

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	10. Abstract
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

SUPPORTING STATEMENT
SOUTHEAST REGION DEALER AND INTERVIEW FAMILY OF FORMS
OMB CONTROL NO. 0648-0013

Introduction

This request for Office of Management and Budget (OMB) review is for renewal of the existing reporting requirements that are currently approved under OMB Control No. 0648-0013, Southeast Region Dealer Family of Forms, which expires on December 31, 2009.

This family of forms includes the various reporting instruments and procedures that the Southeast Fisheries Science Center (SEFSC) uses to collect landings statistics and quota monitoring data from commercial seafood dealers and interviews with fishermen for effort and fishing locations data.

Fishery statistics are collected by the National Marine Fisheries Service (NMFS) for a variety of reasons under several Federal statutes. The overall purposes for the data collection activities under this family have not changed significantly since the approval of this family of forms in 1995. It includes the same three methodologies that were included in the previous submissions. These methods include: (1) landings statistics, which include the general canvass statistics and the shrimp landings statistics; (2) mandatory dealer reporting for monitoring Federal fishery quotas; and (3) bioprofile data from the Trip Interview Program (TIP). The SEFSC employs several methods to collect the variety of data included in the information collection. The following is a brief description of these procedures.

For the general canvass statistics, the SEFSC does not collect these data directly from the seafood dealers. The state fishery agencies in each of the states in the southeast region collect landings statistics under their individual state authority. The state agencies share these data with the SEFSC as part of formal cooperative agreements between the SEFSC and the states. These cooperative arrangements serve to both reduce the overall cost of data collection and avoid the possibility of duplicate effort.

Because more detailed information is required for the shrimp landings statistics than some states provide in the general canvass data, SEFSC employees collect these data directly from seafood dealers. The data that the SEFSC personnel collect are available from the sales receipts that are maintained by the dealers as part of the routine accounting practices that are part of their normal business operations. The dealers are not asked nor required to keep any extra records, other than the sales receipts, which are used by the SEFSC personnel to record the shrimp landings statistics. Consequently, this data collection activity does not impose any reporting burden on the dealers.

For the shrimp fishing effort and the bioprofile data from the Trip Interview Program, this information is collected directly from fishermen by personal interviews with them. SEFSC employees ask them for the information and record the data on work sheets for data entry.

To collect the data required to monitor the fishery quotas, the SEFSC has developed simple, easy to use forms that are to be completed by the dealers selected to report. Currently, there are 4 forms in use by the SEFSC to monitor the fishery quotas (Coastal fisheries, Mackerel dealers, mackerel gillnet fisherman, and Wreckfish). There are 3 other types of data included in OMB Control No.0648-0013 (rock shrimp dealer data, golden crab dealer data, and coral dealer data), but the SEFSC does not actively collect these data. As with the general canvass data, the state fishery agencies provide these

data; however, a minimal number of hours is identified in the unlikely event the states cannot provide those data.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The data collected under the various programs included in OMB Control No.0648-0013 support a wide variety of analytical and management functions performed by the National Marine Fisheries Service (NMFS). These data are collected to support the stewardship role delegated to the NMFS under various Federal regulations.

The collection of this information is authorized by the Fish and Wildlife Act (FWA), modified by the [Reorganization Plan No. 4 of 1970](#), and enhanced by the [Magnuson-Stevens Act](#), originally passed as the Magnuson Fishery Conservation and Management Act of 1976. The U.S. Congress later passed two major sets of amendments to the law, first with the [Sustainable Fisheries Act of 1996](#) and then 10 years later with the [Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006](#). The Secretary of Commerce (Secretary) has undertaken a set of objectives for the conservation and management of marine fishery resources. The Magnuson-Stevens Act requires that conservation and management measures in fishery management plans (FMP) must prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. Such management measures must be based on the best available scientific information. The use of dealer reporting of landings purchased throughout the various regiments of the fishery is an essential ingredient in the management of fishery resources. Section 303 (a)(5) of the Magnuson-Stevens Act specifically identifies the kinds of data to be collected in support of FMPs.

Specific regulations that authorize the collection of data in this family of forms: [50 CFR Part 622](#), Fisheries of the Caribbean, 622.2, Definitions and 622.5, Recordkeeping and Reporting.

The mandatory dealer reporting is necessary to provide the NMFS with timely information to monitor the fishery quotas established in the respective fishery management plans. Without the direct reporting by the selected dealers, NMFS managers would not be able to determine when the quotas are reached and the fisheries need to be closed.

The bioprofile data (also referred to as the trip interview data) are necessary to collect length composition information and age and reproductive samples which are essential to understanding the age composition and reproductive status (mature, immature etc) of the fish caught. used to develop length to age conversion tables (age-length keys) which are used to convert obser. These size, age and reproductive data are used to estimate the reproductive potential of each species. The relationships between the amount of fish removed from a population and the recruitment potential are essential parts of the scientific stock assessments prepared by NMFS scientists.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

The information provided by the data collection activities in OMB Control No. 0648-0013 is used by several offices of NMFS, Fishery Management Council staffs, the U.S. Coast Guard, the Corps of Engineers, and state fishery agencies to develop, implement, and monitor fishery management regimes.

NMFS, Fishery Management Councils, the Departments of State and Commerce, OMB, the fishing industry, congressional staff, and the public use summarizations and analyses of dealer data to answer questions about the nature of fisheries resources.

The primary use of these data, however, is to support the management of the fisheries resources under Federal jurisdiction. The landings data are used to determine the overall magnitude and trends in the fisheries. The trip interview programs provide the most important data for stock assessments that directly support NMFS' stewardship responsibilities. There are two parts to this data collection activity. Port agents select fishing trips and interview the captain or crew to collect information on the fishing trip, i.e., specific locations where the fishing occurred, the type and quantities of gear, and the amount of time that the various types of gear were fished. The second part of the collection activity does not involve any interaction with the fishermen. For this part, port agents are granted permission from the fisherman to measure and weigh individual fish and collect hard-part and tissue samples either directly from the boats when the catch is being unloaded or from storage vats after the unloading has been completed. This size frequency and age data are used directly by stock assessment biologists to perform virtual population analyses for stock assessments. To assure that fishermen cooperate, Federal regulation require that fishermen make their fish available to authorized Federal port agents and provide the gear, area and effort information needed in conjunction with the size and weight data.

The SEFSC routinely performs four to six stock assessments per year (note, an assessment is not necessarily needed for each species every year; consequently, some assessments are performed every 3 to 5 years). As an example, stock assessments for Yellowfin Grouper, Mutton Snapper, Greater Amberjack and Red Snapper were last conducted during 2007.

The SEFSC also conducts an annual vessel inventory that is used to provide a count of the vessels (greater than 5 net tons) that are actively fishing in the southeast region. The data for this inventory is extracted from trip ticket data for some of the states; however, for other states the inventory is prepared by observation and data recorded from dealer records. There are only a small number of situations where it is necessary for the agents to actually contact the vessel owner/operator for specific information on the type or amount of gear used by the vessel.

Another major data collection activity in OMB Control No. 0648-0013 is mandatory dealer reporting that is used to monitor the quotas that are promulgated under various Federal fishery management plans and amendments to those plans. The frequency of reporting is established in accordance with the nature of the respective fishery. For several of the fisheries, fishing effort and/or the biology of the fish require weekly submissions, but for other quotas, the frequency with which the fish are landed only requires reporting every two weeks or monthly. The following is a summary of the reporting frequencies for the 4 quota monitoring forms in OMB Control No. 0648-0013.

Coastal Fisheries Dealers Reporting:

The coastal fisheries quota monitoring form includes fisheries managed under the Gulf of Mexico Reef Fish Fishery Management plan (5 species of deep water groupers, 8 species of shallow water groupers, red snapper, and tilefish). This form also includes fisheries managed under the South Atlantic Fishery Management plan (Snowy grouper, greater Amberjack, Golden tilefish, Black Sea bass, Red porgy, and Vermilion Snapper). Dealers are required to submit this form twice per month.

Mackerel Dealers Reporting (gear types other than gill net):

Because king and Spanish mackerel are migratory and school in large numbers at specific times and areas, monitoring the landings for these species is only necessary for a limited time, i.e., during the open season. Thus, reporting by dealers may only be required for two months or for as many as six months, depending on availability of fish and fishing effort. There are 3 forms used for these quotas. One form is used for dealers that handle the quotas for all gear types other than gill net. Dealers are only required to submit this form monthly.

Mackerel Dealers Reporting (gillnet):

Because of the efficiency of gill nets to catch fish, the quota for this fishery can be reached very quickly. Thus, those dealers and vessels that are selected to submit these two forms must do so weekly. Normally, the quota for this fishery is reached in a month or two and only 7 or 8 reports are required during a year.

Wreckfish Dealer Reporting:

Dealers that purchase wreckfish are required to report the total weight of these species purchased monthly.

Miscellaneous Reporting:

Reporting requirements have been implemented for rock shrimp and golden crab dealers along the Atlantic coast and coral dealers in Puerto Rico. These regulations were promulgated as a safeguard in the event that the states failed to collect the necessary landings statistics. To date, the NMFS has not had to use this authority.

Summaries of the quota monitoring data will be made available to the general public to inform them of the ongoing status of the quota so fishermen can make the appropriate business decisions regarding future fishing activities. NMFS/SEFSC will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See the response to Question 10 for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Currently, electronic reporting is not available for all dealers. However, several of the states in the southeast region are investigating possible methods for dealers to report electronically. A few dealers are using state-approved electronic reporting and for those dealers, the data are provided to the SEFSC (Center) by the state and those dealers are not required to submit a separate quota monitoring report to the Center. The quota monitoring reporting forms for OMB Control No. 0648-0013 are available on the Internet as a pdf file that can be completed and sent via RapidFax (an application allowing the sending of faxes through e-mail) or e-mail to the Center.

4. Describe efforts to identify duplication.

A requirement of the Magnuson Act Operational Guidelines is for each Fishery Management Council to evaluate existing state and federal laws governing the fisheries in question, and such findings are included in each Fishery Management Plan (FMP). Membership on each Fishery Management Council is composed of state and federal officials responsible for resource management in their respective states. These two circumstances identify other data collection activities that may be gathering the same or similar information. In addition, each FMP undergoes an extensive public comment period where potential applicants review the proposed rulemaking.

The NMFS has established cooperative statistics programs with the 8 coastal states in the southeast region of the U.S. The State/Federal Cooperative Statistics Program is comprehensive both geographically within the southeast region and with respect to the data that are collected. The federal and state reporting requirements are coordinated through the Cooperative Agreement. In addition, the location and responsibilities of the port agents are coordinated to avoid any duplication of effort, and contact with fishermen at the docks. As a result of both the Fishery Management Council process and the Cooperative Statistics Agreements, the NMFS/SEFSC is confident that it is aware of all similar data collection activities and that all duplications that can be avoided are avoided.

Quota monitoring is the only area where any duplication occurs and it is unavoidable for this data requirement. As a result of the restrictive quotas, the NMFS/SEFSC has had to establish data collection programs that provide landings data in a more timely way than the state fishery agencies can provide them. It takes the states from 2 to 3 months to process the landings data and provide it to the SEFSC. Unfortunately, with this type of delay, many of the Federal quotas would be filled before any data could be provided by the states. Consequently, the SEFSC has had to implement a means of collecting landings data much more quickly, e.g. with bimonthly reporting.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Because almost all dealers and fishermen are considered small businesses, separate requirements based on the size of the business have not been developed. Only the minimum data to meet reporting objectives are required from the respondents. Most of the data provided under OMB Control No. 0648-0013 are summaries compiled from existing accounting information maintained by seafood dealers and processors in the normal course of their business operations. The dealers not required, nor asked, to maintain any records other than the sales receipts that records the transactions between the dealer (purchaser) and the fishermen (seller). Thus, there is no additional recordkeeping burden on dealers due to the reporting requirements covered in this PRA.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

It is essential that these collection activities are continued. They provide the data necessary for future stock assessments and the means of monitoring the fishery quotas that are currently promulgated to control fishing effort. Thus, if these collection activities were not available, the NMFS could not perform the stock assessments for the conservation and management of our fishery resources. Furthermore, without the mandatory dealer reporting, the SEFSC could not effectively monitor the quotas implemented by existing fishery management plans and therefore, reduce fishing mortality. With respect to frequency, the collection of size frequency data must be an ongoing process. The

dynamics of fishery biology, such as semi-annual spawning, seasonal migratory changes, growth and mortality rates, require a collection frequency that can detect these changes over time. In addition, weekly or monthly reporting frequencies, rather than quarterly or annual submissions, must be used to monitor in-season quota management.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

NA.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register notice published on August 5, 2009 (74 FR 39040) solicited public comment. No comments were received.

