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1ST SESSION

H. R. 39

IN THE SENATE OF THE UNITED STATES

OCTOBER 19 (legislative day, OCTOBER 18), 1995

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

To amend the Magnuson Fishery Conservation and
Management Act to improve fisheries management.

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

1 **TITLE I—REAUTHORIZATION OF**
2 **AND AMENDMENTS TO THE**
3 **MAGNUSON FISHERY CON-**
4 **SERVATION AND MANAGE-**
5 **MENT ACT**

6 **SECTION 1. SHORT TITLE.**

7 This Act may be cited as the “Fishery Conservation
8 and Management Amendments of 1995”.

9 **SEC. 2. AMENDMENT OF THE MAGNUSON FISHERY CON-**
10 **SERVATION AND MANAGEMENT ACT.**

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

17 **SEC. 3. FINDINGS, PURPOSES, AND POLICY.**

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

20 (1) in paragraph (2)—

21 (A) by striking “and (B)” and inserting
22 “(B)”; and

23 (B) by inserting before the period at the
24 end the following: “, and (C) losses of essential

1 fishery habitat can diminish the ability of
2 stocks of fish to survive”;

3 (2) in paragraph (6) by inserting after “to in-
4 sure conservation,” the following: “to provide long-
5 term conservation of essential fishery habitat,”; and

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

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

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

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

17 (2) by striking the period at the end of para-
18 graph (6) and inserting a semicolon; and

19 (3) by adding at the end the following:

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

23 “(8) to ensure that conservation and manage-
24 ment decisions with respect to the Nation’s fishery
25 resources are made in a fair and equitable manner.”.

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

4 **SEC. 4. DEFINITIONS.**

5 (a) EXECUTION OF PRIOR AMENDMENTS TO DEFINI-
6 TIONS.—Notwithstanding section 308 of the Act entitled
7 “An Act to provide for the designation of the Flower Gar-
8 den Banks National Marine Sanctuary”, approved March
9 9, 1992 (Public Law 102–251; 106 Stat. 66), section
10 301(b) of that Act (adding a definition of the term “spe-
11 cial areas”) shall take effect on the date of the enactment
12 of this Act.

13 (b) NEW AMENDMENTS.—Section 3 (16 U.S.C.
14 1802) is amended—

15 (1) in paragraph (4)—

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

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

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

1 (3) in paragraph (17) by striking “Pacific Ma-
2 rine Fisheries Commission” and inserting “Pacific
3 States Marine Fisheries Commission”;

4 (4) by amending paragraph (21) to read as fol-
5 lows:

6 “(21) The term ‘optimum’, when used in ref-
7 erence to the yield from a fishery, means the amount
8 of fish which—

9 “(A) will provide the greatest overall bene-
10 fit to the Nation, particularly with respect to
11 food production and recreational opportunities,
12 taking into account the protection of marine
13 ecosystems;

14 “(B) is prescribed on the basis of the max-
15 imum sustainable yield from the fishery, as re-
16 duced by an relevant social, economic, or eco-
17 logical factor;

18 “(C) in the case of an overfished fishery
19 resource, provides for rebuilding of the resource
20 to a level consistent with providing the maxi-
21 mum sustainable yield from the resource; and

22 “(D) which provides employment opportu-
23 nities and economic benefits through the sus-
24 tained participation of local community-based

1 fleets and the coastal communities which those
2 fleets support.”.

3 (5) in paragraph (31) (as redesignated by the
4 amendments made effective by subsection (a) of this
5 section) by striking “for which a fishery manage-
6 ment plan prepared under title III or a preliminary
7 fishery management plan prepared under section
8 201(h) has been implemented” and inserting “regu-
9 lated under this Act”; and

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

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

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

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

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

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

8 “(39) The term ‘rebuilding program’ means
9 those conservation and management measures nec-
10 essary to restore the ability of a stock of fish to
11 produce maximum sustainable yield on a continuing
12 basis.

13 “(40) The term ‘total allowable catch’ means
14 the total amount of fish in a fishery that may be
15 harvested in a fishing season, as established in ac-
16 cordance with a fishery management plan for the
17 fishery.

18 “(41) The term ‘efficiency’ with respect to the
19 utilization of fishery resources means fishing
20 which—

21 “(A) yields the greatest economic value of
22 the fishery with the minimum practicable
23 amount of bycatch, and

24 “(B) provides the maximum economic op-
25 portunity for, and participation of, local com-

1 community-based fleets and the coastal commu-
2 nities which those fleets support.”.

3 **SEC. 5. FOREIGN FISHING.**

4 (a) TRANSSHIPMENT PERMITS.—

5 (1) AUTHORITY TO OPERATE UNDER TRANS-
6 SHIPMENT PERMITS.—Section 201(a)(1) (16 U.S.C.
7 1821(a)(1)) is amended to read as follows:

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

10 (2) AUTHORITY TO ISSUE TRANSSHIPMENT
11 PERMITS.—Section 204 (16 U.S.C. 1824) is amend-
12 ed by adding at the end the following:

13 “(d) TRANSSHIPMENT PERMITS.—

14 “(1) AUTHORITY TO ISSUE PERMITS.—The Sec-
15 retary may issue a transshipment permit under this
16 subsection which authorizes a vessel other than a
17 vessel of the United States to engage in fishing con-
18 sisting solely of transporting fish products at sea
19 from a point within the boundaries of any State or
20 the exclusive economic zone to a point outside the
21 United States to any person who—

22 “(A) submits an application which is ap-
23 proved by the Secretary under paragraph (3);
24 and

1 “(B) pays a fee imposed under paragraph
2 (7).

3 “(2) TRANSMITTAL.—Upon receipt of an appli-
4 cation for a permit under this subsection, the Sec-
5 retary shall promptly transmit copies of the applica-
6 tion to the Secretary of the department in which the
7 Coast Guard is operating, any appropriate Council,
8 and any interested State.

9 “(3) APPROVAL OF APPLICATION.—The Sec-
10 retary may approve an application for a permit
11 under this section if the Secretary determines that—

12 “(A) the transportation of fish products to
13 be conducted under the permit, as described in
14 the application, will be in the interest of the
15 United States and will meet the applicable re-
16 quirements of this Act;

17 “(B) the applicant will comply with the re-
18 quirements described in section 201(c)(2) with
19 respect to activities authorized by any permit
20 issued pursuant to the application;

21 “(C) the applicant has established any
22 bonds or financial assurances that may be re-
23 quired by the Secretary; and

24 “(D) no owner or operator of a vessel of
25 the United States which has adequate capacity

1 to perform the transportation for which the ap-
2 plication is submitted has indicated to the Sec-
3 retary an interest in performing the transpor-
4 tation at fair and reasonable rates.

5 “(4) WHOLE OR PARTIAL APPROVAL.—The Sec-
6 retary may approve all or any portion of an applica-
7 tion under paragraph (3).

8 “(5) FAILURE TO APPROVE APPLICATION.—If
9 the Secretary does not approve any portion of an ap-
10 plication submitted under paragraph (1), the Sec-
11 retary shall promptly inform the applicant and speci-
12 fy the reasons therefor.

13 “(6) CONDITIONS AND RESTRICTIONS.—The
14 Secretary shall establish and include in each permit
15 under this subsection conditions and restrictions
16 which shall be complied with by the owner and oper-
17 ator of the vessel for which the permit is issued. The
18 conditions and restrictions shall include the require-
19 ments, regulations, and restrictions set forth in sub-
20 section (b)(7).

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

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

3 (1) RESTRICTION ON ALLOCATIONS.—Section
4 201(e)(1)(A) (16 U.S.C. 1821(e)(1)(A)) is amended
5 by adding at the end the following new sentence:
6 “No allocation may be made for a fishery that is not
7 subject to a fishery management plan prepared
8 under section 303.”.

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

12 (A) in subparagraph (A) by striking “sub-
13 paragraph (B)” and inserting “subparagraphs
14 (B) and (C)”; and

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

17 “(C)(i) The Secretary may not approve an ap-
18 plication which proposes harvest of Atlantic mack-
19 erel or Atlantic herring by one or more foreign fish-
20 ing vessels unless the appropriate Council has rec-
21 ommended that the Secretary approve the portion of
22 the application making that proposal and the Sec-
23 retary includes the appropriate conditions and re-
24 strictions recommended by the Council.

1 “(ii) For purposes of this subparagraph, the
2 term ‘appropriate Council’ means the Mid-Atlantic
3 Fishery Management Council with respect to Atlan-
4 tic mackerel and the New England Fishery Manage-
5 ment Council with respect to Atlantic herring.”.

6 (c) PERIOD FOR CONGRESSIONAL REVIEW OF GOV-
7 ERNING INTERNATIONAL FISHERY AGREEMENTS.—Sec-
8 tion 203 (16 U.S.C. 1823) is amended—

9 (1) in subsection (a) by striking “60 calendar
10 days of continuous session of the Congress” and in-
11 serting “120 calendar days (excluding any days in a
12 period for which the Congress is adjourned sine
13 die)”;

14 (2) by striking subsection (c); and

15 (3) by redesignating subsection (d) as sub-
16 section (c).

