

103^D CONGRESS
2^D SESSION

H. R. 4404

To amend the Magnuson Fishery Conservation and Management Act to promote the long-term sustainability of marine fisheries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1994

Mr. GILCHREST (for himself, Mr. SHAYS, Mr. RAVENEL, and Ms. FURSE) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Magnuson Fishery Conservation and Management Act to promote the long-term sustainability of marine fisheries, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Marine Fish Conserva-
5 tion Amendments of 1994”.

1 **TITLE I—AMENDMENTS TO MAG-**
2 **NUSON FISHERY CONSERVA-**
3 **TION AND MANAGEMENT ACT**

4 **SEC. 101. AMENDMENTS TO MAGNUSON FISHERY CON-**
5 **SERVATION AND MANAGEMENT ACT.**

6 Except as otherwise expressly provided, whenever in
7 this title an amendment or repeal is expressed in terms
8 of an amendment to, or repeal of, a section or other provi-
9 sion, the reference shall be considered to be made to a
10 section or other provision of the Magnuson Fishery Con-
11 servation and Management Act (16 U.S.C. 1801 et seq.).

12 **SEC. 102. FINDINGS AND POLICY.**

13 (a) FINDINGS.—(1) Section 2(a)(2) (16 U.S.C.
14 1801(a)(2)) is amended by striking “and” at the end of
15 clause (A), and by inserting before the period at the end
16 the following: “and, (C) losses of essential fishery habitats
17 have diminished the ability of stocks of fish to survive.”.

18 (2) Section 2(a)(6) (16 U.S.C. 1801(a)(6)) is amend-
19 ed by inserting after “to insure conservation,” the follow-
20 ing: “to provide long-term protection for essential fishery
21 habitats,”.

22 (3) Section 2(a) (16 U.S.C. 1801(a)) is amended by
23 adding at the end the following new paragraph:

24 “(9) The greatest long-term threat to the viabil-
25 ity of commercial and recreational fisheries of the

1 United States is the continuing loss of essential fish-
2 ery habitat. Increased attention must be given to the
3 protection of these habitats to conserve and manage
4 the fishery resources of the United States.”.

5 (b) POLICY.—(1) Section 2(c)(3) (16 U.S.C.
6 1801(c)(3)) is amended by inserting after “practical meas-
7 ures that” the following: “reduce bycatch to insignificant
8 levels approaching zero and”.

9 (2) Section 2(c) (16 U.S.C. 1801(c)) is amended by
10 striking “and” after the semicolon in paragraph (5), by
11 striking the period at the end of paragraph (6) and insert-
12 ing “; and”, and by adding at the end the following new
13 paragraph:

14 “(7) to ensure to the maximum extent prac-
15 ticable that all State and Federal actions are con-
16 sistent with the conservation and management of
17 fisheries under this Act.”.

18 **SEC. 103. DEFINITIONS.**

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

20 (1) by redesignating paragraphs (2) through
21 (5) as paragraphs (3) through (6) respectively, by
22 redesignating the second paragraph (6) through
23 paragraph (21) as paragraphs (8) through (23), re-
24 spectively, by redesignating the second paragraph
25 (22) through paragraph (26) as paragraphs (25)

1 through (29), respectively, and by redesignating the
2 second paragraph (27) through paragraph (32) as
3 paragraphs (31) through (36), respectively;

4 (2) by inserting after paragraph (1) the follow-
5 ing new paragraph:

6 “(2) The term ‘bycatch’ means the incidental
7 catch, take, or harvest of—

8 “(A) marine mammals, birds, turtles, or
9 fish that are not the target species of the fish-
10 ery in which a fishing vessel is engaged,

11 “(B) any fish discarded or lost during fish-
12 ing operations, or

13 “(C) fish of the same species as the target
14 species of the fishery in which a fishing vessel
15 is engaged and the harvest of which is prohib-
16 ited by conservation and management measures
17 promulgated under a fishery management plan
18 in effect under title III.”;

19 (3) by inserting after paragraph (6), as redesi-
20 gnated by paragraph (1) of this subsection the follow-
21 ing new paragraph:

22 “(7) The term ‘essential fishery habitat’ means
23 an area which includes physical or biological features
24 which (A) are essential to the conservation and man-

1 agement of a fishery, and (B) may require special
2 management considerations or protection.”.