As described above, the NMFS is part of a cooperative program to collect fishery statistics. SEFSC personnel meet with state, territorial and regional coordinators of fisheries statistics collection programs at least once each year to discuss, coordinate and improve data collections. Through the Atlantic Coastal Cooperative Statistics Program (ACCSP) statistical data collection along the Atlantic coast (including Florida through North Carolina) are coordinated; at least 6 meetings are attended annually by SEFSC staff. Annual biological sampling targets are established through the ACCSP's Biological Technical Committee. Statistical data collection along the Gulf of Mexico coast is coordinated through the Gulf of Mexico Marine Fisheries Commission; SEFSC staff participate in at least three data collection meetings annually. Annual biological sampling targets are established for 15 primary species.

During 2009, SEFSC staff have worked with fisheries representatives from the U.S. Virgin Islands and the Commonwealth of Puerto Rico to develop a plan to improve fisheries data collection throughout the U.S. Caribbean. Three on-site meetings have been held as well as several conference calls. A third meeting will be held in early 2010 and the result will be a plan for improved territorial and commonwealth sampling programs.

The following is a list of the state coordinators and Council staff members who participate in these meetings:

Dee Lupton, North Carolina Department of Marine Resources
P.O. Box 769
Morehead, NC 28557
(919) 726-7021

Amy Whitaker Dukes, South Carolina Wildlife and Marine Resources Dept.
P.O. Box 12559

Charleston, SC 29412
(912) 264-0542

Julie Califf, Georgia Department of Natural Resources
1200 Glynn Avenue Brunswick, GA 31523
(912) 264-0542

Rich Cody, Florida Department of Environmental Protection Marine Research Laboratory 100 8th
Avenue, S.E. St. Petersburg, FL 33701
(813) 896-8626

Kerwin Cuervo, Alabama Department of Marine Resources
P.O. Drawer 458 Gulf Shores, Al 36542
(205) 968-7576

Chris Denson, Mississippi Bureau of Marine Resources
P.O. Box 959 Long Beach, MS 39560
(601) 864-4602

Michelle Kasprzak, Louisiana Department of Wildlife and Fisheries
P.O. Box 15570 Baton Rouge, LA 70895
(504) 765-2371

Aida Rosario, Puerto Rico Department of Natural and Environmental Resources
Laboratori de Investigaciones Pesqueras
P.O. Box 3665 Mayaguez, Puerto Rico 00681
(787) 944-7951

Page Campbell, Texas Parks and Wildlife Department
4200 Smith School Road Austin, TX 78744
(512) 389-4857

William Tobias, U.S. Virgin Islands Division of Fish and Wildlife
Division of Fisheries and Wildlife
45 Mars Hill Frederikstead St. Croix, US Virgin Islands 00840
(340) 772-1955

Steven Atran, Gulf of Mexico Fishery Management Council Lincoln Center
Suite 881 5401 West Kennedy Blvd. Tampa, FL 33609
(813) 228-2815

Gregg Waugh South Atlantic Fishery Management Council Southpark Building, Suite 306
1 Southpark Circle Charleston, SC 29407
(803)571-4366

Sampling targets are established annually for the Gulf of Mexico and South Atlantic regions through the Gulf States Marine Fisheries Commission (GSMFC) and ACCSP. In November 2009, targeted

sampling projects were established through the ACCSP for South and North Carolina in 2010. The SEFSC is working closely with the U.S. Virgin Islands Department of Fish and Wildlife and the Puerto Rico Department of Natural and Environmental Resources to develop a long term plan to improve the quantity of samples collected and the representativeness of collection activities. Additionally in 2009 and/or 2010 sampling projects have been funded to improve short term statistical data collection in the U.S. Caribbean.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or other remuneration are provided.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All data collected under this family of forms are handled in accordance with [NOAA Administrative Order 216-100](#), Confidential Fisheries Statistics. Dealer reports are also considered confidential under the Trade Secrets Act.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions of a sensitive nature are asked.

12. Provide an estimate in hours of the burden of the collection of information.

The total burden on the public for this information collection is estimated to be 1,659 hours, for a total of 10,612 responses. The following is a description of the estimated burden hours and labor costs of reporting for the individual reporting activities. The number of respondents and the estimated time per response for the individual data collection activities (forms) are summarized in Table 1.

General Canvass:

The reporting burden on seafood dealers for the landings (general canvass) statistics is zero. As described in the Introduction, these data are reported to the fishery agency for each state and the NMFS/SEFSC does not conduct this data collection activity. The respective state fishery agencies perform the data processing and quality control on these data and provide them to the SEFSC.

Shrimp Dealers:

The reporting burden for the dealers that handle shrimp in the Gulf of Mexico is also zero. For the dealers located in some states in the southeast region, the landings statistics are collected by NMFS/SEFSC port agents who visit the dealers and record the data. The dealers are not required to record any additional information or maintain any additional information other than the information that is available on the sales receipts that are maintained as part of the company's accounting. The port agents record the information from the sales receipts maintained by the dealers. The dealers are only required to make the sales receipts available to the port agents.

Shrimp Interviews:

The burden to the public for shrimp interviews conducted in the Gulf of Mexico is estimated to be 398 hours. In 2007 2,388 interviews were conducted to collect fishing effort and area of catch information. It takes approximately 10 minutes to ask these questions (applicable questions from the Trip Interview question list). Thus, the total burden is $2,388 \times 10 \text{ minutes} / 60 \text{ minutes/schedule} = 398$ hrs.

The decrease in the number of responses from the previous estimates is 841. The decrease in the burden hours from previous estimates is 140. This is a result of a sampling procedure adjustment in 2006 because participation in the shrimp fishery varies for a number of factors ranging from fuel and market prices to regional and local weather patterns.

Trip Interview Program:

The industrial reporting burden from interviews conducted within the Trip Interview Program (TIP) to collect fishing effort is similar to the burden involved with shrimp interviews. It is estimated that approximately 4,100 interviews are (will be) conducted annually to collect the gear, area and effort information for the TIP. The average time required to collect this effort information is 10 minutes. **The total industry burden of this program is estimated to be 684 hours**, i.e., $4,100 \times 10 \text{ minutes} / 60 \text{ minutes /interview} = 684$. The direct burden to the fishing industry is the time it takes to respond to the interview questions and no separate reporting or recordkeeping is required.

The TIP is a dockside interview and length-frequency sampling program primarily (roughly 99%) for commercial fisheries; however, recreationally caught fish are occasionally sampled to provide length/weight information for aging analysis. The interview takes a relatively small amount of time; however, sampling the catch takes considerably longer, generally in the range of 1 to 3 hours depending on catch size. The sampling of the catch generally occurs at the purchasing dealer's location and does not require the presence of the captain or crew or fish house personnel except that the port agent obtains a copy of the landings invoice or "trip ticket" from the dealer.

The number of interview responses approximates the previous estimate of 4,400. The burden on industry has remained relatively constant although future recommendations from stock assessment reviews may cause this to change.

Coastal Fisheries Dealer Reporting:

In 2007, 167 dealers were selected to make bi-monthly reports used for the monitoring of coastal fisheries. These dealers submitted 1825 reports with landings data and 918 reports where they reported no purchases during 2007. **The forms with landings information require an estimated 10 minutes to complete and the reporting burden is about 306 hours** (i.e., $1,825 \text{ reports} \times 10 \text{ minutes} / 60 \text{ minutes/report} = 305.7$ (306) hours). **For the no-production reports, the reporting time is estimated to be 3 minutes and the total reporting burden is estimated to be 46 hours** (i.e., $918 \text{ reports} \times 0.05 \text{ hours/report} = 45.9$ (46) hours). The total reporting burden is 352 hours for the combined 2743 coastal fisheries quota monitoring reports received in 2007.

The decrease in the number of respondents from the previous estimates is (82) 330 fewer dealers responses. The increase in the burden hours from previous estimates is (270) 11 additional hours.

Mackerel Reporting:

The total burden hours to monitor the king and Spanish mackerel quotas is estimated to be 153 hours. During the past several years, about 95 dealers have been selected to report each year in the Gulf of Mexico. Because the quotas are usually reached before the entire 12 month season is over, only about 7 monthly reports are actually submitted. The average time per report is less than 10 minutes because many dealers do not always purchase mackerel and when no purchases are made, only a no-purchase report is required. **The total Gulf of Mexico burden hours are estimated to be 111 hours annually** (i.e., 95 dealers x 7 reports/dealer (665 reports) x 10 minutes/60 minutes per report).

In the South Atlantic during 2006, there were a total of 21 dealers submitting 252 monthly reports. The average time per report is less than 10 minutes per report, resulting in an **estimated burden of 42 hours annually** (i.e., 21 dealers x 12 reports/dealer x 10 minutes/60 minutes per report = 42).

In addition to the monthly mackerel reports for the western Gulf of Mexico and the south Atlantic, weekly reporting had to be implemented for the southwest Florida area. A quota has been established for the runaround gillnet fishery in this area. Because this type of gear can catch large quantities of fish with a single set, more frequent monitoring had to be implemented. Two forms are used, one for vessels to report and one for dealer reporting. Only 7 dealers reported in 2006 and they submitted 30 reports in total. There are between 12 to 15 vessels that use gillnets, but not all of the vessels fish each year. Because of the nature of the fishery they only submit 2 or 3 reports per year each, and during 2006 only 12 reports were received from six vessels. The reporting burden is estimated at 10 minutes per form. **The total burden is estimated at 7 hours** (i.e., 42 reports x 10 minutes/60 minutes/report = 7 hrs.).

Wreckfish Dealer Reporting:

A total of 40 dealers held wreckfish permits during 2006. There were 2 dealers that handled wreckfish during 2006, and each of them submitted monthly reports. The estimated time required for a dealer to complete a monthly report when fish were purchased is 10 minutes, and in 2006, 34 reports were received. **The burden from these reports is 6 hours** (34 reports x 10 minutes/60 minutes/report = 6). Dealers submitted 104 forms where no purchases were reported. **It is estimated to take about 3 minutes for nonpurchasing reports and the burden is estimated at 5 hours.** The total burden is 5 hours (104 reports x 3 minutes/60 minutes/report = 5 hours).

The increase in the number of responses from the previous estimates is 54. The increase in the burden hours from previous estimates is 3. This is a result of a sampling procedure adjustment in 2006 that can be attributed to more dealers being permitted to handle wreckfish.

Miscellaneous Reporting:

There are 4 miscellaneous reporting requirements that are included in this family of forms. **The rock shrimp and golden crab dealer reporting requirements are not utilized, but an estimated burden of 15 hours per fishery is included** in the event the state fishery agencies cannot provide the data (an estimate of 60 dealers is used at 15 minutes per form which equals 15 hours per fishery). Likewise, Federal regulations include reporting requirements for coral harvested in Puerto Rico. **The burden for this reporting is estimated to be 16 hours** (64 submissions at 15 minutes per report).

Vessel Inventory:

Lastly, hours are included for the annual vessel inventory that is conducted by the SEFSC. Only a small percent of the commercial vessels need to be interviewed and this number, on average, is about 100

vessels. **It only takes about 5 minutes to collect the 3 pieces of information on each vessel, for a total burden of 8 hours per year** ($100 \times 5 \text{ minutes}/60 \text{ minutes} = 8 \text{ hours}$).

Regulations in 50 CFR 622.5(c)(3)(i) and (iii) require dealers, which include cars and trucks, to maintain a record of the landings for at least one year. Since the submission in 1998, the State of Alabama has implemented a state law that meets this requirement. All other states in the Gulf of Mexico region already had such regulations. Consequently, there is no burden associated with this Federal regulation because dealers comply with it under applicable state regulations.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

There are no anticipated postage costs. Dealers are provided with addressed, postage-paid envelopes that they can use to return the completed forms. The preferable method of responding is via RapidFax. However, for the following quota managed fisheries (Coastal fisheries, mackerel and wreckfish), the dealers are asked to fax their reports. There are an estimated 3,918 forms that are submitted by these dealers. **Assuming an average of \$0.10 per fax, the total cost to the dealers is about \$392.**

14. Provide estimates of annualized cost to the Federal government.

The cost to the Federal government is largely salaries of the port agents that are employed to transcribe the data onto the appropriate forms. Twenty-eight port agents are employed in the southeast, 25 of them are employed full-time in the collection of general canvass and shrimp statistics. The total salary cost of these employees is about \$600,000 . In addition, one area supervisor allocates about ½ of his/her time to supervising this data collection activity. This cost is about \$35,000 d. The remaining 3 port agents are employed full-time in TIP data collection at a total cost of \$77,500. Printing and reproduction costs are about \$3,000 per year, which includes the cost of the postage-paid envelopes. The cost of data entry for the shrimp statistics and TIP data are included in the salaries of the port agents because they enter the data they collect. The data entry for the quota monitoring data is very small and is done by staff as part of their other duties. These cost are probably not more than \$1 to \$2 thousand per year.