17 (d) TECHNICAL CORRECTION.—

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

22 (2) APPLICATION.—The amendment made by
23 paragraph (1) shall take effect on the date it would
24 take effect if it were enacted by section 301(d)(2) of
25 the Act entitled “An Act to provide for the designa-

1 tion of the Flower Garden Banks National Marine
2 Sanctuary”, approved March 9, 1992 (Public Law
3 102–251; 106 Stat. 63).

4 **SEC. 6. LARGE-SCALE DRIFT NET FISHING.**

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

7 “(e) REPORT.—Not later than March 17th of each
8 year, the Secretary, after consultation with the Secretary
9 of State and the Secretary of the department in which the
10 Coast Guard is operating, shall submit to the Committee
11 on Commerce, Science, and Transportation of the Senate
12 and the Committee on Resources of the House of Rep-
13 resentatives a list of those nations whose nationals or ves-
14 sels conduct, and of those nations that authorize their na-
15 tionals to conduct, large-scale drift net fishing beyond the
16 exclusive economic zone of any nation in a manner that
17 diminishes the effectiveness of, or is inconsistent with, any
18 international agreement governing large-scale drift net
19 fishing to which the United States is a party or otherwise
20 subscribes.”.

21 **SEC. 7. NATIONAL STANDARD FOR FISHERY CONSERVA-**
22 **TION AND MANAGEMENT TO MINIMIZE**
23 **BYCATCH.**

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

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

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

5 (a) MEMBERSHIP OF NORTH CAROLINA ON MID-AT-
6 LANTIC FISHERY MANAGEMENT COUNCIL.—Section
7 302(a)(2) (16 U.S.C. 1852(a)(2)) is amended—

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

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

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

12 (b) VOTING MEMBERS, GENERALLY.—Section
13 302(b) (16 U.S.C. 1852(b)) is amended—

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

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

22 “(6) The Secretary shall remove any member of a
23 Council required to be appointed by the Secretary in ac-
24 cordance with subsection (b)(2) if the member violates sec-
25 tion 307(1)(P).”.

1 (c) COMPENSATION.—

2 (1) AMENDMENT.—Section 302(d) (16 U.S.C.
3 1852(d)) is amended in the first sentence—

4 (A) by striking “each Council,” and insert-
5 ing “each Council who are required to be ap-
6 pointed by the Secretary and”; and

7 (B) by striking “shall, until January 1,
8 1992,” and all that follows through “GS-16”
9 and inserting the following: “shall receive com-
10 pensation at a daily rate equivalent to the low-
11 est rate of pay payable for GS-15,”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by paragraph (1)(B) shall take effect on January 1,
14 1996.

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

18 “(5) At the request of any voting member of a
19 Council, the Council shall hold a roll call vote on any
20 matter before the Council. The official minutes re-
21 quired under subsection (j)(2)(E) and other appro-
22 priate records of any Council meeting shall identify
23 all roll call votes held, the name of each voting mem-
24 ber present during each roll call vote, and how each
25 member voted on each roll call vote.”.

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

3
4 (1) in paragraph (1), by striking “and” after
5 the semicolon at the end of subparagraph (A) and
6 striking the period at the end of subparagraph (B)
7 and inserting “; and”;

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

10 “(C) shall notify the Secretary regarding, and
11 may comment on and make recommendations to any
12 State or Federal agency concerning, any activity un-
13 dertaken, or proposed to be undertaken, by any
14 State or Federal agency that, in the view of the
15 Council, may have a detrimental effect on the essen-
16 tial fishery habitat of a fishery under the authority
17 of the Council.”; and

18 (3) by amending paragraph (2) to read as fol-
19 lows:

20 “(2) Within 15 days after receiving a comment or
21 recommendation under paragraph (1) from a Council re-
22 garding the effects of an activity on essential fishery habi-
23 tat, a Federal agency shall provide to the Council a de-
24 tailed response in writing. The response shall include a
25 description of measures being considered by the agency

1 for avoiding, mitigating, or offsetting the impact of the
2 activity on such habitat. In the case of a response that
3 is inconsistent with the recommendations of the Council,
4 the Federal agency shall explain its reasons for not follow-
5 ing the recommendations.”.

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

8 (1) by striking “guidelines” in the matter pre-
9 ceding subparagraph (A) and inserting “shall”;

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

14 (3) by adding at the end of subparagraph (D)
15 the following: “The written statement or oral testi-
16 mony shall include a brief description of the back-
17 ground and interests of the person on the subject of
18 the written statement or oral testimony.”;

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

21 “(E) Detailed minutes of each meeting of the
22 Council shall be kept and shall contain a record of
23 the persons present, a complete and accurate de-
24 scription of matters discussed and conclusions
25 reached, and copies of all reports received, issued, or

1 approved by the Council. The Chairman shall certify
2 the accuracy of the minutes of each meeting and
3 submit a copy thereof to the Secretary. The minutes
4 shall be made available to any court of competent ju-
5 risdiction.”; and

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

7 “(G) A Council member may add an item to the
8 agenda of a meeting of a Council or of a committee
9 or advisory panel of a Council by presenting to the
10 Chairman of the Council, committee, or panel, at
11 least 21 days before the date of the meeting, a writ-
12 ten description of the item signed by 2 or more vot-
13 ing members of the Council.”.

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

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

19 (2) in paragraph (1)—

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

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

24 (C) by striking subparagraph (C);

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

1 (4) in paragraph (5)—

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

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

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

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

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

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

13 (7) by adding at the end the following:

14 “(8) The Secretary, in consultation with the Councils,
15 and by not later than 1 year after the date of the enact-
16 ment of the Fishery Conservation and Management
17 Amendments of 1995, shall establish rules which prohibit
18 an affected individual from voting on a matter in which
19 the individual or any other person described in paragraph
20 (2) with respect to the individual has an interest that
21 would be significantly affected. The rules may include pro-
22 visions which take into account the differences in fisheries.

23 “(9) A voting member of a Council shall recuse him-
24 self or herself from voting if—

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

3 “(B) the General Counsel of the National Oce-
4 anic and Atmospheric Administration (or a designee
5 of the General Counsel under paragraph (10)(C)(ii))
6 determines under paragraph (10) that voting by the
7 member would violate the rules established under
8 paragraph (8).

9 “(10)(A) Before any vote held by a Council on any
10 matter, a voting member of the Council may, at a meeting
11 of the Council, request the General Counsel of the Na-
12 tional Oceanic and Atmospheric Administration (or a des-
13 ignee of the General Counsel under subparagraph (C)(ii))
14 to determine whether voting on the matter by the member,
15 or by any other member of the Council, would violate the
16 rules established under paragraph (8).

17 “(B) Upon a request under subparagraph (A) regard-
18 ing voting on a matter by a member—

19 “(i) the General Counsel of the National Oce-
20 anic and Atmospheric Administration (or a designee
21 of the General Counsel under subparagraph (C)(ii))
22 shall determine and state whether the voting would
23 violate the rules established under paragraph (8), at
24 the meeting at which the request is made; and

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

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

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

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

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

16 (j) CONFORMING AMENDMENT.—Section
17 302(k)(1)(A) (16 U.S.C. 1852(k)(1)(A)) is amended to
18 read as follows:

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

24 **SEC. 9. CONTENTS OF FISHERY MANAGEMENT PLANS.**

25 (a) REQUIRED PROVISIONS.—

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

3 (A) in paragraph (5) by striking “and the
4 estimated processing capacity of, and the actual
5 processing capacity utilized by, United States
6 fish processors,” and inserting the following:
7 “the amount and species of bycatch taken on
8 board a fishing vessel based on a standardized
9 reporting methodology established by the Coun-
10 cil for that fishery, and the estimated process-
11 ing capacity of, and the actual processing ca-
12 pacity utilized by, United States fish proc-
13 essors;”;

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

16 “(7) include a description of essential fishery
17 habitat for a fishery based on the guidelines estab-
18 lished by the Secretary under section 304(h)(1) and
19 conservation and management measures necessary to
20 minimize, to the extent practicable, adverse impacts
21 on that habitat caused by fishing;”;

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

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

1 (E) by adding at the end the following:

2 “(10) include a measurable and objective deter-
3 mination of what constitutes overfishing in that fish-
4 ery, and a rebuilding program in the case of a plan
5 for any fishery which the Council or the Secretary
6 has determined is overfished;

7 “(11) include conservation and management
8 measures necessary to minimize bycatch to the maxi-
9 mum extent practicable;

10 “(12) to the extent practicable, minimize mor-
11 tality caused by economic discards and regulatory
12 discards in the fishery;

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

15 “(14) in the case of any plan which under sub-
16 section (b)(8) requires that observers be carried on
17 board vessels—

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

22 “(B) be consistent with other applicable
23 laws; and

1 “(C) take into consideration the operating
2 requirements of the fishery and the safety of
3 observers and fishermen.”.

4 “(15) take into account the historic participa-
5 tion of local community-based fleets and the coastal
6 communities which those fleets support, and provide
7 for the sustained participation of those fleets and
8 communities.”.

9 (2) AMENDMENT OF PLANS.—Not later than 18
10 months after the date of enactment of this Act, each
11 Regional Fishery Management Council established
12 under the Magnuson Fishery Conservation and Man-
13 agement Act shall submit to the Secretary of Com-
14 merce an amendment to each fishery management
15 plan in effect under that Act to comply with the
16 amendments made by paragraph (1).

