which is likely to result in substantial harm to the competitive position of the person who submitted the information to the Secretary."; and

(B) by inserting after paragraph (27) the following:

"(27A) The term 'observer information' means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or fish processing observations, fish sampling or weighing data, vessel logbook data, vessel- or fish processor-specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.".

(d) SOCIOECONOMIC DATA COLLECTION ACTIVITIES.—Section 402 (16 U.S.C. 1881a) is further amended by adding at the end the following:

"(f) SOCIOECONOMIC DATA COLLECTION.—

"(1) The Secretary may provide funds to Councils to carry out collection of socioeconomic data, including information on fishermen and fishing communities, necessary to carry out the functions of the Councils.

"(2) To carry out this subsection there is authorized to be appropriated to the Secretary, in addition to other amounts authorized, $2,000,000 for each fiscal year.".

(e) NEED FOR MORE FREQUENT STOCK SURVEYS.—The Secretary of Commerce—

(1) shall determine the need for more frequent surveys of stocks of fish, and whether State agencies or cooperative research activities can fill the data gaps identified; and

(2) submit a report to the Congress on the current activities and the needs for such surveys, by not later than 2 years after the date of the enactment of this Act.

**SEC. 5. COUNCIL OPERATIONS AND AUTHORITIES.**

(a) COUNCIL APPOINTMENTS.—Section 302(b)(2)(C) (16 U.S.C. 1852(b)(2)(C)) is amended by inserting after the first sentence the following: "A Governor may submit the names of individuals from academia, or other public interest areas including conservation organizations and the seafood consuming public, if the Governor has determined that each such individual is qualified under the requirements of subparagraph (A).".

(b) TRAINING.—Section 302 (16 U.S.C. 1852) is amended by adding at the end the following:

"(k) COUNCIL TRAINING PROGRAM.—

"(1) TRAINING COURSE.—Within 6 months after the date of the enactment of the American Fisheries Management and Marine Life Enhancement Act, the Secretary, in consultation with the Councils and the National Sea Grant College Program, shall develop a training course for newly appointed Council members. The course may cover a variety of topics relevant to matters before the Councils, including—

"(A) fishery science and basic stock assessment methods;

"(B) fishery management techniques, data needs, and Council procedures;

"(C) social science and fishery economics;

"(D) tribal treaty rights and native customs, access, and other rights related to Western Pacific indigenous communities;

"(E) legal requirements of this Act, including conflict of interest and disclosure provisions of this section and related policies;

"(F) other relevant legal and regulatory requirements, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.);

"(G) public process for development of fishery management plans;

"(H) recreational and commercial fishing information including fish harvesting techniques, gear types, fishing vessel types, and economics, for the fisheries within each Council's jurisdiction; and

"(I) other topics suggested by the Council.

"(2) MEMBER TRAINING.—The training course—

"(A) shall be available to both new and existing Council members, staff from the regional offices and regional science centers of the National Marine Fisheries Service; and

"(B) may be made available to committee or advisory panel members as resources allow.

"(3) REQUIRED TRAINING.—Council members appointed after the date of the enactment of the American Fisheries Management and Marine Life Enhancement Act must complete the training course developed under this subsection.".

(c) AUTHORITY TO DEVELOP ECOSYSTEM-BASED FISHERY MANAGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b)) is further amended by adding at the end the following:

"(14) contain research, conservation, and management measures that encompass more than one fishery and are for the purpose of managing the fishery resources concerned under an ecosystem-based management system;".

(d) AUTHORITY TO REQUIRE VESSEL MONITORING SYSTEMS.—Section 303(b) (16 U.S.C. 1853(b)) is further amended by adding at the end the following:

"(15) require a Vessel Monitoring System or other similar electronic monitoring technology for the purposes of enforcing, monitoring, or collecting data from a fishery or fishery sector;".

(e) OBSERVER FUNDING CLARIFICATION.—Section 303 (16 U.S.C. 1853) is further amended by adding at the end the following:

"(e) OBSERVER PROVISIONS.—

"(1) COSTS.—Costs for observer coverage that is primarily for the enforcement of a fishery management plan or for data collection necessary for the monitoring of a fishery—

"(A) shall be paid for by the Secretary; and

"(B) under a limited access program, may be considered as a cost to be recovered under the authority of section 303A(e)(2).

"(2) LIABILITY FOR SANCTIONS.—A fishing vessel that is required to have an observer onboard pursuant to section 303(b)(8), the owner or operator of such a fishing vessel, and the United States shall not be liable for any sanction imposed on the observer for actions of the observer in the course of performance of duties as an observer.".

(f) INCENTIVES.—Section 303(b) (16 U.S.C. 1853(b)) is further amended by adding at the end the following:

"(16) establish a system of incentives to reduce total bycatch and seabird interaction, bycatch rates, and post-release mortality in fisheries under the Council's or Secretary's jurisdiction, including—

"(A) measures to incorporate bycatch into quotas, including the establishment of collective or individual bycatch quotas;

"(B) measures to promote the use of gear with verifiable and monitored low bycatch and seabird interaction rates; and

"(C) measures that, based on the best scientific information available, will reduce bycatch and seabird interaction, bycatch mortality, post-release mortality, or regulatory discards in the fishery; and".

(g) MARINE PROTECTED AREAS AUTHORITY.—

(1) DISCRETIONARY AUTHORITY.—Section 303(b) (16 U.S.C. 1853(b)) is further amended by adding at the end the following:

"(17) designate closed areas, seasonal closures, time/area closures, gear restrictions, or other methods for limiting impacts on habitat, limit bycatch impacts of gear, or limit fishing impact on spawning congregations in specific geographic areas.".

(2) REQUIREMENTS.—Section 303(a) (16 U.S.C. 1853(a)) is further amended by adding at the end the following:

"(16) with respect to any closure of an area to all fisheries managed under this Act, include provisions that ensure that such closure—

"(A) is based on the best scientific information available;

"(B) includes criteria to assess the conservation benefit of the closed area;

"(C) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and

"(D) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to—

"(i) users of the area;

"(ii) overall fishing activity;

"(iii) fishery science; and

"(iv) fishery and marine conservation; and".

(h) FRAMEWORK AUTHORITY.—Section 304 (16 U.S.C. 1854) is amended by adding at the end the following:

"(i) ALTERNATIVE PROCEDURAL MECHANISMS.—

"(1) In a fishery management plan or amendment, the Council or Secretary, as appropriate, may develop alternative procedural mechanisms to be used in lieu of plan amendments for implementing conservation and management measures.

"(2) Such mechanisms may allow for abbreviated processes for the implementation of regulations or other actions as appropriate.

"(3) Alternative procedural mechanisms shall only be approved or adopted for use in situations in which—

"(A) the conservation and management measures are within the scope of conservation and management measures established in an existing fishery management plan;

"(B) otherwise applicable regulatory processes are not sufficient to allow timely and efficient implementation of conservation and management measures in response to new information; and

"(C) notice of the conservation and management measures is provided appropriate to the significance of the expected impacts on affected fishery resources and on the participants in the fishery.

"(4) Any final agency action taken pursuant to the alternative procedural mechanism must be promptly published in the Federal Register.".

(i) COUNCIL MEETING NOTICE.—

(1) REGULAR AND EMERGENCY MEETINGS.—The first sentence of section 302(i)(2)(C) (16 U.S.C. 1852(i)(2)(C)) is amended—

(A) by striking "published in local newspapers" and inserting "provided by any means that will result in wide publicity (except that e-mail notification and Web site postings alone are not sufficient)"; and

(B) by striking "fishery) and such notice may be given by such other means as will result in wide publicity." and inserting "fishery).".

(2) CLOSED MEETINGS.—Section 302(i)(3)(B) (16 U.S.C. 1852(i)(3)(B)) is amended by striking "notify local newspapers" and inserting "provide notice by any means that will result in wide publicity".

(j) CARIBBEAN COUNCIL JURISDICTION.—Section 302(a)(1)(D) (16 U.S.C. 1852(a)(1)(D)) is amended by inserting "and of commonwealths, territories, and possessions of the United States in the Caribbean Sea" after "seaward of such States".

(k) COUNCIL COORDINATION COMMITTEE.—Section 302 (16 U.S.C. 1852) is further amended by adding at the end the following:

"(l) COUNCIL COORDINATION COMMITTEE.—The Councils may establish a Council coordination committee to discuss issues of relevance to all Councils, including issues related to the implementation of this Act. The committee shall consist of the chairs, vice chairs, and executive directors of each of the Councils described in subsection (a)(1), or other Council members or staff.".

**SEC. 6. ECOSYSTEM-BASED FISHERY MANAGEMENT.**

(a) POLICY.—Section 2(c) (16 U.S.C. 1851(c)) is amended by striking "and" after the semicolon at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting "; and", and by adding at the end the following:

"(8) to support and encourage efforts to understand the interactions of species in the marine environment and the development of ecosystem-based approaches to fisheries conservation and management that will lead to better stewardship and sustainability of the Nation's coastal fishery resources and fishing communities.".

(b) AUTHORIZATION OF RESEARCH.—Section 404(c) (16 U.S.C. 1881c(c)) is amended by adding at the end the following:

"(5) The interaction of species in the marine environment, and the development of ecosystem-based approaches to fishery conservation and management that will lead to better stewardship and sustainability of coastal fishery resources.".

(c) REGULATIONS DEFINING TERMS.—The Secretary of Commerce shall, in conjunction with the Regional Fishery Management Councils and based on the recommendations of the Ecosystems Principles Advisory Panel in the report entitled "Ecosystem-based Fishery Management" and dated April 1999, and after provision of notice and an opportunity for public comment, issue regulations that establish definitions of the terms "ecosystem" and "marine ecosystem" for purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(d) REGIONAL ECOSYSTEM RESEARCH.—Section 406 (16 U.S.C. 1882) is amended by adding at the end the following:

"(f) REGIONAL ECOSYSTEM RESEARCH.—

"(1) STUDY.—Within 180 days after the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, the Secretary, in consultation with the Councils, shall undertake and complete a study on the state of the science for advancing the concepts and integration of ecosystem considerations in regional fishery management. The study should build upon the recommendations of the advisory panel and include—

"(A) recommendations for scientific data, information and technology requirements for understanding ecosystem processes, and methods for integrating such information from a variety of Federal, State, and regional sources;

"(B) recommendations for processes for incorporating broad stake holder participation;

"(C) recommendations for processes to account for effects of environmental variation on fish stocks and fisheries; and

"(D) a description of existing and developing Council efforts to implement ecosystem approaches, including lessons learned by the Councils.

"(2) IDENTIFICATION OF MARINE ECOSYSTEMS; RESEARCH PLAN.—

"(A) IN GENERAL.—Within one year after the date of the publication of the study under paragraph (1), the Secretary, in conjunction with the regional science centers of the National Marine Fisheries Service and the Councils, shall—

"(i) identify specific marine ecosystems within each region for which a Council is established by section 302(a); and

"(ii) develop and begin to implement regional research plans to address the information deficiencies identified by the study.

"(B) RESEARCH PLANS.—The research plans shall suggest reasonable timeliness and cost estimates for the collection of the required information.

"(C) REPORTS.—The Secretary shall report to the Congress annually on the progress of the regional research plans.

"(3) AGENCY TECHNICAL ADVICE AND ASSISTANCE, REGIONAL PILOT PROGRAMS.—The Secretary is authorized to provide necessary technical advice and assistance, including grants, to the Councils for the development and design of regional pilot programs that build upon the recommendations of the advisory panel and, when completed, the study.".

**SEC. 7. LIMITED ACCESS PRIVILEGE PROGRAMS.**

(a) IN GENERAL.—

(1) AUTHORIZATION OF PROGRAMS.—Title III (16 U.S.C. 1851 et seq.) is amended—

(A) by striking section 303(d); and

(B) by inserting after section 303 the following:

**"SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.**

"(a) IN GENERAL.—After the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

"(b) NO CREATION OF RIGHT, TITLE, OR INTEREST.—A limited access system, limited access privilege, quota share, or other authorization established, implemented, or managed under this Act—

"(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

"(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation for failure to comply with the terms of the plan or if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

"(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

"(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

"(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

"(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

"(1) IN GENERAL.—In addition to complying with the other requirements of this Act, any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

"(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

"(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

"(C) promote—

"(i) the safety of human life at sea; and

"(ii) the conservation and management of the fishery;

"(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish;

"(E) specify the goals of the program;

"(F) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the establishment of the program and every 5 years thereafter;

"(G) include an effective system for enforcement, monitoring, and management of the program, including the use of observers;

"(H) include an appeals process for administrative review of determinations with respect to the Secretary's decisions regarding administration of the limited access privilege program; and

"(I) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

"(2) FISHING COMMUNITIES.—

"(A) IN GENERAL.—

"(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

"(I) be located within the management area of the relevant Council;

"(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

"(III) consist of residents of the management area of the relevant Council who conduct commercial or recreational fishing, fish processing, or fishery-dependent support businesses within such area; and

"(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of fishing communities, including those that have not historically had the resources to participate in the fishery, for approval by the Council based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

"(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges for a person that were granted to a fishing community, if the person fails to comply with the requirements of the community sustainability plan approved by the relevant Council under clause (i)(IV).

"(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—

"(i) traditional fishing or fish processing practices in, and dependence on, the fishery;

"(ii) the cultural and social framework relevant to the fishery;

"(iii) economic barriers to access to fishery;

"(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, fishing vessel captains and crews, fish processors, and other businesses substantially dependent upon the fishery in the region or subregion;

"(v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and

"(vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or fish processing activities in the fishery.

"(3) REGIONAL FISHERY ASSOCIATIONS.—

"(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

"(i) be located within the management area of the relevant Council;

"(ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

"(iii) be a voluntary association with established by-laws and operating procedures consisting of participants in the fishery, including commercial or recreational fishing, fish processing, fishery-dependent support businesses, or fishing communities; and

"(iv) develop and submit a regional fishery association plan to the Council and the Secretary for approval by the Council based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

"(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges for a person that were granted to a fishery association, if the person fails to comply with the requirements of the regional fishery association plan approved by the relevant Council under subparagraph (A)(iv).

"(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

"(i) traditional fishing or fish processing practices in, and dependence on, the fishery;

"(ii) the cultural and social framework relevant to the fishery;

"(iii) economic barriers to access to fishery;

"(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, fish processors, and other businesses substantially dependent upon the fishery in the region or subregion, upon the administrative and fiduciary soundness of the association and its by-laws; and

"(v) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

"(4) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

"(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

"(i) current and historical harvests;

"(ii) employment in the harvesting and fish processing sectors;

"(iii) investments in, and dependence upon, the fishery; and

"(iv) the current and historical participation of fishing communities;

"(B) to the extent practicable, consider the basic cultural and social framework of the fishery, especially through the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements;

"(C) include measures to assist, when necessary and appropriate, entry-level and small vessel operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges and, where appropriate, recommending the provision of economic assistance in the purchase of limited access privileges to harvest fish;

"(D) for the purpose of preventing significant adverse economic or social impact on any fishing community or other person, ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

"(i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquired, or use; and

"(ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges;

"(E) establish procedures to address geographic or other consolidation in both the harvesting and fish processing sectors of the fishery;

"(F) authorize limited access privileges to harvest fish to be held, acquired, or used by or issued under the system to persons who substantially participate in the fishery, as specified by the Council, including, as appropriate, fishing vessel owners, vessel captains, vessel crew members, fishing communities, and regional fishery associations; and

"(G) ensure that no person otherwise qualified to receive an initial allocation of a limited access privilege to harvest fish is required to join any entity or association that limits in any way the person's ability to sell their catch as a condition of that person receiving an initial or annual allocation.

"(5) PROGRAM INITIATION.—

"(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

"(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

"(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent

more than 50 percent of the permit holders in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

"(D) NEW ENGLAND REFERENDUM.—

"(i) The New England Council may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than ⅔ of those voting in a referendum among eligible permit holders with respect to the New England Council. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

"(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program.

"(iii) The New England Fishery Management Council may determine that vessel captains or crew members who have substantial participation in the fishery concerned shall be eligible to vote in a referendum under this subparagraph. The New England Fishery Management Council shall establish the criteria for determining what constitutes 'substantial participation' for purposes of this clause.

"(iv) Within 1 year after the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements (subject to clause (iii)) for referenda and to conduct such referenda in a fair and equitable manner.

"(E) OTHER LAW.—Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

"(6) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

"(A) establish a policy on the transferability of limited access privilege shares (through sale or lease), including a policy on any conditions that apply to the transferability of limited access privilege shares that is consistent with the policies adopted by the Council for the fishery under paragraph (2); and

"(B) establish criteria for the approval and monitoring of transfers (including sales and leases) of limited access privilege shares.

"(7) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(g).

"(8) LIMITATION ON FEDERAL AGENCIES AND OFFICIALS.—A Federal agency or official may not hold, administer, or reallocate an individual quota issued under a fishery management plan under this section, other than the Secretary and the Council having authority over the fishery for which the individual quota is issued.

"(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council may consider, and provide for, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

"(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of subsection (c)(2)(A); and

"(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

"(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

"(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

"(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

"(f) LIMITED DURATION.—In establishing a limited access privilege program after the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, a Council may establish—

"(1) a period of time after which any initial or subsequent allocation of a limited access privilege shall expire, or various periods for such expiration within a fishery if the Council determines that variation of the periods will further achievement of management goals; and

"(2) a mechanism under which participants in and entrants to the program may acquire or reacquire allocations.

"(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

"(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program that reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used to issue obligations that aid in financing—

"(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

"(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

"(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

"(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the American Fisheries Management and Marine Life Enhancement Act, shall be construed to require a reallocation of individual quota shares, fish processor quota shares, cooperative programs, or other quota programs, including sector allocation, for which a Council has already provided a substantial opportunity for public comment and begun considering alternatives, or submitted by a Council or approved by the Secretary or by congressional action before the date of enactment of such Act.".

(2) CLERICAL AMENDMENT.—The table of contents in the first section is amended by adding after the item relating to section 303 the following:

"Sec. 303A. Limited access privilege programs.".

(b) FEES.—Section 304(d)(2) (16 U.S.C. 1854(d)(2)) is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (F) and (G), respectively;

(2) in subparagraph (F), as so redesignated, by striking "Such fee" and inserting "A fee under this paragraph"; and

(3) by striking "(2)(A)" and all that follows through the end of subparagraph (A) and inserting the following:

"(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) With respect to any initial allocation under a limited access system established after the date of the enactment of the American Fisheries Management and Marine Life Enhancement Act, an initial allocation fee in an amount, determined by the Secretary, equal to 1 percent of the ex-vessel value of fish authorized in one year under an individual quota, that 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 3 percent of the ex-vessel value of fish authorized each year under an individual quota share, that 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 ex-vessel value of fish authorized each year under an individual quota share, that 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 ex-ves-

sel value of fish authorized 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.".

(c) CONFORMING AMENDMENT.—Section 304(d)(2)(G)(i), as redesignated by subsection (b)(1) of this section, is amended by striking "section 305(h)(5)(B)" and all that follows and inserting "section 305(h)(5)(B).".

(d) LIMITED ACCESS PRIVILEGE DEFINED.—Subsection (a) of section 3 (16 U.S.C. 1802) is further amended by inserting after paragraph (23) the following:

"(23A) The term 'limited access privilege'—

"(A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish that may be received or held for exclusive use by a person; and

"(B) includes an individual fishing quota; but

"(C) does not include community development quotas as described in section 305(i).".

**SEC. 8. JOINT FISHERIES ENFORCEMENT AGREEMENTS.**

Section 311 (16 U.S.C. 1861) is amended—

(1) by striking "and" after the semicolon in subsection (b)(1)(A)(iv);

(2) by inserting "and" after the semicolon in subsection (b)(1)(A)(v);

(3) by inserting after clause (v) of subsection (b)(1)(A) the following:

"(vi) access, directly or indirectly, for enforcement purposes any data or information required to be provided under this title or regulations under this title, including data from vessel monitoring systems, or any similar system, subject to the confidentiality provisions of section 402;";

(4) by redesignating subsection (h) as subsection (j); and

(5) by inserting after subsection (g) the following:

"(h) JOINT FISHERIES ENFORCEMENT AGREEMENTS.—

"(1) IN GENERAL.—The Governor of an eligible State may apply to the Secretary for execution of a joint fisheries enforcement agreement with the Secretary that will authorize the deputization and funding of State officers with marine fisheries responsibilities to perform duties of the Secretary relating to fisheries enforcement provisions under this title or any other marine resource law enforced by the Secretary. Upon receiving an application meeting the requirements of this subsection, the Secretary may enter into a joint fisheries enforcement agreement with the requesting State.

"(2) ELIGIBLE STATE.—A State is eligible to participate in the cooperative agreements under this section if it is in, or bordering on, the Atlantic Ocean (including the Caribbean Sea), the Pacific Ocean, the Arctic Ocean, or the Gulf of Mexico.

"(3) REQUIREMENTS.—Joint fisheries enforcement agreements executed under paragraph (1)—

"(A) shall be consistent with the purposes and intent of this section to the extent applicable to the regulated activities; and

"(B) shall provide for confidentiality of data and information submitted to the State under section 402.