15. Explain the reasons for any program changes or adjustments reported.

There is a net decrease of 179 hours in the reporting burden for this PRA request from the previous burden of 1,838 hours. This is mainly due to changes in sampling based on changes in the numbers of participants in the different fisheries.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Results from the data collection using the forms in this information collection are not planned for publication.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

NA.

18. Explain each exception to the certification statement.

NA.

Table 1. Estimated number of respondents and total burden hours for dealer/interview family of forms.

Activity	# Respondents	# Responses	Time / Response	Total Burden
General Canvass	0	0	0	0
Shrimp Dealers***	713	0	0	0
Shrimp Interviews*	2,198 (est.)	2,388	0.167	398
Trip Interview Program*	2,895 (est.)	4,100	0.167	684
Coastal Fisheries Dealer * Reporting	167	1, 825	0.167	306
Coastal Fisheries Dealer No-purchase Reporting		918	0.05	46
<i>Mackerel Dealer Reporting** (non- gill net)- Gulf</i>	95	665	0.167	111
<i>Mackerel Dealer Reporting** (non- gill net) – South Atlantic</i>	21	252	0.167	42
<i>Mackerel Dealer Reporting** (gillnet)</i>	7	30	0.167	5
<i>Mackerel Vessel Reporting ** (gillnet)</i>	6	12	0.167	2
<i>Wreckfish Dealer Reporting**</i>	40	34	0.167	6
<i>Wreckfish Dealer No-purchase Reporting</i>		104	0.05	5
<i>Rock Shrimp***</i>		60	0.25	15
<i>Golden Crab Dealers***</i>		60	0.25	15
<i>Coral Dealers***</i>		64	0.25	16
<i>Vessel Operational Units***</i>	7,634 (est.)	100	0.08	8
Totals	13,755	10,612		1,659

*Based on estimates from number of respondents and responses from 2007

**Based on estimates from number of respondents and responses from 2006

*** Minimal number of estimate hours reserved as a safeguard in the event that the states failed to collect the necessary landings statistics

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

In contrast to the mandatory landings and value data collected from all wholesale seafood dealers, the effort and area data (i.e., the interviews in the shrimp statistics and TIP) are collected from fishing trips by interviewing fishermen as they are encountered at the docks.

Fisheries sampling consists of sampling an often-changing situation with multiple objectives. Fisheries occur over broad areas and at different times in the year. Fisheries usually exhibit extensive geographic and temporal variation in fishing effort, in the species caught and in the size of fish caught within each species. Multiple external forces add to this variability; those forces include short and long term environmental changes which may impact fishermen and resource population abundance, economic factors such as the price of fuel and the price of fish, and management factors which are changing rapidly at this time. There is variation between fishing trips in their duration (from hours to weeks), in the quantities of fish landed (from no catch, to tens of pounds, to tens of thousands of pounds) and in the numbers of species caught. In some fisheries, catches usually consist of one or two species while in other fisheries, catches consist of tens of different species and different life history stages within some species. To properly manage living marine resources,, information is needed on both the species which often dominate the landings as well as the less common and even rare event species.

A broad range of information is needed for assessment and management of marine resources and often what may be needed in the future is not anticipated at the time of sampling. Some types of data needed include 1) distributions of size and age of the landings, 2) the species/life history stage composition of the landings and 3) the size distribution by depth and/or fine scale geographic area. Often the purposes for which the data will be used are not known in advance; for instance, it has only been in recent years that the size distribution at depth has become critical information for assessing the status of resources.

Given that the sampling situations are changing and that there are multiple sampling goals, the primary objective of the SEFSC dockside sampling of commercial fisheries is to obtain representative samples of the trips and species caught. The approach is to take a large number of samples across important strata (time, space, fishery types) under the assumption that, with sufficient sample size, the sample will approximate a random sample. We work cooperatively with personnel from state and territorial agencies to ensure broad coverage of the multiple fisheries. Sampling approaches and targets are coordinated through annual and semi-annual regional meetings. The results of federal, state and territorial sampling are combined for analyses for stock status determination and management.

Recognizing the difficulty in obtaining representative samples of multiple species in multiple fisheries under changing conditions, we have been developing analytical methods which will be useful in correcting for potentially non-random sampling. These will be described below in Question 2.

1. Describe the potential respondent universe and any sampling or other respondent selection method to be used.

The universe includes all commercial fishing trips which land federally managed species. Port agents are distributed throughout the region so that they can cover all federally managed fisheries; each agent covers a defined area. Port agents' knowledge of the fishery is used to attempt to obtain information from trips which are representative of the fishery in each area. The guidance they have been given is that the weight of their samples should in general be proportional to the weight of the landings in their area. There are a large number of trips sampled through the ports at which landings

occur throughout the fishing year, so agents are encouraged to sample more trips obtaining adequate sample sizes (see below) rather than fewer trips with very large sample sizes.

Interview programs:
Trip Interview Program

In recent years (2006-2008) the SEFSC logbook received 120,557 fishing trip reports on coastal fishery logbooks. Federal agents have sampled roughly 900-1,000 trips directed at fisheries each year from North Carolina through Texas. Additional state and territorial partners have sampled an additional 1,000-1,100 such trips. In the high activity areas federal personnel have sampled roughly 50-110 trips per sampler each year. The overall percentage of trips sampled varies from year to year; however, historically the trip interview program has sampled less than 1% of the trips annually to achieve adequate data from each of the target fisheries required for stock assessments.

In the Gulf of Mexico, vessels with Individual Fishery Quota (IFQ) shares are required to provide advance notice of landing red snapper. That information is used to alert port samplers of vessels returning from fishing to ports in their region and they use it in selecting vessels to sample so that they obtain a representative sample of trips from the red snapper fishery. In January 2010 the Gulf of Mexico IFQ program will expand to cover many other species in the reef fish fishery (groupers and tilefishes). The samplers will receive information on expected landing times from all IFQ monitored trips, which should facilitate their efforts to select representative trips to sample.

Shrimp Interviews

In recent years (2006-2008) federal agents in have sampled roughly 2,300-2,500 trips directed at shrimp each year between North Carolina and Texas. In the high activity areas, federal personnel have sampled roughly 75-750 trips per person each year with the overall sampling fractions of 7%-8%.

Respondent selection

Port agents are instructed to sample trips which are representative of the fishery in their defined area; thus trips are generally selected in proportion to the pounds landed by gear and species in their respective area. It is typical for port agents to adjust their daily work schedules to accommodate the changes in fishing industry activities.

2. Describe the procedures for the collection, including the statistical methodology for stratification and sample selection, the estimation procedure, the degree of accuracy needed for the purpose described in the justification, any unusual problems requiring specialized sampling procedures, and any specific use of periodic (less frequent than annual) data collection cycles to reduce burden.

Interview programs:

Fin fish sampling (trip interviews)

Trip selection – The goal is to sample fishing trips at random within specified spatial-temporal strata, so that each vessel or fisherman will occur in the sample, in proportion to the fishing activity. Port

agents use local knowledge about the proportionality of fishing trips within the gear, area, season strata to determine which locations should be sampled to obtain representative trips. Because port agents do not know a priori which trips will be landing, locations are generally selected where it is felt that trips for a given strata will have a high chance of being encountered.

Species selection- All species landed from the trip are to be included in the sampling. Primary or target species have a target sample size, while species that are rare in catches are sampled proportionately to the catch.

Fish selection- For unsorted catch, random basket samples are taken, which include all species. 30-50 fish are selected from primary species, while for rare species, the number sampled should be proportional to the catch. When the catch is sorted, random boxes of each size category are selected in proportion to the catch. 30-50 fish are measured for each species across size categories. For rare species not assigned a size class, sampling should be proportional to the catch. For very small trips, it may be difficult to obtain a representative sample, so the entire catch is measured if feasible.

Historically, samplers have been instructed to obtain samples of 30-50 fish of each of the primary species in a landing and to obtain proportionately similar numbers of samples from less common species in a landing (Zweifel, 1988). At times, landings are small and the numbers of fish available for sampling is low in those situations it is recommended that samplers attempt to obtain length samples from at least 5-10% of the fish landed. On very small trips on which less than fifty fish of all species combined are landed, a sampler will typically measure the entire catch, as it may be difficult to obtain a representative sample with such a small sample size.

Region-wide sampling targets (number of fish) are established for the primary 30-40 species in each region (South Atlantic or Gulf of Mexico) through a cooperative process with regional partners (states and fisheries commissions). Those targets take into account significant strata (usually fishing gear and for some species sub-region) based on the biology of the species, the distribution of sizes in the harvested population and the variability in size at age (Thompson 1987). The stratified sampling targets are then used to provide guidance to samplers on sampling intensity (number of trips to sample).

Shrimp sampling:

Port agents work within their defined area of coverage, and attempt to obtain data which is representative of the shrimp fishery. On average, 2,400 interviews have been conducted annually by the trip interview program in recent years and approximately 33,000 shrimp trips have been made each year. This represents an approximate sampling fraction of 7- 8% annually.

Estimation procedures:

The Southeast Fisheries Science Center (SEFSC) recognizes that it is difficult to obtain a random sample of landings from a stock of fish when landings consist of multiple species and are distributed across multiple strata. Additionally, fishermen may target different segments of a population such as smaller fish, larger fish or spawning groups at different times resulting in clustered samples. Because of these difficulties, the SEFSC has developed and continues to study methods to improve estimates of vital statistics such length composition, age composition and growth rates, taking into account the difficulty in obtaining representative samples (Brooks 2004, Nowlis 2004, Chih 2006, Anonymous 2006a, 2006b, Anonymous 2007, Chih 2009a, Chih 2009b, Chih 2009c, 2009d, 2009e)

- Anonymous. 2006a. SEDAR 10 stock assessment report South Atlantic gag grouper. SEDAR, 485p.
- Anonymous. 2006b. SEDAR 12 stock assessment report Gulf of Mexico red grouper. SEDAR, 358p.
- Anonymous. 2007. SEDAR 15 stock assessment report 1 (SAR1) South Atlantic red snapper. SEDAR, 511p.
- Brooks, E. 2004. Calculation of relative length frequencies. SEDAR7-AW6a. 1p.
- Chih, C.P. 2006. Selected sampling issues regarding the length/age frequency distributions of red groupers caught by commercial fisheries in the Gulf of Mexico from 1984 to 2005. SEDAR12 DW-10 42p.
- Chih, C.P. 2009a. The effects of otolith sampling methods on the precision of growth curves. N. Am. J. Fish. Man. 29.
- Chih, C.P. 2009b. Evaluation of the sampling efficiency of three otolith sampling methods for commercial king mackerel fisheries. Trans. Am. Fish. Soc. 138:990-999.
- Chih, C.P. 2009c. Improving the sampling efficiency for sampling vermilion snappers in the Gulf of Mexico. NMFS SEFSC SFD Contrib. No. SFD-2009-18. 26p.
- Chih, C.P. 2009d. Improving the sampling efficiency for sampling red snappers in the Gulf of Mexico. NMFS SEFSC SFD Contrib. No. SFD-2009-19. 24p.
- Chih, C.P. 2009e. Improving the sampling efficiency for sampling red groupers in the Gulf of Mexico. NMFS SEFSC SFD Contrib. No. SFD-2009-20. 28p.
- Nowlis, J.S. 2004. Draft Gulf of Mexico red snapper observed catch at age. SEDAR7-AW19. 13p.
- Thompson, S.K. 1987. Sample size for estimating multinomial proportions. Am. Stat. 41(1): 42-46.
- Zweifel, J.R. 1988. Operations Manual for the Trip Interview Program in the State/Federal Cooperative Statistics Program. SEFSC. 65p.

3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a specialized justification must be provided if they will not yield “reliable” data that can be generalized to the universe studied.

Interview programs:

Port agents attempt to maintain cooperative relationships with fishermen and attempt to ensure that mandatory interviews are conducted so that they have minimal impact on business activity. To maximize response, port agents stay in close contact with dealers and fishermen to determine when vessels will be arriving at the dock and off-loading. When possible, sampling is conducted when multiple vessels will be off-loading to increase the chances of sampling multiple vessels.