17 (3) FISH WEIGHING.—By January 1, 1997, the
18 North Pacific Fishery Management Council shall re-
19 quire all fish processors and fish processing vessels
20 (as that term is defined in chapter 21 of title 46,
21 United States Code) that process fish species under
22 the management of the Council to weigh those fish
23 to ensure an accurate measurement of the total har-
24 vest of each species.

1 (b) AMENDMENTS RELATING TO DISCRETIONARY
2 PROVISIONS, GENERALLY.—Section 303(b) (16 U.S.C.
3 1853(b)) is amended—

4 (1) in paragraph (8) in the matter preceding
5 the first semicolon, by striking “require that observ-
6 ers” and inserting “require that one or more observ-
7 ers”;

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

10 (3) by redesignating paragraph (10) as para-
11 graph (14); and

12 (4) by inserting after paragraph (9) the follow-
13 ing:

14 “(10) assess and specify the effect which con-
15 servation and management measures of the plan will
16 have on stocks of fish in the ecosystem of the fishery
17 which are not part of the fishery;

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

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

1 “(13) reserve a portion of the allowable biologi-
2 cal catch of the fishery for use for scientific research
3 purposes; and

4 “(14) in the case of any plan which under sub-
5 section (b)(8) requires that observers be carried on
6 board vessels, establish a system of fees, not to ex-
7 ceed the actual costs of the observer program, to pay
8 the costs of the program; and”.

9 (c) REQUIREMENT TO SUBMIT FISHERY IMPACT
10 STATEMENTS TO AFFECTED STATES AND THE CON-
11 GRESS.—Section 303 of the Magnuson Fishery Conserva-
12 tion and Management Act (16 U.S.C. 1853), as amended
13 by section 16(b), is further amended by adding at the end
14 the following new subsection:

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

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

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

4 **SEC. 10. AMENDMENTS RELATING TO MISCELLANEOUS DU-**
5 **TIES OF SECRETARY.**

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

11 (b) HIGHLY MIGRATORY SPECIES.—Section 304(f)
12 (16 U.S.C. 1854(f)) is amended—

13 (1) by striking the subsection heading and in-
14 serting the following: “FISHERIES UNDER AUTHOR-
15 ITY OF MORE THAN ONE COUNCIL.—”;

16 (2) in paragraph (3)(C)(ii) by inserting before
17 the semicolon the following: “and the plan develop-
18 ment team established under paragraph (4)”;

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

22 (4) in paragraph (3)(F)(ii) by inserting “and
23 the plan development team established under para-
24 graph (4)” before the semicolon;

25 (5) by adding at the end the following:

1 “(4)(A) The Secretary shall establish a plan de-
2 velopment team for each highly migratory species
3 fishery over which the Secretary has authority under
4 paragraph (3)(A), to advise the Secretary on and
5 participate in the development of each fishery man-
6 agement plan or amendment to a plan for the fish-
7 ery under this subsection.

8 “(B) The plan development team shall—

9 “(i) consist of not less than 7 individuals
10 who are knowledgeable about the fishery for
11 which the plan or amendment is developed, se-
12 lected from members of advisory committees
13 and species working groups appointed under
14 Acts implementing relevant international fishery
15 agreements pertaining to highly migratory spe-
16 cies and from other interested persons;

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

20 “(iii) participate in all aspects of the devel-
21 opment of the plan or amendment.

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

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

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

6 “(iii) promote international conservation;

7 “(iv) minimize the establishment of regulations
8 that require the discarding of Atlantic highly migra-
9 tory species which cannot be returned to the sea
10 alive; and

11 “(v) promote the implementation of scientific
12 research programs that include to the extent prac-
13 ticable, the tag, and release of Atlantic highly migra-
14 tory species.”.

15 (c) LIMITED ACCESS.—Section 304(c)(3) (16 U.S.C.
16 1854(c)(3)) is amended by inserting “or advisory commit-
17 tee appointed under laws implementing relevant inter-
18 national fishery agreements to which the United States
19 is a party” before the period at the end.

20 (d) INCIDENTAL HARVEST RESEARCH.—Section
21 304(g) (16 U.S.C. 1854(g)) is amended—

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

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

1 “(4) No later than 12 months after the enactment
2 of the Fishery Conservation and Management Amend-
3 ments of 1995, the Secretary shall, in cooperation with
4 affected interests and based upon the best scientific infor-
5 mation available, complete a program to—

6 “(A) develop technological devices and other
7 changes in fishing operations to minimize the inci-
8 dental mortality of nontargeted fishery resources in
9 the course of shrimp trawl activity to the extent
10 practicable from the level of mortality at the date of
11 enactment of the Fishery Conservation and Manage-
12 ment Amendments of 1990;

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

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

19 (3) by adding at the end the following new
20 paragraph:

21 “(7) Any measure implemented under this Act to re-
22 duce the incidental mortality of nontargeted fishery re-
23 sources in the course of shrimp trawl fishing shall apply
24 to such fishing throughout the range of the nontargeted
25 fishery resource concerned.”.

1 (e) ESSENTIAL FISHERY HABITAT; OVERFISHING.—
2 Section 304 (16 U.S.C. 1854) is further amended by add-
3 ing at the end the following:

4 “(h) ACTIONS BY THE SECRETARY ON ESSENTIAL
5 FISHERY HABITAT.—(1) Within one year after the date
6 of enactment of the Fishery Conservation and Manage-
7 ment Amendments of 1995, the Secretary shall—

8 “(A) establish guidelines to assist the Councils
9 in the description of essential fishery habitat in fish-
10 ery management plans; and

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

14 “(2) The Secretary, in cooperation with the Secretary
15 of the Interior, shall identify the essential fishery habitat
16 for each fishery for which a fishery management plan is
17 in effect. The identification shall be based on the descrip-
18 tion of essential fishery habitat contained in the plan.

19 “(3) Each Federal agency shall consult with the Sec-
20 retary with respect to any action proposed to be author-
21 ized, funded, or carried out by such agency that the head
22 of the agency has reason to believe, or the Secretary be-
23 lieves, may result in the destruction or adverse modifica-
24 tion of any essential fishery habitat identified by the Sec-
25 retary under paragraph (2). If the Secretary finds that

1 the proposed action would result in destruction or adverse
2 modifications of such essential fishery habitat, the Sec-
3 retary shall comment on and make recommendations to
4 the agency concerning that action.

5 “(4) Within 15 days after receiving recommendations
6 from the Secretary under paragraph (3) with respect to
7 a proposed action, the head of a Federal agency shall pro-
8 vide a detailed, written response to the Secretary which
9 describes the measures proposed by the agency to avoid,
10 mitigate, or offset the adverse impact of the proposed ac-
11 tion on the essential fishery habitat. In the case of a re-
12 sponse that is inconsistent with the recommendation of the
13 Secretary, the agency shall explain its reasons for not fol-
14 lowing the recommendations.

15 “(5) The Secretary shall review programs adminis-
16 tered by the Department of Commerce to ensure that any
17 relevant programs further the conservation and enhance-
18 ment of essential fishery habitat identified by the Sec-
19 retary under paragraph (2). The Secretary shall coordi-
20 nate with and provide information to other Federal agen-
21 cies to further the conservation and enhancement of essen-
22 tial fishery habitat identified by the Secretary under para-
23 graph (2).

24 “(6) Nothing in this subsection shall have the effect
25 of amending or repealing any other law or regulation or

1 modifying any other responsibility of a Federal agency
2 with respect to fisheries habitat.

3 “(i) ACTION BY THE SECRETARY ON
4 OVERFISHING.—(1) In addition to the authority granted
5 to the Secretary under subsection (c), if the Secretary
6 finds at any time that overfishing is occurring or has oc-
7 curred in any fishery, the Secretary shall immediately no-
8 tify the appropriate Council and request that action be
9 taken to end overfishing in the fishery and to establish
10 a rebuilding program for the fishery. The Secretary shall
11 publish each notice under this paragraph in the Federal
12 Register.

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

24 “(3) If the Secretary finds that overfishing is occur-
25 ring in any fishery for which a fishery management plan

1 prepared by the Secretary is in effect, the Secretary
2 shall—

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

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

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

19 “(5) If the Secretary finds that the action of any Fed-
20 eral agency has caused or contributed to the decline of
21 a fishery below maximum sustainable yield, the Secretary
22 shall notify the agency of the Secretary’s finding and rec-
23 ommend steps that can be taken by the agency to reverse
24 that decline.

1 “(6)(A) The Secretary shall review the progress of
2 any rebuilding program required under this subsection be-
3 ginning in the third year in which the plan is in effect,
4 and annually thereafter.

5 “(B) If the Secretary finds as a result of the review
6 that the rebuilding program is not meeting its specified
7 goals due to reasons related to the reproductive capacity,
8 productivity, life span, or natural variability of the fish
9 species concerned or other environmental conditions or
10 factors beyond the control of the rebuilding program, the
11 Secretary shall—

12 “(i) reassess the goals of the program;

13 “(ii) determine, based on the best available sci-
14 entific information, whether revision to the program
15 is needed; and

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

21 “(C) If the Secretary finds as a result of the review
22 that the rebuilding program is not meeting its specified
23 goals for reasons other than those described in subpara-
24 graph (B), the Secretary shall direct the Council that es-
25 tablished the program to make revisions to the program,

1 or in the case of a program established by the Secretary,
2 make such revisions.