3 (4) in paragraph (9), as redesignated by para-
4 graph (1) of this subsection, by inserting “, turtles,”
5 after “marine mammals”;

6 (5) in paragraph (23), as redesignated by para-
7 graph (1) of this subsection, by inserting “biologi-
8 cal,” before “or ecological factor”, and by inserting
9 before the period the following: “, except that no
10 economic or social factor may be applied under this
11 paragraph to increase the amount described in this
12 paragraph above maximum sustainable yield, com-
13 promise ecological integrity, lead to or prolong
14 overfishing, or impede recovery from overfishing”;

15 (6) by inserting after paragraph (23); as redesi-
16 gnated by paragraph (1) of this subsection, the fol-
17 lowing new paragraph:

18 “(24) The term ‘overfishing’ means a level or a
19 rate of fishing that either jeopardizes the capacity of
20 a fish species, population, or population complex to
21 provide maximum sustainable yield on a continuing
22 basis or compromises ecological integrity.”; and

23 (7) by inserting after paragraph (29), as redesi-
24 gnated by paragraph (1) of this subsection, the fol-
25 lowing new paragraph:

1 “(30) The term ‘target species’ means the spe-
2 cies or species groups for which a fishing vessel is
3 fishing.”.

4 **SEC. 104. HIGHLY MIGRATORY SPECIES.**

5 Section 102 (16 U.S.C. 1812) is amended by striking
6 “utilization” and inserting “yield”.

7 **SEC. 105. NATIONAL STANDARDS.**

8 (a) ACHIEVING OPTIMUM YIELD.—Section 301(a)(1)
9 (16 U.S.C. 1851(a)(1)) is amended by striking “for the
10 United States fishing industry”.

11 (b) MARGIN OF SAFETY.—Section 301(a) (16 U.S.C.
12 1851(a)) is amended by redesignating paragraphs (3)
13 through (7) as (4) through (8), respectively, and by insert-
14 ing after paragraph (2) the following new paragraph:

15 “(3) In order to account for inadequacies in
16 data, uncertainties in the best available scientific in-
17 formation, and unpredictable variations and fluctua-
18 tions in fish populations and catches, and to provide
19 for the ecological needs of the species that interact
20 within a management unit, conservation and man-
21 agement measures shall provide an adequate margin
22 of safety to act as a buffer against overfishing.”.

23 (c) REDUCTION OF BYCATCH.—Section 301(a) (16
24 U.S.C. 1851(a)) is amended by adding at the end the fol-
25 lowing new paragraph:

1 “(9) Conservation and management measures
2 shall reduce bycatch to the lowest level practicable
3 and avoid unnecessary waste of fish.”.

4 (d) GUIDELINES.—Section 301(b) (16 U.S.C.
5 1851(b)) is amended by striking “advisory guidelines
6 which shall not have the force and effect of law” and in-
7 serting “guidelines,”.

8 **SEC. 106. REGIONAL FISHERY MANAGEMENT COUNCILS.**

9 (a) VOTING MEMBERS.—Section 302(b) (16 U.S.C.
10 1852(b)) is amended—

11 (1) in paragraph (2)(B) by adding at the end
12 the following:

13 “In addition, the Secretary, in making appointments
14 under this section, shall ensure that no fewer than 25 per-
15 cent of the appointed members of each Council are persons
16 selected for their fisheries expertise, as demonstrated by
17 university, environmental organization, or other nonuser
18 group affiliation and by past actions and accomplish-
19 ments.”; and

20 (2) in paragraph (5) in the first sentence by in-
21 serting before the period at the end the following:

22 “or if the Secretary makes a written determination,
23 including a statement of the reasons for such deter-
24 mination, that the member has violated conflict of
25 interest provisions of subsection (k)”.

1 (b) TRANSACTION OF BUSINESS.—Section 302(e)
2 (16 U.S.C. 1852(e)) is amended by redesignating para-
3 graphs (2) through (4) as paragraphs (3) through (5), re-
4 spectively, and inserting after paragraph (1) the following
5 new paragraph:

6 “(2) Each decision of the Council shall be re-
7 corded through a roll call vote such that the vote of
8 individual members is registered and forwarded with
9 the decision to the Secretary for review under sec-
10 tion 304.”.

11 (c) FISHERY HABITAT CONCERNS.—Section 302(i)
12 (16 U.S.C. 1852(i)) is amended—

13 (1) in paragraph (1) by striking “and” after
14 the semicolon in subparagraph (A), by redesignating
15 subparagraph (B) as subparagraph (C); and by in-
16 serting after subparagraph (A) the following new
17 subparagraph:

18 “(B) may request that the Secretary initi-
19 ate consultation under section 305(e)(4) con-
20 cerning any such activity which may affect the
21 essential fishery habitat of a fishery under its
22 jurisdiction which is designated in a fishery
23 management plan which is in effect under sec-
24 tion 304; and”;

1 (2) in paragraph (2) by striking “In the case of
2 a comment or recommending under paragraph
3 (1)(C), the response” and inserting “The response”,
4 by inserting “, avoiding,” after “mitigating”, and by
5 adding at the end the following: “In the case of a
6 response or decision that is inconsistent with the
7 Council’s recommendations, the Federal agency shall
8 explain its reasons for not following the rec-
9 ommendations and how its actions are consistent
10 with the conservation and management of the fish-
11 ery concerned.”.