"(4) ALLOCATION OF FUNDS.—The Secretary shall include in each joint fisheries enforcement agreement an allocation of funds to assist in management of the agreement. The allocation shall be fairly distributed among all eligible States participating in cooperative agreements under this subsection, based upon consideration of Federal marine fisheries needs, the specific marine fisheries conservation needs of each participating eligible State, and the capacity of the State to undertake the mission and assist with Federal needs. The agreement may provide for amounts to be withheld by the Secretary for the cost of any technical or other assistance provided to the State by the Secretary under the agreement.

"(i) IMPROVED DATA SHARING.—

"(1) IN GENERAL.—Notwithstanding any other provision of this Act, as soon as practicable but no later than 21 months after the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, the Secretary shall implement data-sharing measures to make any data required to be provided by this Act from vessel monitoring systems, or similar systems—

"(A) directly accessible by State officers authorized under subsection (a) of this section; and

"(B) available to a State management agency involved in, or affected by, management of a fishery if the State has entered into an agreement with the Secretary under section 402(b)(1)(B) of this Act.

"(2) AGREEMENT REQUIRED.—The Secretary shall promptly enter into an agreement with a State under section 402(b)(1)(B) of this Act if—

"(A) the State provides a written opinion or certification that State law allows the State to maintain the confidentiality of information required by Federal law to be kept confidential; or

"(B) the Secretary is provided other reasonable assurance that the State can and will protect the identity or business of any person to which such information relates.".

**SEC. 9. FUNDING FOR FISHERY OBSERVER PROGRAMS.**

(a) NORTH PACIFIC FISHERIES RESEARCH PLANS.—Section 313 (16 U.S.C. 1862) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1) by striking "all" and inserting "any"; and

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

"(2) establishes a system, or systems, of fees, which may vary by fishery, management area, and observer coverage level, to pay for the costs of implementing the plan."; and

(2) in subsection (b)(2)—

(A) in subparagraph (A) by inserting ", or electronic monitoring systems," after "stationing observers";

(B) in subparagraph (E) by inserting "fixed amount reflecting actual observer costs as described in clauses (i), (ii), and (iii) of subparagraph (A), or" after "be expressed as";

(C) in subparagraph (F)—

(i) by inserting "some or" after "assessed against"; and

(ii) by inserting ", or electronic monitoring systems," after "carry an observer"; and

(D) by striking "and" after the semicolon at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting "; and", and by adding at the end the following:

"(J) provide that fees collected under the system shall be credited against any fee for stationing observers, or electronic monitoring systems, onboard fishing vessels and United States fish processors and the actual cost of inputting collected data to which a fishing vessel or fish processor is subject under section 304(d).".

(b) OBSERVER PROGRAM FUNDING.—Section 403 (16 U.S.C. 1881(b)) is amended by adding at the end the following:

"(d) OBSERVER PROGRAM FUNDING MECHANISM.—

"(1) IN GENERAL.—The Secretary may establish a funding mechanism to cover the cost of an observer program to monitor any fishery managed under this Act or any other Act administered by the Secretary, including the Northern Pacific halibut fishery.

"(2) FORM OF MECHANISM.—

"(A) The Secretary may exercise broad discretion in developing a funding mechanism under this subsection, which may include a system of fees, payments collected from limited access privilege programs, or any other cost recovery mechanism to pay for—

"(i) the cost of stationing observers on board fishing vessels and United States fish processors, and

"(ii) the actual cost of inputting data and managing observer databases.

"(B) The moneys collected under a funding mechanism established under this subsection for an observer program shall be—

"(i) deposited into the Fishery Observer Fund established under subsection (e); and

"(ii) used only for the observer program covering fisheries from which the moneys were collected.

"(e) FISHERY OBSERVER FUND.—

"(1) ESTABLISHMENT OF FUND.—There is established on the books of the Treasury of the United States, a fund that shall be known as the Fishery Observer Fund (in this subsection referred to as the 'Fund'). The Fund shall be administered by the Secretary of Commerce. The Fund shall be available, subject to the availability of appropriations, only to the Secretary for purposes of

carrying out subsection (d). The Fund shall consist of all moneys deposited into in it accordance with this section, plus interest on those moneys.

"(2) INVESTMENT OF AMOUNT.—

"(A) It shall be the duty of the Secretary of the Treasury to invest, at the direction of the Secretary of Commerce, such portion of the Fund that is not currently needed for the purposes of each observer program covering fisheries from which moneys were collected under subsection (d).

"(B) Such investments shall be in public debt obligations with maturities suitable to the needs of the Fund, as determined by the Secretary of Commerce. Investments in public debt obligations shall bear interest at rates determined by the Secretary of the Treasury taking into consideration the current market yield on outstanding marketable obligations of the United States of comparable maturity.

"(3) SALE OF OBLIGATION.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the direction of the Secretary of Commerce at market prices.

"(f) CONTRIBUTIONS.—For purposes of carrying out subsections (d) and (e), the Secretary may accept, solicit, receive, hold, administer, and use gifts, devices, contributions, and bequests. Amounts received under this subsection shall be deposited in the Fishery Observer Fund established under subsection (c).".

**SEC. 10. COMPETING STATUTES.**

(a) REQUIRED INFORMATION IN MANAGEMENT PLANS.—Section 303(a) (16 U.S.C. 1853A)) is further amended by adding at the end the following:

"(17) contain information on the Council's efforts to study, develop, and describe appropriate alternatives to recommend courses of action.".

(b) REQUIRED ANALYSIS IN MANAGEMENT PLANS.—Section 303(a)(9) (16 U.S.C. 1853(a)(9)) is amended by striking "describe the likely effects, if any, of the conservation and management measures on—" and inserting "analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts of, the conservation and management measures on, and possible mitigation measures for—".

(c) COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—

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

**"SEC. 315. COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.**

"(a) IN GENERAL.—The Secretary may consider the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) to have been satisfied with respect to any fishery management plan, amendment to such a plan, or regulation implementing such a plan that the Secretary determines has been prepared in accordance with applicable provisions of sections 303 and 304 of this Act.

"(b) LIMITATION OF APPLICATION.—This section shall not apply unless the Secretary has published a determination that sections 304 and 305 are substantially equivalent to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).".

(2) CLERICAL AMENDMENT.—The table of contents in the first section is amended by adding at the end of the items relating to title III the following:

"Sec. 315. Compliance with National Environmental Policy Act of 1969.".

(3) EFFECT ON TIME REQUIREMENTS.—Section 305(e) (16 U.S.C. 1855(E)) is amended by inserting "the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)," after "the Regulatory Flexibility Act (5 U.S.C. 601 et seq.),".

**SEC. 11. DIMINISHED FISHERIES.**

(a) SUBSTITUTION OF "DIMINISHED" FOR "OVERFISHED".—

(1) SUBSTITUTION OF TERM.—The Act is amended—

(A) by striking "overfished" each place it appears (other than in subsection (a) of section 3 of the Act (16 U.S.C. 1802), as amended by this Act) and inserting "diminished"; and

(B) in the heading for section 304(e) (16 U.S.C. 1854(e)) by striking "OVERFISHED" and inserting "DIMINISHED".

(2) DIMINISHED DEFINED.—Subsection (a) of section 3 (16 U.S.C. 1802) is further amended—

(A) by inserting after paragraph (8) the following:

"(8A) The term 'diminished' means a fishery whose abundance is at or below a level that jeopardizes the capacity of the fishery to produce maximum sustainable yield on a continuing basis."; and

(B) by amending paragraph (29) to read as follows:

"(29) The term 'overfishing' means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.".

(3) DISTINGUISHING IN REPORTS.—Section 304(e)(1) (16 U.S.C. 1854(e)(1)) is amended by adding at the end the following: "The report shall distinguish between fisheries that are diminished (or approaching that condition) as a result of fishing and fisheries that are diminished (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as diminished or approaching that condition, whether the fishery is the target of directed fishing.".

(b) DURATION OF MEASURES TO REBUILD DIMINISHED FISHERIES.—Section 304(e)(4)(A)(ii) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1854(e)(4)(A)(ii)) is amended to read as follows:

"(ii) not exceed 10 years, except in cases where—

"(I) the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

"(II) the Secretary determines that such 10-year period should be extended because the cause of the fishery decline is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities;

"(III) the Secretary determines that such 10-year period should be extended for one or more diminished components of a multi-species fishery; or

"(IV) the Secretary makes substantial changes to the rebuilding targets after the rebuilding plan has been put in place.".

**SEC. 12. NEW PROHIBITED ACTS.**

(a) PROHIBITION ON SALE OR PURCHASE OF RECREATIONAL CATCH.—Section 307 (16 U.S.C. 1857) is amended by striking "and" after the semicolon at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting "; and", and by adding at the end the following:

"(6) to sell or purchase any fish caught in recreational fishing.".

(b) PROHIBITION ON USE OF RETIRED VESSEL.—Section 307(1) (16 U.S.C. 1857(1)) is amended—

(1) by striking "or" after the semicolon in subparagraph (O);

(2) by striking "carcass." in subparagraph (P) and inserting "carcass; or"; and

(3) by inserting after subparagraph (P) and before the last sentence the following:

"(Q) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).".

**SEC. 13. FISHERY FAILURES.**

Section 312(a) (16 U.S.C. 1361a) is amended by striking "commercial fishery" each place it appears and inserting "fishery".

**SEC. 14. EMERGENCY REGULATIONS.**

(a) LENGTHENING OF SECOND EMERGENCY PERIOD.—Section 305(c)(3)(B) (16 U.S.C. 1855(c)(3)(B)) is amended by striking "180 days," and inserting "186 days,".

(b) TECHNICAL AMENDMENT.—Section 305(c)(3)(D) (16 U.S.C. 1855(c)(3)(D)) is amended by inserting "or interim measures" after "emergency regulations".

**SEC. 15. BYCATCH AND SEABIRD INTERACTIONS.**

(a) GEAR GRANT PROGRAM.—Title IV (1 U.S.C. 1881 et seq.) is further amended by adding at the end the following:

**"SEC. 409. GEAR GRANT PROGRAM.**

"(a) IDENTIFICATION OF FISHERIES WITH MOST URGENT PROBLEMS.—The Secretary shall—

"(1) identify those fisheries included in a list under subsection (a) that have the most urgent bycatch problems or seabird interaction problems, based on comments received regarding the list; and

"(2) work in conjunction with the Councils and fishing industry participants to develop new fishing gear, or modifications to existing fishing gear, that will help minimize bycatch and seabird interactions to the extent practicable.

"(b) GRANT AUTHORITY.—The Secretary shall, subject to the availability of appropriations, make grants for the development of fishing gear and modifications to existing fishing gear that will help—

"(1) minimize bycatch and seabird interactions; and

"(2) minimize adverse fishing gear impacts on habitat areas of particular concern.

"(c) REPORT.—The Secretary shall report to the Congress annually on—

"(1) the amount expended to implement this section in the preceding year;

"(2) developments in gear technology achieved under this section;

"(3) the reductions in bycatch associated with implementation of this section; and

"(4) any other relevant information.

"(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary $10,000,000 for each of fiscal years 2007 through 2011.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section is amended by adding at the end of the items relating to title IV the following:

"Sec. 409. Gear grant program.".

(c) REPORT.—The Secretary of Commerce shall report to the Congress within one year after the date of the enactment of this Act on—

(1) the extent of the problem of seabird interaction with fisheries of the United States;

(2) efforts by the fishing industry and Regional Fishery Management Councils to address that problem; and

(3) the extent of the problem of seabird interaction with fisheries other than the fisheries of the United States.

(d) INTERNATIONAL ACTION.—The Secretary of Commerce shall take appropriate action at appropriate international fisheries management bodies to reduce seabird interactions in fisheries.

**SEC. 16. OVER CAPITALIZATION.**

(a) DISCRETION OF SECRETARY TO CONDUCT FISHING CAPACITY REDUCTION PROGRAM.—Section 312(b) (16 U.S.C. 1861a(b)) is amended—

(1) in paragraph (1) by striking ", at the request of the appropriate Council for fisheries under the authority of such Council, or the Governor of a State for fisheries under State authority,";

(2) in paragraph (1), by inserting "that is managed under a limited access system authorized by section 303(b)(6)," after "in a fishery"; and

(3) by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following:

"(4) The Council, or the Governor of a State, having authority over a fishery may request the Secretary to conduct a fishing capacity reduction program in the fishery under this subsection.".

(b) REQUIREMENT TO SURRENDER ALL PERMITS.—Section 312(b)(2) (16 U.S.C. 1861a(b)(2)) is amended to read as follows:

"(2)(A) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time.

"(B) To achieve that objective, the Secretary is authorized to pay an amount to the owner of a fishing vessel, if—

"(i) such vessel is scrapped, or through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing;

"(ii) all permits authorizing the participation of the vessel in any fishery under the jurisdiction of the United States are surrendered for permanent revocation; and

"(iii) the owner of the vessel and such permits relinquishes any claim associated with the vessel and such permits that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established.".

(c) ENSURING VESSELS DO NOT ENTER FOREIGN OR HIGH SEAS FISHERIES.—Section 312(b) (16 U.S.C. 1861a(b)) is further amended by adding at the end the following:

"(6) The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped, unless the Secretary certifies that the vessel will not be used for any fishing, including fishing in the waters of a foreign nation and fishing on the high seas.".

(d) REPORT.—

(1) IN GENERAL.—The Secretary shall, within 12 months after the date of the enactment of this Act, submit to the Congress a report—

(A) identifying and describing the 20 fisheries in United States waters with the most severe examples of excess harvesting capacity in the fisheries, based on value of each fishery and the amount of excess harvesting capacity as determined by the Secretary;

(B) recommending measures for reducing such excess harvesting capacity, including the retirement of any latent fishing permits that could contribute to further excess harvesting capacity in those fisheries; and

(C) potential sources of funding for such measures.

(2) BASIS FOR RECOMMENDATIONS.—The Secretary shall base the recommendations made with respect to a fishery on—

(A) the most cost effective means of achieving voluntary reduction in capacity for the fishery using the potential for industry financing; and

(B) including measures to prevent the capacity that is being removed from the fishery from moving to other fisheries in the United States, in the waters of a foreign nation, or in the high seas.

**SEC. 17. AMENDMENT REGARDING DEFINITIONS OF FISHING COMMUNITY AND RECREATIONAL FISHING INDUSTRY.**

(a) DEFINITION OF FISHING COMMUNITY.—Section 3 (16 U.S.C. 1802) is further amended in paragraph (16) of subsection (a)—

(1) by striking "harvest" and inserting "catch, harvest,"; and

(2) by inserting ", recreational participants, marina owners and operators, for-hire vessel owners and operators, bait and tackle shop owners and operators," after "crew".

(b) RECREATIONAL FISHING INDUSTRY.—Section 3 (16 U.S.C. 1802) is further amended by adding at the end of subsection (a) the following:

"(45) The term 'recreational fishing industry' means individual anglers, boat builders, fishing tackle manufacturers, for-hire vessel owners and operators, bait and tackle shop owners and operators, and recreational marina owners and operators.".

**SEC. 18. CONSIDERATION OF ECONOMIC IMPACTS.**

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

(1) in paragraph (5) by inserting "economic information necessary to meet the requirements of this Act," after "number of hauls,";

(2) in paragraph (13) by striking "fishery" the first place it appears and inserting "fishery, including their economic impact,"; and

(3) in paragraph (14) by striking "allocate" and inserting "allocate, taking into consideration the economic impact of harvest restrictions or recovery benefits on the fishery participants in each sector,".

**SEC. 19. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.**

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

**"SEC. 316. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.**

"(a) IN GENERAL.—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.

"(b) PROGRAM COMPONENTS.—

"(1) IN GENERAL.—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—

"(A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure;

"(B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region that may be temporarily closed as a result of environmental or other effects associated with the disaster;

"(C) vessel repair and refloating;

"(D) debris removal and cleaning;

"(E) public and private oyster bed, shrimp, and other fisheries rehabilitation; and

"(F) any other activities authorized under section 312(a) of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

"(2) JOB TRAINING.—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.

"(3) NO MATCHING REQUIRED.—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fish-

eries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—

"(A) no reasonable means are available through which applicants can meet the matching requirement; and

"(B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.

"(4) NET REVENUE LIMIT INAPPLICABLE.—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.

"(c) REGIONAL IMPACT EVALUATION.—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region's fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.

"(d) CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.—In this section the term 'catastrophic regional fishery disaster' means a natural disaster, including a hurricane or tsunami, or a judicial or regulatory closure to protect human health or the marine environment, that—

"(1) results in economic losses to coastal or fishing communities;

"(2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and

"(3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of that Act is further amended by inserting after the item relating to section 315 the following:

"Sec. 316. Regional coastal disaster assistance, transition, and recovery program.".

**SEC. 20. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION.—Section 4 (16 U.S.C. 1803) is amended by striking paragraphs (1) through (4) and inserting the following:

"(1) $338,970,000 for fiscal year 2007.

"(2) $366,087,000 for fiscal year 2008.

"(3) $395,374,000 for fiscal year 2009.

"(4) $427,604,000 for fiscal year 2010.

"(5) $461,812,000 for fiscal year 2011.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section is amended by inserting after the item relating to section 3 the following:

"Sec. 4. Authorization of appropriations.".

**SEC. 21. REVIEW AND REPORT REGARDING VIOLATIONS OF DISCLOSURE, CONFLICT OF INTEREST, AND RECUSAL PROVISIONS.**

The Secretary of Commerce shall, within 6 months after the date of enactment of this Act, review the votes of all Fishery Management Councils that have occurred since the date of the enactment of the Sustainable Fisheries Act (Public Law 104–297) and report to the Committee on Resources of the House of Representatives on whether there were any meaningful violations of the disclosure, conflict of interest, and recusal provisions of section 302(j) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(j)). The Secretary shall include in the report recommendations for legislative or regulatory changes to section 302(j) of such Act as the Secretary considers appropriate to address situations with respect to which violations were identified in the review.

**SEC. 22. REPORT ON EFFECTS OF HURRICANES.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the National Oceanic and Atmospheric Administration shall report to the Congress on the effects of Hurricanes Katrina, Rita, and Wilma on the fisheries and fish habitat of the United States.

(b) CONTENTS.—The report shall include a description of the effects of such hurricanes on—

(1) commercial and recreational fisheries;

(2) owners and operators of shrimp fishing vessels; and

(3) the oyster industry.

**SEC. 23. STUDY OF THE ACIDIFICATION OF THE OCEANS AND EFFECT ON FISHERIES.**

The Secretary of Commerce shall request the National Research Council to conduct a study of the acidification of the oceans and how this process effects United States fisheries.

## PURPOSE OF THE BILL

The purpose of H.R. 5018 is to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.

## BACKGROUND AND NEED FOR LEGISLATION

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is the primary law governing fisheries resources and fishing activities in federal waters, which are defined as those waters extending from the edge of State waters (generally three to nine miles from shore) to the 200-mile limit. The Secretary of Commerce administers the Magnuson-Stevens Act, and has delegated most authority to the National Marine Fisheries Services (NMFS) in the National Oceanic and Atmospheric Administration (NOAA).

The Magnuson-Stevens Act created eight Regional Fishery Management Councils charged with implementing these goals in coordination with NMFS and established 10 National Standards which are guiding principles for the conservation and management of the domestic fishery resources. In addition to managing the fisheries resources for conservation purposes, Councils are responsible for allocating resources among various and often competing users. Councils are comprised of a representative of NMFS, a representative of each of the member States' fishery management departments, and an established number of at-large appointees from the commercial fishing industry, the recreational fishing industry, or other individuals who have experience, scientific expertise, training or knowledge regarding the conservation and management of the fishery resources under the jurisdiction of the Council.

The process of managing fisheries is accomplished through the preparation of a fishery management plan (FMP) for each fishery. These FMPs require scientific assessments of the fishery resources and then the issuance of conservative allocations of catch for the domestic fishing fleet. The Councils and/or the Secretary have prepared and implemented more than 40 FMPs, some of which have been amended numerous times.

The primary goals at the time of enactment of the Magnuson-Stevens Act were the conservation and management of U.S. fishery resources, the development of U.S. domestic fisheries, and the phasing-out of foreign fishing activities within the 200-mile fisheries conservation zone adjacent to the U.S. coastline (approximately 3.4 million square nautical miles). This area became known as the Exclusive Economic Zone (EEZ) following a 1983 proclamation by President Ronald Reagan. The U.S. EEZ is the largest in the world, containing 3.4 million square miles of ocean and 90,000 miles of coastline. More than one fifth of the world's most productive marine waters are within the U.S. EEZ.

Commercial and recreational fisheries contribute over $50 billion annually to the U.S. economy, with the commercial industry valued at over $28 billion and the recreational saltwater fishing industry

valued at approximately $20 billion. In addition, the annual U.S. retail trade in ornamental fish is worth another $3 billion. In 2004, commercial landings of fishery products in the United States totaled approximately 9.6 billion pounds valued at $3.7 billion. The Department of Commerce estimated in 2001 that there were 123,000 commercial fishing vessels operating in the U.S., employing more than 170,000 people. The U.S. harvests approximately 4.1 percent of the total world fish landings and is the fifth leading harvester of fishery resources following China, Peru, India, and Indonesia.