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

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

13 “(C) The Secretary shall identify a fishery under sub-
14 paragraph (A) as approaching a condition of being
15 overfished if, based on trends in fishing effort, fishery re-
16 source size, and other appropriate factors, the Secretary
17 determines that the fishery is likely to become overfished
18 within 2 years.

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

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

24 “(ii) make specific recommendations to the ap-
25 propriate Council regarding actions that should be

1 taken to prevent that condition from being
2 reached.”.

3 (f) ACTION ON CERTAIN IMPLEMENTING REGULA-
4 TIONS PROPOSED BY COUNCILS.—Section 304 (16 U.S.C.
5 1854) is further amended by adding at the end the follow-
6 ing:

7 “(j) ACTION ON COVERED IMPLEMENTING REGULA-
8 TIONS PROPOSED BY A COUNCIL.—(1) After the receipt
9 date of a covered implementing regulation submitted by
10 a Council, the Secretary shall—

11 “(A) immediately commence a review of the
12 covered implementing regulation to determine wheth-
13 er it is consistent with the fishery management plan
14 it would implement, the national standards, the
15 other provisions of this Act, and any other applicable
16 law; and

17 “(B) immediately publish the covered imple-
18 menting regulation in the Federal Register and pro-
19 vide a period of not less than 15 days and not more
20 than 45 days for the submission of comments by the
21 public.

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

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

3 “(B) decline to publish a final regulation.

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

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

7 “(A) ‘receipt date’ means the 5th day after the
8 day on which a Council submits to the Secretary a
9 covered implementing regulation that the Council
10 characterizes as a final covered implementing regula-
11 tion; and

12 “(B) ‘covered implementing regulation’—

13 “(i) means a proposed amendment to exist-
14 ing regulations implementing a fishery manage-
15 ment plan in effect under this Act, which does
16 not have the effect of amending the plan; and

17 “(ii) does not include any proposed regula-
18 tion submitted with a plan or amendment to a
19 plan under section 303(c).”.

20 (g) PACIFIC REGION STOCK ASSESSMENT.—Section
21 304 (16 U.S.C. 1854) is further amended by adding at
22 the end the following:

23 “(k) PACIFIC REGION STOCK ASSESSMENT.—(1) Not
24 later than 120 days after the date of enactment of the
25 Fishery Conservation and Management Amendments of

1 1995, the Secretary shall, in consultation with the Pacific
2 Fishery Management Council and the States of California,
3 Oregon, and Washington, establish a Pacific Region Sci-
4 entific Review Group (in this subsection referred to as the
5 ‘Group’) consisting of representatives of the National Ma-
6 rine Fisheries Service, each of the States of California,
7 Oregon, and Washington, universities located in those
8 States, commercial and recreational fishermen and United
9 States fish processors located in those States, and environ-
10 mental organizations. Individuals appointed to serve on
11 the Group shall be selected from among individuals who
12 are knowledgeable or experienced in the harvesting, proc-
13 essing, biology, or ecology of the fish stocks of fish that
14 are managed under the Pacific Fisheries Management
15 Council Pacific Coast Groundfish Plan (in this subsection
16 referred to as the ‘covered Pacific stocks’).

17 “(2) Not later than 180 days after the date of estab-
18 lishment of the Group, the Group shall transmit to the
19 Secretary a research plan of at least 3 years duration to
20 assess the status of the covered Pacific stocks, including
21 the abundance, location, and species, age, and gender com-
22 position of those stocks. The plan shall provide for the
23 use of private vessels to conduct stock surveys.

24 “(3) Immediately upon receiving the plan transmitted
25 under paragraph (2), the Secretary shall take action nec-

1 essary to carry out the plan and report such actions to
2 the Committee on Resources of the House of Representa-
3 tives. The Secretary shall implement the plan, subject to
4 the availability of appropriations, by chartering private
5 vessels, arranging for the deployment of scientists on those
6 vessels (including the payment of increased insurance
7 costs to vessel owners), and obtaining the assistance of
8 United States fish processors.

9 “(4) The Secretary may offset the cost of carrying
10 out the plan by entering into agreements with vessel own-
11 ers or United States fish processors to provide vessel own-
12 ers or United States fish processors with a portion of the
13 allowable biological catch reserved for research purposes
14 under section 303(b).

15 (h) ECONOMIC ANALYSIS.—Section 304 (16 U.S.C.
16 1854) is further amended by adding after subsection (m)
17 (as added by section 22(b) of this Act) the following new
18 subsection:

19 “(n) ECONOMIC ANALYSIS.—In performing any eco-
20 nomic analysis of a plan, amendment, or regulation pro-
21 posed under this Act, the Secretary or a Council, as appro-
22 priate, shall consider the costs and benefits which accrue
23 to local community-based fleets and the coastal commu-
24 nities they support.”.

1 **SEC. 11. EMERGENCY ACTIONS.**

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

3 (1) in paragraph (2)(A), by inserting “under
4 section 302(b)(1)(A) and (C)” after “voting mem-
5 bers”;

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

8 “(B) shall remain in effect for not more than
9 180 days after the date of such publication, except
10 that any such regulation may, by agreement of the
11 Secretary and the Council and after notice and an
12 opportunity for submission of comments by the pub-
13 lic, be effective for 1 additional period of not more
14 than 180 days; and”;

15 (3) by adding at the end the following:

16 “(4) The Secretary may promulgate emergency regu-
17 lations under this subsection to protect the public health.
18 Notwithstanding paragraph (3), regulations promulgated
19 under this paragraph shall remain in effect until with-
20 drawn by the Secretary. The Secretary shall promptly
21 withdraw regulations under this paragraph when the cir-
22 cumstances requiring the regulations no longer exist. The
23 Secretary shall provide an opportunity for submission of
24 comments by the public after regulations are promulgated
25 under this paragraph.

1 “(5) An emergency regulation promulgated under
2 this subsection that closes an area to fishing shall not re-
3 main in effect for an additional period under paragraph
4 (3)(B) unless before the beginning of the additional period
5 the Council having jurisdiction over the area, in conjunc-
6 tion with the Secretary, publishes a report on the status
7 of the fishery in the area that includes an analysis of the
8 costs and benefits of the closure.”.

9 **SEC. 12. STATE JURISDICTION.**

10 (a) REPORTS.—Section 306(c)(1) (16 U.S.C.
11 1856(c)(1)) is amended—

12 (1) by striking “and” at the end of subpara-
13 graph (A);

14 (2) by striking the period at the end of sub-
15 paragraph (B) and inserting “; and”; and

16 (3) by adding at the end the following:

17 “(C) the owner or operator of the vessel sub-
18 mits to the appropriate Council and the Secretary,
19 in a manner prescribed by the Secretary, periodic re-
20 ports on the tonnage of fish received from vessels of
21 the United States and the locations from which such
22 fish were harvested.”.

23 (b) STATE AUTHORITY.—Section 306(b) (16 U.S.C.
24 1856(b)) is amended by adding at the end the following:

1 “(3) For any fishery occurring off the coasts of Alas-
2 ka for which there is no Federal fishery management plan
3 approved and implemented pursuant to this Act, or pursu-
4 ant to delegation to a State in a fishery management plan,
5 a State may enforce its laws or regulations pertaining to
6 the taking of fish in the exclusive economic zone off that
7 State or the landing of fish caught in the exclusive eco-
8 nomic zone providing there is a legitimate State interest
9 in the conservation and management of that fishery, until
10 a Federal fishery management plan is implemented. Fish-
11 eries currently managed pursuant to a Federal fishery
12 management plan shall not be removed from Federal man-
13 agement and placed under State authority without the
14 unanimous consent (except for the Regional Director of
15 the National Marine Fisheries Service) of the Council
16 which developed the fishery management plan.”.

17 **SEC. 13. PROHIBITED ACTS.**

18 (a) PROHIBITION ON REMOVING, DAMAGING, TAM-
19 PERING WITH, OR MOVING FISHING GEAR AND FISH.—

20 (1) PROHIBITION.—Section 307(1) of the Mag-
21 nuson Fishery Conservation and Management Act
22 (16 U.S.C. 1857(1)) is amended—

23 (A) by redesignating subparagraphs (L),
24 (M), and (N) in order as subparagraphs (M),
25 (N), and (O); and

1 (B) by striking subparagraph (K) and in-
2 serting the following:

3 “(K) to steal or to knowingly and without
4 authorization to remove, damage, or tamper
5 with—

6 “(i) fishing gear owned by another
7 person, which is located in the exclusive
8 economic zone or special areas; or

9 “(ii) fish contained in such fishing
10 gear;

11 “(L) to negligently damage, remove, or
12 move, or to attempt to do any of the foregoing
13 with respect to—

14 “(i) fishing gear that is owned by an-
15 other person and located in the exclusive
16 economic zone; or

17 “(ii) fish contained in such fishing
18 gear;”.

19 (2) CONFORMING AMENDMENTS.—Section
20 309(a) of the Magnuson Fishery Conservation and
21 Management Act (16 U.S.C. 1859) is amended—

22 (A) in paragraph (1) by striking “or (L)”
23 and inserting “(K), or (M)”; and

24 (B) in subsection (b) by striking “section
25 307(1)(L)” and inserting “section 307(1)(M)”.