12 (d) DISCLOSURE OF FINANCIAL INTEREST.—Section
13 302(k) (16 U.S.C. 1852(k)) is amended—

14 (1) in the heading by inserting “AND RECUSAL”
15 before the period at the end;

16 (2) in paragraph (2) by striking subparagraph
17 (B) and inserting the following:

18 “(B) the spouse, child, grandchild, parent,
19 sibling, or partner of that individual;”;

20 (3) in paragraph (5) by striking “and” after
21 the semicolon in subparagraph (A), by striking the
22 period at the end of subparagraph (B), and inserting
23 “; and”, and by adding at the end, the following new
24 subparagraph:

1 “(C) be kept on file with the Secretary for
2 use in reviewing Council actions under section
3 304 and made available for public inspection at
4 reasonable hours.”;

5 (4) in paragraph (6) by striking “prescribed
6 under” and all that follows through the end of the
7 paragraph and inserting “prescribed under this sub-
8 section may be treated as cause for the invalidation
9 of that action if the vote of that individual was nec-
10 essary for approval of that action under subsection
11 (e).”; and

12 (5) by amending paragraph (7) to read as fol-
13 lows:

14 “(7) A Council member holding a financial interest
15 requiring disclosure under this subsection shall recuse him
16 or herself from voting on or participating in all Council
17 actions that would affect such financial interest. Council
18 members and the public may submit to the Secretary for
19 review under section 304, in writing, a challenge to any
20 vote of a Council member that is alleged to have been
21 made in violation of this paragraph.”.

22 **SEC. 107. CONTENTS OF FISHERY MANAGEMENT PLANS.**

23 (a) **REQUIRED PROVISIONS.**—Section 303(a) (16
24 U.S.C. 1853(a)) is amended as follows:

1 (1) Paragraph (1)(A) is amended by inserting
2 before the semicolon at the end the following: “in-
3 cluding its essential fishery habitat”.

4 (2) Paragraph (2) is amended by inserting after
5 “location,” the following: “its essential habitat,”.

6 (3) Paragraph (7) is amended by striking
7 “readily available”, and by inserting before the semi-
8 colon at the end the following: “, including the ef-
9 fects of fishing gear and practices used in that fish-
10 ery on the habitat of the fishery or other fisheries
11 under the Council’s jurisdiction”.

12 (4) Paragraph (8) is amended by striking
13 “and” after the semicolon, paragraph (9) is amend-
14 ed by striking the period and inserting a semicolon,
15 and the following new paragraphs are added at the
16 end:

17 “(10) specify an objective definition of
18 overfishing for each fish species or population in-
19 volved in the fishery (as described pursuant to para-
20 graph (2)), which is developed or expressed in terms
21 of a minimum level of spawning biomass, maximum
22 level or rate of fishing mortality, or other measur-
23 able standard designed to ensure the maintenance of
24 the fish species or population’s abundance, age
25 structure, sex ratio, and size structure so as to pre-

1 serve its capacity to provide maximum sustainable
2 yield and maintain ecological integrity;

3 “(11) in the case of any fishery management
4 plan or amendment for a fishery for which a deter-
5 mination has been made by the Council or the Sec-
6 retary that such fishery is overfished, contain a re-
7 covery plan which will establish measures for re-
8 building the fish species, population, or population
9 complex in accordance with specifications for a re-
10 covery plan set forth in section 304(h)(2);

11 “(12) specify allowable gear types for the fish-
12 ery;

13 “(13) require the use of gear types which mini-
14 mize bycatch and associated mortality;

15 “(14) include provisions that—

16 “(A) require that observers be stationed on
17 fishing vessels engaged in the catching, taking,
18 or harvesting of fish and on fish processing ves-
19 sels that are vessels of the United States and
20 are fishing for or processing species under the
21 jurisdiction of the Council having authority over
22 the geographical area to which the plan applies
23 for purposes of collecting data necessary for the
24 conservation and management and scientific un-

1 derstanding of any fisheries under the jurisdic-
2 tion of the Council; and

3 “(B) are reasonably calculated to—

4 “(i) ensure the gathering by observers sta-
5 tioned on vessels pursuant to subparagraph (A),
6 of reliable data that is necessary for the con-
7 servation and management and scientific under-
8 standing of the fisheries covered by the plan;

9 “(ii) be fair and equitable to all fishing
10 vessels and fish processing vessels that are ves-
11 sels of the United States and that participate in
12 fisheries covered by the plan;

13 “(iii) be consistent with other applicable
14 laws; and

15 “(iv) take into consideration the operating
16 requirements of the fisheries and the safety of
17 observers and fishermen;

18 “(15) establish a system of fees to pay for the
19 costs of implementing the plan;

20 “(16) assess the bycatch of all gear types used
21 in the fishery; require through regulation provisions
22 to measure bycatch and associated mortality; develop
23 regulations such as seasonal, time, and area clo-
24 sures, gear modifications, and others to reduce
25 bycatch and associated mortality; specify the best

1 available technology that reduces bycatch; and evalu-
2 ate the bycatch of all new gear types and methods
3 before they can be allowed in the fishery; and

4 “(17) contain conservation and management
5 measures to minimize or eliminate the adverse im-
6 pacts of fishing gear and practices on habitat for
7 fish.”.