U.S. consumers spent an estimated $61.9 billion for fishery products in 2004. This includes $42.8 billion in expenditures at restaurants and other food service outlets, $18.9 billion in retail sales for home consumption, and $213.3 million for other non-food-related uses. The U.S. per capita consumption of fish and shellfish reached a record 16.6 pounds in 2004. For the period 1999–2001 the United States ranked as the third largest consumer of seafood in the world. U.S. imports of edible fishery products in 2004 were valued at a record $11.3 billion while U.S. exports of edible fishery products were 2.9 billion pounds valued at $3.7 billion.

On the recreational side, it is estimated that there are on average 14 million anglers who fished in the marine waters of the United States in recent years. It is estimated that there were almost 82 million fishing trips taken by these recreational fishermen with an estimated 440.7 million fish taken in 2004.

Because of the number of users and the importance of fisheries to fishing communities, fisheries management under the Magnuson-Stevens Fishery Conservation and Management Act requires a balance between the need to maintain a healthy resource and the goal of providing a healthy fishing economy which includes the fishermen (both commercial and recreational), the processing sector, and fishing communities, including the shoreside businesses that depend on the fishing industry.

In 1996, the Sustainable Fisheries Act (Public Law 104–297) was enacted. This was the first major reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. It included three major new provisions to maintain a healthy fishery resource. These new provisions dealt with minimizing bycatch, identifying and protecting essential fish habitat, and identifying overfished fisheries and requiring that they be rebuilt. This last requirement was something which had not been required previously and the number of overfished fisheries that were identified was higher than expected. The new provision required that rebuilding plans be put in place for all overfished fisheries and that these rebuilding plans, with some limited exceptions, needed to rebuild the fisheries within ten years. While this provision has been in place for less than 10 years and the regulations detailing how fishery management Councils should identify overfished fisheries have been in place for less than 10 years, concern has been raised about the progress toward rebuilding all of the identified fisheries. Additional concern has been raised by the fishing industry about the harmful effects of the short rebuilding timeframes. While the 10-year time limit has been described as arbitrary, there is concern that an unlimited amount of time available for rebuilding will be counterproductive to maintaining a sustainable resource and maintaining economically

healthy fishing communities. At the same time, flexibility is necessary so that the Councils can take economic factors such as the effects of the timeframes on the fishing communities into account. There is no question that rebuilding these overfished fisheries is important; however, it is important that managers have the ability to include reasonable flexibility to extend these timeframes so that the harmful economic consequences can be lessened.

Just as the Sustainable Fisheries Act provided fishery managers with three new tools for maintaining fishery resources, H.R. 5018 also offers new tools for fishery managers. The most important of these is the mandate that fishery managers base harvest levels on science. This was the key recommendation of the U.S. Commission on Ocean Policy. After the harvest levels are established, the Councils may allocate as they have done in the past; however, under H.R. 5018 they will now be required to base the harvest levels on the recommendations of the Science and Statistical Committees (SSCs). In addition, to help them with this goal, H.R. 5018 allows for an expanded pool of qualified participants for the SSCs and authorizes that they be paid for their time spent on SSC activities to help attract additional qualified scientists.

There has been a trend in fisheries management to move away from single species management and toward taking ecosystem considerations into account in managing the Nation's fisheries. This approach has been hindered by a lack of information on the interplay between species, habitat, predator/prey relationships and other factors such as changing ocean conditions. H.R 5018 includes language to encourage fishery managers to use more ecosystem considerations in their management decisions. However, testimony was heard from a number of witnesses, including the Administration, requesting that new, unachievable mandates not be enacted. H.R. 5018 takes a stepped approach by examining the state of the science needed for ecosystem-based fishery management and authorization for a new research plan to identify and gather the necessary information before any new mandates are considered. When considering ecosystem-based fisheries management, it is important that human factors need to be taken into account in any consideration of the ecosystem, as noted by the U.S. Commission on Ocean Policy.

Cooperative research can provide some of the information which will be necessary for future ecosystem-based fishery management efforts. This type of research involves scientists and fishermen working cooperatively, often using fishing vessels as platforms for research. These cooperative research efforts have been effective and have provided an opportunity for valuable interactions between the fishing community and the scientific community that might not otherwise take place. As this research tool becomes more widely used, it is important to include new technologies that become available in this type of research.

While ecosystem-based management and cooperative research continue to become more widely used, agency assets are becoming stretched and used more to deal with litigation rather than management activities. Since the enactment of the Sustainable Fisheries Act, the amount of litigation involving NMFS had increased substantially. Prior to 1996, NMFS faced 16 lawsuits. The NOAA Litigation Docket of Open Cases, as of April 7, 2006, shows 110

open cases. Of the 110 open cases involving NMFS, 99 are cases brought against the agency (11 were cases brought by the agency against outside interests). Of the 99, 46 have been brought primarily by environmental organizations, and 16 by commercial or recreational fishing organizations. Cases were also brought by States and Tribes.

The Magnuson-Stevens Act is not the sole source of these lawsuits. While most of the cases were filed under multiple statutes, the level of litigation does show a disturbing trend toward courts being asked to decide fishery management decisions. In addition, the amount of time and effort that NMFS is forced to exert in defending the cases takes personnel away from management activities. According to the National Academy of Public Administration's report to NMFS titled Courts, Congress, and Constituencies: Managing Fisheries by Default, the Magnuson-Stevens Act "is the basis of more litigation than any other statute, accounting for approximately 40% of all challenges between 1977 and 2001. . . [T]he total number of national standard challenges has increased dramatically over time, especially after the Sustainable Fisheries Act was enacted in 1996."

Litigation has become the favorite tool of many organizations. Rather than work through the Council system, many groups have decided that they would rather have the courts manage fisheries. It is important that sound fisheries policy continue and statutory provisions with the sole purpose of providing litigation hooks should be avoided.

One of the other statutes used for litigation against the agency is the National Environmental Policy Act (NEPA, 42 U.S.C. 4231 et seq.). Of the 99 open cases against NMFS, 35 of those cases were brought under NEPA. While certainly an important statute, NEPA is a procedural statute. The Magnuson-Stevens Act, however, is an environmental statute dealing with fisheries conservation and management standards. The current Magnuson-Stevens Act contains many of the same procedural requirements as NEPA; however, the two statutes have different timelines for complying with their respective provisions. In addition, because both statutes contain many of the same requirements for public review, analysis of alternatives, etc., fishery managers have been required to comply with each statute separately. Using separate timelines results in a duplication of effort and a delay in implementing fishery management actions.

One concern with these conflicts is that fishery managers face delays in getting scientific information to those who need the information in a timely manner to better manage fisheries. It has been reported that because of the NEPA delays, the Pacific Regional Fishery Management Council is "using 3 year old data for most species to determine how much fish we can catch." This is no way to manage fisheries.

The Magnuson-Stevens Act currently embodies most of the procedural safeguards that are in NEPA and already embodies most of the intent of NEPA. H.R. 5018 adds the missing pieces to the Magnuson-Stevens Act and then gives the Secretary the discretion to determine whether the Magnuson-Stevens provisions meet the requirements of NEPA. H.R. 5018 requires the Secretary to publish that determination before he or she can make any individual deci-

sions about whether a fishery management plan or plan amendment meets the requirements of NEPA. By adding the intent and basic procedural requirements of NEPA to the Magnuson-Stevens Act that are not already in the Act, the time lags and duplicative nature of the conflict should go away.

Because NEPA has been used as a litigation tool, documents developed by fishery managers to comply with NEPA have become unnecessarily complicated. The North Pacific Fishery Management Council has drafted a programmatic environmental impact statement (EIS) for the groundfish fishery that is 7,000 pages long. According to testimony, "Because of one finding related to an unknown effect on the overall habitat from allowing these fisheries to commence, the council is now being told that it may have to do an EIS every year to support its specification process." Because of the effort to meet this type of requirement, fishery managers are not able to adapt to changing conditions in the fisheries in a timely manner.

In addition, lawsuits alleging NEPA violations have another chilling effect. Once a court begins to review a fishery management action under NEPA, it removes the flexibility that the Councils have in finding a creative solution. According to one witness, "Once the agency is in court, it no longer has the flexibility to try different approaches, convene stakeholders for negotiation, or work with councils to improve background and analytical documents. If an organization is not a plaintiff or intervener, it doesn't have a seat at the table or a role in crafting solutions."

While reconciling the conflicts between statutes dealing with fishery management is an important part of this legislation, another important aspect of H.R. 5018 is to provide a scientific basis for setting harvest levels. This is accomplished by using the example of the North Pacific Fishery Management Council. Under this model and this legislation, all Councils would be required to set their harvest levels based on the recommendation of their Science and Statistical Committees (SSCs). Each SSC would recommend an Acceptable Biological Catch level based on the scientific information presented to the panel. It is important that these SSCs have the best and the brightest scientists participating. H.R. 5018 accomplishes this by allowing a broader slate of scientists to serve on the SSC and authorizes a stipend to be paid for those non-federal or State employed scientists. It is also important that the SSCs be able to access a broad array of scientific information on which to base their recommendations.

By basing the harvest levels on the Acceptable Biological Catch (ABC), Councils will be basing their harvest levels on a level of harvest that the biomass of the fishery can sustain. If short-term overharvesting occurs, the biomass estimates provided to the SSC by NOAA stock assessments will recognize this and the SSC will set the harvest recommendation correspondingly lower. In that way, Councils will receive harvest recommendations based on what the fishery can scientifically sustain and will be required, under H.R. 5018, to set the harvest level no higher than the recommendation.

Because fisheries are managed in different ways, Councils establish harvest levels using different methods such as Total Allowable Catches, Guideline Harvest Levels, Days at Sea, harvest levels

based on escapement goals, bag limits, size limits, and seasonal closures. Not all fisheries can be managed in the same way but setting harvest levels based on ABC will ensure that however the harvest levels are set, they will have to be set at or below the ABC—a scientifically-based determination. For species that have an annual life cycle, fishery managers rely on allowing the number of fish necessary to maintain a sustainable population to "escape" harvest, and the rest of the fish can then be harvested without damaging the viability of the resource. For these fish with an annual life cycle (such as salmon, squid and some species of shrimp) and those that are managed using escapement goals or other methods of harvest control, fishery managers may not be able to set a preseason harvest level. Annual fisheries such as these would be difficult to manage under a Total Allowable Catch level or other annual catch limits. Because of this, fishery managers need to have the ability to set harvest levels using a variety of methods—all of which need to be based on the scientific recommendations of the SSC under H.R. 5018.

In cases where fisheries are overfished (or diminished under H.R. 5018), current law already requires that rebuilding plans be developed and implemented. In addition, for fisheries subject to a rebuilding plan, the plan must include a time period for ending overfishing. Current law also requires rebuilding plans to include time periods to end overfishing and rebuild the fishery that shall not exceed 10 years except in certain limited cases. H.R. 5018 would give fishery managers additional flexibility to exceed the 10-year time period only in three limited cases.

In sum, reauthorization of the Magnuson-Stevens Act should push fishery managers to take new steps to achieve sustainable fisheries using science-based management decisions (with peer review that includes public and recognizes the need to get information to the managers in a timely manner). It needs to maintain the open, transparent decision-making process with stakeholder involvement that is currently embodied in the regional fishery management system. Fishery managers need to have the flexibility in making management decisions so that regional solutions can be found to address regional problems. Fisheries across the country are very different and managers need to use appropriate tools to address management needs that are appropriate for individual fisheries. The reauthorization of this important statute needs to minimize the potential for lawsuits. Courts should not be managing fisheries. Fishery managers need to maintain a balance between the need for conservation to maintain a healthy, sustainable resource while recognizing the economic considerations of the fishing fleets and the fishing communities. H.R. 5018 allows this flexibility, achieves a balance, and includes new scientifically-based harvest levels that will achieve sustainable harvest levels that benefit both the resource and the fishing communities that depend upon the resource.

Appropriations for the Magnuson-Stevens Act were last reauthorized in 1996 through Fiscal Year 1999. Since 2000, the Resources Committee has held 17 hearings and heard from 143 witnesses on issues associated with implementation of the Act. In the 109th Congress alone, the Committee held six hearings and heard from 55 witnesses.

## COMMITTEE ACTION

Resources Committee Chairman Richard W. Pombo (R–CA) introduced H.R. 5018 on March 28, 2006. It was referred to the Committee on Resources. The Committee held hearings on the bill on April 25, 2006 and May 3, 2006. On May 17, 2006, the Committee met to consider the bill. Chairman Pombo offered an amendment in the nature of a substitute. The following amendments were offered to the amendment in the nature of a substitute: Congressman Frank Pallone, Jr. (D–NJ) offered an amendment regarding fees for recreational fishermen. The amendment was adopted by voice vote. Congressman Jim Saxton (R–NJ) offered an amendment to strike language in Section 10 of the bill regarding fishery management in marine sanctuaries. The amendment was adopted by voice vote. Ranking Democrat Nick J. Rahall II (D–WV) offered an amendment on behalf of Congressman Raúl M. Grijalva (D–AZ) to strike the provisions relating to compliance with the National Environmental Policy Act (NEPA). By unanimous consent, Congressman Wayne T. Gilchrest (R–MD) offered a substitute to the Rahall amendment to replace the NEPA language with an "Efficient, Effective, Environmental Impact Assessment." The Gilchrest substitute to the Rahall amendment was not adopted by a roll call vote of 18 yeas to 22 nays, as follows:

**COMMITTEE ON RESOURCES**
U.S. House of Representatives
109th Congress

Date: May 17, 2006

Convened:_____
Adjourned:_____

Meeting on: Markup of HR 5018 - A substitute amendment to the Rahall Amendment was offered by Mr. Gilchrest (Gilchrest.033), WAS NOT AGREED TO by a roll call vote of 18 Yeas, and 22 Nays.

☐ Attendance ☑ Recorded Vote Vote Number 41 Total: Yeas 18 Nays 22

| | YEA | NAY | PRESENT | | YEA | NAY | PRESENT |
|---|---|---|---|---|---|---|---|
| Mr. Pombo, CA, Chairman | | ✓ | | *Mrs. Napolitano, CA* | ✓ | | |
| *Mr. Rahall, WV* | ✓ | | | Mr. Walden, OR | | ✓ | |
| Mr. Young, AK | | ✓ | | *Mr. Tom Udall, NM* | ✓ | | |
| *Mr. Miller, CA* | ✓ | | | Mr. Tancredo, CO | | | |
| Mr. Saxton, NJ | ✓ | | | *Mr. Mark Udall, CO* | ✓ | | |
| *Mr. Markey, MA* | ✓ | | | Mr. Hayworth, AZ | | ✓ | |
| Mr. Gallegly, CA | | | | *Mr. Grijalva, AZ* | ✓ | | |
| *Mr. Kildee, MI* | ✓ | | | Mr. Flake, AZ | | ✓ | |
| Mr. Duncan, TN | | ✓ | | *Mr. Cardoza, CA* | ✓ | | |
| *Mr. DeFazio, OR* | ✓ | | | Mr. Renzi, AZ | | ✓ | |
| Mr. Gilchrest, MD | ✓ | | | *Ms. Bordallo, Guam* | | | |
| *Mr. Faleomavaega, AS* | | ✓ | | Mr. Pearce, NM | | ✓ | |
| Mr. Calvert, CA | | | | *Ms. Herseth, SD* | ✓ | | |
| *Mr. Abercrombie, HI* | | ✓ | | Mr. Brown, SC | | ✓ | |
| Mrs. Cubin, WY, vice chair | | | | *Mr. Costa, CA* | ✓ | | |
| *Mr. Ortiz, TX* | | ✓ | | Mrs. Drake, VA | | ✓ | |
| Mr. Radanovich, CA | | ✓ | | *Mr. Melancon, LA* | | | |
| *Mr. Pallone, NJ* | ✓ | | | Mr. Fortuño, PR | | ✓ | |
| Mr. Jones, NC | | ✓ | | *Mr. Boren, OK* | | | |
| *Mrs. Christensen, VI* | ✓ | | | Miss McMorris, WA | | ✓ | |
| Mr. Cannon, UT | | ✓ | | Mr. Jindal, LA | | ✓ | |
| *Mr. Kind, WI* | ✓ | | | Mr. Gohmert, TX | | | |
| Mr. Peterson, PA | | ✓ | | Mrs. Musgrave, CO | | ✓ | |
| *Mr. Inslee, WA* | ✓ | | | ***Vacancy*** | | | |
| Mr. Gibbons, NV | | ✓ | | | | | |
| | | | | | | | |
| | | | | **Total** | 18 | 22 | |

The Rahall amendment was not agreed to by voice vote. Congressman Saxton offered an amendment to strike Section 11(b) of the amendment (diminished fisheries). The amendment was not adopted by a roll call vote of 17 yeas to 18 nays, as follows:

**COMMITTEE ON RESOURCES**
U.S. House of Representatives
109th Congress

Date: May 17, 2006

Convened:_____
Adjourned:_____

Meeting on: Markup of HR 5018 - Saxton.074 Amendment to the Pombo amendment in the Nature of a Substitute, WAS NOT AGREED TO by a roll call vote of 17 Yeas, and 18 Nays.

☐ Attendance ☑ Recorded Vote Vote Number 40 Total: Yeas 17 Nays 18

| | YEA | NAY | PRESENT | | YEA | NAY | PRESENT |
|---|---|---|---|---|---|---|---|
| Mr. Pombo, CA, Chairman | | ✓ | | *Mrs. Napolitano, CA* | ✓ | | |
| *Mr. Rahall, WV* | ✓ | | | Mr. Walden, OR | | | |
| Mr. Young, AK | | | | *Mr. Tom Udall, NM* | ✓ | | |
| *Mr. Miller, CA* | ✓ | | | Mr. Tancredo, CO | | | |
| Mr. Saxton, NJ | ✓ | | | *Mr. Mark Udall, CO* | ✓ | | |
| *Mr. Markey, MA* | ✓ | | | Mr. Hayworth, AZ | | ✓ | |
| Mr. Gallegly, CA | | | | *Mr. Grijalva, AZ* | ✓ | | |
| *Mr. Kildee, MI* | ✓ | | | Mr. Flake, AZ | | | |
| Mr. Duncan, TN | | ✓ | | *Mr. Cardoza, CA* | ✓ | | |
| *Mr. DeFazio, OR* | ✓ | | | Mr. Renzi, AZ | | ✓ | |
| Mr. Gilchrest, MD | ✓ | | | *Ms. Bordallo, Guam* | | | |
| *Mr. Faleomavaega, AS* | | ✓ | | Mr. Pearce, NM | | ✓ | |
| Mr. Calvert, CA | | | | *Ms. Herseth, SD* | ✓ | | |
| *Mr. Abercrombie, HI* | ✓ | | | Mr. Brown, SC | | ✓ | |
| Mrs. Cubin, WY, vice chair | | | | *Mr. Costa, CA* | | | |
| *Mr. Ortiz, TX* | | ✓ | | Mrs. Drake, VA | | ✓ | |
| Mr. Radanovich, CA | | ✓ | | *Mr. Melancon, LA* | | | |
| *Mr. Pallone, NJ* | ✓ | | | Mr. Fortuño, PR | | ✓ | |
| Mr. Jones, NC | | ✓ | | *Mr. Boren, OK* | | | |
| *Mrs. Christensen, VI* | ✓ | | | Miss McMorris, WA | | ✓ | |
| Mr. Cannon, UT | | ✓ | | Mr. Jindal, LA | | ✓ | |
| *Mr. Kind, WI* | | | | Mr. Gohmert, TX | | | |
| Mr. Peterson, PA | | ✓ | | Mrs. Musgrave, CO | | ✓ | |
| *Mr. Inslee, WA* | ✓ | | | ***Vacancy*** | | | |
| Mr. Gibbons, NV | | ✓ | | | | | |
| | | | | | | | |
| | | | | **Total** | 17 | 18 | |

Congressman Charlie Melancon (D–LA) offered an amendment to create a regional coastal disaster assistance, transition, and recovery program. It was adopted by voice vote. Congressman Saxton offered an amendment to include recreational participants in the definition of "fishing community." By unanimous consent, Congressman Pallone amended the Saxton amendment to expand this definition and to include a definition for "recreational fishing industry." The Saxton amendment, as amended by the Pallone amendment, was adopted by voice vote. Congressman Saxton offered an amendment to require the consideration of economic impacts. The amendment was agreed to by voice vote. Congressman Bobby Jindal (R–LA) offered an amendment to require a report on the effects of certain hurricanes on fisheries and fish habitat. The amendment was adopted by voice vote. Congressman Saxton offered and withdrew an amendment to include a new title called "National Fishing Fleet Vision, Implementation, and Management Act." Congressman Gilchrest offered and withdrew an amendment regarding overfishing. Congressman Pallone offered and withdrew an amendment regarding the commercial harvesting of morone saxatilis. Congressman Jindal offered and withdrew an amendment regarding fishery finance program hurricane assistance. Congressman Gilchrest offered an amendment regarding ecosystem management. The amendment was not adopted by voice vote. Congressman Jay Inslee (D–WA) offered an amendment to require a study on the acidification of the oceans and effects on fisheries. The amendment was agreed to by voice vote. Congressman Inslee offered an amendment regarding North Pacific Fisheries Research Plans. The amendment was adopted by voice vote. Congressman Melancon offered and withdrew an amendment regarding New England and Gulf of Mexico Referendums. Congressman Gilchrest offered and withdrew an amendment regarding a coral reef research and technology program. The Pombo amendment in the nature of a substitute, as amended, was adopted by voice vote. The bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 26 yeas to 15 nays, as follows:

**COMMITTEE ON RESOURCES**
U.S. House of Representatives
109th Congress

Date: May 17. 2006

Convened:_____
Adjourned:_____

Meeting on: Markup of HR 5018 - Motion favorably reporting HR 5018, as amended, to the House of Representatives by a roll call votes of 26 Yeas and 15 Nays.