1 (b) FAILURE TO DISCLOSE FINANCIAL INFORMA-
2 TION.—Section 307(1) (16 U.S.C. 1857(1)) is amended—

3 (1) by striking “or” at the end of subparagraph
4 (N) (as redesignated by subsection (a)(1)(A) of this
5 section);

6 (2) by striking the period at the end of sub-
7 paragraph (O) (as redesignated by subsection
8 (a)(1)(A) of this section) and inserting “; or”; and

9 (3) by adding at the end the following:

10 “(P) to knowingly and willfully fail to dis-
11 close or falsely disclose any financial interest as
12 required under section 302(k) or to knowingly
13 violate any rule established under section
14 302(k)(8).”.

15 (c) PROHIBITED FISHING.—

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

18 “(B) in fishing, except recreational fishing
19 permitted under section 201(j), within the ex-
20 clusive economic zone or within the special
21 areas, or for any anadromous species or Con-
22 tinental Shelf fishery resources beyond such
23 zone or areas, or in fishing consisting of trans-
24 porting fish products from a point within the
25 boundaries of any State or the exclusive eco-

1 nomic zone or the special areas, unless such
2 fishing is authorized under, and conducted in
3 accordance with, a valid and applicable permit
4 issued under section 204, except that this sub-
5 paragraph shall not apply to fishing within the
6 special areas before the date on which the
7 Agreement between the United States and the
8 Union of Soviet Socialist Republics on the Mar-
9 itime Boundary, signed June 1, 1990, enters
10 into force for the United States; or”.

11 (2) CONFORMING AMENDMENT.—Section
12 301(h)(2)(A) of the Act entitled “An Act to provide
13 for the designation of the Flower Garden Banks Na-
14 tional Marine Sanctuary”, approved March 9, 1992
15 (Public Law 102–251; 106 Stat. 64), is repealed.

16 (d) RESTRICTION ON SALE OF LOBSTERS.—Section
17 307(1)(J)(i) (16 U.S.C. 1557(1)(J)(i)) is amended—

18 (1) by striking “plan,” and inserting “plan”;
19 and

20 (2) by inserting before the semicolon the follow-
21 ing: “, or in the absence of both such plans is small-
22 er than the minimum possession size in effect at the
23 time under the Atlantic States Marine Fisheries
24 Commission’s American Lobster Fishery Manage-
25 ment Plan”.

1 **SEC. 14. HAROLD SPARCK BERING SEA COMMUNITY DEVELOP-**
2 **MENT QUOTA PROGRAM.**

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

5 “(f) BERING SEA COMMUNITY DEVELOPMENT
6 QUOTA PROGRAM.—(1) The North Pacific Fishery Man-
7 agement Council and the Secretary shall establish a west-
8 ern Alaska community development quota program under
9 which a percentage of the total allowable catch of any Ber-
10 ing Sea fishery is allocated to western Alaska communities
11 that participate in the program.

12 “(2) To be eligible to participate in the western Alas-
13 ka community development quota program under para-
14 graph (1), a community must—

15 “(A) be located within 50 nautical miles from
16 the baseline from which the breadth of the territorial
17 sea is measured along the Bering Sea coast from the
18 Bering Strait to the western most of the Aleutian Is-
19 lands, or on an island within the Bering Sea;

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

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

1 “(D) be certified by the Secretary of the Inte-
2 rior pursuant to the Alaska Native Claims Settle-
3 ment Act to be a Native village;

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

8 “(F) not have previously developed harvesting
9 or processing capability sufficient to support sub-
10 stantial participation in the groundfish fisheries in
11 the Bering Sea, unless the community can show that
12 the benefits from an approved Community Develop-
13 ment Plan would be the only way for the community
14 to realize a return from previous investments.”.

15 **SEC. 15. OBSERVERS.**

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

18 **“SEC. 315. RIGHTS OF OBSERVERS.**

19 “(a) CIVIL ACTION.—An observer on a vessel (or the
20 observer’s personal representative) under the requirements
21 of this Act or the Marine Mammal Protection Act of 1972
22 (16 U.S.C. 1361 et seq.) that is ill, disabled, injured, or
23 killed from service as an observer on that vessel may not
24 bring a civil action under any law of the United States
25 for that illness, disability for that illness, disability, injury,

1 or death against the vessel or vessel owner, except that
2 a civil action may be brought against the vessel owner for
3 the owner's willful misconduct.

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

8 **SEC. 16. INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS.**

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

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

14 “(A) in developing such system, the Coun-
15 cils and the Secretary take into account—

16 “(i) the need to promote conservation;

17 “(ii) present participation in the fish-
18 ery,

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

21 “(iv) the economics of the fishery,

22 “(v) the capability of fishing vessels
23 used in the fishery to engage in other fish-
24 eries,

1 “(vi) the cultural and social frame-
2 work relevant to the fishery and local
3 coastal communities, and

4 “(vii) any other relevant consider-
5 ations; and

6 “(B) in the case of such a system that pro-
7 vides for the allocation and issuance of individ-
8 ual quotas (as that term is defined in sub-
9 section (g)), the plan complies with subsection
10 (g).”.

11 (b) REQUIREMENTS.—Section 303 is further amend-
12 ed by adding at the end the following new subsection:

13 “(g) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA
14 SYSTEMS.—(1) A fishery management plan which estab-
15 lishes an individual quota system for a fishery—

16 “(A) shall provide for administration of the sys-
17 tem by the Secretary in accordance with the terms
18 of the plan;

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

22 “(C) shall include provisions which establish
23 procedures and requirements for each Council hav-
24 ing authority over the fishery, for—

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

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

6 “(D) shall include provisions to—

7 “(i) provide for fair and equitable alloca-
8 tion of individual quotas under the system;

9 “(ii) minimize negative social and economic
10 impacts of the system on local coastal commu-
11 nities; and

12 “(iii) ensure adequate enforcement of the
13 system, including the use of observers where
14 appropriate at a level of coverage that should
15 yield statistically significant results, except that
16 on a fish processing vessel at sea observers shall
17 be required as necessary to ensure monitoring
18 of fishing activities 24 hours each day; and

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

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

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

4 “(B) may be revoked or limited at any time, in
5 accordance with the terms of the plan and regula-
6 tions issued by the Secretary or the Council having
7 authority over the fishery for which it is issued, if
8 necessary for the conservation and management of
9 the fishery (including as a result of a violation of
10 this Act or any regulation prescribed under this
11 Act);

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

15 “(D) may be received and held in accordance
16 with regulations prescribed by the Secretary under
17 this Act;

18 “(E) shall, except in the case of an individual
19 quota allocated under an individual quota system es-
20 tablished before the date of enactment of the Fish-
21 ery Conservation and Management Amendments of
22 1995, expire not later than 7 years after the date it
23 is issued, in accordance with the terms of the fishery
24 management plan; and

1 “(F) upon expiration under subparagraph (E),
2 may be renewed, reallocated, or reissued if deter-
3 mined appropriate by each Council having authority
4 over the fishery.

5 “(3)(A) Except as provided in subparagraphs (B)
6 and (C), any fishery management plan that establishes an
7 individual quota system for a fishery may authorize indi-
8 vidual quotas to be held by or issued under the system
9 to fishing vessel owners, fishermen, crew members, and
10 United States fish processors.

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

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

19 “(4) Any fishery management plan that establishes
20 an individual quota system for a fishery may include provi-
21 sions that—

22 “(A) allocate individual quotas under the sys-
23 tem among categories of vessels; and

24 “(B) provide a portion of the annual harvest in
25 the fishery for entry-level fishermen, small vessel

1 owners, or crewmembers who do not hold or qualify
2 for individual quotas.

3 “(5)(A) An individual quota system established for
4 a fishery may be limited or terminated at any time if nec-
5 essary for the conservation and management of the fish-
6 ery, by—

7 “(i) the Council which has authority over the
8 fishery for which the system is established, through
9 a fishery management plan or amendment; or

10 “(ii) the Secretary, in the case of any individual
11 quota system established by a fishery management
12 plan developed by the Secretary.

13 “(B) This paragraph does not diminish the authority
14 of the Secretary under any other provision of this Act.

15 “(6) Any individual quota system established for a
16 fishery after the date of enactment of the Fishery Con-
17 servation and Management Amendments of 1995—

18 “(A) shall not allow individual quotas shares
19 under the system to be sold, transferred, or leased;

20 “(B) shall prohibit a person from holding an in-
21 dividual quota share under the system unless the
22 person participates in the fishery for which the indi-
23 vidual quota share is issued; and

24 “(C) shall require that if any person that holds
25 an individual quota share under the system does not

1 engage in fishing under the individual quota share
2 for 3 or more years in any period of 5 consecutive
3 years, the individual quota share shall revert to the
4 Secretary and shall be reallocated under the system
5 to qualified participants in the fishery in a fair and
6 equitable manner and in accordance with the follow-
7 ing priorities:

8 “(i) As the first priority, to persons who
9 have participated in the fishery but have not re-
10 ceived any individual quota shares under the
11 system, or have received individual quota shares
12 under the system in an amount insufficient to
13 allow participation in the fishery.

14 “(ii) As the second priority, to persons who
15 desire to enter the fishery.

16 “(iii) As the third priority, to persons who
17 participate in the fishery and hold individual
18 quota shares sufficient to permit that participa-
19 tion.