8 (b) REVIEW OF EXISTING PLANS BY SECRETARY
9 REGARDING OVERFISHING DEFINITION.—

10 (1) REVIEW AND DETERMINATION OF COMPLI-
11 ANCE.—Not later than 90 days after the date of the
12 enactment of this Act, the Secretary of Commerce
13 shall—

14 (A) review each fishery management plan
15 in effect under title III of the Magnuson Fish-
16 ery Conservation and Management Act;

17 (B) determine whether the plan contains a
18 definition (or definitions) of overfishing in com-
19 pliance with section 303(a)(10) of that Act, as
20 amended by subsection (a) of this section; and

21 (C) if the Secretary determines that the
22 plan does not contain such a definition, notify
23 the Regional Fishery Management Council hav-
24 ing authority over the geographical area to

1 which the plan applies regarding that deter-
2 mination.

3 (2) PREPARATION OF AMENDMENT.—Not later
4 than 180 days after receiving notification from the
5 Secretary of Commerce under paragraph (1) with re-
6 spect to a fishery management plan, a Regional
7 Fishery Management Council shall prepare and sub-
8 mit to the Secretary an amendment to the plan to
9 add to the plan a definition of overfishing in accord-
10 ance with section 303(a)(10) of the Magnuson Fish-
11 ery Conservation and Management Act, as amended
12 by subsection (a) of this section, in accordance with
13 procedures and requirements applicable to an
14 amendment under that Act.

15 **SEC. 108. ACTIONS BY THE SECRETARY WITH RESPECT TO**
16 **FISHERY MANAGEMENT PLANS.**

17 Section 304(a)(2) (16 U.S.C. 1854(a)(2)) is amended
18 in subparagraph (B) by striking “and” after the semi-
19 colon, in subparagraph (C) by striking the period and in-
20 serting “; and”, and by adding at the end of paragraph
21 (2) the following:

22 “(D) evaluate whether any violation of sec-
23 tion 302(k) occurred with respect to the prepa-
24 ration of the plan or amendment that is the
25 subject of the review.”.

1 (b) REVIEW BY SECRETARY.—Section 304(b) (16
2 U.S.C. 1854(b)) is amended—

3 (1) in paragraph (2) in the first sentence by in-
4 sserting before the comma the following: “or with the
5 best scientific information presented to the Council
6 by scientists participating in the plan development
7 process”;

8 (2) by redesignating paragraph (3) as para-
9 graph (4); and

10 (3) by inserting after paragraph (2) the follow-
11 ing:

12 “(3) If the Secretary determines that a Council
13 member voted in violation of section 302(k) in any
14 Council action related to the preparation of the plan
15 or amendment, the Secretary shall disapprove the
16 action if that vote was necessary for approval of the
17 action.”.

18 (c) PREPARATION BY SECRETARY.—(1) PREPARA-
19 TION REQUIRED.—Section 304(c)(1) (16 U.S.C.
20 1854(c)(1)) is amended—

21 (A) in the material preceding subparagraph
22 (A), by striking “may” and inserting “shall”, and by
23 inserting after “management plan,” the following:
24 “including a recovery plan if necessary,”;

1 (B) in subparagraph (A) by striking “or” after
2 the semicolon;

3 (C) by redesignating subparagraph (B) as sub-
4 paragraph (E);

5 (D) in subparagraph (E) (as redesignated by
6 paragraph (3) of this subsection) by striking “such
7 plan or amendment” and inserting “a plan or
8 amendment submitted by a Council”; and

9 (E) by inserting after subparagraph (A) the fol-
10 lowing new subparagraphs:

11 “(B) the appropriate Council fails to develop
12 and submit to the Secretary a recovery plan as re-
13 quired under subsection (h), within the time speci-
14 fied therein;

15 “(C)(i) the Secretary determines under sub-
16 section (e)(4) that a fish species, population, or pop-
17 ulation complex is overfished,

18 “(ii) no fishery management plan or required
19 part thereof, is in effect for the fishery for that spe-
20 cies, population, or population complex, and

21 “(iii) no such plan or amendment is submitted
22 by the appropriate Council to the Secretary for ap-
23 proval within 240 days after the Council is notified
24 of such determination;

1 “(D) notwithstanding any fishery management
2 plan that is in effect and any objective definition of
3 overfishing therein, the Secretary determines, based
4 on the best scientific information available, that a
5 fish species, population, or population complex—

6 “(i) has sustained fishing mortality that
7 exceeds maximum sustainable yield by more
8 than 10 percent per annum averaged over a pe-
9 riod of 3 consecutive years, or that com-
10 promises ecological integrity, or

11 “(ii) is depleted; or”.