☐ Attendance ☑ Recorded Vote Vote Number 42 Total: Yeas 26 Nays 15

| | YEA | NAY | PRESENT | | YEA | NAY | PRESENT |
|---|---|---|---|---|---|---|---|
| Mr. Pombo, CA, Chairman | ✓ | | | *Mrs. Napolitano, CA* | | ✓ | |
| *Mr. Rahall, WV* | | ✓ | | Mr. Walden, OR | ✓ | | |
| Mr. Young, AK | ✓ | | | *Mr. Tom Udall, NM* | | ✓ | |
| *Mr. Miller, CA* | | ✓ | | Mr. Tancredo, CO | | | |
| Mr. Saxton, NJ | ✓ | | | *Mr. Mark Udall, CO* | | ✓ | |
| *Mr. Markey, MA* | | ✓ | | Mr. Hayworth, AZ | ✓ | | |
| Mr. Gallegly, CA | | | | *Mr. Grijalva, AZ* | | ✓ | |
| *Mr. Kildee, MI* | | ✓ | | Mr. Flake, AZ | ✓ | | |
| Mr. Duncan, TN | ✓ | | | *Mr. Cardoza, CA* | | ✓ | |
| *Mr. DeFazio, OR* | | ✓ | | Mr. Renzi, AZ | ✓ | | |
| Mr. Gilchrest, MD | ✓ | | | *Ms. Bordallo, Guam* | | | |
| *Mr. Faleomavaega, AS* | ✓ | | | Mr. Pearce, NM | ✓ | | |
| Mr. Calvert, CA | | | | *Ms. Herseth, SD* | | ✓ | |
| *Mr. Abercrombie, HI* | ✓ | | | Mr. Brown, SC | ✓ | | |
| Mrs. Cubin, WY, vice chair | ✓ | | | *Mr. Costa, CA* | | ✓ | |
| *Mr. Ortiz, TX* | ✓ | | | Mrs. Drake, VA | ✓ | | |
| Mr. Radanovich, CA | ✓ | | | *Mr. Melancon, LA* | | | |
| *Mr. Pallone, NJ* | | ✓ | | Mr. Fortuño, PR | ✓ | | |
| Mr. Jones, NC | ✓ | | | *Mr. Boren, OK* | | | |
| *Mrs. Christensen, VI* | ✓ | | | Miss McMorris, WA | ✓ | | |
| Mr. Cannon, UT | ✓ | | | Mr. Jindal, LA | ✓ | | |
| *Mr. Kind, WI* | | ✓ | | Mr. Gohmert, TX | | | |
| Mr. Peterson, PA | ✓ | | | Mrs. Musgrave, CO | ✓ | | |
| *Mr. Inslee, WA* | | ✓ | | ***Vacancy*** | | | |
| Mr. Gibbons, NV | ✓ | | | | | | |
| | | | | | | | |
| | | | | **Total** | 26 | 15 | |

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title; amendment references*

The Act may be cited as the "American Fisheries Management and Marine Life Enhancement Act." It also notes that amendments in the bill are to the Magnuson-Steven Fishery Management and Conservation Act (16 U.S.C. 1801 et seq.).

*Section 2. Technical corrections to definitions*

This section makes a number of technical corrections to the definitions in the Magnuson-Stevens Act.

*Section 3. Science-based improvements to management*

This section requires that Regional Fishery Management Councils provide a mechanism in each fishery management plan for specifying that the Total Allowable Catch or other annual catch limit in the plan is based on the best scientific information available and at a level that does not exceed the Acceptable Biological Catch level as recommended by the scientific and statistical committee of that Council.

The section also requires that the Councils adopt a total allowable catch limit or other annual harvest effort control limit for each of its managed fisheries after considering the recommendation of the scientific and statistical committee. The limit may not exceed the recommendation for the Acceptable Biological Catch as recommended by the scientific and statistical committee.

The section requires the Secretary of Commerce to develop guidelines for the Councils to use in determining what is the best scientific information available. The Secretary must base the guidelines on the recommendations developed by the Ocean Studies Board of the National Research Council in its report titled "Improving the Use of the 'Best Scientific Information Available' Standard in Fisheries Management."

The section requires that each Councils' Scientific and Statistical Committees (SSC) provide ongoing scientific advice for fishery management decisions, including recommendations for the Acceptable Biological Catch and maximum sustainable yield, and reports on stock status and health, bycatch, habitat status, socio-economic impacts of management measures, and sustainability of fishing practices.

The section allows federal employees to serve on the SSCs along with State employees, academicians, or independent experts with strong scientific or technical credentials and experience. The section also requires the Secretary to pay a stipend to members of the SSCs who are not employed by the federal government or a State government agency. The section requires that the SSCs hold its meetings in conjunction with the meetings of the Council, to the extent practicable.

The section requires the Councils, in conjunction with the SSCs, to develop a multi-year research priority list for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes. It also requires that the priority list be for a five year period and be updated as necessary. The lists will be submitted to the Secretary and the National Marine Fishery

Service (NMFS) Regional Science Centers for their consideration when developing research priorities and budgets for the region.

The section gives authority for Councils to create a cooperative research program. In addition, it adds new language to ensure that qualified fishing vessels participating in the cooperative research activities will not lose allocated fishing privileges (such as days at sea) during the cooperative research activities unless the Secretary makes such qualifications a part of the cooperative research plan. In addition, the Secretary shall ensure that catch history derived by the vessel during the cooperative research activities during which the vessel is sacrificing fishing time in an open season accrue to the vessel unless the Secretary makes such qualifications a part of the cooperative research plan.

The section makes it clear that the Secretary shall conduct periodic stock assessments. In conducting these stock assessments, the Secretary must ensure that these assessments are independently peer reviewed, are as transparent as possible, do not delay the process of providing the information to the Councils, and allows members of the interested public to provide input during the process. In addition, the section requires the Secretary and each Council to formalize a peer review process for the scientific information used to advise the Council or the Secretary, as appropriate, about the conservation and management of the fishery. However, the peer review must not delay, to the extent practicable, the process of providing to the Council or the Secretary current information for use in managing fisheries and must be as transparent as possible, so that members of the interested public can provide input during the review process.

*Section 4. Data collection*

This section allows the Secretary to require, if requested to do so by the Council, a Vessel Monitoring System (VMS) or other similar electronic monitoring technology for a fishery or specific sectors of a fishery. To the extent that the technology is required for enforcement or data collection purposes, requires the Secretary to cover the expenses. The section requires that any information obtained under a VMS requirement be subject to the confidentiality provisions of the Magnuson-Stevens Act.

The section requires the Secretary to establish, within 24 months, a program to improve the quality and accuracy of information generated by the National Marine Fisheries Service recreational fishing data collection programs with the goal of achieving accurate, useful, and improved data for each fishery. The program shall include: an increased number of intercepts; use of surveys that target anglers at the State level; collection and analysis of vessel trip report data from for-hire vessels; development of weather corrective factors, an independent committee composed of recreational fishermen and other stakeholders, academia, and other persons with expertise in stock assessment and survey design, NMFS personnel; and identification of deficiencies in recreational data collection and develop sampling methods to correct the deficiencies.

The Secretary is prohibited from charging any news fees on recreational fishermen for data collection purposes.

The Secretary is required to report to Congress within 18 months on the progress made in developing such a program, whether the program has resulted in significantly better data for management purposes and any actions to continue to make improvements in data collection.

This section includes an authorization of appropriations to the Secretary of $5 million for each Fiscal Years 2007–2011.

This section clarifies that other State and federal authorities, Council employees, and Marine Fisheries Commission employees may obtain access to certain confidential information for management or enforcement purposes, but that the information must remain confidential. This section adds a definition of "confidential information" to clarify that other information such as video observer information and VMS information are also considered confidential for the purposes of this Act. It also adds a definition of "observer information".

This section authorizes the Secretary to develop a Memorandum of Understanding with the heads of other federal agencies for the sharing of confidential information such as VMS or other electronic monitoring systems if the Secretary determines there is a compelling need to do so and if the heads of other federal agencies agree to maintain the confidentiality of the information in a manner similar to the requirements of the Secretary under the Magnuson-Stevens Act.

The section adds a new authorization for the Secretary for new socio-economic data collection activities. Funds may also be shared with the Councils for their data collection needs. The section authorizes an appropriation of $2 million for each Fiscal Year for this program.

This section requires the Secretary to determine the need for frequent surveys and whether States or cooperative research programs can fill the data gaps identified by the Secretary. It also requires the Secretary to report to Congress on the current activities and the needs for increased surveys within two years.

*Section 5. Council operations and authorities*

This section allows a Governor, for Council appointments, to submit the names of individuals from academia, or other public interest areas such as conservation organizations, the seafood consuming public, etc. if the Governor has determined that each such individual is qualified under the requirements of the Act. This section requires new Council members to undergo training. It also allows other Council members and regional NMFS staff to participate in the training.

This section also gives the Councils a new authority to develop ecosystem-based fishery management plans.

It allows Councils to require a Vessel Monitoring System or other similar electronic monitoring technology for the purposes of enforcing, monitoring, or collecting data from a fishery or fishery sector.

The section clarifies that the costs for observer coverage that is primarily for the enforcement of the management plan or for data collection necessary for the monitoring of the fishery shall be paid for by the Secretary or may be considered as a cost to be recovered under a Limited Access Program.

The section also clarifies that any observer required to be onboard a vessel who knowingly commits a crime while on board a fishing vessel shall be solely liable for any sanctions associated with the crime.

The section allows Councils to develop and implement bycatch reduction incentives.

The section clarifies that Councils may designated Marine Protected Areas and adds criteria for areas that are totally closed to fishing.

The section authorizes the Councils to use the framework authority for fishery management plans.

It modifies the notice requirement for Councils scheduling public meetings, clarifies the jurisdiction of the Caribbean Council, and clarifies that the Chairmen from the individual Councils may meet and maintain their Federal Advisory Committee exemption for these meetings.

*Section 6. Ecosystem-based fishery management*

This section adds new language to the Policy section of the Magnuson-Stevens Act to make it clear that it is the policy of the Act to support and encourage efforts to understand the interactions of species in the marine environment and the development of ecosystem-based approaches to fisheries conservation and management that will lead to better stewardship and sustainability of the Nation's coastal fishery resources and fishing communities.

It authorizes research into the interaction of species in the marine environment and the development of ecosystem-based approaches to management.

The section requires the Secretary, in conjunction with the Councils and based on the recommendations of the Ecosystem Principles Advisory Panel, to develop definitions of "ecosystem"and " marine ecosystem."

The section authorizes the Secretary, in conjunction with the Councils, to undertake a study on the state of science for advancing the concepts and integration of ecosystem consideration in regional fishery management and within one year identify specific marine ecosystems within each region and develop regional research plans to address the deficiencies identified in the study.

The section requires a report to Congress annually on the progress of the regional research plans.

The section also authorizes the Secretary to provide technical assistance and grants to the Councils for regional pilot programs.

*Section 7. Limited Access Privilege Programs*

This section adds a new section to the Magnuson-Stevens Act authorizing Councils to develop and implement Limited Access Privilege Programs (LAPP) and creates criteria for the creation of such programs. These criteria stipulate that any limited access privilege program must: assist in rebuilding an overfished/diminished fishery; reduce capacity in a fishery that is overcapitalized; promote the safety of human life at sea; promote conservation and management; prohibit any person other than a U.S. citizen; corporation, partnership, or other entity established under the laws of the U.S. or a State; or resident alien that meets the requisite participation and eligibility requirements, to hold a harvesting privilege; limits

the authority of other agencies to hold quota shares. This section requires that such a program must also: specify the goals of the program; be subject to continual monitoring with a formal review of the program every five years which shall include any modifications needed to ensure the program meets its goals; include a system for monitoring, management, and enforcement; and include an appeals process for administrative review of Secretarial determinations.

This section clarifies that a limited access system, or limited access privilege: is not to be considered a permit; may be revoked, limited, or modified including for failure to comply with the terms of the plan; shall not confer any rights of compensation if the system is revoked, limited or modified; shall not create a right, title or interest to any fish before the fish is harvested; and shall be considered a grant of permission to engage in activities permitted by the program.

This section creates a discretionary authority and criteria for the allocation of shares to fishing communities and regional fishery associations.

This section requires that Council consider the following when allocating shares: must provide for a fair and equitable distribution of the initial allocation; consider catch history, employment, investment, and dependence on the fishery; consider historic participation of fishing communities; consider the basic social and cultural framework of the fishery; promote the sustained participation of small, owner-operated fishing vessels and communities that depend on the fisheries; may include regional landing requirements; assist entry-level and small scale members of the fishing community; limit the maximum share of the access privileges able to be held, acquired, or used by a qualified entity; address geographic consolidation of the fishery; authorize all those who substantially participate in the fishery to hold a limited access privilege; and ensure that no person who is qualified to receive an initial allocation is required to join an entity or association that limits that person's ability to sell his or her catch as a condition of receiving their initial or annual allocation.

This section allows a Council to initiate a limited access privilege program on its own and creates a method of instituting a LAPP through a petition signed by more than 50 percent of the permit holders in a fishery.

This section requires a referendum prior to the implementation of an Individual Fishing Quota program developed by the New England Council. The referendum would require an affirmative vote by at least a two-thirds majority among the eligible permit holders. The Council may determine that vessel owners or crew who have substantial participation in the fishery are eligible to vote in the referendum. The Council is required to establish criteria for what constitutes "substantial participation."

This section also requires the Councils to establish a policy on the transferability of limited access privilege shares.

This section clarifies that the provisions of this section also apply to any plan prepared by the Secretary. It also limits the ability of federal agencies (other than the Secretary of Commerce) or the Council to hold, administer or reallocate an individual quota issued

under this section. It allows the use of auctions for the initial distribution of shares in the fishery.

The section requires the Council to develop a methodology for determining the management, data collection and analysis, and enforcement programs necessary for the program and to establish a cost recovery system for an LAPP. It also allows a Council to establish a sunset period for shares under an LAPP.

It authorizes the Councils to set aside up to 25% of the fees collected through the fee program to be used for new entrants and small boat fishermen, subject to regulations being proposed and implemented. It clarifies that the new LAPP authority will not require the reallocation of shares for any existing quota allocation management system.

The section grandfathers any limited access privilege plan or plan amendment that has reached the stage where the Council has provided a substantial opportunity for public comment and begun considering alternatives from the new requirements in this section.

The section establishes a three-tiered fee structure consisting of a 1% initial allocation fee, up to 4% to be collected annually and to be based on actual costs of managing, enforcing, and monitoring the fishery, and a 1% transfer fee for individual quotas. All fees are based on the value of the share allocated and based on ex-vessel price.

The section adds a definition of "limited access privilege."

*Section 8. Joint Fisheries Enforcement Agreements*

This section authorizes the Secretary to enter into Joint Fishery Enforcement Agreements with States at the request of a Governor. A Joint Fishery Enforcement Agreement could provide funding for the States and provide for the sharing of information for enforcement purposes with the understanding that the shared information must remain confidential.

*Section 9. Funding for Fishery Observer Programs*

This section updates and clarifies the North Pacific Fisheries Research Plans provisions in the Magnuson-Stevens Act to include costs of electronic monitoring systems in addition to observers in cost recovery provisions.

It authorizes the Secretary to establish a funding mechanism to cover the costs of an observer program. It also creates a Fishery Observer Fund to collect the fees paid by industry, as well as any contributions or gifts that might be made by outside interests, to fund observer programs. The deposits may be invested in interest-bearing accounts and are available, subject to appropriation, to the Secretary for financing observer programs.

*Section 10. Competing statutes*

This section adds a new requirement for Councils to follow when developing fishery management plans which requires a description of the alternatives studied under the National Environmental Policy Act (NEPA). It adds another new requirement for Councils to examine the cumulative impacts of conservation, economic and social impacts of the plan.

It also allows the Secretary to make a determination that a fishery management plan, plan amendment, or regulation prepared

under the Magnuson-Stevens Act provisions and timelines has met the requirements of NEPA, but only if the Secretary has published a determination that sections 304 and 305 of the Magnuson-Stevens Act are substantially equivalent to the requirements of NEPA.

It adds language that clarifies that the timelines for the Secretary's actions under the Magnuson-Stevens Act shall be the same timelines used for NEPA compliance. The current Magnuson-Stevens Act already requires this for the Paperwork Reduction Act of 1980 and the Regulatory Flexibility Act.

*Section 11. Diminished fisheries*

This section splits the definitions of "overfished" and "overfishing," changes the term "overfished" to "diminished" and makes the corresponding changes to the word "overfished" wherever it appears in the Magnuson-Stevens Act.

This section requires the Secretary to make changes in the annual Status of Stocks report to clarify which fisheries that are "diminished" as a result of fishing and those that are "diminished" as a result of other factors.

This section adds new flexibility for rebuilding plans currently required under the Magnuson-Stevens Act for fisheries that are "diminished." This flexibility would allow the Secretary (not a Council) to extend the ten-year time frame required for rebuilding a fishery in these cases: if the biology of the stock, other environmental condition, or international agreements warrant extension; if the cause of the decline is outside the jurisdiction of the Council and/or the rebuilding program cannot be effective only by limiting fishing activities; where only one or more components of a multispecies fisheries are under the rebuilding requirement; or if the rebuilding targets substantially change after the rebuilding plan is put in place.

*Section 12. New prohibited acts*

This section makes it illegal to sell or purchase recreationally caught fish. It also makes it illegal to use a vessel for fishing in federal or State waters, on the high seas, or in the waters of another country if the vessel has been subject to a buyout under this Act.

*Section 13. Fishery failures*

This section makes changes to the fishery disaster section of the Magnuson-Stevens Act to clarify that it is not just commercial fishermen that can benefit from a fishery disaster assistance program.

*Section 14. Emergency regulations*

This section makes minor changes to the length of time that the Secretary may implement emergency regulations.

*Section 15. Bycatch and seabird interactions*

The Secretary would be authorized to create a new grant program to fund research into gear technology which could minimize bycatch, minimize seabird interactions, and minimize adverse fishing gear impacts on habitat areas of particular concern, and authorizes appropriations of $10 million for each of Fiscal Years 2007–2011 for this grant program. The Secretary would then be re-

quired to report annually to Congress on the amounts expended on the grant program and what reductions have been identified as a result of this section. The Secretary would also be required to report within one year of the date of enactment on the extent of the seabird interaction problem in U.S. fisheries, what efforts have been undertaken by the U.S. fishing industry and the Councils to address the problem, and the extent of the seabird interaction problems in other fisheries outside the U.S. The Secretary would also be required to take action at the appropriate international fisheries management bodies to reduce seabird interactions in those fisheries outside the United States.

*Section 16. Overcapitalization*

This section modifies the capacity reduction program section of the Magnuson-Stevens Act to require that the Secretary must remove the vessel and all U.S. fishing permits when implementing a fishing capacity reduction program. The Secretary must ensure, prior to making any payments, that vessels being purchased under this section will be scrapped or will not be used for fishing, including in the waters of a foreign nation or on the high seas. The section requires the Secretary of Commerce to report to Congress and identify and describe the 20 U.S. fisheries which face the most severe problems with excess harvesting capacity. In addition, the report would include recommendations for reducing the excess capacity, including the retirement of any latent capacity that might contribute to further overcapitalization if activated. The Secretary must also attempt to identify potential sources of funding for capacity reduction programs.

*Section 17. Amendment regarding definitions of fishing community and recreational fishing industry*

This section modifies the definition of "fishing community" to include recreational participants, marina owners and operators, for-hire vessel owners and operators, bait and tackle shop owners and operators. It also adds a definition of "recreational fishing industry" to mean individual anglers, boat builders, fishing tackle manufacturers, for-hire vessel owners and operators, bait and tackle shop owners and operators, and recreational marina owners and operators.

*Section 18. Consideration of economic impacts*

This section amends the required provisions for fishery management plans to include "economic information necessary to meet the requirements of" the Magnuson-Stevens Act to the requirement that plans specify pertinent data that must be submitted to the Secretary with respect to commercial, recreational, and charter fishing. It also requires that the economic impact of the plan be included in the description of the different fishery sectors which participate in the fishery. It requires that rebuilding plans or other conservation and management measures which reduce the overall harvest take into consideration the economic impact of the restriction or recovery benefits on the participant in each sector when allocating the restriction or recovery benefits among the fishery sectors.