20 “(7) In reallocating individual quota shares under
21 paragraph (6)(C)(iii), the Secretary may utilize a royalty
22 auction or other comparable bidding process.

23 “(8) The Secretary may suspend the applicability of
24 paragraph (6) for individuals on a case-by-case basis due

1 to death, disablement, undue hardship, or in any case in
2 which fishing is prohibited by the Secretary or the Council.

3 “(9) This subsection does not require a Council or
4 the Secretary to amend a fishery management plan in
5 order to comply with paragraph (1)(D)(i) or (ii) with re-
6 spect to an individual quota system, if the plan (or an
7 amendment to the plan) established the individual quota
8 system before the date of enactment of the Fishery Con-
9 servation and Management Amendments of 1995.

10 “(10) As used in this subsection:

11 “(A) The term ‘individual quota system’ means
12 a system that limits access to a fishery in order to
13 achieve optimum yield, through the allocation and is-
14 suance of individual quotas.

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

20 (c) FEES.—Section 304(d) is amended—

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

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

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

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

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

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

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

1 “(D) The Secretary, in consultation with the Coun-
2 cils, shall promulgate regulations prescribing the method
3 of determining under this paragraph the value of fish au-
4 thorized to be taken under an individual quota share, the
5 amount of fees, and the method of collecting fees.

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

11 “(F) The Secretary may not assess or collect any fee
12 under this paragraph with respect to an individual quota
13 system established before the date of enactment of the
14 Fishery Conservation and Management Amendments of
15 1995, during the 5-year period beginning on that date of
16 enactment.”.

17 (d) APPROVAL OF FISHERY MANAGEMENT PLANS
18 ESTABLISHING INDIVIDUAL QUOTA SYSTEMS.—Section
19 304 (16 U.S.C. 1854) is further amended by adding after
20 subsection (k) (as added by section 10 of this Act) the
21 following new subsection:

22 “(l) ACTION ON LIMITED ACCESS SYSTEMS.—(1) In
23 addition to the other requirements of this Act, the Sec-
24 retary may not approve a fishery management plan that
25 establishes a limited access system that provides for the

1 allocation of individual quotas (in this subsection referred
2 to as an ‘individual quota system’) unless the plan com-
3 plies with section 303(g).

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

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

13 “(B) ensure that any individual quota system is
14 consistent with the requirements of sections 303(b)
15 and 303(g), and require the collection of fees in ac-
16 cordance with subsection (d)(2);

17 “(C) provide for appropriate penalties for viola-
18 tions of individual quotas systems, including the rev-
19 ocation of individual quotas for such violations;

20 “(D) include recommendations for potential
21 management options related to individual quotas, in-
22 cluding the authorization of individual quotas that
23 may not be transferred by the holder, and the use
24 of leases or auctions by the Federal Government in

1 the establishment or allocation of individual quotas;
2 and

3 “(E) establish a central lien registry system for
4 the identification, perfection, and determination of
5 lien priorities, and nonjudicial foreclosure of encum-
6 brances, on individual quotas.

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

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

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

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

21 “(iv) the use of leases or auctions in the estab-
22 lishment or allocation of individual quota shares.

23 “(B) The review panel shall consist of—

24 “(i) the Secretary or a designee of the Sec-
25 retary;

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

3 “(iii) 3 representatives of the commercial fish-
4 ing and processing industry; and

5 “(iv) one at large representative who is selected
6 by reason of occupational or other experience, sci-
7 entific expertise, or training, and who is knowledge-
8 able regarding the conservation and management or
9 the commercial or recreational harvest of fishery re-
10 sources.

11 “(C) Based on the evaluation required under sub-
12 paragraph (A), the review panel shall, by September 30,
13 1997—

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

18 “(ii) submit recommendations to the Secretary
19 for the development of the regulations required
20 under paragraph (2).”.

21 (e) RESTRICTION ON NEW INDIVIDUAL QUOTA SYS-
22 TEMS PENDING REGULATIONS.—

23 (1) RESTRICTION.—The Secretary of Commerce
24 may not approve any covered quota system plan, and
25 no covered quota system plan shall take effect,

1 under title III of the Magnuson Fishery Conserva-
2 tion and Management Act before the effective date
3 of regulations issued by the Secretary under section
4 304(l) of that Act, as added by subsection (d).

5 (2) COVERED QUOTA SYSTEM PLAN DE-
6 FINED.—In this subsection, the term “covered quota
7 system plan” means a fishery management plan or
8 amendment to a fishery management plan, that—

9 (A) proposes establishment of an individual
10 quota system (as that term is used in section
11 303 of the Magnuson Fishery Conservation and
12 Management Act, as amended by subsection (a)
13 of this section); and

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

16 **SEC. 17. FISHING CAPACITY REDUCTION PROGRAMS.**

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

20 **“SEC. 316. FISHING CAPACITY REDUCTION PROGRAMS.**

21 “(a) AUTHORITY TO CONDUCT PROGRAM.—The Sec-
22 retary, with the concurrence of the Council having author-
23 ity over a fishery, may conduct a voluntary fishing capac-
24 ity reduction program for a fishery in accordance with this
25 section, if—

1 “(1) the Secretary—

2 “(A) determines that the program is nec-
3 essary for rebuilding, preventing overfishing, or
4 generally improving conservation and manage-
5 ment of the fishery; or

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

8 “(2) there is in effect under section 304 a fish-
9 ery management plan that—

10 “(A) limits access to the fishery through a
11 Federal fishing permit required by a limited ac-
12 cess system established under section 303(b)(6);
13 and

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

16 “(i) a moratorium on the issuance of
17 new Federal fishing permits for the dura-
18 tion of the repayment period; and

19 “(ii) restrictions on fishing vessel ca-
20 pacity upgrading.

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

24 “(1) seek to permanently reduce the maximum
25 effective fishing capacity at the least cost and in the

1 shortest period of time through the removal of ves-
2 sels and permits from the fishery;

3 “(2) make payments to—

4 “(A) scrap or otherwise render perma-
5 nently unusable for fishing in the United
6 States, vessels that operate in the fishery; and

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

9 “(3) provide for the funding of those payments
10 by persons that participate in the fishery, by estab-
11 lishing and imposing fees on holders of Federal fish-
12 ing permits under this Act that authorize that par-
13 ticipation;

14 “(4) establish criteria for determining the types
15 of vessels and permits which are eligible to partici-
16 pate in the program, that—

17 “(A) assess vessel impact on the fishery;

18 “(B) minimize program costs; and

19 “(C) take into consideration—

20 “(i) previous fishing capacity reduc-
21 tion programs; and

22 “(ii) the characteristics of the fishery;

23 “(5) establish procedures for determining the
24 amount of payments under subsection (c); and

1 “(6) identify sources of funding for the pro-
2 gram in addition to the amounts referred to in sub-
3 section (f)(2)(A), (B), (C), and (D).

4 “(c) PAYMENTS.—

5 “(1) IN GENERAL.—As part of a fishing capac-
6 ity reduction program under this section, and sub-
7 ject to paragraph (2), the Secretary shall make pay-
8 ments under subsection (b)(2).

9 “(2) ESTABLISHMENT OF FEE REQUIRED.—

10 The Secretary may not make any payment under
11 paragraph (1) for a fishery unless there is in effect
12 for the fishery a fee under subsection (d).

13 “(3) LIMITATION ON TOTAL AMOUNT OF PAY-
14 MENTS FOR FISHERY.—The total amount of pay-
15 ments under paragraph (1) for a fishery may not ex-
16 ceed the total amount the Secretary projects will be
17 deposited into the Fund from fees that apply to the
18 fishery under subsection (d).

19 “(d) FEES.—

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

1 Federal fishing permits authorizing participation in
2 the fishery.

3 “(2) AMOUNT OF FEE.—The amount of a fee
4 established under this subsection for a fishery de-
5 scribed in paragraph (1)—

6 “(A) shall be adequate to ensure that the
7 total amount collected in the form of the fee
8 will not be less than the amount the Secretary
9 determines is necessary for payments under
10 subsection (b)(2) to reduce fishing capacity in
11 the fishery to a level that will ensure the long-
12 term health of the fishery;

13 “(B) shall be based on—

14 “(i) the value of the fishery;

15 “(ii) the projected number of partici-
16 pants in the fishery;

17 “(iii) the projected catch in the fish-
18 ery; and

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

22 “(C) may not exceed, for any permit hold-
23 er, 5 percent of the value of fish harvested
24 under the permit each year.

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

4 “(4) USE OF AMOUNTS RECEIVED.—Amounts
5 received by the United States as fees under this sub-
6 section—

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

8 “(B) may not be used to pay any adminis-
9 trative overhead or other costs not directly in-
10 curred in implementing this section with respect
11 to the fishery.

12 “(e) ADVISORY PANELS.—

13 “(1) IN GENERAL.—The Secretary shall estab-
14 lish for each fishery for which a fishing capacity re-
15 duction program is conducted under this section an
16 advisory panel to advise the Secretary regarding that
17 program.

18 “(2) MEMBERSHIP.—Each advisory panel
19 under this subsection shall consist of individuals ap-
20 pointed by the Secretary and shall include represent-
21 atives of—

22 “(A) the Department of Commerce,

23 “(B) Councils having authority over fish-
24 eries for which the panel is established,

1 “(C) appropriate sectors of the fishing in-
2 dustry affected by fishing capacity reduction
3 programs under this sections, and

4 “(D) appropriate States affected by such
5 programs.