12 (2) DETERMINATION OF OVERFISHING.—Section
13 304(c) (16 U.S.C. 1854(c)) is amended by adding at the
14 end the following:

15 “(4) A determination by the Secretary described in
16 paragraph (1)(D) (i) or (ii) shall constitute a determina-
17 tion of overfishing with respect to which a recovery plan
18 is required under section 304(h). Notwithstanding the pre-
19 ceding sentence, the Secretary may determine that a fish
20 species or population is not overfished, based on the best
21 scientific information available, only if such determination
22 is based on a clear preponderance of such scientific infor-
23 mation. Nothing in this paragraph or paragraph (1) shall
24 prevent a more stringent objective definition of overfishing
25 under a fishery management plan, pursuant to section

1 304(e) or pursuant to a judicial determination. For the
2 purposes of paragraph (1)(D)(ii), a fish species or popu-
3 lation shall be considered to be depleted if it is determined
4 by the Secretary, using the best available scientific infor-
5 mation and a calculation that provides a risk-averse as-
6 sessment, that the spawning population is reduced to 20
7 percent or less than the unfished population, unless it is
8 shown, subject to review and approval by the Secretary,
9 that a smaller spawning population is adequate to provide
10 maximum sustainable yield and maintain ecological integ-
11 rity. If the size of the spawning population cannot be de-
12 termined, alternative measurements may be used subject
13 to approval by the Secretary.”.

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

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

18 (2) striking “section 303(b)(1)” and inserting
19 “sections 303 and 304”;

20 (3) striking the third sentence; and

21 (4) by adding at the end the following new
22 paragraphs:

23 “(2) FEE SYSTEM REQUIREMENTS.—Any sys-
24 tem of fees established under this section shall—

1 “(A) provide that the total amount of fees
2 collected under this section not exceed the
3 amount equal to the difference of—

4 “(i) the combined cost of (I) station-
5 ing observers on board fishing vessels and
6 United States vessels and United States
7 fish processors (II) the actual cost of
8 inputting collected data, and (III) assess-
9 ments necessary for a risk sharing pool im-
10 plemented under subsection (e), minus

11 “(ii) any amount received for such
12 purpose from another source or from an
13 existing surplus in this National Fishery
14 Observer Fund established by paragraph
15 (3);

16 “(B) be fair and equitable to all partici-
17 pants in the fisheries under the jurisdiction of
18 any Council;

19 “(C) provide that fees collected not be used
20 to pay any costs of administrative overhead or
21 other costs not directly incurred in carrying out
22 the system;

23 “(D) not be used to offset amounts author-
24 ized under other provisions of law;

1 “(E) provide that fees shall be expressed
2 as a percentage, not to exceed 1 percent of the
3 wholesale or 2 percent of the ex-vessel value of
4 the fish and shellfish harvested under the juris-
5 diction of any Council;

6 “(F) provide that fees under that system
7 be assessed against all fishing vessels and Unit-
8 ed States processors participating in fisheries
9 under the jurisdiction of the Councils, including
10 those not required to carry an observer under
11 a fishery management plan;

12 “(G) provide that fees collected under the
13 system shall be deposited in the National Fish-
14 ery Observer Fund established by paragraph
15 (3);

16 “(H) provide that fees collected under the
17 system shall only be used for implementing re-
18 quirements relating to observers under fishery
19 management plans; and

20 “(I) comply with section 9701(b) of title
21 31, United States Code.

22 “(3) NATIONAL FISHERY OBSERVER FUND.—
23 There is established in the Treasury a separate ac-
24 count which shall be known as the National Fishery
25 Observer Fund. The Fund shall be available to the

1 Secretary, without appropriation or fiscal year limi-
2 tation, for carrying out this section, subject to the
3 restrictions in subsection (b)(2). The Fund shall
4 consist of all amounts received by the United States
5 as fees under this subsection. Amounts in the Fund
6 that are not currently needed for the purposes of
7 this section shall be kept on deposit or invested in
8 obligations of, or guaranteed by, the United
9 States.”.

10 (e) FISHERIES RESEARCH.—Section 304(e) (16
11 U.S.C. 1854(e)) is amended—

12 (1) in the heading by inserting “OVERFISHING
13 LIST AND” before “FISHERIES”;

14 (2) in paragraph (3)(A) by inserting after “deg-
15 radation,” the following: “identification of essential
16 fishery habitat,”; and

17 (3) by adding at the end the following new
18 paragraph:

19 “(5) No later than 1 year after the date of en-
20 actment of the Marine Fish Conservation Amend-
21 ments of 1994 and each year thereafter, the Sec-
22 retary shall, after consultation with and notice to the
23 appropriate Councils and based on the best scientific
24 information available, prepare and publish in the
25 Federal Register a list of fish species, populations,