*Section 19. Regional coastal disaster assistance, transition, and recovery program*

This section authorizes the Secretary, when there is a catastrophic regional fishery disaster, in consultation with the Governors of the affected States, to establish a regional economic transition program to provide immediate disaster relief assistance to fishermen, charter fishing operators, U.S. fish processors, and owners of related fishery infrastructure affected by the disaster. The program shall provide funds or other economic assistance to affected entities or to other governmental entities for disbursement to affect entities, subject to appropriations, to meet immediate regional shoreside fishery infrastructure needs, financial assistance and job training assistance, vessel repair and refloating, debris removal and cleaning, public and private oyster beds, shrimp and other fisheries rehabilitation.

The section also authorizes fishermen to be eligible for job training assistance under this program for any fisherman that decides to scrap their fishing vessel.

It also allows the Secretary to waive the matching requirements of section 312 of the Magnuson-Stevens Act and Section 308 of the Interjurisdictional Fisheries Act and any other provision of law under which the federal share of the cost is limited to less than 100 percent, if the Secretary determines that no reasonable means are available through which the applicants can meet the matching requirement and if the probable benefit of 100 percent federal financing outweighs the public interest in imposition of the matching requirement.

The section requires the Secretary, within two months after a catastrophic regional fishery disaster, to provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected regions fisheries.

It defines "catastrophic regional fishery disaster" to mean a natural disaster, including a hurricane or tsunami, or a judicial or regulatory closure to protect human health or the marine environment that results in economic loss to coastal fishing communities, affects more than one State or a major fishery managed by the Council or interstate fishery commission, and is determined by the Secretary to be a commercial fishery failure under Section 312 of the Magnuson-Stevens Act or a fishery resources disaster under Section 308 of the Interjurisdictional Fisheries Act.

*Section 20. Authorization of appropriations*

This section authorizes appropriations for the Magnuson-Stevens Act through Fiscal Year (FY) 2011. It sets the initial authorization for FY 2007 at the President's request for "Fisheries Research and Management" and "Enforcement and Training" line items ($338.97M). For FY 2008 through FY 2011, the authorizations represent an eight percent increase from the preceding year's authorization level, rounding to the nearest thousand dollars.

*Section 21. Review and report regarding violations of disclosure, conflict of interest, and recusal provisions*

This section requires the Secretary, within six months, to review the votes of all fishery management Councils that have occurred since the enactment of the Sustainable Fisheries Act and to report

to the House Committee on Resources whether there have been any meaningful violations of the disclosure, conflict of interest, and recusal provisions in Section 302 of the Magnuson-Stevens Act. It requires that the report include recommendations for legislative or regulatory changes that the Secretary considers appropriate to address any violations identified in the review.

*Section 22. Report on effects of hurricanes*

This section requires the Administrator of the National Oceanic and Atmospheric Administration, within 180 days, to report to Congress on the effects of Hurricanes Katrina, Rita, and Wilma on fisheries and fish habitat of the United States. The report must include a description of the effect on the commercial and recreational fisheries, the owners and operators of shrimp fishing vessels, and the oyster industry.

*Section 23. Study of the acidification of the oceans and effect on fisheries*

This section requires the Secretary to request the National Research Council to conduct a study of the acidification of the oceans and how this process effects U.S. fisheries.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

## FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committees authorized in the bill are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

## CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, clause 3, and Article IV, section 3, clause 2 of the Constitution of the United States grant Congress the authority to enact this bill.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) 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 this bill. However, clause 3(d)(3)(B) 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 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII 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 this bill from the Director of the Congressional Budget Office:

*H.R. 5018—American Fisheries Management and Marine Life Enhancement Act*

Summary: H.R. 5018 would amend the Magnuson-Stevens Act (MSA) and authorize appropriations for MSA fisheries programs carried out by the National Oceanic and Atmospheric Administration (NOAA). CBO estimates that appropriation of the amounts authorized by the bill would cost $228 million in fiscal year 2007 and about $1.8 billion over the 2007–2011 period.

Several provisions of H.R. 5018 also would increase collections of civil penalties, regulatory fees, and nonfederal contributions. Because NOAA would have authority to spend most of those additional collections, CBO estimates that enacting these provisions would have an insignificant net impact on the federal budget.

H.R. 5018 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA); the bill would benefit state, local, or tribal governments, and any costs would be incurred voluntarily.

H.R. 5018 would impose private-sector mandates as defined in UMRA. It would require certain commercial and recreational fishers in the United States to participate in data collection programs. It also would require individuals to pay quota origination and transfer fees for participation in a fishery under the limited access privilege program (LAPP), as well as authorize the Secretary to collect observer fees in all U.S. fisheries. It would prohibit the sale of recreationally caught fish, and it would prohibit the use of retired fishing vessels. It would restrict local fishers off of Navassa Island by making them subject to the regulations of the Magnuson-Stevens Act. Based on information from industry and government sources, CBO estimates the direct cost of complying with those mandates would fall below the annual threshold for private-sector mandates established in UMRA ($128 million in 2006, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5018 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1, 2] | | | | | | |
| MSA Spending Under Current Law: | | | | | | |
| Budget Authority [3] | 335 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 322 | 115 | 46 | 14 | 7 | 6 |
| Proposed Changes: | | | | | | |
| MSA Reauthorization: | | | | | | |
| Authorization Level | 0 | 339 | 366 | 395 | 428 | 462 |

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| Estimated Outlays | 0 | 220 | 312 | 371 | 408 | 445 |
| Recreational Fishing Survey: | | | | | | |
| Authorization Level | 0 | 5 | 5 | 5 | 5 | 5 |
| Estimated Outlays | 0 | 3 | 4 | 5 | 5 | 5 |
| Socioeconomic Data Collection: | | | | | | |
| Authorization Level | 0 | 2 | 2 | 2 | 2 | 2 |
| Estimated Outlays | 0 | 2 | 2 | 2 | 2 | 2 |
| Grants to Minimize Bycatch: | | | | | | |
| Authorization Level | 0 | 10 | 10 | 10 | 10 | 10 |
| Estimated Outlays | 0 | 3 | 7 | 10 | 10 | 10 |
| Total Changes: | | | | | | |
| Authorization Level | 0 | 356 | 383 | 412 | 445 | 479 |
| Estimated Outlays | 0 | 228 | 325 | 388 | 425 | 462 |
| MSA Spending Under H.R. 5018: | | | | | | |
| Authorization Level[3] | 335 | 356 | 383 | 412 | 445 | 479 |
| Estimated Outlays | 322 | 343 | 371 | 402 | 432 | 468 |

[1] Enacting H.R. 5018 would result in small changes in revenues and related direct spending. CBO estimates that the changes would be less than $500,000 annually and would offset each other in most fiscal years.

[2] H.R. 5018 would also change the classification of about $7 million a year in revenues by directing that such amounts be recorded in the budget as offsetting collections. Following scorekeeping rule 13, such reclassifications in legislation are not counted for purposes of Congressional scorekeeping.

[3] The 2006 level is the amount appropriated for that year for programs carried out under the MSA.

Note.—MSA = Magnuson-Stevens Act.

Basis of estimate: For this estimate, CBO assumes that H.R. 5018 will be enacted by the end of fiscal year 2006 and that the amounts authorized by the bill will be appropriated for each year. Estimated outlays are based on historical spending patterns for NOAA fisheries programs.

*Spending subject to appropriation*

H.R. 5018 would authorize annual appropriations of between $356 million and $479 million over the 2007–2011 period for MSA programs. CBO estimates that appropriation of these amounts would cost $228 million in 2007 and $1.8 billion over the 2007–2011 period.

Of the amounts specified for each year, between $339 million and $462 million would be authorized to carry out the MSA as amended by H.R. 5018. These amounts would fund conservation and management programs of the MSA as well as new programs or requirements to be carried out by NOAA. Major new activities would include:

- Financial assistance to fishermen, charter operators, and related businesses for losses resulting from coastal disasters,
- A research program to identify and collect information on marine ecosystems, and
- An independent peer review of NOAA's assessments of regional fishery stocks.

In addition, the bill would authorize the appropriation of $17 million a year for three new programs:

- $5 million for a survey on recreational fishing,
- $2 million for fisheries councils to collect socioeconomic data on fishing communities, and
- $10 million for grants to nonfederal entities to develop fishing gear to minimize unintentional catches of other species, including seabirds.

*Revenues and direct spending*

Limited Access Privilege Programs Fees. Section 7 of the bill would amend the statute governing fees collected under NOAA's limited access privilege programs. Those programs are used by NOAA to manage regulated fisheries by dividing shares of the annual allowable catch among commercial fishermen. Under current law, fees collected under LAPP are considered revenues and are spent without further appropriation to administer the programs.

Section 7 would require NOAA to collect additional fees from fishermen who hold individual fishing quotas (IFQs) under any LAPP established after the bill's enactment. The new fees would be equal to 1 percent of the value of a fisherman's annual quota. The 1 percent fee would be imposed when a quota is initially issued under the LAPP and again if that quota is transferred to another entity. Amounts collected from the new fees would be credited against the agency's appropriation and could be spent to implement the LAPP for the affected fishery.

CBO estimates that NOAA would collect less than $500,000 annually under section 7. Because these amounts would be available without further appropriation, we estimate that the net budgetary effect of this provision would be negligible in any fiscal year.

Also, section 7 would eliminate the existing IFQ fee that is collected from Alaska communities that are allocated quotas under the community development quota program. CBO estimates that the loss of that revenue would have a negligible impact on the budget.

Finally, section 7 would change the budgetary classification of the current annual fee on holders of IFQs. That fee is equal to 3 percent of the ex-vessel value of the annual catch. About $7 million a year in revenues is collected from this fee. Under the legislation, those amounts would become offsetting collections. The resulting decrease in revenues is not counted for purposes of Congressional consideration, however, pursuant to scorekeeping rule 13, which states that reclassifications are not counted for purposes of enforcing the budget resolution (see House Report 105–217, the conference report on the Balanced Budget Act of 1997, page 1011). Annual collections of this fee would continue to be available without further appropriation action.

Fishery Observer Fees. Section 9 would authorize NOAA to establish a funding system to recover the costs of stationing observers on board fishing vessels to collect data and enforce fishery management plans. The bill would establish a fishery observer fund, which could be credited with IFQ fees, private contributions, any fees that NOAA might impose under this section, and any interest earned on the fund's balances. Amounts in the fund would be available, subject to appropriation, to cover the costs of operating the observer program.

CBO expects that the general and permissive authority provided by section 9 would not result in the collection of any significant fees over the next several years because NOAA would not be required to charge new fees. CBO further expects that NOAA would not deposit any IFQ fees into the new fund because such amounts are already available to be spent without further appropriation but would require appropriation if deposited into the fund. CBO also expects that private foundations and other nonfederal entities

would be unlikely to contribute significant amounts to the fund because spending those amounts would require future appropriation actions.

Civil Penalties. Section 12 would increase federal revenues by expanding the number of actions prohibited under the MSA that are subject to civil penalties. CBO estimates that any additional collections would total less than $500,000 a year. Because most amounts collected from such penalties would be retained by NOAA and spent without further appropriation, we estimate that this provision of the bill would have no significant impact on the federal budget.

Estimated impact on state, local, and tribal governments: H.R. 5018 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The funds authorized by the bill would benefit states that implement fish conservation and management initiatives. Any costs they might incur would result from complying with conditions for receiving federal assistance.

Estimated impact on the private sector: H.R. 5018 would impose private-sector mandates as defined in UMRA. It would:

- Require certain commercial and recreational fishers in the United States to participate in data collection programs;
- Require individuals to pay quota origination and transfer fees for participation in a fishery under the Limited Access Privilege program, as well as authorize the Secretary to collect observer fees in all U.S. fisheries;
- Prohibit the sale of recreationally caught fish, and prohibit the use of retired fishing vessels; and
- Restrict local fishers off of Navassa Island by promulgating the regulations of the Magnuson-Stevens Act upon their fishing activities.

Based on information from industry and government sources, CBO estimates the direct cost of complying with those mandates would fall below the annual threshold for private-sector mandates established in UMRA ($128 million in 2006, adjusted annually for inflation).

*Data collection programs*

Section 4 would require the Secretary to establish a program to improve the quality and accuracy of recreational fishing data collection programs. The program would increase the number of intercepts of fishers to estimate catch, use surveys that target fishers registered at the state level to collect participation and effort data, and require collection and analysis of vessel trip report data from for-hire vessels including party, head, and charter fishing vessels. The bill would prohibit the Secretary from collecting fees for the purpose of data collection, though costs may be incurred by thousands of individuals and charter fishing companies to comply with the program. Section 4 also would authorize the Secretary to require a vessel monitoring system similar to electronic monitoring technology on vessels participating in certain fisheries. These types of technologies are currently required for participation in some fisheries. Based on information from government sources, CBO estimates that the cost of these provisions would not be large.

*Fees*

Section 7 would amend the statute governing fees collected under the limited access privilege program. The new fees would be equal to 1 percent of the value of a fisherman's annual quota. The 1 percent fee would be imposed when a quota is initially issued under the LAPP and again if that quota is transferred to another entity.

In addition, section 9 would authorize the Secretary of Commerce to collect observer fees from operators of fishing vessels in all U.S. fisheries. The fees would be used to help pay for the cost of stationing observers on board fishing vessels and fish processors, as well as the cost of managing data collected by the observers.

Based on information from government sources, CBO estimates the direct cost to the private sector of these fees would be small.

*Prohibitions*

Section 12 would prohibit the sale or purchase of any fish caught in recreational fishing. According to government sources, most fisheries under U.S. jurisdiction have laws prohibiting the sale of fish caught by recreational fishers. The prohibition would affect certain fisheries in U.S. territories that do not have laws that prohibit the sale of recreationally caught fish.

Section 12 also would prohibit the use of any fishing vessel to engage in fishing in any part of the world after the Secretary of Commerce has made a payment to the owner to permanently retire that vessel. Currently, retired vessels may not be used in the fishery for which they were licensed when the owner agreed to retire their vessel. Some vessel owners, though, have sold their vessels to entities in other fisheries or to foreign fishing firms.

Based on information from government sources, CBO estimates that cost of these prohibitions to the private sector would not be large.

*Regulation of fisheries adjacent to Navassa Island*

Section 5 would restrict local fishers off of Navassa Island by making them subject to the regulations of the Magnuson-Stevens Act. Navassa Island is an uninhabited, unincorporated territory of the United States that lies off the West coast of Haiti. Most of the fishing off the small island is done by local, subsistence fishers from Haiti who are not currently regulated under the Act. If regulated under the Act, all individuals who fish in the waters off the island would be subject to the fishery management plan established for the Caribbean region. Because this provision would affect so few people, CBO estimates that the cost of this provision would be small.

Previous CBO estimate: On May 6, 2006, CBO transmitted a cost estimate for S. 2012, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, as reported by the Senate Committee on Commerce, Science, and Transportation on April 4, 2006. S. 2012 and H.R. 5018 would both reauthorize fisheries programs carried out by NOAA, but S. 2012 would cover programs covered by fisheries acts other than the MSA. Moreover, the bills would require NOAA to carry out different grant programs and studies. The CBO cost estimates reflect these differences.

Both S. 2012 and H.R. 5018 would restrict local fishers off Navassa Island by making them subject to the regulations of the

Magnuson-Stevens Act. The bills also would increase data collection by the Secretary on recreational fishing, though S. 2012 would require certain recreational fishers in the United States to register in a federal recreational fishery registry. S. 2012 would require commercial fishing operations to submit to the Secretary of Commerce certain confidential and proprietary information. S. 2012 also would reauthorize an existing mandate on owners of vessels that fish for Dungeness crab by allowing the states of Washington, Oregon, and California to issue permits for Dungeness crab and to collect permit fees. Based on information from industry and government sources, CBO estimated the direct cost of complying with these mandates would fall below the annual threshold for private-sector mandates established in UMRA.

Estimate prepared by: Federal costs: Deborah Reis; Impact on State, local, and tribal governments: Lisa Ramirez-Branum; Impact on the private sector: Tyler Kruzic.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

### COMPLIANCE WITH PUBLIC LAW 104–094

This bill contains no unfunded mandates as defined by Public Law 104–094.

### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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):

## SUSTAINABLE FISHERIES ACT

* * * * * * *

# TITLE I—CONSERVATION AND MANAGEMENT

* * * * * * *

**SEC. 102. DEFINITIONS.**

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

(1) * * *

(2) in paragraph (7) (as redesignated)—

(A) by striking "**[**COELENTERATA**]** ***COELENTERATA***" from the heading of the list of corals and inserting "**[**CNIDARIA**]** ***CNIDARIA***"; and

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

* * * * * * *

(11) by striking "for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(g) has been implemented" in paragraph [(42)] *(43)* (as redesignated) and inserting "regulated under this Act"; and

* * * * * * *

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## MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

*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-Stevens Fishery Conservation and Management Act".

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*Sec. 303A. Limited access privilege programs.*

* * * * * * *

*Sec. 315. Compliance with National Environmental Policy Act of 1969.*
*Sec. 316. Regional coastal disaster assistance, transition, and recovery program.*

TITLE IV—FISHERY MONITORING AND RESEARCH

* * * * * * *

*Sec. 408. Regional stock assessments.*
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**SEC. 2. FINDINGS, PURPOSES AND POLICY.**

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

(1) * * *

* * * * * * *

(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] *diminished* stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.

* * * * * * *

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

(1) * * *

* * * * * * *

(6) to foster and maintain the diversity of fisheries in the United States; [and]

(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States[.]*; and*

*(8) to support and encourage efforts to understand the interactions of species in the marine environment and the development of ecosystem-based approaches to fisheries conservation and management that will lead to better stewardship and sustainability of the Nation's coastal fishery resources and fishing communities.*

**SEC. 3. DEFINITIONS.**

*(a) GENERAL DEFINITIONS.*—As used in this Act, unless the context otherwise requires—

(1) * * *

* * * * * * *

*(4A) The term "confidential information" means—*

*(A) trade secrets; or*

*(B) commercial or financial information the disclosure of which is likely to result in substantial harm to the competitive position of the person who submitted the information to the Secretary.*

* * * * * * *

*(8A) The term "diminished" means a fishery whose abundance is at or below a level that jeopardizes the capacity of the fishery to produce maximum sustainable yield on a continuing basis.*

* * * * * * *

(16) The term "fishing community" means a community which is substantially dependent on or substantially engaged in the [harvest] *catch, harvest,* or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew*, recreational participants, marina owners and operators, for-hire vessel owners and operators, bait and tackle shop owners and operators,* and United States fish processors that are based in such community.

* * * * * * *

*(23A) The term "limited access privilege"—*

*(A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish that may be received or held for exclusive use by a person; and*

*(B) includes an individual fishing quota; but*

*(C) does not include community development quotas as described in section 305(i).*

* * * * * * *

*(27A) The term "observer information" means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or fish processing observations, fish sampling or weighing data, vessel logbook data, vessel- or fish processor-specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.*

(28) The term "optimum", with respect to the yield from a fishery, means the amount of fish which—

(A) * * *

* * * * * * *

(C) in the case of an [overfished] *diminished* fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

* * * * * * *

[(29) The terms "overfishing" and "overfished" mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.]

*(29) The term "overfishing" means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.*

* * * * * * *

[(35) The term "special areas" means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

[(36) The term "special areas" means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.]

[(37)] *(35)* The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

[(38)] *(36)* The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

[(39)] *(37)* The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

[(40)] *(38)* The term "tuna species" means the following:

Albacore Tuna—Thunnus alalunga;
Bigeye Tuna—Thunnus obesus;
Bluefin Tuna—Thunnus thynnus;
Skipjack Tuna—Katsuwonus pelamis; and
Yellowfin Tuna—Thunnus albacares.

[(41)] *(39)* The term "United States", when used in a geographical context, means all the States thereof.

[(42)] *(40)* The term "United States fish processors" means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

[(43)] *(41)* 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.

[(44)] *(42)* The term "vessel subject to the jurisdiction of the United States" has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).

[(45)] *(43)* The term "vessel of the United States" means—

(A) * * *

* * * * * * *

[(33)] *(44)* The term "waters of a foreign nation" means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

*(45) The term "recreational fishing industry" means individual anglers, boat builders, fishing tackle manufacturers, for-hire vessel owners and operators, bait and tackle shop owners and operators, and recreational marina owners and operators.*

*(b) TERMS RELATING TO AGREEMENT WITH THE FORMER SOVIET UNION.—As used in this Act the term "special areas" means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.*

**SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act, not to exceed the following sums:

[(1) $147,000,000 for fiscal year 1996;

[(2) $151,000,000 for fiscal year 1997;

[(3) $155,000,000 for fiscal year 1998; and

[(4) $159,000,000 for fiscal year 1999.]