The reliability of data collected under the finfish (and shrimp) sampling program(s) is examined in multiple ways. Extensive quality control procedures are used at data entry and subsequently. Sampling personnel are instructed to visually compare entered data with data sheets after data entry. Additional quality control checks are performed periodically in preparation for analyses and data users/analysts are frequently reviewing and checking the data.

In addition, the South Atlantic, Gulf of Mexico and Caribbean Fisheries Management Councils, in cooperation with the NOAA Fisheries Southeast Fishery Science Center, have developed a process called SEDAR (Southeast Data, Assessment and Review) to conduct assessments of the status of exploited finfish and shell fish marine stocks. The process involves a series of workshops and involves knowledgeable fishermen, representatives of non-governmental organizations, regional scientists from

both state and federal agencies and independent scientists, often from outside of the region and from other nations. A central component of that process is extensive review of the reliability and adequacy of the data used to characterize the fish and the fisheries. That review is primarily conducted in the SEDAR Data Workshop, but also in the Assessment and Review Workshops. The types of criteria used by the reviewers generally include the consistency of the data with historical patterns, the expected patterns across fisheries, the perceptions of knowledgeable resource users and samplers, sampling fractions, the internal consistency of the data, and the like. The SEDARs have found sampling to be adequate for the species which comprise substantial proportions of the landings.

4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.

Vessels permitted in the Gulf of Mexico reef fish fishery (the primary finfish fishery) are required to have electronic position monitoring systems active at all times. SEFSC has not yet been permitted access to that information, though we expect to obtain access in the near future due to a change in the availability of access licenses. We plan to develop a system for Gulf of Mexico port agents to view vessel tracks so that they can anticipate landing times. We anticipate that the resulting information will further assist samplers in selecting representative trips to sample from the reef fish fishery (and probably other fisheries because vessels are usually permitted in multiple fisheries).

SEFSC has contracted with researchers from the Virginia Institute of Marine Science to conduct a small feasibility study of a systematic sampling approach and to compare the results with our current sampling methods.

5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

The following Southeast Fisheries Science Center staff were consulted on the statistical aspects of this data collection activity:

Dr. Steve Turner, Leader of the Fisheries Statistics Group, is responsible for some of these data collection activities (305) 361-4482

Clay Porch, Director, Sustainable Fisheries Division
(305) 361-4220

REPORTING FORM FOR THE TRIP INTERVIEW PROGRAM (TRIP)

Next Row is for Data Entry Personnel Use Only

PC Data Entry by:		Date:		Batch		Interview #:	
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SECTION I

Interview Number												
Fishery Codes	CP	RF	OP		IN	ML	BF		EG	MX	SL	
Trip Type	030	100	200	300	400	600	675	676	735	900		
Agent Code or Name	OR											
Date of Interview												
	Month			Day			Year					
Reporting Area of Landings												
	Reporting State				Reporting County				Reporting Area Zipcode			
Sampling Site												
	State		County			Zipcode		Sampling Location Code (Dealer or MRSS)				
Start / End Date of Trip												
	Start Month		Start Day		Start Year			End Month		End Day	End Year	
Information Source	SR		LB	CI	SS		SI		OD		SO	
	Sales Records		Logs		Site Sampling			Recs and Int		Observer Data		Recs and Observ
Fishing Mode	CM		CP		HB			PR		TR	SS	
	Commercial		Charter/Party		Head Boat			Private Rec		Tournament	Scientific Survey	
Time of Data Collection -24hr												
	Begin	:			End	:						
	Hour		Minutes	Hour		Minutes						
Bias Type	NB		SB		EB		SE		NI			
	No Bias		Size Bias		Effort Bias		Size & Effort		No Information			
Interview Type	FS			DS			TS			AT		
	Fisherman Sample			Dealer Sample			Trip Survey			Angler Trip		
Landings Type	CL			IL			NL			NF		
	Complete Landings (weight)			Incomplete Landings			No Landings			No Fish Caught		
Crew Size	(The number of crew including the captain)											
Total Effort												
	Days Out		Days Fished		UK	NR	WR	EQ	NF	SA	WI	OB
Vessel Information												
	Vessel ID				Vessel Length (feet)				Vessel Name			

SECTION II

Gear Information					Effort / Location		
Code	Number	Quantity	Other	Soak Time (Hours)	Area Fished	Depth Range (Fathoms)	
---	---	---	---	---	---	-- / --	
---	---	---	---	---	---	-- / --	
---	---	---	---	---	---	-- / --	
---	---	---	---	---	---	-- / --	
---	---	---	---	---	---	-- / --	

PLEASE MAKE ENOUGH COPIES OF THIS FORM TO LAST THROUGH THE END OF MARCH

NOAA Form 88-129 (8/94)

OMB No. 00648-0013
Expires 12/31/2009

WEEKLY DEALER REPORT OF SPANISH MACKEREL LANDINGS

Dealer Name _____

Reporting Period: _____ Through: _____
(Month/Day/Year) (Month/Day/Year)

County Where Landed _____ State Where Landed _____

SPANISH MACKEREL

GEAR ROUND Wt. GUTTED Wt.

Net _____ _____

No Spanish Mackerel were purchased during the reporting period. _____

Submitted by: Name (please print) _____

Signature _____ Date: _____

Fax Reports to: Josh Bennett (305) 361-4460

Public reporting burden for this collection of information is estimated to average 10 minutes per response including the time for reviewing the instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this burden to Roy Crabtree, NOAA Fisheries Service, Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, Florida 33701 and to the Office of Management and Budget, Paperwork Reduction Project (0648-0013), Washington, DC 20303.

You are advised that disclosure of the information requested in this report is mandatory for the purpose of managing the fisheries in accordance with the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C.1801 ET SEQ). Failure to report may result in civil and administrative penalties.

DEALER REPORTING FOR COASTAL FISHERIES QUOTA MONITORING**BIWEEKLY REPORTING PERIOD: «BEGIN» - «END»**Reporting period 1 begins on the 1st day through the 15th day of the month. Period 2 begins on the 16th day through the last day of the month.
All forms must be submitted to SEFSC no later than 5 days following the end of the reporting period.DEALER NUMBER: NOAA - «DLR_CODE»
«DEALER_NAME»
«ADDRESS_1»
«CITY», «STATE» «ZIP_CODE»

Write the amount (pounds) for each species purchased during the reporting Period. Please make sure you are reporting species caught in the Gulf on the Gulf side and species in the Atlantic on the Atlantic side. If no purchases were made, check the No purchases box.

 No Purchases for any of the below species were made during this period**GULF REEF FISH FISHERIES**

Report only species caught in the Gulf of Mexico

SPECIES	WHOLE WEIGHT	GUTTED WEIGHT
GOM - Black Grouper:		
GOM - Gag Grouper:		
GOM - Red Grouper:		
GOM - Yellowfin Grouper:		
GOM - Scamp:		
GOM - Red Hind:		
GOM - Rock Hind:		
GOM - Yellowmouth Grouper:		
GOM - Snowy Grouper:		
GOM - Misty Grouper:		
GOM - Yellowedge Grouper:		
GOM - Warsaw Grouper:		
GOM - Speckled Hind:		
GOM - Tilefish:		
GOM - Golden Tilefish:		
GOM - Blackline Tilefish:		
GOM - Blueline Tilefish:		
GOM - Anchor Tilefish:		
GOM - Grey Triggerfish:		
GOM - Greater Amberjack:		

SOUTH ATLANTIC COMPLEX

Report only species caught in the South Atlantic

SPECIES	WHOLE WEIGHT	GUTTED WEIGHT
SA - Gag Grouper:		
SA - Snowy Grouper:		
SA - Greater Amberjack:		
SA - Golden Tilefish:		
SA - Black Sea Bass:		
SA - Red Porgy:		
SA - Vermillion Snapper:		

REPORTING OPTIONS:

1. Report online at: <https://grunt.sefsc.noaa.gov/QMS/> or
2. Fax Reports to: 305 / 361 - 4460 or
3. Mail reports to: Michael Judge or Heather Balchowsky
National Marine Fisheries Service
PO Box 491500
Key Biscayne, FL 33149

Submitted by Date: ____ / ____ / 2009

Name (please print): _____

Phone (please print): _____

Fax (please print): _____

Signature: _____

Public reporting burden for this collection of information is estimated to average 10 minutes per response including the time for reviewing the instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this burden to Steve Turner, National Marine Fisheries Service, 75 Virginia Beach Dr., Miami, Florida 33149. This reporting authorized under 50 CFR 622.5(c)(3)(ii). Information submitted will be treated as confidential in accordance with NOAA Administrative Orders. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB Control Number. The NMFS requires this information for the conservation and management of marine fishery resources. This data will be used to monitor the quotas for these fisheries.

DEALER REPORT OF KING MACKEREL LANDINGS
FOR THE
COASTAL MIGRATORY PELAGIC RESOURCES

DEALER NAME

REPORTING PERIOD: _____, 200__ THROUGH _____, 200__.

COUNTY OR PARISH WHERE LANDED: _____, STATE WHERE LANDED _____.

POUNDS

GEAR ROUND GUTTED

Hook and Line

/___/ No king mackerel were landed during the reporting period.

Submitted by: Name (please print) _____.

Signature: _____ Date: _____, 200__.

FAX or Mail Report to:

FAX Number:
(409) 766-3543

Keith Roberts
Galveston Lab Lab NOAA
4700 Avenue U
Galveston, TX 77551

Public reporting burden for this collection of information is estimated to average 10 minutes per response including the time for reviewing the instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this burden to Roy Crabtree, NOAA Fisheries Service, Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, Florida 33701 and to the Office of Management and Budget, Paperwork Reduction Project (0648-0013), Washington, DC 20303.

You are advised that disclosure of the information requested in this report is mandatory for the purpose of managing the fisheries in accordance with the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 ET SEQ). Failure to report may result in civil and administrative penalties.

WEEKLY VESSEL REPORT FOR RUNAROUND GILLNET CAUGHT KING MACKEREL

VESSEL NAME _____ VESSEL NUMBER _____

REPORTING PERIOD: _____, 20 THROUGH _____, 20 .
(Sunday) (Saturday)

COUNTY WHERE LANDED: _____

FOR EACH TRIP DURING THE WEEK REPORT THE FOLLOWING:

DATE OF LANDING / / 20: POUNDS GUTTED: _____
MM/DD/YR

POUNDS WHOLE: _____

DEALER SOLD TO: _____

DATE OF LANDING / / 20: POUNDS GUTTED: _____
MM/DD/YR

POUNDS WHOLE: _____

DEALER SOLD TO: _____

DATE OF LANDING / / 20: POUNDS GUTTED: _____
MM/DD/YR

POUNDS WHOLE: _____

DEALER SOLD TO: _____

Submitted by: Name _____ Phone: (____) ____ - ____
(Please Print)

Signature: _____ Date: _____, 20 .

FAX Report to: (305) 361-4460

Pam Eyo
National Marine Fisheries Service
Southeast Fisheries Science Center
75 Virginia Beach Drive
Miami, Florida 33149

Public reporting burden for this collection of information is estimated to average 10 minutes per response including the time for reviewing the instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden or any other aspects of this burden to Rich Malinowski NOAA Fisheries Services 263 13 Ave South, St. Petersburg, FL 33701.

You are advised that disclosure of the information requested in this report is mandatory for the purposes of managing the fisheries in accordance with the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 ET SEQ). Failure to report may result in civil and administrative penalties.

DEALER REPORT OF KING MACKEREL LANDINGS FROM RUNAROUND GILLNET FISHING

****ANY KING MACKEREL CAUGHT BY GILLNET MUST BE REPORTED TO THE RESEARCH AND SCIENCE DIRECTOR WITHIN 24 HOURS OF THE LANDING**

DEALER NAME _____

Phone number _____

LANDING DATE: _____ / _____ /20

COUNTY WHERE LANDED: _____, STATE WHERE LANDED _____.

GEAR -GILLNET	POUNDS	
	ROUND	GUTTED
VESSEL NAME _____ VESSEL NUMBER _____	_____	_____
VESSEL NAME _____ VESSEL NUMBER _____	_____	_____
VESSEL NAME _____ VESSEL NUMBER _____	_____	_____
VESSEL NAME _____ VESSEL NUMBER _____	_____	_____
VESSEL NAME _____ VESSEL NUMBER _____	_____	_____

Submitted by: Name _____
(Please Print)

Signature: _____ Date: _____ / _____ /20 .