1 and population complexes that are overfished and
2 the objective definition of overfishing utilized by the
3 Secretary to make that determination. Such deter-
4 mination shall be made whether or not a fishery
5 management plan is in effect for a species, popu-
6 lation, or population complex or contains an objec-
7 tive definition of overfishing, and is not required to
8 be in conformity with any such plan. In cases in
9 which scientific data are severely limited, the Sec-
10 retary's informed judgment may be used. In the case
11 of fish species, populations, and population com-
12 plexes for which there is insufficient information to
13 make such a determination, the Secretary shall de-
14 velop a research plan to identify and gather the
15 needed data. The plan shall—

16 “(A) identify priority research needed to
17 assess the condition of the relevant fish species,
18 populations, and population complexes and to
19 support fishery conservation and management;

20 “(B) describe a research program to con-
21 duct that research; and

22 “(C) indicate the timetable for conducting
23 that research, assess those conditions, and sup-
24 porting that conservation and management.”.

1 (f) FISHERIES UNDER AUTHORITY OF MORE THAN
2 ONE COUNCIL.—Section 304(f) (16 U.S.C. 1854(f)) is
3 amended—

4 (1) in paragraph (1), in the matter following
5 subparagraph (B), by striking “the voting members,
6 present and voting, of each Council concerned” and
7 inserting the following: “all of the combined individ-
8 ual voting members of the concerned Councils
9 present and voting”;

10 (2) by amending paragraph (3) to read as fol-
11 lows:

12 “(3) Any fishery management plan or amendment
13 which—

14 “(A) addresses a highly migratory species fish-
15 ery to which paragraph (1) applies,

16 “(B) was prepared by the Secretary, and

17 “(C) was in effect on July 1, 1993,

18 shall remain in effect until superseded by a fishery man-
19 agement plan or amendment prepared by the appropriate
20 Councils, and approved by the Secretary.”.

21 (g) RECOVERY PLANS.—Section 304 (16 U.S.C.
22 1854) is amended by adding at the end the following new
23 subsection:

24 “(h) RECOVERY PLANS.—(1) If the Secretary deter-
25 mines that a condition of overfishing has occurred with

1 respect to a fish species, population, or population complex
2 that is subject to a fishery management plan, based on
3 the best scientific information available and the definition
4 of overfishing specified in such plan, the Secretary shall
5 notify the appropriate Councils in writing of such deter-
6 mination.

7 “(2) Within 180 days after receiving such notice, the
8 appropriate Councils shall prepare and submit to the Sec-
9 retary for approval an amendment to the fishery manage-
10 ment plan, including a recovery plan that specifies—

11 “(A) the action or combination of actions to be
12 taken to rebuild the fish species, population, or pop-
13 ulation complex specified in the notice;

14 “(B) the time within which such rebuilding
15 shall be accomplished, which shall be no greater
16 than 5 years; and

17 “(C) the level of abundance to which such fish
18 populations or population complexes are to be rebuilt
19 to provide maximum sustainable yield and maintain
20 ecological integrity.

21 “(3) The time established pursuant to paragraph
22 (2)(B) for a recovery plan may be extended only upon a
23 determination by the Secretary, based upon the best avail-
24 able scientific information (which shall include at a mini-
25 mum information from annual progress reports made

1 under paragraph (5)), that a longer period will be required
2 due only to the reproductive capacity, productivity, or life
3 span of the fish species concerned.

4 “(4) The Secretary shall review and act upon such
5 amendment within 180 days after receipt and in accord-
6 ance with the procedures set forth in this section.

7 “(5) The Secretary shall review progress made in re-
8 building a species, population, or population complex
9 under a recovery plan under paragraph (2). The first re-
10 view shall occur no later than the beginning of the 3d year
11 in which the plan is in effect, and subsequent reviews shall
12 occur at least annually thereafter.”.

13 (h) BYCATCH RESEARCH.—Section 304 (16 U.S.C.
14 1854) is further amended by adding after subsection (h),
15 as added by subsection (g) of this section, the following
16 new subsection:

17 “(i) BYCATCH RESEARCH.—The Secretary shall es-
18 tablish, in cooperation with industry, a program for the
19 elimination of bycatch through fees and incentive pro-
20 grams. Amounts received as such fees shall be made avail-
21 able to the appropriate Councils for use exclusively for
22 bycatch related management activities, including costs of
23 observer programs and cooperative efforts with the Gov-
24 ernment on research and development of selective fishing

1 gear and other technological devices for the reduction of
2 bycatch.”.

3 (i) FISHERY HABITAT.—Section 304 (16 U.S.C.
4 1854) is further amended by adding after subsection (i)
5 as added by subsection (h) of this section, the following
6 new subsection:

7 “(j) HABITAT CONSERVATION.—(1) Within 6 months
8 after the date of the enactment of the Marine Fish Con-
9 servation Amendments of 1994 and every 12 months
10 thereafter, the Secretary shall publish in the Federal Reg-
11 ister and submit to the Congress a report on the cumu-
12 lative impacts of fishery habitats of the actions authorized,
13 funded, or carried out by Federal agencies, including an
14 assessment of how fishery habitats which are identified in
15 approved fishery management plans are being impacted.