*(1) $338,970,000 for fiscal year 2007.*

*(2) $366,087,000 for fiscal year 2008.*

*(3) $395,374,000 for fiscal year 2009.*

*(4) $427,604,000 for fiscal year 2010.*

*(5) $461,812,000 for fiscal year 2011.*

* * * * * * *

# 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, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of [overfished] *diminished* stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

* * * * * * *

**SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.**

(a) ESTABLISHMENT.—(1) There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(A) * * *

* * * * * * *

(D) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States *and of commonwealths, territories, and possessions of the United States in the Caribbean Sea* (except as provided in paragraph (3)). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

* * * * * * *

(b) VOTING MEMBERS.—(1) * * *

(2)(A) * * *

* * * * * * *

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. *A Governor may submit the names of individuals from academia, or other public interest areas including conservation organizations and the seafood consuming public, if the Governor has determined that each such individual is qualified under the requirements of subparagraph (A).* A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests

of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

* * * * * * *

(g) COMMITTEES AND PANELS.—

(1)*(A)* Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

*(B) Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch and for the maximum sustainable yield for each fishery under the jurisdiction of the Council, and reports on stock status and health, bycatch, habitat status, socio-economic impacts of management measures, and sustainability of fishing practices.*

*(C) Members appointed to the scientific and statistical committees shall be Federal employees, State employees, academicians, or independent experts with strong scientific or technical credentials and experience.*

*(D) In addition to payments authorized by subsection (f)(7), the Secretary shall pay a stipend to members of the scientific and statistical committees who are not employed by the Federal Government or a State government agency.*

*(E) A science and statistical committee shall hold its meetings in conjunction with the meetings of the Council, to the extent practicable.*

* * * * * * *

*(6) PEER REVIEW PROCESS.—*

*(A) The Secretary and each Council shall establish a peer review process for scientific information used to advise the Secretary or the Council, respectively, about the conservation and management of fisheries.*

*(B) The Secretary and each Council shall ensure that the peer review process established under this paragraph—*

*(i) to the extent practicable, will not delay the process of providing to the Council or the Secretary, respectively, current information for use in managing fisheries; and*

*(ii) is as transparent as possible, so that interested members of the public can provide input during the review process.*

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

(1) * * *

* * * * * * *

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery (except as provided in subsection (a)(3)) within its geographical area of authority; **[**and**]**

(6) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions**[**.**]***;*

*(7) adopt a total allowable catch limit or other annual harvest effort control limit for each of the fisheries for which such a limit can be established, after considering the recommendation of the scientific and statistical committee of the Council having jurisdiction over the fishery, which shall not exceed the recommendation for the acceptable biological catch as recommended by such scientific and statistical committee; and*

*(8) develop, in conjunction with the scientific and statistical committee, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall—*

*(A) establish priorities for 5-year periods;*

*(B) be updated as necessary; and*

*(C) be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service for their consideration in developing research priorities and budgets for the region of the Council.*

(i) PROCEDURAL MATTERS.—(1) * * *

(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels established under subsection (g):

(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**]** *provided by any means that will result in wide publicity (except that e-mail notification and Web site postings alone are not sufficient)* in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected **[**fishery) and such notice may be given by such other means as will result in wide publicity.**]** *fishery).* Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such

modification is to address an emergency action under section 305(c), in which case public notice shall be given immediately.

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(3)(A) * * *

(B) If any meeting or portion is closed, the Council concerned shall [notify local newspapers] *provide notice by any means that will result in wide publicity* in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

* * * * * * *

*(k) COUNCIL TRAINING PROGRAM.—*

*(1) TRAINING COURSE.—Within 6 months after the date of the enactment of the American Fisheries Management and Marine Life Enhancement Act, the Secretary, in consultation with the Councils and the National Sea Grant College Program, shall develop a training course for newly appointed Council members. The course may cover a variety of topics relevant to matters before the Councils, including—*

*(A) fishery science and basic stock assessment methods;*

*(B) fishery management techniques, data needs, and Council procedures;*

*(C) social science and fishery economics;*

*(D) tribal treaty rights and native customs, access, and other rights related to Western Pacific indigenous communities;*

*(E) legal requirements of this Act, including conflict of interest and disclosure provisions of this section and related policies;*

*(F) other relevant legal and regulatory requirements, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.);*

*(G) public process for development of fishery management plans;*

*(H) recreational and commercial fishing information including fish harvesting techniques, gear types, fishing vessel types, and economics, for the fisheries within each Council's jurisdiction; and*

*(I) other topics suggested by the Council.*

*(2) MEMBER TRAINING.—The training course—*

*(A) shall be available to both new and existing Council members, staff from the regional offices and regional science centers of the National Marine Fisheries Service; and*

*(B) may be made available to committee or advisory panel members as resources allow.*

*(3) REQUIRED TRAINING.—Council members appointed after the date of the enactment of the American Fisheries Management and Marine Life Enhancement Act must complete the training course developed under this subsection.*

*(l) COUNCIL COORDINATION COMMITTEE.—The Councils may establish a Council coordination committee to discuss issues of rel-*

*evance to all Councils, including issues related to the implementation of this Act. The committee shall consist of the chairs, vice chairs, and executive directors of each of the Councils described in subsection (a)(1), or other Council members or staff.*

**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) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery, to prevent overfishing and rebuild [overfished] *diminished* stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

* * * * * * *

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, *economic information necessary to meet the requirements of this Act,* and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors,

* * * * * * *

(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—] *analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts of, the conservation and management measures on, and possible mitigation measures for—*

(A) * * *

* * * * * * *

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is [overfished] *diminished* (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an [overfished] *diminished* condition or is [overfished] *diminished*, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

* * * * * * *

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the [fishery] *fishery, including their economic impact,* and, to the extent practicable, quantify trends in landings of the managed fishery

resource by the commercial, recreational, and charter fishing sectors; [and]

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, [allocate] *allocate, taking into consideration the economic impact of harvest restrictions or recovery benefits on the fishery participants in each sector,* any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery[.]*;*

*(15) provide a mechanism for specifying the total allowable catch or another annual catch limit under the plan (including for a multiyear plan) for each fishery for which an annual catch limit can be established, that—*

*(A) is based on the best scientific information available; and*

*(B) in the case of a plan issued by a Council, does not exceed the acceptable biological catch level recommended by the scientific and statistical committee of the Council;*

*(16) with respect to any closure of an area to all fisheries managed under this Act, include provisions that ensure that such closure—*

*(A) is based on the best scientific information available;*

*(B) includes criteria to assess the conservation benefit of the closed area;*

*(C) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and*

*(D) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to—*

*(i) users of the area;*

*(ii) overall fishing activity;*

*(iii) fishery science; and*

*(iv) fishery and marine conservation; and*

*(17) contain information on the Council's efforts to study, develop, and describe appropriate alternatives to recommend courses of action.*

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

(1) * * *

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(11) reserve a portion of the [allowable] *acceptable* biological catch of the fishery for use in scientific research; [and]

(12) 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[.]*;*

*(13) include provisions to create a cooperative research component including the use of commercial fishing, charter fishing, or recreational fishing vessels for the gathering of data on stock*

*abundance, composition, distribution, or other relevant information important for the implementation of the plan;*

*(14) contain research, conservation, and management measures that encompass more than one fishery and are for the purpose of managing the fishery resources concerned under an ecosystem-based management system;*

*(15) require a Vessel Monitoring System or other similar electronic monitoring technology for the purposes of enforcing, monitoring, or collecting data from a fishery or fishery sector;*

*(16) establish a system of incentives to reduce total bycatch and seabird interaction, bycatch rates, and post-release mortality in fisheries under the Council's or Secretary's jurisdiction, including—*

*(A) measures to incorporate bycatch into quotas, including the establishment of collective or individual bycatch quotas;*

*(B) measures to promote the use of gear with verifiable and monitored low bycatch and seabird interaction rates; and*

*(C) measures that, based on the best scientific information available, will reduce bycatch and seabird interaction, bycatch mortality, post-release mortality, or regulatory discards in the fishery; and*

*(17) designate closed areas, seasonal closures, time/area closures, gear restrictions, or other methods for limiting impacts on habitat, limit bycatch impacts of gear, or limit fishing impact on spawning congregations in specific geographic areas.*

* * * * * * *

[(d) INDIVIDUAL FISHING QUOTAS.—

[(1)(A) A Council may not submit and the Secretary may not approve or implement before October 1, 2002, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program.

[(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately returned by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).

[(2)(A) No provision of law shall be construed to limit the authority of a Council to submit and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an individual fishing quota program.

[(B) This subsection shall not be construed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the North Pacific halibut and sablefish, South Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog individual fishing quota programs.

[(3) An individual fishing quota or other limited access system authorization—

[(A) shall be considered a permit for the purposes of sections 307, 308, and 309;

[(B) may be revoked or limited at any time in accordance with this Act;

[(C) shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited; and

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

[(4)(A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the—

[(i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and

[(ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

[(B) A Council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.

[(5) In submitting and approving any new individual fishing quota program on or after October 1, 2002, the Councils and the Secretary shall consider the report of the National Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program—

[(A) establishes procedures and requirements for the review and revision of the terms of any such program (including any revisions that may be necessary once a national policy with respect to individual fishing quota programs is implemented), and, if appropriate, for the renewal, reallocation, or reissuance of individual fishing quotas;

[(B) provides for the effective enforcement and management of any such program, including adequate observer coverage, and for fees under section 304(d)(2) to recover actual costs directly related to such enforcement and management; and

[(C) provides for a fair and equitable initial allocation of individual fishing quotas, prevents any person from acquiring an excessive share of the individual fishing quotas issued, and considers the allocation of a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, and crew members who do not hold or qualify for individual fishing quotas.]

*(d) BEST SCIENTIFIC INFORMATION AVAILABLE.—The Secretary shall develop guidelines for the Councils to use in determining what is the best scientific information available. The Secretary shall base these guidelines on the recommendations for guidelines developed by*

*the Ocean Studies Board of the National Research Council in its report titled "Improving the Use of the Best Scientific Information Available, Standard in Fisheries Management".*

*(e) OBSERVER PROVISIONS.—*

*(1) COSTS.—Costs for observer coverage that is primarily for the enforcement of a fishery management plan or for data collection necessary for the monitoring of a fishery—*

*(A) shall be paid for by the Secretary; and*

*(B) under a limited access program, may be considered as a cost to be recovered under the authority of section 303A(e)(2).*

*(2) LIABILITY FOR SANCTIONS.—A fishing vessel that is required to have an observer onboard pursuant to section 303(b)(8), the owner or operator of such a fishing vessel, and the United States shall not be liable for any sanction imposed on the observer for actions of the observer in the course of performance of duties as an observer.*

* * * * * * *

***SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.***

*(a) IN GENERAL.—After the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.*

*(b) NO CREATION OF RIGHT, TITLE, OR INTEREST.—A limited access system, limited access privilege, quota share, or other authorization established, implemented, or managed under this Act—*

*(1) shall be considered a permit for the purposes of sections 307, 308, and 309;*

*(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation for failure to comply with the terms of the plan or if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;*

*(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;*

*(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and*

*(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.*

*(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—*

*(1) IN GENERAL.—In addition to complying with the other requirements of this Act, any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—*

*(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;*

*(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;*

*(C) promote—*

*(i) the safety of human life at sea; and*

*(ii) the conservation and management of the fishery;*

*(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish;*

*(E) specify the goals of the program;*

*(F) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the establishment of the program and every 5 years thereafter;*

*(G) include an effective system for enforcement, monitoring, and management of the program, including the use of observers;*

*(H) include an appeals process for administrative review of determinations with respect to the Secretary's decisions regarding administration of the limited access privilege program; and*

*(I) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.*

*(2) FISHING COMMUNITIES.—*

*(A) IN GENERAL.—*

*(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—*

*(I) be located within the management area of the relevant Council;*

*(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;*

*(III) consist of residents of the management area of the relevant Council who conduct commercial or recreational fishing, fish processing, or fishery-dependent support businesses within such area; and*

*(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of fishing communities, including those that have not historically had the resources to participate in the fishery, for approval by the Council based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.*

*(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges for a person that were granted to a fishing community, if the person fails to comply with the requirements of the community sustainability plan approved by the relevant Council under clause (i)(IV).*

*(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—*

*(i) traditional fishing or fish processing practices in, and dependence on, the fishery;*

*(ii) the cultural and social framework relevant to the fishery;*

*(iii) economic barriers to access to fishery;*

*(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, fishing vessel captains and crews, fish processors, and other businesses substantially dependent upon the fishery in the region or subregion;*

*(v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and*

*(vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or fish processing activities in the fishery.*

*(3) REGIONAL FISHERY ASSOCIATIONS.—*

*(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—*

*(i) be located within the management area of the relevant Council;*

*(ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;*

*(iii) be a voluntary association with established bylaws and operating procedures consisting of participants in the fishery, including commercial or recreational fishing, fish processing, fishery-dependent support businesses, or fishing communities; and*

*(iv) develop and submit a regional fishery association plan to the Council and the Secretary for approval by the Council based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.*

*(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges for a person that were granted to a fishery association, if the person fails to comply with the requirements of the regional fishery association plan approved by the relevant Council under subparagraph (A)(iv).*

*(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—*

*(i) traditional fishing or fish processing practices in, and dependence on, the fishery;*

*(ii) the cultural and social framework relevant to the fishery;*

*(iii) economic barriers to access to fishery;*

*(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, fish processors, and other businesses substantially dependent upon the fishery in the region or subregion, upon the administrative and fiduciary soundness of the association and its by-laws; and*

*(v) the expected effectiveness, operational transparency, and equitability of the fishery association plan.*

*(4) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—*

*(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—*

*(i) current and historical harvests;*

*(ii) employment in the harvesting and fish processing sectors;*

*(iii) investments in, and dependence upon, the fishery; and*

*(iv) the current and historical participation of fishing communities;*

*(B) to the extent practicable, consider the basic cultural and social framework of the fishery, especially through the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements;*

*(C) include measures to assist, when necessary and appropriate, entry-level and small vessel operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges and, where appropriate, recommending the provision of economic assistance in the purchase of limited access privileges to harvest fish;*

*(D) for the purpose of preventing significant adverse economic or social impact on any fishing community or other person, ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—*

*(i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquired, or use; and*

*(ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges;*

*(E) establish procedures to address geographic or other consolidation in both the harvesting and fish processing sectors of the fishery;*

*(F) authorize limited access privileges to harvest fish to be held, acquired, or used by or issued under the system to persons who substantially participate in the fishery, as specified by the Council, including, as appropriate, fishing vessel owners, vessel captains, vessel crew members, fishing communities, and regional fishery associations; and*

*(G) ensure that no person otherwise qualified to receive an initial allocation of a limited access privilege to harvest fish is required to join any entity or association that limits in any way the person's ability to sell their catch as a condition of that person receiving an initial or annual allocation.*

*(5) PROGRAM INITIATION.—*

*(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.*

*(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.*

*(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.*

*(D) NEW ENGLAND REFERENDUM.—*

*(i) The New England Council may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than ⅔ of those voting in a referendum among eligible permit holders with respect to the New England Council. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.*

*(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule,*

*procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program.*

*(iii) The New England Fishery Management Council may determine that vessel captains or crew members who have substantial participation in the fishery concerned shall be eligible to vote in a referendum under this subparagraph. The New England Fishery Management Council shall establish the criteria for determining what constitutes "substantial participation" for purposes of this clause.*

*(iv) Within 1 year after the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements (subject to clause (iii)) for referenda and to conduct such referenda in a fair and equitable manner.*

*(E) OTHER LAW.—Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.*

*(6) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—*

*(A) establish a policy on the transferability of limited access privilege shares (through sale or lease), including a policy on any conditions that apply to the transferability of limited access privilege shares that is consistent with the policies adopted by the Council for the fishery under paragraph (2); and*

*(B) establish criteria for the approval and monitoring of transfers (including sales and leases) of limited access privilege shares.*

*(7) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(g).*

*(8) LIMITATION ON FEDERAL AGENCIES AND OFFICIALS.—A Federal agency or official may not hold, administer, or reallocate an individual quota issued under a fishery management plan under this section, other than the Secretary and the Council having authority over the fishery for which the individual quota is issued.*

*(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council may consider, and provide for, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—*

*(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of subsection (c)(2)(A); and*

*(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.*

*(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—*

*(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and*

*(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.*

*(f) LIMITED DURATION.—In establishing a limited access privilege program after the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, a Council may establish—*

*(1) a period of time after which any initial or subsequent allocation of a limited access privilege shall expire, or various periods for such expiration within a fishery if the Council determines that variation of the periods will further achievement of management goals; and*

*(2) a mechanism under which participants in and entrants to the program may acquire or reacquire allocations.*

*(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—*

*(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program that reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used to issue obligations that aid in financing—*

*(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and*

*(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.*

*(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.*

*(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the American Fisheries Management and Marine Life Enhancement Act, shall be construed to require a reallocation of individual quota shares, fish processor quota shares, cooperative programs, or other quota programs, including sector allocation, for which a Council has already provided a substantial opportunity for public comment and begun considering alternatives, or submitted by a Council or approved by the Secretary or by congressional action before the date of enactment of such Act.*

* * * * * * *

**SEC. 304. ACTION BY THE SECRETARY.**

(a) * * *

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(d) ESTABLISHMENT OF FEES.—(1) * * *

[(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any—

[(i) individual fishing quota program; and

[(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.]

*(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) With respect to any initial allocation under a limited access system established after the date of the enactment of the American Fisheries Management and Marine Life Enhancement Act, an initial allocation fee in an amount, determined by the Secretary, equal to 1 percent of the ex-vessel value of fish authorized in one year under an individual quota, that 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 3 percent of the ex-vessel value of fish authorized each year under an individual quota share, that 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 ex-vessel value of fish authorized each year under an individual quota share, that 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 ex-vessel value of fish authorized 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.*

[(B) Such fee] *(F) A fee under this paragraph* shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

[(C)] *(G)*(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B)[, except that the portion

of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1))**]**.

* * * * * * *

(e) REBUILDING **[**OVERFISHED**]** *DIMINISHED* FISHERIES.—

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are **[**overfished**]** *diminished* or are approaching a condition of being **[**overfished**]** *diminished*. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being **[**overfished**]** *diminished* if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become **[**overfished**]** *diminished* within two years. *The report shall distinguish between fisheries that are diminished (or approaching that condition) as a result of fishing and fisheries that are diminished (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as diminished or approaching that condition, whether the fishery is the target of directed fishing.*

(2) If the Secretary determines at any time that a fishery is **[**overfished**]** *diminished*, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within one year of an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

(A) * * *

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an **[**overfished**]** *diminished* condition.

(4) For a fishery that is **[**overfished**]** *diminished*, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

(A) specify a time period for ending overfishing and rebuilding the fishery that shall—

(i) be as short as possible, taking into account the status and biology of any **[**overfished**]** *diminished* stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of

the [overfished] *diminished* stock of fish within the marine ecosystem; and

[(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;]

*(ii) not exceed 10 years, except in cases where—*

*(I) the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;*

*(II) the Secretary determines that such 10-year period should be extended because the cause of the fishery decline is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities;*

*(III) the Secretary determines that such 10-year period should be extended for one or more diminished components of a multi-species fishery; or*

*(IV) the Secretary makes substantial changes to the rebuilding targets after the rebuilding plan has been put in place.*

* * * * * * *

(5) If, within the one-year period beginning on the date of identification or notification that a fishery is [overfished] *diminished*, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

* * * * * * *

*(i) ALTERNATIVE PROCEDURAL MECHANISMS.—*

*(1) In a fishery management plan or amendment, the Council or Secretary, as appropriate, may develop alternative procedural mechanisms to be used in lieu of plan amendments for implementing conservation and management measures.*

*(2) Such mechanisms may allow for abbreviated processes for the implementation of regulations or other actions as appropriate.*

*(3) Alternative procedural mechanisms shall only be approved or adopted for use in situations in which—*

*(A) the conservation and management measures are within the scope of conservation and management measures established in an existing fishery management plan;*

*(B) otherwise applicable regulatory processes are not sufficient to allow timely and efficient implementation of conservation and management measures in response to new information; and*

*(C) notice of the conservation and management measures is provided appropriate to the significance of the expected impacts on affected fishery resources and on the participants in the fishery.*

*(4) Any final agency action taken pursuant to the alternative procedural mechanism must be promptly published in the Federal Register.*

**SEC. 305. OTHER REQUIREMENTS AND AUTHORITY.**

(a) * * *

* * * * * * *

(c) EMERGENCY ACTIONS AND INTERIM MEASURES.—(1) * * *

* * * * * * *

(3) Any emergency regulation or interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation or interim measure promulgated under this subsection—

(A) * * *

(B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than [180] *186* days, provided the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;

* * * * * * *

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations *or interim measures* promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

* * * * * * *

(e) EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.—The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C 601 et seq.), *the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),* and Executive Order Numbered 12866, dated September 30, 1993, shall be complied with within the time limitations specified in subsections (a), (b), and (c) of section 304 as they apply to the functions of the Secretary under such provisions.