FAX REPORT TO: **(305) 361-4460**

PAM EYO
National Marine Fisheries Service
Southeast Fisheries Science Center
75 Virginia Beach Drive
Miami, Florida 33149

Public reporting burden for this collection of information is estimated to average 10 minutes per response including the time for reviewing the instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send your comments regarding this burden estimate or any other aspects of this burden to Rich Malinowski, NOAA Fisheries Service, 263 13 Avenue South, St. Petersburg, Florida 33701.

You are advised that disclosure of the information requested in this report is mandatory for the purposes of managing the fisheries in accordance with the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 ET SEQ). Failure to report may result in civil and administrative penalties.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

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

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

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

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

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

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

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(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

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

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

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

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

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(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

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(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

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

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(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

97-453, 99-659, 101-627, 102-251, 104-297

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

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

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(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

- (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
- (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

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(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

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(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

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(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

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

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(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]¹⁵ prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

¹⁵ So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

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SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

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

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

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

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

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

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

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

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

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

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

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

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

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

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

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

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

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

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

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

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

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

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

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

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

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

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

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

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

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

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

16 U.S.C. 1853a
MSA § 303A

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

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

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

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

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

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

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

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

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

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

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

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

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

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SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

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(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

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

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

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

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

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

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

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

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(d) **CONTRACTING AUTHORITY.**—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) **RESOURCE ASSESSMENTS.**—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

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SEC. 403. OBSERVERS

16 U.S.C. 1881b

(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

Title 50: Wildlife and Fisheries

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

Subpart A—General Provisions

§ 622.2 Definitions and acronyms.

[Link to an amendment published at 74 FR 58911, Nov. 16, 2009.](#)

In addition to the definitions in the Magnuson Act and in §600.10 of this chapter, and the acronyms in §600.15 of this chapter, the terms and acronyms used in this part have the following meanings:

Accountability measure means a management control implemented such that overfishing is prevented, where possible, and mitigated if it occurs.

Actual ex-vessel value means the total monetary sale amount a fisherman receives for IFQ landings from a registered IFQ dealer.

Allowable chemical means a substance, generally used to immobilize marine life so that it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral and is allowed by Florida for the harvest of tropical fish (e.g., quinaldine, quinaldine compounds, or similar substances).

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

Note: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, with attached substrate exceeding 1 inch (2.54 cm) is considered to be live rock and not allowable octocoral.

Annual catch limit (ACL) means the level of catch that serves as the basis for invoking accountability measures.

Aquacultured live rock means live rock that is harvested under a Federal aquacultured live rock permit, as required under §622.4(a)(3)(iii).

Atlantic means the North Atlantic, Mid-Atlantic, and South Atlantic.

Authorized statistical reporting agent means:

(1) Any person so designated by the SRD; or

(2) Any person so designated by the head of any Federal or State agency that has entered into an agreement with the Assistant Administrator to collect fishery data.

Automatic reel means a reel that remains attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel electrically or hydraulically.

Bandit gear means a rod and reel that remain attached to a vessel when in use from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

BRD means bycatch reduction device.

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom. A hook or hooks (usually 6 to 10) are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.

Carapace length means the straight-line distance from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax. (See Figure 1 in Appendix C of this part.)

Caribbean means the Caribbean Sea and Atlantic Ocean seaward of Puerto Rico, the U.S. Virgin Islands, and possessions of the United States in the Caribbean Sea.

Caribbean coral reef resource means one or more of the species, or a part thereof, listed in Table 1 in Appendix A of this part, whether living or dead.

Caribbean prohibited coral means, in the Caribbean; a gorgonian, that is, a Caribbean coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea; a live rock; or a stony coral, that is, a Caribbean coral reef resource of the Class Hydrozoa (fire corals and hydrocorals) or of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals); or a part thereof.

Caribbean queen conch or queen conch means the species, *Strombus gigas*, or a part thereof.

Caribbean reef fish means one or more of the species, or a part thereof, listed in Table 2 in Appendix A of this part.

Caribbean spiny lobster means the species *Panulirus argus*, or a part thereof.

CFMC means the Caribbean Fishery Management Council.

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under §622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew. However, a charter vessel that has a charter vessel permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid Certificate of Inspection (COI) issued by the USCG to carry passengers for hire will not be considered to be operating as a charter vessel provided—

(1) It is not carrying a passenger who pays a fee; and

(2) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Circle hook means a fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

Coastal migratory pelagic fish means one or more of the following species, or a part thereof:

(1) Bluefish, *Pomatomus saltatrix* (Gulf of Mexico only).

(2) Cero, *Scomberomorus regalis*.

(3) Cobia, *Rachycentron canadum*.

(4) Dolphin, *Coryphaena hippurus* (Gulf of Mexico only).

(5) King mackerel, *Scomberomorus cavalla*.

(6) Little tunny, *Euthynnus alletteratus*.

(7) Spanish mackerel, *Scomberomorus maculatus*.

Coral area means marine habitat in the Gulf or South Atlantic EEZ where coral growth abounds, including patch reefs, outer bank reefs, deep water banks, and hard bottoms.

Dealer, in addition to the definition specified in §600.10 of this chapter, means the person who first receives rock shrimp harvested from the EEZ or dolphin or wahoo harvested from the Atlantic EEZ upon transfer ashore.

Deep-water grouper (DWG) means yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in §622.20, scamp are also included as DWG as specified in §622.20(b)(2)(vi).

Dehooking device means a device intended to remove a hook embedded in a fish to release the fish with minimum damage.

Dolphin means the species *Coryphaena equiselis* or *C. hippurus*, or a part thereof, in the Atlantic. (See the definition of *Coastal migratory pelagic fish* for dolphin in the Gulf of Mexico.)

Drift gillnet, for the purposes of this part, means a gillnet, other than a long gillnet or a run-around gillnet, that is unattached to the ocean bottom, regardless of whether attached to a vessel.

Fish trap means—

(1) In the Caribbean EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish.

(2) In the Gulf EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish, except a trap historically used in the directed fishery for crustaceans (that is, blue crab, stone crab, and spiny lobster).

(3) In the South Atlantic EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking fish, except a sea bass pot, a golden crab trap, or a crustacean trap (that is, a type of trap historically used in the directed fishery for blue crab, stone crab, red crab, jonah crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, red crab, jonah crab, and spiny lobster).

Fork length means the straight-line distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 2 in appendix C of this part.)

Golden crab means the species *Chaceon feneri*, or a part thereof.

Golden crab trap means any trap used or possessed in association with a directed fishery for golden crab in the South Atlantic EEZ, including any trap that contains a golden crab in or from the South Atlantic EEZ or any trap on board a vessel that possesses golden crab in or from the South Atlantic EEZ.

GMFMC means the Gulf of Mexico Fishery Management Council.

Gulf means the Gulf of Mexico. The line of demarcation between the Atlantic Ocean and the Gulf of Mexico is specified in §600.105(c) of this chapter.

Gulf reef fish means one or more of the species, or a part thereof, listed in Table 3 in appendix A of this part.

Gulf and South Atlantic prohibited coral means, in the Gulf and South Atlantic, one or more of the following, or a part thereof:

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals).

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

(3) A seafan, *Gorgonia flabellum* or *G. ventalina*.

(4) Coral in a coral reef, except for allowable octocoral.

(5) Coral in an HAPC, including allowable octocoral.

Handline means a line with attached hook(s) that is tended directly by hand.

HAPC means habitat area of particular concern.

Headboat means a vessel that holds a valid Certificate of Inspection (COI) issued by the USCG to carry more than six passengers for hire.

(1) A headboat with a commercial vessel permit, as required under §622.4(a)(2), is considered to be operating as a headboat when it carries a passenger who pays a fee or—

(i) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's COI; or

(ii) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish, when there are more than three persons aboard, including operator and crew.

(2) However a vessel that has a headboat permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid COI issued by the USCG to carry passengers for hire will not be considered to be operating as a headboat provided—

(i) It is not carrying a passenger who pays a fee; and

(ii) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

Headrope length means the distance, measured along the forwardmost webbing of a trawl net, between the points at which the upper lip (top edge) of the mouth of the net are attached to sleds, doors, or other devices that spread the net.

Hook-and-line gear means automatic reel, bandit gear, buoy gear, handline, longline, and rod and reel.

Import means, for the purpose of §§622.1(b) and 622.50 only,—

(1) To land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, Puerto Rico or the U.S. Virgin Islands, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

(2) Does not include any activity described in paragraph (1) of this definition with respect to fish caught in the U.S. exclusive economic zone by a vessel of the United States.

IFQ means individual fishing quota.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Long gillnet means a gillnet that has a float line that is more than 1,000 yd (914 m) in length.

Longline means a line that is deployed horizontally to which gangions and hooks are attached. A longline may be a bottom longline, i.e., designed for use on the bottom, or a pelagic longline, i.e., designed for use off the bottom. The longline hauler may be manually, electrically, or hydraulically operated.

MAFMC means the Mid-Atlantic Fishery Management Council.

Mid-Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the New England Fishery Management Council and the MAFMC, as specified in §600.105(a) of this chapter, to the boundary between the MAFMC and the SAFMC, as specified in §600.105(b) of this chapter.

Migratory group, for king and Spanish mackerel, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King and Spanish mackerel are divided into migratory groups—the Atlantic migratory group and the Gulf migratory group. The boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation*. From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation*. From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25' N. lat., which is a line directly east from the Volusia/Flagler County, FL, boundary to the outer limit of the EEZ.

(2) *Spanish mackerel*. The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4' N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

MPA means marine protected area.

North Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the United States and Canada to the boundary between the New England Fishery Management Council and the MAFMC, as specified in §600.105(a) of this chapter.

Off Florida means the waters in the Gulf and South Atlantic from 30°42'45.6" N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary, to 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary.

Off Georgia means the waters in the South Atlantic from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to 30°42'45.6" N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary.

Official sunrise or official sunset means the time of sunrise or sunset as determined for the date and location in *The Nautical Almanac*, prepared by the U.S. Naval Observatory.

Off Louisiana, Mississippi, and Alabama means the waters in the Gulf other than off Florida and off Texas.

Off North Carolina means the waters in the South Atlantic from 36°34'55" N. lat., which is a line directly east from the Virginia/North Carolina boundary, to a line extending in a direction of 135°34'55" from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51'07.9" N. lat., 78°32'32.6" W. long.

Off South Carolina means the waters in the South Atlantic from a line extending in a direction of 135°34'55" from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51'07.9" N. lat., 78°32'32.6" W. long., to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off Texas means the waters in the Gulf west of a rhumb line from 29°32.1' N. lat., 93°47.7' W. long. to 26°11.4' N. lat., 92°53' W. long., which line is an extension of the boundary between Louisiana and Texas.

Pelagic longline means a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom.

Pelagic sargassum means the species *Sargassum natans* or *S. fluitans*, or a part thereof.

Penaeid shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus*.

(2) Pink shrimp, *Farfantepenaeus duorarum*.

(3) White shrimp, *Litopenaeus setiferus*.

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of penaeid shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, that fires a projectile upon contact.

Processor means a person who processes fish or fish products, or parts thereof, for commercial use or consumption.

Purchase means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

Red drum, also called redfish, means *Sciaenops ocellatus*, or a part thereof.

Red snapper means *Lutjanus campechanus*, or a part thereof, one of the Gulf reef fish species.

Regional Administrator (RA), for the purposes of this part, means the Administrator, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or a designee.

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically.

Run-around gillnet means a gillnet, other than a long gillnet, that, when used, encloses an area of water.

SAFMC means the South Atlantic Fishery Management Council.

Sale or sell means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

Science and Research Director (SRD), for the purposes of this part, means the Science and Research Director, Southeast Fisheries Science Center, NMFS (see Table 1 of §600.502 of this chapter).

Sea bass pot means a trap has six rectangular sides and does not exceed 25 inches (63.5 cm) in height, width, or depth.

Shallow-water grouper (SWG) means gag, red grouper, black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in §622.20, speckled hind and warsaw grouper are also included as SWG as specified in §622.20(b)(2)(v).

Shrimp means one or more of the following species, or a part thereof:

- (1) Brown shrimp, *Farfantepenaeus aztecus* .
- (2) White shrimp, *Litopenaeus setiferus* .
- (3) Pink shrimp, *Farfantepenaeus duorarum* .
- (4) Royal red shrimp, *Hymenopenaeus robustus* .
- (5) Rock shrimp, *Sicyonia brevirostris* .
- (6) Seabob shrimp, *Xiphopenaeus kroyeri* .

Shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

SMZ means special management zone.

South Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the MAFMC and the SAFMC, as specified in §600.105(b) of this chapter, to the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in §600.105(c) of this chapter.

South Atlantic snapper-grouper means one or more of the species, or a part thereof, listed in Table 4 in Appendix A of this part.

Stab net means a gillnet, other than a long gillnet, or trammel net whose weight line sinks to the bottom and submerges the float line.

Total length (TL), for the purposes of this part, means the straight-line distance from the tip of the snout to the tip of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side. The mouth of the fish may be closed and/or the tail may be squeezed together to give the greatest overall measurement. (See Figure 2 in appendix C of this part.)

Toxic chemical means any substance, other than an allowable chemical, that, when introduced into the water, can stun, immobilize, or take marine life.

Trammel net means two or more panels of netting, suspended vertically in the water by a common float line and a common weight line, with one panel having a larger mesh size than the other(s), to entrap fish in a pocket of netting.

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

Try net, also called test net, means a net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses).

Venting device means a device intended to deflate the swim bladder of a fish to release the fish with minimum damage.

Wahoo means the species *Acanthocybium solandri* , or a part thereof, in the Atlantic.

Wild live rock means live rock other than aquacultured live rock.

Wreckfish means the species *Polyprion americanus*, or a part thereof, one of the South Atlantic snapper-grouper species.

Editorial Note: For Federal Register citations affecting §622.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Fishery Conservation and Management

§ 622.5

EFFECTIVE DATE NOTE: At 69 FR 30240, May 27, 2004, § 622.4 was amended by revising paragraph (a)(5) and the last sentence of paragraph (i), effective Nov. 23, 2004. For the convenience of the user the revised text is set forth as follows:

§ 622.4 Permits and fees.

(a) * * *

(5) *Operator permits.* (i) The following persons are required to have operator permits:

(A) An operator of a vessel that has or is required to have a valid permit for South Atlantic rock shrimp issued under this section.

(B) An operator of a vessel that has or is required to have a charter vessel/headboat or commercial permit for Atlantic dolphin and wahoo issued under this section.

(ii) A person required to have an operator permit under paragraph (a)(5)(i) of this section must carry on board such permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(iii) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section must ensure that at least one person with a valid operator permit is aboard while the vessel is at sea or offloading.

(iv) An owner of a vessel that is required to have a permitted operator under paragraph (a)(5)(i) of this section and the operator of such vessel are responsible for ensuring that a person whose operator permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 is not aboard that vessel.

* * * * *

(i) * * * An operator of a vessel in a fishery in which an operator permit is required must present his/her operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

* * * * *

§ 622.5 Recordkeeping and reporting.

Participants in fisheries governed in this part are required to keep records and report as follows.

(a) *Commercial vessel owners and operators—(1) Requirements by species—(i) Coastal migratory pelagic fish.* The owner or operator of a vessel that fishes for or lands coastal migratory pelagic fish for sale in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king or Spanish mackerel, as required under

§ 622.4(a)(2)(iii) or (iv), who is selected to report by the SRD, must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(ii) *Gulf reef fish.* The owner or operator of a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), or whose vessel fishes for or lands reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(A) *Fish traps.* In addition to the other reporting requirements in paragraph (a)(1)(ii) of this section, the owner or operator of a vessel for which a fish trap endorsement has been issued, as required under § 622.4(a)(2)(i), must comply with the following requirements.

(1) *Inspection.* The RA will establish a 1-month period for mandatory inspection of all fish trap gear, permits, and vessels. The RA will provide written notification of the inspection period to each owner of a vessel for which a fish trap endorsement has been issued as required under § 622.4(a)(2)(i). Each such owner or operator must contact the Special Agent-in-Charge, NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL (SAC) or his designee by telephone (727-570-5344) to schedule an inspection during the 1-month period. Requests for inspection must be made between 8:00 a.m. and 4:30 p.m. Monday through Friday and must be made at least 72 hours in advance of the desired inspection date. Inspections will be conducted Monday through Friday between 8:00 a.m. and 4:30 p.m. only. On the inspection date, the owner or operator must make all fish trap gear with attached trap tags and buoys and all applicable permits available for inspection on land. Vessels must also be made available for inspection as directed by the SAC or his designee. Upon completion of the inspection and a determination that all fish trap gear, permits, and vessels are in compliance, an owner or operator may resume fishing with the lawful gear. However, an

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owner or operator who fails to comply with the inspection requirements during the 1-month inspection period or during any other random inspection may not use or possess a fish trap in the Gulf EEZ until the required inspection or reinspection, as directed by the SAC, has been completed and all fish trap gear, permits, and vessels are determined to be in compliance with all applicable regulations.

(2) *Trip reports.* For each fishing trip on which a fish trap will be used or possessed, an owner or operator of a vessel for which a fish trap endorsement has been issued, as required under § 622.4(a)(2)(i), must submit a trip initiation report and a trip termination report to the SAC or his designee, by telephone, using the following 24-hour toll-free number—800-305-0697.

(i) *Trip initiation report.* The trip initiation report must be submitted before beginning the trip and must include: vessel name; official number; number of traps to be deployed; sequence of trap tag numbers; date, time, and point of departure; and intended time and date of trip termination.

(ii) *Trip termination report.* The trip termination report must be submitted immediately upon returning to port and prior to any offloading of catch or fish traps. The trip termination report must include: vessel name; official number; name and address of dealer where catch will be offloaded and sold; the time offloading will begin; notification of any lost traps; and notification of any traps left deployed for any reason.

(B) [Reserved]

(iii) *Gulf shrimp.* The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(iv) *South Atlantic snapper-grouper.* (A) The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under

§ 622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(B) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(C) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(v) *South Atlantic golden crab.* The owner or operator of a vessel for which a commercial permit for golden crab has been issued, as required under § 622.4(a)(2)(x), who is selected to report by the SRD must maintain a fishing record on a form available from the SRD.

(vi) *Atlantic dolphin and wahoo.* The owner or operator of a vessel for which a commercial permit for Atlantic dolphin and wahoo has been issued, as required under § 622.4 (a)(2)(xii), or whose vessel fishes for or lands Atlantic dolphin or wahoo in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(2) *Reporting deadlines.* (i) Completed fishing records required by paragraphs (a)(1)(i), (ii), (iv), and (vi) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is

indicated on the form and its accompanying instructions.

(ii) Reporting forms required in paragraph (a)(1)(v) of this section must be submitted to the SRD postmarked not later than 30 days after sale of the golden crab offloaded from a trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Coastal migratory pelagic fish, reef fish, snapper-grouper, and Atlantic dolphin and wahoo.* The owner or operator of a vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish, South Atlantic coastal migratory pelagic fish, Gulf reef fish, South Atlantic snapper-grouper, or Atlantic dolphin and wahoo has been issued, as required under §622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, snapper-grouper, or Atlantic dolphin or wahoo in or from state waters adjoining the applicable Gulf, South Atlantic, or Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers*—(1) *Coastal migratory pelagic fish.* (i) A person who purchases

coastal migratory pelagic fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters who is selected to report by the SRD must submit information on forms provided by the SRD. This information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no coastal migratory pelagic fish were received during a calendar month, a report so stating must be submitted on one of the forms, in accordance with the instructions on the form, and must be postmarked not later than 5 days after the end of the month. The information to be reported is as follows:

(A) Dealer's or processor's name and address.

(B) County where fish were landed.

(C) Total poundage of each species received during that month, or other requested interval.

(D) Average monthly price paid for each species.

(E) Proportion of total poundage landed by each gear type.

(ii) *Alternate SRD.* For the purposes of paragraph (c)(1)(i) of this section, in the states from New York through Virginia, or in the waters off those states, "SRD" means the Science and Research Director, Northeast Fisheries Science Center, NMFS (see Table 1 of §600.502 of this chapter), or a designee.

(2) *Gulf red drum.* A dealer or processor who purchases red drum harvested from the Gulf who is selected to report by the SRD must report to the SRD such information as the SRD may request and in the form and manner as the SRD may require. The information required to be submitted must include, but is not limited to, the following:

(i) Dealer's or processor's name and address.

(ii) State and county where red drum were landed.

(iii) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

(3) *Gulf reef fish.* A person who purchases Gulf reef fish from a fishing vessel, or person, that fishes for or lands

such fish in or from the EEZ or adjoining state waters must maintain records and submit information as follows:

(i) A dealer must maintain at his/her principal place of business a record of Gulf reef fish that he/she receives. The record must contain the name of each fishing vessel from which reef fish were received and the date, species, and quantity of each receipt. A dealer must retain such record for at least 1 year after receipt date and must provide such record for inspection upon the request of an authorized officer or the SRD.

(ii) When requested by the SRD, a dealer must provide information from his/her record of Gulf reef fish received the total poundage of each species received during the month, average monthly price paid for each species by market size, and proportion of total poundage landed by each gear type. This information must be provided on forms available from the SRD and must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no reef fish were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month.

(iii) The operator of a car or truck that is used to pick up from a fishing vessel reef fish harvested from the Gulf must maintain a record containing the name of each fishing vessel from which reef fish on the car or truck have been received. The vehicle operator must provide such record for inspection upon the request of an authorized officer.

(4) *Gulf shrimp*. A person who purchases shrimp from a vessel, or person, that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide the following information when requested by the SRD:

(i) Name and official number of the vessel from which shrimp were received or the name of the person from whom shrimp were received, if received from other than a vessel.

(ii) Amount of shrimp received by species and size category for each receipt.

(iii) Exvessel value, by species and size category, for each receipt.

(5) *South Atlantic snapper-grouper*. (i) A person who purchases South Atlantic snapper-grouper that were harvested from the EEZ or from adjoining state waters and who is selected to report by the SRD and a dealer who has been issued a dealer permit for wreckfish, as required under §622.4(a)(4), must provide information on receipts of South Atlantic snapper-grouper and prices paid, by species, on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no South Atlantic snapper-grouper were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month. However, during complete months encompassed by the wreckfish spawning-season closure (that is, February and March), a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

(ii) A dealer reporting South Atlantic snapper-grouper other than wreckfish may submit the information required in paragraph (c)(5)(i) of this section via facsimile (fax).

(iii) A dealer who has been issued a dealer permit for wreckfish, as required under §622.4(a)(4), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(6) *South Atlantic golden crab*. A dealer who receives from a fishing vessel golden crab harvested from the South Atlantic EEZ and who is selected by the SRD must provide information on receipts of, and prices paid for, South Atlantic golden crab to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD.

(7) *South Atlantic rock shrimp*. (i) A dealer who has been issued a permit for

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rock shrimp, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of rock shrimp and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) On demand, a dealer who has been issued a dealer permit for rock shrimp, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of rock shrimp.

(8) *Atlantic dolphin and wahoo.* (i) A dealer who has been issued a permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of Atlantic dolphin and wahoo and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) For the purposes of paragraph (c)(8)(i) of this section, in the states from Maine through Virginia, or in the waters off those states, "SRD" means the Science and Research Director, Northeast Fisheries Science Center, NMFS, (see Table 1 of § 600.502 of this chapter), or a designee.

(iii) On demand, a dealer who has been issued a dealer permit for Atlantic dolphin and wahoo, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of dolphin and wahoo.

(d) *Individuals with coral or live rock permits.* (1) An individual with a Federal allowable octocoral permit must submit a report of harvest to the SRD. Specific reporting requirements will be provided with the permit.

(2) A person with a Federal aquacultured live rock permit must report to the RA each deposition of material on a site. Such reports must be postmarked not later than 7 days after

deposition and must contain the following information:

(i) Permit number of site and date of deposit.

(ii) Geological origin of material deposited.

(iii) Amount of material deposited.

(iv) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(3) A person who takes aquacultured live rock must submit a report of harvest to the RA. Specific reporting requirements will be provided with the permit. This reporting requirement is waived for aquacultured live rock that is landed in Florida.

(e) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents and by authorized officers. A person who fishes for or possesses species in or from the EEZ governed in this part is required to make the applicable fish or parts thereof available for inspection by the SRD or an authorized officer upon request.

(f) *Commercial vessel, charter vessel, and headboat inventory.* The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under paragraph (a) or (b) of this section must provide the following information when interviewed by the SRD:

(1) Name and official number of vessel and permit number, if applicable.

(2) Length and tonnage.

(3) Current home port.

(4) Fishing areas.

(5) Ports where fish were offloaded during the last year.

(6) Type and quantity of gear.

(7) Number of full- and part-time fishermen or crew members.