6 “(f) FISHERIES CONSERVATION AND RESTORATION
7 FUND.—

8 “(1) ESTABLISHMENT.—There is established in
9 the Treasury of the United States a separate ac-
10 count which shall be known as the Fisheries Con-
11 servation and Restoration Fund (in this section re-
12 ferred to as the ‘Fund’).

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

15 “(A) amounts appropriated under clause
16 (iv) of section 2(b)(1)(A) of the Act of August
17 11, 1939 (15 U.S.C. 713c-3(b)(1)(A)), popu-
18 larly known as the Saltonstall-Kennedy Act;

19 “(B) amounts paid to the United States
20 Government as fees established under sub-
21 section (d);

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

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

3 “(3) AVAILABILITY.—

4 “(A) IN GENERAL.—Amounts in the Fund
5 shall be available to the Secretary without fiscal
6 year limitation for making payments under sub-
7 section (b)(2).

8 “(B) MANAGEMENT OF UNNEEDED BAL-
9 ANCE.—Amounts in the Fund that are not cur-
10 rently needed for the purposes of this section
11 shall be invested in obligations of, or guaran-
12 teed by, the United States.

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

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

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

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

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

7 **SEC. 18. CONSIDERATION OF ABILITY TO PAY PENALTIES.**

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

9 (1) in the last sentence by striking “ability to
10 pay,”; and

11 (2) by adding at the end the following new sen-
12 tence: “In assessing such penalty, the Secretary may
13 also consider facts relating to the ability of the viola-
14 tor to pay that are established by the violator in a
15 timely manner.”.

16 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

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

19 **“TITLE IV—MISCELLANEOUS**
20 **PROVISIONS**

21 **“Sec. 401. AUTHORIZATION OF APPROPRIATIONS.**

22 “There are authorized to be appropriated to the Sec-
23 retary, for carrying out this Act, the following:

24 “(1) \$114,000,000 for fiscal year 1996.

25 “(2) \$118,000,000 for fiscal year 1997.

1 “(3) \$122,000,000 for fiscal year 1998.

2 “(4) \$126,000,000 for fiscal year 1999.

3 “(5) \$130,000,000 for fiscal year 2000.”.

4 (b) CLERICAL AMENDMENT.—The table of contents
5 in the first section of the Magnuson Fishery Conservation
6 and Management Act is amended by striking the items
7 relating to title IV (including the items relating to the sec-
8 tions in that title) and inserting the following:

9 **“TITLE IV—MISCELLANEOUS**
10 **PROVISIONS**

“Sec. 401. Authorization of appropriations.”.

11 (c) AUTHORIZATION OF APPROPRIATIONS FOR NOAA
12 MARINE FISHERY PROGRAMS.—The National Oceanic
13 and Atmospheric Administration Marine Fisheries Pro-
14 gram Authorization Act (Public Law 98–210; 97 Stat.
15 1409) is amended—

16 (1) in section 2(a)—

17 (A) by striking “and” after “1992” and
18 inserting a comma; and

19 (B) by inserting before the period at the
20 end the following: “, \$47,000,000 for fiscal year
21 1996, \$48,645,000 for fiscal year 1997,
22 \$50,347,575 for fiscal year 1998, \$52,109,740
23 for fiscal year 1999, and \$53,933,580 for fiscal
24 year 2000”;

1 (2) in section 3(a)—

2 (A) by striking “and” after “1992” and
3 inserting a comma; and

4 (B) by inserting before the period at the
5 end the following: “, \$27,400,000 for fiscal year
6 1996, \$28,359,000 for fiscal year 1997,
7 \$29,351,565 for fiscal year 1998, \$30,378,869
8 for fiscal year 1999, and \$31,442,129 for fiscal
9 year 2000”;

10 (3) in section 4(a)—

11 (A) by striking “and” after “1992” and
12 inserting a comma; and

13 (B) by inserting before the period at the
14 end the following: “, \$17,300,000 for fiscal year
15 1996, \$17,905,500 for fiscal year 1997,
16 \$18,532,192 for fiscal year 1998, \$19,180,818
17 for fiscal year 1999, and \$19,852,146 for fiscal
18 year 2000”; and

19 (4) in section 2(e)—

20 (A) by striking “1992 and 1993” and in-
21 serting “1996 and 1997”;

22 (B) by striking “establish” and inserting
23 “operate”;

24 (C) by striking “306” and inserting
25 “307”; and

1 (D) by striking “1991” and inserting
2 “1992”.

3 **SEC. 20. TECHNICAL CORRECTIONS.**

4 (a) CORRECTION.—Section 304 of the Act entitled
5 “An Act to provide for the designation of the Flower Gar-
6 den Banks National Marine Sanctuary”, approved March
7 9, 1992 (Public Law 102–251; 106 Stat. 65), is repealed.

8 (b) CONFORMING AMENDMENT.—Section 3(15) of
9 the Marine Mammal Protection Act of 1972 (16 U.S.C.
10 1362(15)) is amended to read as follows:

11 “(15) The term ‘waters under the jurisdiction
12 of the United States’ means—

13 “(A) the territorial sea of the United
14 States;

15 “(B) the waters included within a zone,
16 contiguous to the territorial sea of the United
17 States, of which the inner boundary is a line co-
18 terminous with the seaward boundary of each
19 coastal State, and the outer boundary is a line
20 drawn in such a manner that each point on it
21 is 200 nautical miles from the baseline from
22 which the territorial sea is measured; and

23 “(C) the areas referred to as eastern spe-
24 cial areas in Article 3(1) of the Agreement be-
25 tween the United States of America and the

1 Union of Soviet Socialist Republics on the Mar-
2itime Boundary, signed June 1, 1990; in par-
3ticular, those areas east of the maritime bound-
4ary, as defined in that Agreement, that lie with-
5in 200 nautical miles of the baselines from
6which the breadth of the territorial sea of Rus-
7sia is measured but beyond 200 nautical miles
8of the baselines from which the breadth of the
9territorial sea of the United States is measured,
10except that this subparagraph shall not apply
11before the date on which the Agreement be-
12tween the United States and the Union of So-
13viet Socialist Republics on the Maritime Bound-
14ary, signed June 1, 1990, enters into force for
15the United States.”.

16 **SEC. 21. CLERICAL AMENDMENTS.**

17 The Magnuson Fishery Conservation and Manage-
18ment Act (16 U.S.C. 1801 et seq.) is amended by striking
19 “Committee on Merchant Marine and Fisheries” each
20 place it appears and inserting “Committee on Resources”.

21 **SEC. 22. PROVISIONS RELATING TO GULF OF MEXICO.**

22 (a) FISHERY ASSESSMENTS.—Section 304(e) (16
23 U.S.C. 1854(e)) is amended by adding at the end the fol-
24 lowing new paragraph:

1 “(5) The Secretary shall develop and implement a
2 systematic program for the assessment and annual report-
3 ing to the public of the status of fisheries in the Gulf of
4 Mexico subject to management under this Act. Such pro-
5 gram shall—

6 “(A) provide for the use of peer-review panels
7 consisting of independent and external experts;

8 “(B) not exclude peer-reviewers merely because
9 they represent entities that may have an interest or
10 potential interest in the outcome, if that interest is
11 fully disclosed to the Secretary;

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

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

18 (b) FISHERY MONITORING.—Section 304 (16 U.S.C.
19 1854) is further amended by adding at the end the follow-
20 ing new subsection:

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

25 “(2) The plan under this subsection shall—

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

4 “(B) minimize paperwork and regulatory bur-
5 dens on fishermen and fish buyers;

6 “(C) minimize costs to Federal and State agen-
7 cies;

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

11 “(E) ensure the confidentiality of information.

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

17 “(4) No later than 9 months after the date of enact-
18 ment of the Fishery Conservation and Management
19 Amendments of 1995, the Secretary shall publish notice
20 of a proposed plan required under this subsection and pro-
21 vide the public with a reasonable opportunity to comment
22 on such proposed plan. The Secretary shall consider such
23 comments before submitting the plan under paragraph
24 (5).

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

7 (c) RESOURCE ASSESSMENT.—Section 304 (16
8 U.S.C. 1854) is further amended by adding at the end
9 the following new subsection:

10 “(n) RESOURCE ASSESSMENTS.—(1) Notwithstand-
11 ing any other provision of this Act, the Secretary shall,
12 wherever practicable, subject to the availability of appro-
13 priations, and when the arrangement will yield statistically
14 reliable results, rely on the private sector to provide ves-
15 sels, equipment, and services necessary to survey the fish-
16 ery resources of the United States. The Secretary shall
17 determine whether this arrangement will yield statistically
18 reliable results.

19 “(2) The Secretary, in consultation with the appro-
20 priate Council and the fishing industry—

21 “(A) may structure competitive solicitations
22 under paragraph (1) so as to compensate a contrac-
23 tor for a fishery resources survey by allowing the
24 contractor to retain for sale fish harvested during
25 the survey voyage; and

1 “(B) in the case of a survey during which the
2 quantity or quality of fish harvested is not expected
3 to be adequately compensatory, may structure those
4 solicitations so as to provide that compensation by
5 permitting the contractor to harvest on a subsequent
6 voyage and retain for sale a portion of the allowable
7 biological catch of the surveyed fishery that is re-
8 served for research purposes under section 303(b).