* * * * * * *

*(j) AUTHORITY TO REQUIRE VMS.—The Secretary may require, if requested to do so by a Council, a Vessel Monitoring System or other similar electronic monitoring technology for a fishery or specific sectors of a fishery under the jurisdiction of the Council. To the extent that the technology is required for enforcement or data collection purposes for a limited access privilege management system, the cost of such a system shall be included in the costs that are considered in determining the amount of any fee required under this Act to be paid to participate in the fishery. Any information collected*

*under this subsection shall be treated as confidential and exempt from disclosure under section 402(b).*

* * * * * * *

**SEC. 307. PROHIBITED ACTS.**

It is unlawful—

(1) for any person—

(A) * * *

* * * * * * *

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A); **[**or**]**

(P)(i) * * *

* * * * * * *

(iii) to land any such fin without the corresponding carcass**[**.**]***; or*

*(Q) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).*

* * * * * * *

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State or special areas, if—

(A) * * *

* * * * * * *

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; **[**and**]**

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation**[**.**]***; and*

*(6) to sell or purchase any fish caught in recreational fishing.*

* * * * * * *

**SEC. 311. ENFORCEMENT.**

(a) * * *

(b) POWERS OF AUTHORIZED OFFICERS.—(1) Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may—

(A) with or without a warrant or other process—

(i) * * *

* * * * * * *

(iv) seize any fish (wherever found) taken or retained in violation of any provision of this Act; [and]

(v) seize any other evidence related to any violation of any provisions of this Act; *and*

*(vi) access, directly or indirectly, for enforcement purposes any data or information required to be provided under this title or regulations under this title, including data from vessel monitoring systems, or any similar system, subject to the confidentiality provisions of section 402;*

* * * * * * *

*(h) JOINT FISHERIES ENFORCEMENT AGREEMENTS.—*

*(1) IN GENERAL.—The Governor of an eligible State may apply to the Secretary for execution of a joint fisheries enforcement agreement with the Secretary that will authorize the deputization and funding of State officers with marine fisheries responsibilities to perform duties of the Secretary relating to fisheries enforcement provisions under this title or any other marine resource law enforced by the Secretary. Upon receiving an application meeting the requirements of this subsection, the Secretary may enter into a joint fisheries enforcement agreement with the requesting State.*

*(2) ELIGIBLE STATE.—A State is eligible to participate in the cooperative agreements under this section if it is in, or bordering on, the Atlantic Ocean (including the Caribbean Sea), the Pacific Ocean, the Arctic Ocean, or the Gulf of Mexico.*

*(3) REQUIREMENTS.—Joint fisheries enforcement agreements executed under paragraph (1)—*

*(A) shall be consistent with the purposes and intent of this section to the extent applicable to the regulated activities; and*

*(B) shall provide for confidentiality of data and information submitted to the State under section 402.*

*(4) ALLOCATION OF FUNDS.—The Secretary shall include in each joint fisheries enforcement agreement an allocation of funds to assist in management of the agreement. The allocation shall be fairly distributed among all eligible States participating in cooperative agreements under this subsection, based upon consideration of Federal marine fisheries needs, the specific marine fisheries conservation needs of each participating eligible State, and the capacity of the State to undertake the mission and assist with Federal needs. The agreement may provide for amounts to be withheld by the Secretary for the cost of any technical or other assistance provided to the State by the Secretary under the agreement.*

*(i) IMPROVED DATA SHARING.—*

*(1) IN GENERAL.—Notwithstanding any other provision of this Act, as soon as practicable but no later than 21 months after the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, the Secretary shall implement data-sharing measures to make any data required to be provided by this Act from vessel monitoring systems, or similar systems—*

*(A) directly accessible by State officers authorized under subsection (a) of this section; and*

*(B) available to a State management agency involved in, or affected by, management of a fishery if the State has entered into an agreement with the Secretary under section 402(b)(1)(B) of this Act.*

*(2) AGREEMENT REQUIRED.—The Secretary shall promptly enter into an agreement with a State under section 402(b)(1)(B) of this Act if—*

*(A) the State provides a written opinion or certification that State law allows the State to maintain the confidentiality of information required by Federal law to be kept confidential; or*

*(B) the Secretary is provided other reasonable assurance that the State can and will protect the identity or business of any person to which such information relates.*

**[**(h)**]** *(j)* DEFINITIONS.—For purposes of this section—

(1) * * *

* * * * * * *

**SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.**

(a) FISHERIES DISASTER RELIEF.—(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a **[**commercial**]** fishery failure due to a fishery resource disaster as a result of—

(A) * * *

* * * * * * *

(2) Upon the determination under paragraph (1) that there is a **[**commercial**]** fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the **[**commercial**]** fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the **[**commercial**]** fishery failure in that fishery or into other fisheries or other geographic regions.

* * * * * * *

(b) FISHING CAPACITY REDUCTION PROGRAM.—(1) The Secretary**[**, at the request of the appropriate Council for fisheries under the authority of such Council, or the Governor of a State for fisheries under State authority,**]** may conduct a fishing capacity reduction program (referred to in this section as the "program") in a fishery *that is managed under a limited access system authorized by section 303(b)(6),* if the Secretary determines that the program—

(A) * * *

* * * * * * *

**[**(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and

in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

[(A) the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or

[(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.]

*(2)(A) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time.*

*(B) To achieve that objective, the Secretary is authorized to pay an amount to the owner of a fishing vessel, if—*

*(i) such vessel is scrapped, or through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing;*

*(ii) all permits authorizing the participation of the vessel in any fishery under the jurisdiction of the United States are surrendered for permanent revocation; and*

*(iii) the owner of the vessel and such permits relinquishes any claim associated with the vessel and such permits that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established.*

* * * * * * *

*(4) The Council, or the Governor of a State, having authority over a fishery may request the Secretary to conduct a fishing capacity reduction program in the fishery under this subsection.*

[(4)] *(5)* The Secretary shall consult, as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

*(6) The Secretary may not make a payment under paragraph (2) with respect to a vessel that will not be scrapped, unless the Secretary certifies that the vessel will not be used for any fishing, including fishing in the waters of a foreign nation and fishing on the high seas.*

**SEC. 313. NORTH PACIFIC FISHERIES CONSERVATION.**

(a) IN GENERAL.—The North Pacific Council may prepare, in consultation with the Secretary, a fisheries research plan for [all] *any* fisheries under the Council's jurisdiction except salmon fisheries which—

(1) * * *

[(2) establishes a system of fees to pay for the costs of implementing the plan.]

*(2) establishes a system, or systems, of fees, which may vary by fishery, management area, and observer coverage level, to pay for the costs of implementing the plan.*

(b) STANDARDS.—(1) * * *

(2) Any system of fees established under this section shall—

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers*, or electronic monitoring systems,* on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

* * * * * * *

(E) be expressed as *fixed amount reflecting actual observer costs as described in clauses (i), (ii), and (iii) of subparagraph (A), or* a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against *some or* all fishing vessels and United States fish processors, including those not required to carry an observer*, or electronic monitoring systems,* under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

* * * * * * *

(H) provide that fees collected will only be used for implementing the plan established under this section; [and]

(I) meet the requirements of section 9701(b) of title 31, United States Code[.]*; and*

*(J) provide that fees collected under the system shall be credited against any fee for stationing observers, or electronic monitoring systems, onboard fishing vessels and United States fish processors and the actual cost of inputting collected data to which a fishing vessel or fish processor is subject under section 304(d).*

* * * * * * *

**SEC. 314. NORTHWEST ATLANTIC OCEAN FISHERIES REINVESTMENT PROGRAM.**

(a) PROGRAM.—(1) Not later than October 1, 1993, the Secretary shall establish a Northwest Atlantic Ocean Fisheries Reinvestment Program for the purposes of—

(A) * * *

* * * * * * *

(E) helping to restore [overfished] *diminished* New England groundfish stocks through aquaculture or hatchery programs.

* * * * * * *

***SEC. 315. COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.***

*(a) IN GENERAL.—The Secretary may consider the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) to have been satisfied with respect to any fishery management plan, amendment to such a plan, or regulation implementing such a plan that the Secretary determines has been prepared in accordance with applicable provisions of sections 303 and 304 of this Act.*

*(b) LIMITATION OF APPLICATION.—This section shall not apply unless the Secretary has published a determination that sections 304 and 305 are substantially equivalent to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).*

***SEC. 316. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.***

*(a) IN GENERAL.—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.*

*(b) PROGRAM COMPONENTS.—*

*(1) IN GENERAL.—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—*

*(A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure;*

*(B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region that may be temporarily closed as a result of environmental or other effects associated with the disaster;*

*(C) vessel repair and refloating;*

*(D) debris removal and cleaning;*

*(E) public and private oyster bed, shrimp, and other fisheries rehabilitation; and*

*(F) any other activities authorized under section 312(a) of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).*

*(2) JOB TRAINING.—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.*

*(3) NO MATCHING REQUIRED.—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—*

*(A) no reasonable means are available through which applicants can meet the matching requirement; and*

*(B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.*

*(4) NET REVENUE LIMIT INAPPLICABLE.—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.*

*(c) REGIONAL IMPACT EVALUATION.—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region's fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.*

*(d) CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.—In this section the term "catastrophic regional fishery disaster" means a natural disaster, including a hurricane or tsunami, or a judicial or regulatory closure to protect human health or the marine environment, that—*

*(1) results in economic losses to coastal or fishing communities;*

*(2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and*

*(3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).*

# TITLE IV—FISHERY MONITORING AND RESEARCH

* * * * * * *

**SEC. 402. INFORMATION COLLECTION.**

(a) * * *

[(b) CONFIDENTIALITY OF INFORMATION.—(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—

[(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

[(B) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

[(C) when required by court order;

[(D) when such information is used to verify catch under an individual fishing quota program;

[(E) that observer information collected in fisheries under the authority of the North Pacific Council may be released to the public as specified in a fishery management plan or regulation for weekly summary bycatch information identified by vessel, and for haul-specific bycatch information without vessel identification; or

[(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.

[(2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).]

*(b) CONFIDENTIALITY OF INFORMATION.—*

*(1) IN GENERAL.—Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—*

*(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;*

*(B) to State or Marine Fisheries Commission employees—*

*(i) as necessary for achievement of the purposes of this Act; and*

*(ii) in accordance with a confidentiality agreement between the State or Commission, as appropriate, and the Secretary that prevents public disclosure of the identity or business of any person;*

*(C) when required by court order;*

*(D) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access privilege program, but only to the extent that such use is consistent with subparagraph (B);*

*(E) if such information is required to be submitted to the Secretary for any determination under a limited access program;*

*(F) that observer information collected in fisheries under the authority of the North Pacific Council may be released to the public as specified in a fishery management plan or regulation for weekly summary bycatch information identified by vessel, and for haul-specific bycatch information without vessel identification; or*

*(G) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.*

*(2) PROCEDURES TO PRESERVE CONFIDENTIALITY.—The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of any observer information, information produced by a vessel monitoring system, or*

*information produced by other technology used on-board a vessel for enforcement or data collection purposes, that is submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public—*

*(A) any such information that in any aggregate or summary form that does not directly or indirectly disclose the identity or business of any person who submits such information.*

*(B) any such information when it is necessary in proceedings to adjudicate observer certifications; and*

*(C) any such information as authorized by any regulations issued under paragraph (4) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, for purposes of—*

*(i) allowing the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or*

*(ii) validating the accuracy of the observer information collected.*

*(3) USE FOR CONSERVATION AND MANAGEMENT PURPOSES.—Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(F).*

*(4) MEMORANDUM OF UNDERSTANDING.—The Secretary may enter into a memorandum of understanding with the heads of other Federal agencies for the sharing of confidential information for purposes of this Act, such as information produced by vessel monitoring systems or other electronic monitoring systems, if the Secretary determines there is a compelling need to do so and if the heads of the other Federal agencies agree to maintain the confidentiality of the information in accordance with the requirements that apply to the Secretary under this section.*

* * * * * * *

*(f) SOCIOECONOMIC DATA COLLECTION.—*

*(1) The Secretary may provide funds to Councils to carry out collection of socioeconomic data, including information on fishermen and fishing communities, necessary to carry out the functions of the Councils.*

*(2) To carry out this subsection there is authorized to be appropriated to the Secretary, in addition to other amounts authorized, $2,000,000 for each fiscal year.*

**SEC. 403. OBSERVERS.**

(a) * * *

* * * * * * *

*(d) OBSERVER PROGRAM FUNDING MECHANISM.—*

*(1) IN GENERAL.—The Secretary may establish a funding mechanism to cover the cost of an observer program to monitor any fishery managed under this Act or any other Act administered by the Secretary, including the Northern Pacific halibut fishery.*

*(2) FORM OF MECHANISM.—*

*(A) The Secretary may exercise broad discretion in developing a funding mechanism under this subsection, which may include a system of fees, payments collected from limited access privilege programs, or any other cost recovery mechanism to pay for—*

*(i) the cost of stationing observers on board fishing vessels and United States fish processors, and*

*(ii) the actual cost of inputting data and managing observer databases.*

*(B) The moneys collected under a funding mechanism established under this subsection for an observer program shall be—*

*(i) deposited into the Fishery Observer Fund established under subsection (e); and*

*(ii) used only for the observer program covering fisheries from which the moneys were collected.*

*(e) FISHERY OBSERVER FUND.—*

*(1) ESTABLISHMENT OF FUND.—There is established on the books of the Treasury of the United States, a fund that shall be known as the Fishery Observer Fund (in this subsection referred to as the "Fund"). The Fund shall be administered by the Secretary of Commerce. The Fund shall be available, subject to the availability of appropriations, only to the Secretary for purposes of carrying out subsection (d). The Fund shall consist of all moneys deposited into in it accordance with this section, plus interest on those moneys.*

*(2) INVESTMENT OF AMOUNT.—*

*(A) It shall be the duty of the Secretary of the Treasury to invest, at the direction of the Secretary of Commerce, such portion of the Fund that is not currently needed for the purposes of each observer program covering fisheries from which moneys were collected under subsection (d).*

*(B) Such investments shall be in public debt obligations with maturities suitable to the needs of the Fund, as determined by the Secretary of Commerce. Investments in public debt obligations shall bear interest at rates determined by the Secretary of the Treasury taking into consideration the current market yield on outstanding marketable obligations of the United States of comparable maturity.*

*(3) SALE OF OBLIGATION.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the direction of the Secretary of Commerce at market prices.*

*(f) CONTRIBUTIONS.—For purposes of carrying out subsections (d) and (e), the Secretary may accept, solicit, receive, hold, administer, and use gifts, devices, contributions, and bequests. Amounts received under this subsection shall be deposited in the Fishery Observer Fund established under subsection (c).*

**SEC. 404. FISHERIES RESEARCH.**

(a) * * *

* * * * * * *

(c) AREAS OF RESEARCH.—Areas of research are as follows:

(1) * * *

* * * * * * *

(4) Information management research, including the development of a fishery information base and an information management system [under section 401] that will permit the full use of information in the support of effective fishery conservation and management.

*(5) The interaction of species in the marine environment, and the development of ecosystem-based approaches to fishery conservation and management that will lead to better stewardship and sustainability of coastal fishery resources.*

* * * * * * *

*(e) COOPERATIVE RESEARCH BY SECRETARY.—The research program under subsection (a) may include cooperative research using commercial fishing, charter fishing, or recreational fishing vessels for the gathering of data on stock abundance, composition, distribution, or other relevant information.*

*(f) PRESERVING FISHING PRIVILEGES.—The Secretary shall ensure that—*

*(1) fishing vessels participating in research activities conducted pursuant to section 303(b)(13) or title IV do not lose allocated fishing privileges (such as days at sea) based on the research activities, unless loss of such privileges is a part of the research plan under which the vessel participates; and*

*(2) catch history of a vessel during such research activities at any time when the vessel is sacrificing fishing time in an open season shall accrue to the vessel, unless loss of such accrual is part of such research plan.*

**SEC. 405. INCIDENTAL HARVEST RESEARCH.**

(a) * * *

* * * * * * *

(c) COLLECTION AND ASSESSMENT OF SPECIFIC STOCK INFORMATION.—For stocks of fish identified pursuant to subsection (b), with priority given to stocks which (based upon the best available scientific information) are considered to be [overfished] *diminished*, the Secretary shall conduct—

(1) * * *

* * * * * * *

**SEC. 406. FISHERIES SYSTEMS RESEARCH.**

(a) * * *

* * * * * * *

*(f) REGIONAL ECOSYSTEM RESEARCH.—*

*(1) STUDY.—Within 180 days after the date of enactment of the American Fisheries Management and Marine Life Enhancement Act, the Secretary, in consultation with the Councils, shall undertake and complete a study on the state of the science for advancing the concepts and integration of ecosystem consider-*

*ations in regional fishery management. The study should build upon the recommendations of the advisory panel and include—*

*(A) recommendations for scientific data, information and technology requirements for understanding ecosystem processes, and methods for integrating such information from a variety of Federal, State, and regional sources;*

*(B) recommendations for processes for incorporating broad stake holder participation;*

*(C) recommendations for processes to account for effects of environmental variation on fish stocks and fisheries; and*

*(D) a description of existing and developing Council efforts to implement ecosystem approaches, including lessons learned by the Councils.*

*(2) IDENTIFICATION OF MARINE ECOSYSTEMS; RESEARCH PLAN.—*

*(A) IN GENERAL.—Within one year after the date of the publication of the study under paragraph (1), the Secretary, in conjunction with the regional science centers of the National Marine Fisheries Service and the Councils, shall—*

*(i) identify specific marine ecosystems within each region for which a Council is established by section 302(a); and*

*(ii) develop and begin to implement regional research plans to address the information deficiencies identified by the study.*

*(B) RESEARCH PLANS.—The research plans shall suggest reasonable timeliness and cost estimates for the collection of the required information.*

*(C) REPORTS.—The Secretary shall report to the Congress annually on the progress of the regional research plans.*

*(3) AGENCY TECHNICAL ADVICE AND ASSISTANCE, REGIONAL PILOT PROGRAMS.—The Secretary is authorized to provide necessary technical advice and assistance, including grants, to the Councils for the development and design of regional pilot programs that build upon the recommendations of the advisory panel and, when completed, the study.*

* * * * * * *

***SEC. 408. REGIONAL STOCK ASSESSMENTS.***

*(a) IN GENERAL.—The Secretary shall conduct periodic regional assessments of stocks of fish.*

*(b) INDEPENDENT REVIEW.—The Secretary shall ensure that each periodic assessment under this section is independently reviewed in a manner that—*

*(1) will not delay the process of providing to Regional Fishery Management Councils current assessments for use in managing fisheries; and*

*(2) is as transparent as possible, so that interested members of the public can provide input during the review process.*

***SEC. 409. GEAR GRANT PROGRAM.***

*(a) IDENTIFICATION OF FISHERIES WITH MOST URGENT PROBLEMS.—The Secretary shall—*

*(1) identify those fisheries included in a list under subsection (a) that have the most urgent bycatch problems or seabird inter-*

*action problems, based on comments received regarding the list; and*

*(2) work in conjunction with the Councils and fishing industry participants to develop new fishing gear, or modifications to existing fishing gear, that will help minimize bycatch and seabird interactions to the extent practicable.*

*(b) GRANT AUTHORITY.—The Secretary shall, subject to the availability of appropriations, make grants for the development of fishing gear and modifications to existing fishing gear that will help—*

*(1) minimize bycatch and seabird interactions; and*

*(2) minimize adverse fishing gear impacts on habitat areas of particular concern.*

*(c) REPORT.—The Secretary shall report to the Congress annually on—*

*(1) the amount expended to implement this section in the preceding year;*

*(2) developments in gear technology achieved under this section;*

*(3) the reductions in bycatch associated with implementation of this section; and*

*(4) any other relevant information.*

*(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary $10,000,000 for each of fiscal years 2007 through 2011.*

* * * * * * *

## DISSENTING VIEWS

We support reauthorization of the Magnuson-Stevens Fisheries Conservation Management Act (Magnuson Act) but strongly oppose H.R. 5018. The Joint Oceans Commission Initiative (JOCI), which represents the combined recommendations of the U.S. Commission on Ocean Policy (USCOP) and the Pew Oceans Commission, expressed similar concerns in letters dated May 16, 2006, and June 7, 2006. (See attachments.)

### FAILURE TO CURB OVERFISHING

Last reauthorized in 1996 to promote sustainable fisheries in our oceans, the Magnuson Act mandates the end to overfishing in stocks designated as overfished, and requires the rebuilding of overfished stocks in as short a time as possible but in general within 10 years. The law defines overfishing and overfished as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce maximum sustainable yield on a continuing basis.

The National Marine Fisheries Service has identified 74 depleted fish stocks in need of rebuilding. Of these 74 stocks, rebuilding plans have been approved for 67 fish stocks. Although the requirements to rebuild fisheries were enacted nine years ago, only three fish stocks (Atlantic sea scallop, Pacific whiting and Pacific lingcod) have recovered. For 48 percent of stocks with rebuilding plans, fish population levels are increasing. However, overfishing is still occurring for 45 percent of the stocks with rebuilding plans in place. Studies have shown that the clearest cause of the lack of progress in rebuilding is the failure of many plans to reduce exploitation sufficiently to end overfishing.[1]

Notwithstanding the poor fish stock recovery rate, H.R. 5018 would undermine the law's conservation provisions and make it even more difficult and costly to rebuild marine fisheries by authorizing exemptions to the rebuilding requirements. While the bill would require annual catch limits, there is no mechanism in H.R. 5018 to enforce these limits.