[61 FR 34940, July 3, 1996, as amended at 61 FR 43956, Aug. 27, 1996; 61 FR 47448, Sept. 9, 1996; 63 FR 10567, Mar. 4, 1998; 63 FR 57590, Oct. 28, 1998; 64 FR 59126, Nov. 2, 1999; 64 FR 68935, Dec. 9, 1999; 67 FR 43565, June 28, 2002; 69 FR 30241, May 27, 2004]

§ 622.6 Vessel and gear identification.

(a) *Vessel identification*—(1) *Applicability*—(i) *Official number.* A vessel for which a permit has been issued under § 622.4, and a vessel that fishes for or

Magnuson-Stevens Fishery Conservation and Management Act

Public Law 94-265

As amended through October 11, 1996

AN ACT

**To provide for the conservation and management of the fisheries,
and for other purposes.**

J.Feder version (12/19/96)

TITLE III -- NATIONAL FISHERY MANAGEMENT PROGRAM

Part 2

SEC. 301. NATIONAL STANDARDS FOR FISHERY 16

U.S.C. 1851 CONSERVATION AND MANAGEMENT

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

98-623

- (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
- (2) Conservation and management measures shall be based upon the best scientific information available.
- (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
- (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

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- (5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

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

104-297

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

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(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

97-453

(b) GUIDELINES.-- The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS 16

U.S.C. 1852 97-453, 101-627, 104-297

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

(A) NEW ENGLAND COUNCIL.--The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(B) MID-ATLANTIC COUNCIL.--The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have 21 voting members, including 13 appointed by the Secretary in accordance with subsection

(b)(2) (at least one of whom shall be appointed from each such State).

(C) **SOUTH ATLANTIC COUNCIL.**--The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection

(b)(2) (at least one of whom shall be appointed from each such State).

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

(E) **GULF COUNCIL.**--The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in paragraph (3)). The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(F) **PACIFIC COUNCIL.**--The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State), and including one appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).

(G) **NORTH PACIFIC COUNCIL.**--The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(H) **WESTERN PACIFIC COUNCIL.**--The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

(2) Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(3) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following

Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

97-453, 99-659, 101-627, 102-

582, 104-297 (b) VOTING

MEMBERS.--

(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary in accordance with paragraphs (2) and (5).

(2) (A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall--

(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational

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

(D) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with paragraphs (2) and (5) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.

(4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(5) (A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph.

(B) Representation shall be rotated among the tribes taking into consideration--

(i) the qualifications of the individuals on the list referred to in subparagraph (A),

(ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and

(iii) the geographic area in which the tribe of the representative is located.

(C) A vacancy occurring prior to the expiration of any term shall be filled in the same manner as set out in subparagraphs (A) and (B), except that the Secretary may use the list from which the vacating representative was chosen.

(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraphs (2) or (5) if--

(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

(B) the member is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act

prohibited by section 307(1)(O).

(c) NONVOTING MEMBERS.--

(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The Executive Director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

96-561, 101-627, 104-297

(d) COMPENSATION AND EXPENSES.--The voting members of each Council who are required to be appointed by the Secretary and who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-15, step 7 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

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(e) TRANSACTION OF BUSINESS.-- (1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.

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(5) At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.

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(f) STAFF AND ADMINISTRATION.--

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g), must be consistent with the procedural guidelines set forth in subsection [j](2). Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay--

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

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(g) COMMITTEES AND PANELS.--

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

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(3) (A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

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(4) The Secretary shall establish advisory panels to assist in the collection and evaluation of information relevant to the development of any fishery management plan or plan amendment for a fishery to which subsection (a)(3) applies. Each advisory panel shall participate in all aspects of the development of the plan or amendment; be balanced in its representation of commercial, recreational, and other interests; and consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from among--

(A) members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

(B) other interested persons.

(5) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

95-354, 97-453, 101-627

(h) FUNCTIONS.--Each Council shall, in accordance with the provisions

of this Act--**104-297**

(1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time (and promptly whenever changes in conservation and management measures in another fishery substantially affect the fishery for which such plan was developed);

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(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(C) or section 204(d), and any fishery management plan or amendment transmitted to it under section 304(c)(4);

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act (and for purposes of this paragraph, the term "geographical area concerned" may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area);

(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;

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

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

97-453, 99-659, 101-627

(i) PROCEDURAL MATTERS.--

(1) The Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to the Councils or to the scientific and statistical committees or advisory panels established under subsection (g).

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

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be published in local newspapers in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for

Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c), in which case public notice shall be given immediately.

(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.

(E) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

(F) Subject to the procedures established under paragraph (4), and the guidelines prescribed by the Secretary under section 402(b), relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council or the Secretary, as appropriate.

(3) (A) Each Council, scientific and statistical committee, and advisory panel--

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested; and

(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters. Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 402(b), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans.

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

99-659, 104-297

(j) DISCLOSURE OF FINANCIAL INTEREST AND

RECUSAL.--104-297

(1) For the purposes of this subsection--

(A) the term "affected individual" means an individual who--

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

(ii) is a voting member of a Council appointed--

(I) under subsection (b)(2); or

(II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

(B) the term "designated official" means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).

(2) Each affected individual must disclose any financial interest held by--

(A) that individual;

(B) the spouse, minor child, or partner of that individual; and

(C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee;

in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.

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

(A) in the case of an affected individual referred to in paragraph (1)(A)(i), before appointment by the Secretary; and

(B) in the case of an affected individual referred to in paragraph (1)(A)(ii), within 45 days of

taking office.

(4) An affected individual referred to in paragraph (1)(A)(ii) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C).

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(5) The financial interest disclosures required by this subsection shall--

(A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe;

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

(C) be kept on file by the Secretary for use in reviewing determinations under paragraph 7(B) and made available for public inspection at reasonable hours.

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(6) The participation by an affected individual referred to in paragraph (1)(A)(ii) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.

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(7) (A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(B) At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

(C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

(D) Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the record how he or she would have voted on such decision if he or she had voted.

(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph

(C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.

(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of the Sustainable Fisheries Act, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and which allow for the making of determinations under subparagraphs (B) and (C).

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(8) Section 208 of title 18, United States Code, does not apply to an affected individual referred to in paragraph (1)(A)(ii) during any time in which that individual is in compliance with the regulations prescribed under paragraph (5).

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16

U.S.C. 1853 95-354, 99-659, 101-627, 104-297

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

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

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

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

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

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

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

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

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

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing

under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

97-453, 99-659, 101-627, 102-251, 104-297

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

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

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

(C) the economics of the fishery,

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

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

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

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

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(c) PROPOSED REGULATIONS.--Proposed regulations which the Council deems necessary or appropriate for the purposes of--

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is

approved under section 304.

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(d) INDIVIDUAL FISHING QUOTAS.--

(1) (A) A Council may not submit and the Secretary may not approve or implement before October 1, 2000, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program.

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

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

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

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

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

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

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

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

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

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

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

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

(5) In submitting and approving any new individual fishing quota program on or after October 1, 2000, the Councils and the Secretary shall consider the report of the National Academy of

Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program--

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

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

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

104-297, sec. 108(b), M-S Act SS 303 note

IMPLEMENTATION.--Not later than 24 months after the date of enactment of this Act [P.L. 104-297], each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this section [i.e., the P.L. 104-297 revisions to SS 303(a)(1), (5), (7), and (9), and the addition of SS 303(a)(10)-(14)].

104-297, sec. 108(i), M-S Act SS 303 note

EXISTING QUOTA PLANS.--Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY 16

U.S.C. 1854 104-297

(a) REVIEW OF PLANS.--

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall--

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

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

- (A) take into account the information, views, and comments received from interested persons;
- (B) consult with the Secretary of State with respect to foreign fishing; and
- (C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify--

- (A) the applicable law with which the plan or amendment is inconsistent;
- (B) the nature of such inconsistencies; and
- (C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the term "immediately" means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

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(b) REVIEW OF REGULATIONS.--

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and--

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

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(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.--

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if--

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

(2) In preparing any plan or amendment under this subsection, the Secretary shall--

(A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and

(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any individual fishing quota program unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately--

(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

(B) publish in the Federal Register a notice stating that the plan or amendment is available

and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.

97-453, 104-297

(d) ESTABLISHMENT OF FEES.--

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any--

(i) individual fishing quota program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C) (i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required

by section 504(b)(1) of the Federal Credit Reform Act (2 U. S.C. 661 c(b)(1)).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

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(e) REBUILDING OVERFISHED FISHERIES.--

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within one year of an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies--

(A) to end overfishing in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall--

(A) specify a time period for ending overfishing and rebuilding the fishery that shall--

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the one-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall--

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.

101-627, 104-297

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.--

(1) Except as provided in paragraph (3)[3], if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may--

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

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(g) ATLANTIC HIGHLY MIGRATORY SPECIES.--

(1) PREPARATION AND IMPLEMENTATION OF PLAN OR PLAN AMENDMENT.--

The Secretary shall prepare a fishery management plan or plan amendment under subsection (c)

with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall--

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection--

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

(2) CERTAIN FISH EXCLUDED FROM "BYCATCH" DEFINITION.--

Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d) that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.

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(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.--The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

101-627, sec. 108(k), M-S Act SS 304 note

Interim Management of Highly Migratory Species Fisheries.--Notwithstanding the amendments made by subsections (a) and (g) [of section 108 of Pub. L. 101-627], any fishery management plan or amendment which--

(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act [101-627]) applies,

(2) was prepared by one or more Regional Fishery Management Councils, and

(3) was in force and effect on January 1, 1990,

shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.

104-297, sec. 109(d), M-S Act SS 304 note

DELAY OF FEES.--Notwithstanding any other provision of law, the Secretary shall not begin the collection of fees under section 304(d)(2) of the Magnuson Fishery Conservation and Management Act, as amended by this Act [104-297], in the surf clam and ocean (including mahogany) quahog fishery or in the wreckfish fishery until after January 1, 2000.

104-297, sec. 109(h), M-S Act SS 304 note

COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY.--(1) The Secretary of Commerce shall--

(A) establish an advisory panel under section 302(g)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species;

(B) conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;

(C) to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and

(D) complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.

(2) Based on the study under paragraph (1)(D) and consistent with the requirements of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation

with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000.

104-297, sec. 109(j), M-S Act 304 note

AMERICAN LOBSTER FISHERY.--Section 304(h) of the Magnuson Fishery Conservation and Management Act, as amended by this Act [Public Law 104-297], shall not apply to the American Lobster Fishery Management Plan.

Reorganization Plan No. 4 of 1970

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of chapter 9 of title 5 of the United States Code.¹

¹Effective October 3, 1970, under the provisions of 5 U.S.C. 906.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SECTION 1. *Transfers to Secretary of Commerce.* The following are hereby transferred to the Secretary of Commerce

(a) All functions vested by law in the Bureau of Commercial Fisheries of the Department of the Interior or in its head, together with all functions vested by law in the Secretary of the Interior or the Department of the Interior which are administered through that Bureau or are primarily related to the Bureau, exclusive of functions with respect to (1) Great Lakes fishery research and activities related to the Great Lakes Fisheries Commission, (2) Missouri River Reservoir research, (3) the Gulf Breeze Biological Laboratory of the said Bureau at Gulf Breeze, Florida, and (4) Trans-Alaska pipeline investigations.

(b) The functions vested in the Secretary of the Interior by the Act of September 22, 1959 (Public Law 86-359, 73 Stat. 642, 16 U.S.C. 760e-760g; relating to migratory marine species of game fish).

(c) The functions vested by law in the Secretary of the Interior, or in the Department of the Interior or in any officer or instrumentality of that Department, which are administered through the Marine Minerals Technology Center of the Bureau of Mines.

(d) All functions vested in the National Science Foundation by the National Sea Grant College and Program Act of 1966 (80 Stat. 998), as amended (33 U.S.C. 1121 et seq.).

(e) Those functions vested in the Secretary of Defense or in any officer, employee, or organizational entity of the Department of Defense by the provision of Public Law 91-144, 83 Stat. 326, under the heading "Operation and maintenance, general" with respect to "surveys and charting of northern and northwestern lakes and connecting waters," or by other law, which come under the mission assigned as of July 1, 1969, to the United States Army Engineer District, Lake Survey, Corps of Engineers, Department of the Army and relate to (1) the conduct of hydrographic surveys of the Great Lakes and their outflow rivers, Lake Champlain, New York State Barge Canals, and the Minnesota-Ontario border lakes, and the compilation and publication of navigation charts, including recreational aspects, and the Great Lakes Pilot for the benefit and use of the public, (2) the conception, planning, and conduct of basic research and development in the fields of water motion, water characteristics, water quantity, and ice and snow, and (3) the publication of data and the results of research projects in forms useful to the Corps of Engineers and the public, and the operation of a Regional Data Center for the collection, coordination, analysis, and the furnishing to interested agencies of data relating to water resources of the Great Lakes.