9 “(3) The Secretary shall undertake efforts to expand
10 annual fishery resource assessments in all regions of the
11 Nation through the use of the authority provided in this
12 subsection.”

13 (d) GULF OF MEXICO RED SNAPPER STOCK MAN-
14 AGEMENT STUDY.—

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

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

21 (B) the effectiveness of the fishery man-
22 agement plan in effect under the Magnuson
23 Fishery Conservation and Management Act that
24 applies to Gulf of Mexico red snapper, in terms
25 of the appropriateness of the management goal

1 and time frame given the available biological
2 data; and

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

7 (2) STUDY REQUIREMENTS.—The study shall—

8 (A) assess all alternatives that could pro-
9 vide a more balanced and practical approach to
10 managing the red snapper fishery in the Gulf of
11 Mexico;

12 (B) involve commercial and recreational
13 fishermen from the Gulf of Mexico in the collec-
14 tion of data and information and in the devel-
15 opment of an accurate assessment plan; and

16 (C) be completed and reported to the Con-
17 gress and the Gulf of Mexico Fishery Manage-
18 ment Council within 1 year after the date of the
19 enactment of this Act.

20 (3) USE OF REPORT.—It is expected for the re-
21 port on the study under this subsection to be used
22 as the foundation for any future management of red
23 snapper in the Gulf of Mexico by the Gulf of Mexico
24 Fishery Management Council or the National Ma-
25 rine Fisheries Service (or both). It is also expected

1 that the Council will suspend the implementation of
2 any individual fishing quota plan for red snapper in
3 the Gulf of Mexico until the study is completed and
4 until the Secretary of Commerce has completed
5 standards or guidelines.

6 (4) LIMITED IMMUNITY.—Individuals providing
7 credible information to receive the most accurate as-
8 sessments shall not be subject to any catch reporting
9 violations.

10 **SEC. 23. STUDY OF CONTRIBUTION OF BYCATCH TO CHARITABLE ORGANIZATIONS.**
11

12 (a) STUDY.—The Secretary of Commerce shall con-
13 duct a study of the contribution of bycatch to charitable
14 organizations by commercial fishermen. The study shall
15 include determination of—

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

19 (2) the economic benefits to commercial fisher-
20 men from those contributions; and

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

23 (b) REPORT.—Not later than 1 year after the date
24 of the enactment of this Act, the Secretary of Commerce

1 shall submit to the Congress a report containing deter-
2 minations made in the study under subsection (a).

3 (c) BYCATCH DEFINED.—In this section the term
4 “bycatch” has the meaning given that term in section
5 3(34) of the Magnuson Fishery Conservation and Manage-
6 ment Act, as amended by section 4 of this Act.

7 **SEC. 24. PROHIBITION.**

8 No fish may be introduced into interstate commerce
9 of the United States unless the Secretary of Commerce
10 certifies that the country of origin of the fish has imple-
11 mented and is enforcing laws or regulations requiring fish
12 excluder devices on that country’s fishing industry in the
13 manner in which these laws are enforced in the United
14 States.

15 **SEC. 25. SENSE OF CONGRESS; REQUIREMENT REGARDING**
16 **NOTICE.**

17 (a) IN GENERAL.—Title IV, as amended by section
18 19, is further amended by adding at the end the following
19 new section:

20 **“SEC. 402. SENSE OF CONGRESS; NOTICE TO RECIPIENTS**
21 **OF ASSISTANCE.**

22 “(a) PURCHASE OF AMERICAN-MADE EQUIPMENT
23 AND PRODUCTS.—It is the sense of the Congress that, to
24 the greatest extent practicable, all equipment and products

1 purchased with funds made available under this Act
2 should be American-made.

3 “(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In
4 providing financial assistance under this Act, the Sec-
5 retary, to the greatest extent practicable, shall provide to
6 each recipient of the assistance a notice describing the
7 statement made in subsection (a) by the Congress.”.

8 (b) CLERICAL AMENDMENT.—The table of contents
9 in the first section, as amended by section 19, is further
10 amended by adding at the end the following:

“Sec. 402. Sense of Congress; notice to recipients of assistance.”.

11 **TITLE II—INSULAR AREAS**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Pacific Insular Areas
14 Fisheries Empowerment Act of 1995”.

15 **SEC. 202. FINDINGS AND POLICY.**

16 (a) FINDINGS.—Section 2(a) (16 U.S.C. 1801(a)) is
17 further amended by adding at the end the following:

18 “(10) The Pacific Insular Areas of the United
19 States contain a unique historical, cultural, legal, po-
20 litical, and geographic circumstance, including the
21 importance of fisheries resources to their economic
22 growth.”.

23 (b) POLICY.—Section 2(c) (16 U.S.C. 1801) is
24 amended—

1 (1) by striking “and” at the end of paragraph
2 (5);

3 (2) by striking the period at the end of para-
4 graph (6) and inserting “; and”; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(7) to assure that the fishery resources adja-
8 cent to Pacific Insular Areas, including those within
9 the exclusive economic zone of such areas and any
10 Continental Shelf fishery resources of such areas, be
11 explored, exploited, conserved, and managed for the
12 benefit of the people of each such areas.”.

13 **SEC. 203. DEFINITIONS.**

14 Section 3 (16 U.S.C. 1802), as amended by section
15 4 of this Act, is further amended by redesignating para-
16 graphs (39) and (40) as paragraphs (40) and (41), respec-
17 tively, and by inserting after paragraph (38) the following
18 new paragraph:

19 “(39) The term ‘Pacific Insular Area’ means
20 American Samoa, Guam, or the Northern Mariana
21 Islands.”.

22 **SEC. 204. FOREIGN FISHING AND INTERNATIONAL FISHERY**
23 **AGREEMENTS.**

24 (a) AUTHORITY FOR FOREIGN FISHING UNDER A
25 PACIFIC INSULAR AREA AGREEMENT.—Section 201(a)(1)

1 (16 U.S.C. 1821(a)(1)), as amended by title I of this Act,
2 is further amended by inserting “or (e)” after “section
3 204(d)”.

4 (b) AUTHORITY TO ENTER INTO A PACIFIC INSULAR
5 AREAS AGREEMENT.—Section 202(c)(2) (16 U.S.C.
6 1822(c)(2)) is amended by inserting before the period at
7 the end the following: “or section 204(e)”.

8 (c) PACIFIC INSULAR AREA AGREEMENTS.—Section
9 204 (26 U.S.C. 1824), as amended by section 5 of this
10 Act, is further amended by adding at the end the follow-
11 ing:

12 “(e) PACIFIC INSULAR AREAS.—(1) After consulta-
13 tion with or at the request of the Governor of a Pacific
14 Insular Area, the Secretary of State, in concurrence with
15 the Secretary and the appropriate Council, may negotiate
16 and enter into a Pacific Insular Area Fishery Agreement
17 (in this subsection referred to as a ‘PIAFA’) to authorize
18 foreign fishing within the exclusive economic zone adjacent
19 to such Pacific Insular Area or for Continental Shelf fish-
20 ery resources beyond such zone.

21 “(2)(A) Fees pursuant to a PIAFA shall be paid to
22 the Secretary by the owner or operator of any foreign fish-
23 ing vessel for which a permit has been issued pursuant
24 to this section.

1 “(B) The Secretary of Commerce, in consultation
2 with the Governor of the Pacific Island Insular Area, may
3 establish, by regulation, the level of fees which may be
4 charged pursuant to a PIAFA. The amount of fees may
5 exceed administrative costs and shall be reasonable, fair,
6 and equitable to all participants in the fisheries.

7 “(C) Amounts received by the United States as fees
8 under this paragraph shall be deposited in the general
9 fund of the Treasury and shall be used, as provided in
10 appropriations Acts, for fishery conservation and manage-
11 ment purposes in waters adjacent to the Pacific Insular
12 Area with respect to which the fees are paid.

13 “(3) A PIAFA shall become effective according to the
14 procedures of section 203.

15 “(4) The Secretary of State may not negotiate a
16 PIAFA with a country that is in violation of a governing
17 international fishery agreement in effect under this Act.

18 “(5) This subsection shall not be considered to super-
19 sede any governing international fishery agreement in ef-
20 fect under this Act.”.

21 **SEC. 205. ENFORCEMENT.**

22 Section 311 (16 U.S.C. 1861) is amended by adding
23 at the end the following new subsection:

24 “(f) ENFORCEMENT IN THE INSULAR AREAS.—The
25 Secretary, in consultation with the Governors of the Pa-

1 cific Insular Areas shall, to the greatest extent practicable,
2 support cooperative enforcement agreements between Fed-
3 eral and Pacific Insular Area authorities.”.

4 **SEC. 206. CONFORMING AMENDMENTS.**

5 (a) Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is
6 amended by striking “204(b) or (c)” and inserting
7 “204(b), (c), or (e)”.

8 (b) Section 311(g)(1) (16 U.S.C. 1861(g)(1)) is
9 amended by inserting after the citation “201(b) or (c)”
10 the words “or section 204(d)”.

Passed the House of Representatives October 18,
1995.

Attest:

ROBIN H. CARLE,
Clerk.

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