16 “(2) Upon the request of a Council, the Secretary
17 shall immediately undertake a study to identify essential
18 fishery habitat of a fishery under the authority of the
19 Council, and the possible Federal and State actions which
20 could destroy or adversely modify such habitat. The Sec-
21 retary shall submit the results of such study to the Council
22 as soon as practicable, but not later than 12 months after
23 the date of such request.”.

24 (j) SPECIAL PROVISIONS REGARDING OBSERVERS.—
25 Section 304 of the Magnuson Fishery Conservation and

1 Management Act (16 U.S.C. 1854) is further amended by
2 adding after subsection (j), as added by subsection (i) of
3 this section, the following new subsection:

4 “(k) SPECIAL PROVISIONS REGARDING OBSERV-
5 ERS.—(1) The Secretary shall review—

6 “(A) the feasibility of establishing a risk shar-
7 ing pool through a reasonable fee, to provide cov-
8 erage for vessels and vessel owners against liability
9 from civil suits by observers, and

10 “(B) the availability of comprehensive commer-
11 cial insurance for vessel and owner liability against
12 civil suits by observers.

13 “(2) If the Secretary determines that a risk sharing
14 pool is feasible, the Secretary shall establish such a pool
15 unless the Secretary determines that—

16 “(A) comprehensive commercial insurance is
17 available for all fishing vessels and United States
18 fish processors required to have observers under this
19 section, and

20 “(B) such comprehensive commercial insurance
21 will provide a greater measure of coverage at a lower
22 cost to each participant.

23 “(3) The Secretary shall establish an alternative ob-
24 servation program for vessels on which facilities for quar-
25 tering of an observer, or for carrying out observer func-

1 tions, are inadequate to ensure the health or safety of the
2 observer or the safe operation of the vessel.”.

3 **SEC. 109. IMPLEMENTATION OF FISHERY MANAGEMENT**
4 **PLANS.**

5 (a) INTERIM MEASURES.—Section 305 (16 U.S.C.
6 1855) is amended—

7 (1) by redesignating subsections (c) through (e)
8 as subsections (d) through (f), respectively;

9 (2) by adding after subsection (b) the following
10 new subsection:

11 “(c) INTERIM MEASURES.—(1) In the absence of a
12 fishery management plan which contains such a provision,
13 the Secretary or the appropriate Council (subject to ap-
14 proval by the Secretary) may adopt as an interim measure
15 regulations with respect to any fish species, population,
16 or population complex consisting of specific provisions to
17 conserve such fish species, population, or population com-
18 plex, including a provision establishing a minimum size to
19 increase yield per recruit, prohibiting a type of fishing
20 gear or closing an area to fishing.

21 “(2) Any regulation under this subsection which
22 changes any existing fishery management plan shall be
23 treated as an amendment to such plan for the period in
24 which such regulation is in effect.

1 “(3) Any regulation under this subsection shall not
2 constitute a recovery plan for purposes of section 303 or
3 subsection (c) or (h) of this section. Any regulation under
4 this subsection shall remain in effect for 1 year after its
5 adoption, unless (A) it is specifically limited to a lesser
6 of effective period or superseded by a fishery management
7 plan or amendment thereto, or (B) the Secretary, initially
8 or before the expiration of the regulation, follows the pro-
9 cedures to review and approve the regulation that are ap-
10 plicable to a fishery management plan, or amendment to
11 a plan, under section 304.”.

12 (b) RESPONSIBILITY OF SECRETARY.—Section
13 305(e), as redesignated by subsection (a) of this section;
14 is amended by inserting “(1)” before “The Secretary
15 shall”; and by adding at the end the following new para-
16 graphs:

17 “(2) The Secretary shall comment on and make
18 recommendations concerning any action authorized,
19 funded, or carried out, or proposed to be authorized,
20 funded, or carried out, by any State or Federal
21 agency that may result in the destruction or adverse
22 modification of the essential habitat designated in a
23 fishery management plan approved under section
24 304.

1 “(3) Within 45 days after receiving a comment
2 or recommendation under paragraph (2), a Federal
3 agency shall provide a detailed response, in writing,
4 to the Secretary regarding the matter, including a
5 description of measures being considered by the
6 agency for avoiding, mitigating, or offsetting the im-
7 pact of the activity on such essential habitat.

8 “(4) Each Federal agency shall, in consultation
9 with the Secretary, ensure that any action author-
10 ized, funded, or carried out by the agency is not
11 likely to result in the destruction or adverse modi-
12 fication of the essential habitat of a fishery identi-
13 fied in a fishery management plan approved under
14 section 304.

15 “(5) The Secretary, after notice and oppor-
16 tunity for public hearing, may prohibit any action
17 authorized, funded, or carried out by a Federal
18 agency which the Secretary determines may result in
19 the destruction or adverse modification of essential
20 fishery habitat of a fishery identified in a fishery
21 management plan approved under section 304.”.