### UNDERCUTTING THE REQUIREMENT TO REBUILD FISHERIES

The Magnuson Act requires preparation of a rebuilding plan for an overfished fishery. The rebuilding time frame is to be as short as possible but no longer than 10 year years, except in cases where the biology of the stock or other environmental conditions dictate otherwise.

Despite the flexibility already in the law, H.R. 5018 would authorize a series of loopholes large enough to pilot a fishing trawler through, and would enable the 10-year deadline to be extended in-

[1] Rosenberg, Andrew A., Swasey, Jill H., and Bowman, Margaret. "Rebuilding US fisheries: progress and problems." Frontiers in Ecology 2006: 4(7).

definitely. Under H.R. 5018, overfishing could continue indefinitely if the Secretary makes any of the following determinations: the cause of the fishery decline is outside the Council's jurisdiction, rebuilding cannot be effective only by limiting fishing activities, one or more stocks in a multi species fishery need more than 10 years to recover, or the rebuilding targets are changed.

"If fishery productivity is reduced due to factors other than fishing, fishing pressure must still be reduced. It is not a matter of assigning blame, but of adjusting fishing pressure to a level that the resource can sustain," wrote the JOCI in its May 16, 2006, letter.

The loopholes would exacerbate the effects of overfishing, making it more difficult, perhaps impossible, to produce sustainable fisheries to support the fishing industry. If H.R. 5018 is enacted, the fishermen of today could continue fishing or even overfishing in the short term, but it is unlikely that fisheries experiencing over harvesting could sustain future generations of fishermen.

"Continuing to extend the rebuilding time frame makes it far more difficult to rebuild overall, causes even greater economic and social impacts, and means an ongoing loss of resources," the JOCI said in its May 16, 2006, letter. This provision is not in S. 2012, a bill passed by the Senate to reauthorize the Magnuson-Stevens Act.

Ranking Democrat Nick J. Rahall and Representative Jim Saxton (R–NJ) filed amendments to strike the rebuilding language in Section 11. The amendment failed by a vote of 18 to 17.

FAILURE TO ASSURE BALANCED AND ACCOUNTABLE REGIONAL FISHERY MANAGEMENT COUNCILS (COUNCILS)

The Magnuson Act established eight regional Councils which play a major role in managing our nation's fisheries. The USCOP made important recommendations to improve the operations of the Councils, including some that are in H.R. 5018. These include payment to members serving on the Councils' Science and Statistical Committees (SSC) and the requirement that the SSCs recommend "acceptable biological catch" and maximum sustainable yield levels.

While we support the SSCs role in establishing catch levels, the term "acceptable biological catch" is not defined in H.R. 5018 and should be. An enforcement mechanism is also needed to ensure that the catch level is not exceeded. H.R. 5018 would authorize Councils to use harvest control methods instead of catch limits, but these methods are difficult to measure and are not as effective as catch limits in managing sustainable fisheries.

Other USCOP and JOCI recommendations pertaining to appointments to the Councils and training for Council members are not in H.R. 5018. "As it stands, the fishing industry representatives, who make up the majority of the regional fishery management council members, may tend to favor economic interests over the long-term sustainability of the stocks," the USCOP's report said. Of the 72 council members nationwide in 2005, only 10 were not from the commercial or recreational fishing sectors.

In an attempt to address this concern, H.R. 5018 would authorize governors to nominate Councils members from academia and the public interest sector, but governors would not be required to rec-

ommend a broad slate of candidates, including two representatives from the general public, as the USCOP recommended.

While H.R. 5018 would direct the Secretary to provide training to Council members, the bill fails to establish a deadline for Council members to complete the course, and would not prevent council members from voting prior to completing the course. The USCOP recommended both of these changes to the Magnuson Act.

We are troubled that the bill contains absolutely no financial disclosure requirements for certain SSC members. Council members are required to abide by financial disclosure regulations in 50 CFR 600.235 and Federal employees must comply with 18 U.S.C. 208, but SSC members who are academicians or independent experts would be exempt from both. There is nothing to prevent SSC members, who also work for the fishing industry, from recommending catch levels that benefit their employers but do not promote stock sustainability.

To get around a potential conflict of interest, the USCOP recommended that the Administrator of the National Oceanic and Atmospheric Administration ultimately approve the SSC appointments, but H.R. 5018 ignores this recommendation and retains the Councils' exclusive authority to make SSC appointments. An alternative solution would be to require that SSC members not have a direct financial interest or be employed by any person with a direct financial interest in any fishery.

ELIMINATING COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPAL)

H.R. 5018 continues the Republican crusade to weaken NEPA with a cascade of rifle-shot exemptions. In this case, H.R. 5018 would create a unique, dual system for fisheries management where the Secretary of Commerce would be authorized to waive NEPA by finding that compliance with the Magnuson Act is "substantially equivalent" to NEPA. This new system would reduce public involvement, and curb alternatives and cumulative impacts analyses.

Ironically, supporters of this exemption sometimes claim that the application of NEPA is redundant to the requirements in the Magnuson Act, and other times claim that the two laws are at odds with one another.

The Council on Environmental Quality's General Counsel and the Assistant Administrator for Fisheries at the Department of Commerce testified that NEPA and the Magnuson Act are not in conflict. Neither the Magnuson Act nor H.R. 5018 require a broad analysis of the impacts that an action may have on the marine environment. The mere inclusion of Section 10 in H.R. 5018 is a tacit admission that the Magnuson Act lacks the level of analysis found in NEPA, otherwise it would be unnecessary.

The imitation NEPA requirements which H.R. 5018 would add to the Magnuson Act are insufficient. Section 10(a) in H.R. 5018 would direct the Councils to provide information on "efforts to study, develop and describe" alternatives. While this language mimics NEPA, a formal process, where alternative actions are identified and analyzed, is not required under H.R. 5018.

Section 10(b) in H.R. 5018 mentions cumulative impact analysis but requires it only within the narrow confines of a fishery management plan. Without the broader perspective NEPA requires, Councils could consider cumulative impacts of an action on one species in a fishery while ignoring the impacts of that action on other species and other aspects of the marine environment. If this language were to become law, the unintended result would be greater confusion and more litigation since there is no precedent for this approach.

In its June 7, 2006, letter the JOCI said Section 10 "would seriously compromise the integrity of NEPA" and asked that the provision be removed from H.R. 5018. The Bush Administration did not request nor does it endorse the extraordinary powers granted to the Secretary of Commerce in Section 10. Moreover, this provision is not in S. 2012, the Magnuson reauthorization bill approved by the Senate.

Ranking Democrat Nick J. Rahall and Congressman Raúl Grijalva offered an amendment in Committee to strike this provision. The amendment failed by voice vote. A second degree amendment which would have deleted the offensive NEPA waiver language in H.R. 5018, and in its place directed the Secretary to update and revise procedures to integrate compliance with NEPA and the Magnuson Act, failed by a vote of 18 to 23.

AUTHORIZING PERMANENT PRIVATIZATION OF PUBLIC FISHERY RESOURCES

Often called an individual fishing quota, a Limited Access Privilege Program (LAPP) is a permit issued to individuals or an entity to harvest a specified amount of the total allowable catch of a fishery. H.R. 5018 would authorize councils to create a LAPP, subject to approval by the Secretary of Commerce.

If implemented properly, LAPPs can be a management tool with the potential to improve conservation and promote fishermen safety, but there is no guarantee that LAPPs authorized in H.R. 5018 would meet these goals. In its June 7, 2006, letter, the JOCI recommended that quota shared be assigned for a limited time period. Yet, under H.R. 5018, LAPP holders could retain their permits forever.

In other areas within the Resources Committee's jurisdiction, such as contracting for timber harvest, and delivery of water and power, as well as issuing permits to graze animals on public lands, there are limitations in law or regulation on the amount of time public resources may be used for private benefit. Opponents of terms for a LAPP argue that fishermen will not be able to secure business loans without a long-term permit. Similar arguments were made by irrigation districts when contract terms for delivery of Bureau of Reclamation water were proposed. Yet farmers are still able to secure loans notwithstanding the limitations Congress enacted.

While some fishermen support LAPPs, particularly those holding a quota, not all do. H.R. 5018 would grant New England fishermen authority to hold a referendum on whether or not a LAPP should be issued in their region, and would require a 2/3 vote in support to approve a LAPP. Vessel captains and crew members would be

eligible to participate in the referendum. Fishermen in other parts of the country would not be granted the same rights. In our view, all regions should be required to comply with the same rules.

We also oppose provisions in H.R. 5018 which would exempt those LAPPS that are being developed but have not yet been approved by the Secretary from having to comply with H.R. 5018. The new rules established in H.R. 5018 should apply to all LAPPS.

CONCLUSION

We support a reauthorization bill that will enable fisheries to rebuild, but H.R. 5018 would undermine this goal by allowing overfishing to continue indefinitely and would limit analysis of environmental impacts. Instead of enhancing the conservation provisions in the Magnuson Act for future generations, H.R. 5018 would lead to depleted fisheries, thereby threatening the $60 billion contribution our fisheries make to the U.S. economy, and jobs for more than half a million Americans. We strongly oppose H.R. 5018.

NICK J. RAHALL II.
GEORGE MILLER.
EDWARD J. MARKEY.
DALE KILDEE.
GRACE F. NAPOLITANO.
RAÚL GRIJALVA.
TOM UDALL.

JOINT
OCEAN COMMISSION
INITIATIVE

The Honorable J. Dennis Hastert
The Honorable Nancy Pelosi
United States House of Representatives
Washington, DC 20515

June 7, 2006

Dear Mr. Speaker and Minority Leader Pelosi:

The Joint Ocean Commission Initiative, which represents the views of the members of the U.S. Commission on Ocean Policy and the Pew Oceans Commission, offers the following recommendations for enhancing H.R. 5018, legislation to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, which is scheduled for consideration on the House floor in the near future.

We greatly appreciate the commitment of House Majority and Minority Leadership to improving our nation's management of its fisheries, which is vitally important to the health of our economy and our oceans. We also applaud the work of the House Resources Committee, whose bill incorporates, in whole or in part, a number of the two Commissions' key recommendations, including, but not limited to, provisions that:

- Improve science-based management
- Promote cooperative research
- Authorize the development of ecosystem-based fishery management plans, regional stock assessments, and regional ecosystem research
- Promote the collection of socioeconomic data
- Establish a council member training course
- Authorize the establishment of Limited Access Privilege Programs
- Endorse joint fisheries enforcement
- Authorize the use of vessel monitoring systems

However, there are a number of provisions either contained in or missing from the legislation that are of concern to the Joint Initiative. We urge the House to take this opportunity to further strengthen the bill by addressing these provisions so that H.R. 5018 more closely tracks the recommendations made by the two Commissions.

Before discussing these provisions, we would like to clarify that the basis for the Joint Ocean Commission Initiative's comments are a set of fundamental principles that are articulated in both Commission reports and that we believe should ground all ocean policy reform (see enclosed statement of principles). These principles promote an ecosystem-based management

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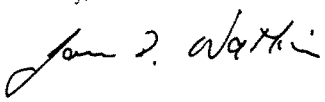
approach, a stronger reliance on science, greater participation and support of fishermen and the general public, an enhanced stewardship ethic, and adequate funding to support fishery management and recovery. We believe effective fisheries management legislation should incorporate all of these principles and look forward to continuing to work with both the House and Senate to put as many as possible in the final Magnuson-Stevens Act reauthorization bill.

The Joint Initiative respectfully requests that House leaders support the following changes to H.R. 5018:

- Modify bill language to prevent overfishing by ensuring accountability for and compliance with Science and Statistical Committee-recommended allowable biological catch levels. Such a measure is needed to reinforce the Council's responsibility for abiding by annual harvest levels, and if necessary, compensate within a fixed period of time for overharvest in a given year.
- Eliminate new exceptions to current rebuilding provisions that would allow stock rebuilding time frames to be extended beyond the ten years, delaying the recovery of many depleted fisheries.
- Remove the language exempting federal fishery management from compliance with the National Environmental Policy Act (NEPA). We appreciate the desire to harmonize Magnuson-Stevens Act and NEPA requirements and timelines, and we recognize that an improved regime would facilitate better adaptive management. However, we feel that granting the Secretary of Commerce the authority to issue a NEPA consistency determination for Fishery Management Plans or amendments would seriously compromise the integrity of NEPA and, if extended to other laws, would result in greater inconsistencies in natural resource management policies.
- Clarify that access to publicly owned fisheries resources under Dedicated Access Privileges or Limited Access Programs are a privilege by requiring periodic reviews of the plans and assigning quota share for a limited time period.
- Expand upon the provision allowing greater opportunity for public representation on Regional Fishery Management Councils by requiring the Governors to submit the name of individuals representing the broader public interest in addition to those from the fishing industry. Such an action would address long-standing concerns regarding the dominant role of fishing industry representatives in the development of the Council's recommendations.
- Enhance the requirement for training for new Council members by tying it to their voting privileges. Fisheries management is highly complex, and the decisions made by the Councils have significant economic ramifications. Thus, member training should be mandated.

We commend you for your efforts to undertake Magnuson-Stevens Act reauthorization in the 109th Congress. The Magnuson-Stevens Act is the cornerstone of our fisheries management regime. Its regional management process, reliance on strong science and public participation, and call for transparency of the information upon which management decisions are based are central to its effectiveness. Enhancing these elements during its reauthorization is crucial and long overdue. We look forward to working with you and your staff on passage of H.R. 5018 so that it can fulfill the principles the Joint Ocean Commission Initiative believes are essential to fisheries management reform.

Sincerely,



James D. Watkins
Admiral, U.S. Navy (Retired)
Chairman, U.S. Commission on Ocean Policy

The Honorable Leon E. Panetta
Chair, Pew Oceans Commission

Cc: The Honorable John A. Boehner
The Honorable Steny Hoyer
The Honorable Richard W. Pombo
The Honorable Nick Rahall

JOINT OCEAN COMMISSION INITIATIVE

The Honorable Richard Pombo
Chairman, House Committee on Resources
2411 Rayburn House Office Building
Washington, DC 20515

May 16, 2006

Dear Chairman Pombo:

The Joint Ocean Commission Initiative has identified fisheries management reform and, more specifically, reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as one of its top priorities. We have been encouraged by the hard work that both the House and the Senate have dedicated to this issue during the 109th Congress. While leaders on Capitol Hill have articulated various thoughts on MSA reauthorization, the Joint Ocean Commission Initiative is committed to a set of fundamental principles that it believes should ground all ocean policy reform (enclosed).

We are encouraged to see elements of the Joint Initiative's principles addressed in H.R. 5018, the American Fisheries Management and Marine Life Improvement Act. Below we highlight key provisions we are pleased to see included in the Committee's bill, identify opportunities for the Committee to further strengthen some of these provisions, and express our serious reservations over a few provisions that we feel should be removed from the bill.

We start by applauding the bill's requirement for the Secretary to establish a peer review process to evaluate the scientific information used by the Regional Fishery Management Councils (Councils), underscoring the need for good science to drive the fishery management process. This valuable section could be enhanced by providing more guidance regarding the standards and criteria used in the peer review process, while also clarifying the public's role in reviewing and commenting on this information.

The bill also mandates the Science and Statistical Committees (SSCs) to recommend acceptable biological catch levels and requires the Councils to adopt harvest levels that do not exceed the recommended levels. This requirement represents a big step toward fulfilling the Commissions' recommendations but could be strengthened by clarifying the meaning of the "acceptable" biological catch, removing the option allowing "other annual harvest effort control limits" as part of this provision, and adding language that will ensure compliance with these limits. Setting annual catch levels is a means of ensuring that overfishing is ended, and deducting overages from subsequent years is an accountability provision. In effect, the actual catch (including discards) can be compared to the catch limit as a performance measure of the effectiveness of management. Setting an annual catch limit does not preclude management measures that regulate fishery inputs, such as effort controls, closed areas, and gear

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requirements. These management methods can be fully employed, but the catch limit ensures that the output from the fishery meets conservation goals. In this context, it is not appropriate to have annual effort control limits as an alternative to catch limits in the requirements.

We were also pleased to see the provision mandating that financial support be provided for nongovernmental SSC members. This beneficial change will help to ensure greater participation and more effective review of fisheries data by experts in the scientific community. The Committee should also consider expanding opportunities for greater public representation on the Council by requiring the Governors to submit a broad slate of candidates, including two representatives from the general public.

The Joint Initiative notes that H.R. 5018 promotes the use of cooperative enforcement agreements, requires training for new Council members within six months of their appointment (which should be tied to their voting privileges), supports the use of Vessel Monitoring Systems, and the collection of socioeconomic data collection. These are all important steps toward the development of a system that more fully incorporates fishermen into the management process, makes the difficult job of enforcement more efficient, and allows for more informed decision making by Council members, particularly in the difficult matter of balancing economic and ecologic objectives.

The bill's support for use of limited access privileges (LAPs) and clarification of the need for national standards to guide the development of these programs are encouraging. LAPs represent an effective management tool that should be available to the Councils; however, the bill should strengthen this provision by clarifying that LAPs are a privilege by requiring periodic reviews of the plans and assigning quota share for a limited time period. The bill should also clarify the need for full public discussion and consultation with all affected stakeholders and interested parties in the development of LAP programs.

The transition toward an ecosystem-based management approach is a principle that the Joint Initiative believes to be extremely important. While it is encouraging to see language in the bill supporting further research into the state of science regarding the integration of ecosystem considerations into fisheries management, the development of regional research plans, and regional stock assessments, we would like to see the Committee make a further commitment toward managing fisheries in a broader context. The bill should explicitly encourage the Councils to support a transition toward an ecosystem-based management approach, with the objective of moving towards the development of fishery ecosystem plans. Such an approach would promote managing fisheries within the broader context of regional marine ecosystems, which would improve managers' ability to account for and address cumulative effects of fishing and nonfishing activities that impact the functioning of the ecosystem, the health of fish stocks, their prey, and important habitats. Commercial and recreational fishing are the major extractive activities impacting the health and productivity of living marine resources and marine habitats in state and federal waters. The reauthorization of the MSA provides Congress with a unique

opportunity to demonstrate its recognition of the need to transition toward a more sustainable management strategy for the long-term ecologic and economic health of the industry.

The Joint Initiative would also like to express serious reservations with a few proposed revisions to the MSA contained in H.R. 5018, including changes to requirements to comply with the National Environmental Policy Act (NEPA) and coordination with the National Marine Sanctuaries Act. While the Commissions recognized and recommended the need for better coordination and integration of ocean-related statutes, we do not feel that the partial integration of NEPA provisions into the MSA and the delegation of Secretarial authority to make a NEPA consistency determination are appropriate strategies to address this problem. NEPA's role is to ensure careful and full consideration of the environmental impacts of all classes of activities and their alternatives. Allowing the Secretary to make a determination that MSA-related actions are consistent with NEPA will inevitably lead to similar requests by other industries. Such a process would seriously compromise the integrity of NEPA and would increase, not decrease, inconsistency in natural resource management policies. We appreciate the desire to harmonize MSA and NEPA requirements and timelines, and recognize that an improved regime would facilitate better adaptive management. However, these desires must be balanced with the larger need to fully understand, reconcile and balance fishing's impact on the ecosystem, which is the primary role of the NEPA process.

We are also concerned about the provision that would impose MSA requirements on fishing activities within the confines of national marine sanctuaries. We fully support the MSA's fundamental principles of full and open public participation process, its grounding in the use of best available science to justify management decisions, and the need for activities in sanctuaries to respect explicit statutory prohibitions related to fishing that are established by Congress in the MSA or other legislation. However, we do not think that applying the MSA's guiding principle, which includes promoting the full utilization of fisheries, is always appropriate within sanctuaries, given the special recognition granted to sanctuaries and their resources. This matter should be debated and addressed during deliberations to reauthorize the National Marine Sanctuaries Act.

Finally, the bill's provisions for rebuilding fish stocks are also of concern. The bill describes many new instances in which the stock rebuilding time frames could be extended beyond the ten years called for in the MSA. If fishery productivity is reduced due to factors other than fishing, fishing pressure must still be reduced. It is not a matter of assigning blame, but of adjusting fishing pressure to a level that the resource can sustain. Continuing to extend the rebuilding timeframe makes it far more difficult to rebuild overall, causes even greater economic and social impacts, and means an ongoing loss of resources. The collapse and delayed recovery of New England groundfish fisheries, such as Gulf of Maine cod, illustrates the problems resulting from continued delays in implementing strong rebuilding measures, requiring increasingly severe economic impacts as stock biomass is depleted.

JOINT OCEAN COMMISSION INITIATIVE

We commend you for your efforts to undertake Magnuson-Stevens reauthorization in the 109th Congress. The Magnuson-Stevens Act is the cornerstone of our fisheries management regime. Its regional management process, reliance on strong science and public participation, and call for transparency of the information upon which management decisions are based are central to its effectiveness. Enhancing these elements during its reauthorization is crucial and long overdue. We look forward to working with you and your staff on H.R. 5018 so that it can fulfill the principles that the Joint Ocean Commission Initiative believes are essential to fisheries management reform.

Sincerely,

James D. Watkins
Admiral, U.S. Navy (Retired)
Chairman, U.S. Commission on Ocean Policy

The Honorable Leon E. Panetta
Chair, Pew Oceans Commission



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