22 (c) CITIZEN SUITS PROVISION.—Section 305 (16
23 U.S.C. 1855) is further amended by adding at the end
24 the following new subsection:

25 “(g) CITIZEN SUITS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), any person may commence a civil action
3 on his or her own behalf against the Secretary if
4 there is alleged a violation of any provision of this
5 Act or any regulation promulgated thereunder, or a
6 failure of the Secretary to perform any act or duty
7 under this Act which is not discretionary with the
8 Secretary, or the appropriate Council, as the case
9 may be, to perform such act or duty.

10 “(2) NOTICE.—No action may be commenced
11 under paragraph (1) before the 60th calendar day
12 after the date on which the plaintiff gives notice of
13 the action to the Secretary and the affected Council
14 if the action is directed against such Council; except
15 that the action may be brought immediately after
16 such notification in the case of an action under this
17 section with respect to an emergency posing a sig-
18 nificant risk to the well-being of any fishery re-
19 source. Notice under this paragraph shall be given
20 in such manner as the Secretary shall prescribe by
21 regulation. Until the adoption of such regulation on
22 the manner of notice, delivery of notice upon the
23 Secretary by first class, prepaid United States mail,
24 with proof of mailing, shall satisfy the notice re-
25 quirement herein.

1 “(3) COSTS.—The court, in issuing any final
2 order in any suit brought pursuant to paragraph
3 (1), may award costs of litigation, including reason-
4 able attorney and expert witness fees, to any party
5 if the court determines such award is appropriate.

6 “(4) OTHER RIGHTS.—Nothing in this section
7 shall restrict or expand any right which any person
8 (or class of persons) may have under any statute or
9 common law to seek enforcement of any requirement
10 or to seek any other relief.

11 “(5) INTERVENTION.—In any action under this
12 section, any person may intervene as a matter of
13 right if such person has a direct interest which is or
14 may be adversely affected by the action and the dis-
15 position of the action may, as a practical matter, im-
16 pair or impede the person’s ability to protect that in-
17 terest, unless the United States or another party
18 shows that the person’s interest is adequately rep-
19 resented by existing parties in the action.”.

20 (d) CITIZEN PETITIONS.—Section 305 (16 U.S.C.
21 1855) is further amended by adding after subsection (g),
22 as added by subsection (c) of this section, the following
23 new subsection:

24 “(h) CITIZEN PETITIONS.—

1 “(1) IN GENERAL.—Any interested person may
2 petition the Secretary at any time to make any find-
3 ing or determination, or take any other action au-
4 thorized by this Act. The petition shall include such
5 substantial information as may be necessary to dem-
6 onstrate the need for the action requested by the pe-
7 tition.

8 “(2) CONSIDERATION AND RULING.—To the
9 maximum extent practicable, within 90 days after
10 receiving the petition of an interested person to
11 make a finding or determination, or take any other
12 action authorized by this Act, the Secretary shall
13 make a ruling as to whether the petition presents
14 substantial information indicating that the peti-
15 tioned action may be warranted. The Secretary shall
16 promptly publish such ruling in the Federal Register
17 and, if the petition is found to present such informa-
18 tion, the Secretary shall undertake to make a find-
19 ing or determination, or take any other action au-
20 thorized by the relevant provisions of this Act.”.

1 **TITLE II—AMENDMENTS TO THE**
2 **ATLANTIC TUNAS CONVEN-**
3 **TION ACT**

4 **SEC. 201. REGARDING HIGHLY MIGRATORY SPECIES.**

5 (a) HIGHLY MIGRATORY SPECIES.—Section 3(a) of
6 the Atlantic Tunas Convention Act of 1975 (16 U.S.C.
7 971a(a)) is amended—

8 (1) in paragraph (1) by striking the 2d and 3rd
9 sentences and inserting the following: “The Director
10 of the National Marine Fisheries Service or his or
11 her designee shall be one of the Commissioners, and
12 the other 2 Commissioners shall be appointed by and
13 serve at the pleasure of the President. A Commis-
14 sioner who is appointed by the President may not be
15 a salaried employee of a State, a political subdivision
16 of a State, or the Federal Government.”;

17 (2) by adding at the end the following new sen-
18 tence: “No Commissioner shall be an individual with
19 a financial interest or serving as an officer, director,
20 trustee, partner, or employee with an organization
21 that has a financial interest in any catching, har-
22 vesting, processing, or marketing activity that is un-
23 dertaken within any fishery over which the Commis-
24 sion has jurisdiction.”; and

1 (3) by striking paragraph (2) and redesignating
2 paragraph (3) as (2).

3 (b) ADMINISTRATION.—Section 6(c)(3) of the Atlan-
4 tic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(3))
5 is amended in the matter following subparagraph (K) by
6 striking “or decreasing”.

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