(f) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Secretary of Commerce of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Secretary of Commerce made by this section shall be deemed to include the transfer of authority, provided by law, to prescribe regulations relating primarily to the transferred functions.

SEC. 2. *Establishment of Administration.* (a) There is hereby established in the Department of Commerce an agency which shall be known as the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administration."

(b) There shall be at the head of the Administration the Administrator of the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(c) There shall be in the Administration a Deputy Administrator of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Administration an Associate Administrator of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316). The Associate Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator and Deputy Administrator. The office of Associate Administrator may be filled at the discretion of the President by appointment (by and with the advice and consent of the Senate) from the active list of the commissioned officers of the Administration in which case the appointment shall create a vacancy on the active list and while holding the office of Associate Administrator the officer shall have rank, pay, and allowances not exceeding those of a vice admiral.

(e) There shall be in the Administration three additional officers who shall perform such functions as the Administrator shall from time to time assign or delegate. Each such officer shall be appointed by the Secretary, subject to the approval of the President, under the classified civil service, shall have such title as the Secretary shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(f) The President may appoint in the Administration, by and with the advice and consent of the Senate, two commissioned officers to serve at any one time as the designated heads of two principal constituent organizational entities of the Administration, or the President may designate one such officer as the head of such an organizational entity and the other as the head of the commissioned corps of the Administration. Any such designation shall create a vacancy on the active list and the officer while serving under this subsection shall have the rank, pay, and allowances of a rear admiral (upper half).

(g) Any commissioned officer of the Administration who has served under (d) or (f) and is retired while so serving or is retired after the completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay, and allowances authorized by law for the highest grade and rank held by him; but any such officer, upon termination of his appointment in a rank above that of captain, shall, unless appointed or assigned to some other position for which a higher rank or grade is provided, revert to the grade and number he would have occupied had he not served in a rank above that of captain and such officer shall be an extra number in that grade.

SEC. 3. *Performance of transferred functions.* The provisions of sections 2 and 4 of Reorganization Plan No. 5 of 1950 (64 Stat. 1263) shall be applicable to the functions transferred hereunder to the Secretary of Commerce.

SEC. 4. *Incidental Transfers.* (a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Secretary of Commerce by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Department of Commerce at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

(c) The personnel, property, records, and unexpended balances of the appropriations, allocations, and other funds of the Environmental Science Services Administration shall become personnel, property, records, and unexpended balances of the National Oceanic and Atmospheric Administration or of such other organizational entity or entities of the Department of Commerce as the Secretary of Commerce shall determine.

(d) The Commissioned Officer Corps of the Environmental Science Services Administration shall become the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration. Members of the Corps, including those appointed hereafter, shall be entitled to all rights, privileges, and benefits heretofore available under any law to commissioned officers of the Environmental Science Services Administration, including those rights, privileges, and benefits heretofore accorded by law to commissioned officers of the former Coast and Geodetic Survey.

(e) Any personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of the Bureau of Commercial Fisheries not otherwise transferred shall become personnel, property, records, and unexpended balances of such organizational entity or entities of the Department of the Interior as the Secretary of the Interior shall determine.

SEC. 5. *Interim Officers.* (a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator and authorize any such person to act as Associate Administrator.

(c) The President may similarly authorize a member of the former Commissioned Officer Corps of the Environmental Science Services Administration to act as the head of one principal constituent organizational entity of the Administration.

(d) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 6. *Abolitions.* (a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Environmental Science Services Administration in the Department of Commerce (established by Reorganization Plan No. 2 of 1965, 79 Stat. 1318), including the offices of Administrator of the Environmental Science Services Administration and Deputy Administrator of the Environmental Science Services Administration.

(2) The Bureau of Commercial Fisheries in the Department of the Interior (16 U.S.C. 742b), including the office of Director of the Bureau of Commercial Fisheries.

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of Commerce in the case of the Environmental Science Services Administration and by the Secretary of the Interior in the case of the Bureau of Commercial Fisheries.

[F.R. Doc. 70-13375; Filed Oct. 5, 1970; 8:45 a.m.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code. The plan would transfer to the Secretary of Commerce various functions relating to the oceans and atmosphere, including commercial fishery functions, and would establish a National Oceanic and Atmospheric Administration in the Department of Commerce. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 4 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3) "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 2 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

The reorganization plan should result in the more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

Richard Nixon.

The White House, July 9, 1970.

Public Law 104–297
104th Congress

An Act

To amend the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes.

Oct. 11, 1996

[S. 39]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Sustainable Fisheries Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment of Magnuson Fishery Conservation and Management Act.

TITLE I—CONSERVATION AND MANAGEMENT

- Sec. 101. Findings; purposes; policy.
- Sec. 102. Definitions.
- Sec. 103. Authorization of appropriations.
- Sec. 104. Highly migratory species.
- Sec. 105. Foreign fishing and international fishery agreements.
- Sec. 106. National standards.
- Sec. 107. Regional fishery management councils.
- Sec. 108. Fishery management plans.
- Sec. 109. Action by the Secretary.
- Sec. 110. Other requirements and authority.
- Sec. 111. Pacific community fisheries.
- Sec. 112. State jurisdiction.
- Sec. 113. Prohibited acts.
- Sec. 114. Civil penalties and permit sanctions; rebuttable presumptions.
- Sec. 115. Enforcement.
- Sec. 116. Transition to sustainable fisheries.
- Sec. 117. North Pacific and northwest Atlantic Ocean fisheries.

TITLE II—FISHERY MONITORING AND RESEARCH

- Sec. 201. Change of title.
- Sec. 202. Registration and information management.
- Sec. 203. Information collection.
- Sec. 204. Observers.
- Sec. 205. Fisheries research.
- Sec. 206. Incidental harvest research.
- Sec. 207. Miscellaneous research.
- Sec. 208. Study of contribution of bycatch to charitable organizations.
- Sec. 209. Study of identification methods for harvest stocks.
- Sec. 210. Review of Northeast fishery stock assessments.
- Sec. 211. Clerical amendments.

TITLE III—FISHERIES FINANCING

- Sec. 301. Short title.
- Sec. 302. Individual fishing quota loans.
- Sec. 303. Fisheries financing and capacity reduction.

TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS

- Sec. 401. Marine fish program authorization of appropriations.

Sustainable
Fisheries Act.
16 USC 1801
note.

- Sec. 402. Interjurisdictional Fisheries Act amendments.
 Sec. 403. Anadromous fisheries amendments.
 Sec. 404. Atlantic coastal fisheries amendments.
 Sec. 405. Technical amendments to maritime boundary agreement.
 Sec. 406. Amendments to the Fisheries Act.

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

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

TITLE I—CONSERVATION AND MANAGEMENT

SEC. 101. FINDINGS; PURPOSES; POLICY.

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

(1) by striking subsection (a)(2) and inserting the following:

“(2) Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.”;

(2) by inserting “to facilitate long-term protection of essential fish habitats,” in subsection (a)(6) after “conservation,”;

(3) by adding at the end of subsection (a) the following:

“(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

“(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.”;

(4) by striking “principles;” in subsection (b)(3) and inserting “principles, including the promotion of catch and release programs in recreational fishing;”;

(5) by striking “and” after the semicolon at the end of subsection (b)(5);

(6) by striking “development.” in subsection (b)(6) and inserting “development in a non-wasteful manner; and”;

(7) by adding at the end of subsection (b) the following:

“(7) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.”;

(8) in subsection (c)(3)—

(A) by striking “promotes” and inserting “considers”;

and

- (B) by inserting “minimize bycatch and” after “practical measures that”;
- (9) striking “and” at the end of paragraph (c)(5);
- (10) striking the period at the end of paragraph (c)(6) and inserting “; and”; and
- (11) adding at the end of subsection (c) a new paragraph as follows:
- “(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.”.

SEC. 102. DEFINITIONS.

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

(1) by redesignating paragraphs (2) through (32) as paragraphs (5) through (35) respectively, and inserting after paragraph (1) the following:

“(2) The term ‘bycatch’ means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

“(3) The term ‘charter fishing’ means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.

“(4) The term ‘commercial fishing’ means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.”;

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

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

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

(3) by redesignating paragraphs (9) through (35) (as redesignated) as paragraphs (11) through (37), respectively, and inserting after paragraph (8) (as redesignated) the following:

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

“(10) The term ‘essential fish habitat’ means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.”;

(4) by redesignating paragraphs (16) through (37) (as redesignated) as paragraphs (17) through (38), respectively, and inserting after paragraph (15) (as redesignated) the following:

“(16) The term ‘fishing community’ means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, opera-

tors, and crew and United States fish processors that are based in such community.”;

(5) by redesignating paragraphs (21) through (38) (as redesignated) as paragraphs (22) through (39), respectively, and inserting after paragraph (20) (as redesignated) the following:

“(21) The term ‘individual fishing quota’ means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).”;

(6) by striking “of one and one-half miles” in paragraph (23) (as redesignated) and inserting “of two and one-half kilometers”;

(7) by striking paragraph (28) (as redesignated), and inserting the following:

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

“(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

“(B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and

“(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.”;

(8) by redesignating paragraphs (29) through (39) (as redesignated) as paragraphs (31) through (41), respectively, and inserting after paragraph (28) (as redesignated) the following:

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

“(30) The term ‘Pacific Insular Area’ means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.”;

(9) by redesignating paragraphs (32) through (41) (as redesignated) as paragraphs (34) through (43), respectively, and inserting after paragraph (31) (as redesignated) the following:

“(32) The term ‘recreational fishing’ means fishing for sport or pleasure.

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

(10) by redesignating paragraphs (36) through (43) (as redesignated) as paragraphs (37) through (44), respectively,

and inserting after paragraph (35) (as redesignated) the following:

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

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

(12) by redesignating paragraph (44) (as redesignated) as paragraph (45), and inserting after paragraph (43) the following:

“(44) The term ‘vessel subject to the jurisdiction of the United States’ has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).”.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

The Act is amended by inserting after section 3 (16 U.S.C. 1802) the following:

“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

16 USC 1803.

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

- “(1) \$147,000,000 for fiscal year 1996;
- “(2) \$151,000,000 for fiscal year 1997;
- “(3) \$155,000,000 for fiscal year 1998; and
- “(4) \$159,000,000 for fiscal year 1999.”.

SEC. 104. HIGHLY MIGRATORY SPECIES.

Section 102 (16 U.S.C. 1812) is amended by striking “promoting the objective of optimum utilization” and inserting “shall promote the achievement of optimum yield”.

SEC. 105. FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS.

(a) **AUTHORITY TO OPERATE UNDER TRANSSHIPMENT PERMITS.**—Section 201 (16 U.S.C. 1821) is amended—

(1) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

“(1) is authorized under subsections (b) or (c) or section 204(e), or under a permit issued under section 204(d);

“(2) is not prohibited under subsection (f); and”;

(2) by striking “(i)” in subsection (c)(2)(D) and inserting “(h)”;

(3) by striking subsection (f);

(4) by redesignating subsections (g) through (j) as subsections (f) through (i), respectively;

(5) in paragraph (2) of subsection (h) (as redesignated), redesignate subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and insert after subparagraph (A) the following:

“(B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program that is at least equal in effectiveness to the program established by the Secretary;” and

(6) in subsection (i) (as redesignated) by striking “305” and inserting “304”.

(b) INTERNATIONAL FISHERY AGREEMENTS.—Section 202 (16 U.S.C. 1822) is amended—

(1) by adding before the period at the end of subsection (c) “or section 204(e)”;

(2) by adding at the end the following:

“(h) BYCATCH REDUCTION AGREEMENTS.—

“(1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this Act for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

“(2) An international agreement negotiated under this subsection shall be—

“(A) consistent with the policies and purposes of this Act; and

“(B) subject to approval by Congress under section 203.

“(3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing actions taken under this subsection.”.

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

(1) by striking “GOVERNING” in the section heading;

(2) by striking “agreement” each place it appears in subsection (a) and inserting “agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement”;

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

(4) by striking subsection (c);

(5) by redesignating subsection (d) as subsection (c); and

(6) by striking “agreement” in subsection (c)(2)(A), as redesignated, and inserting “agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement”.

(d) TRANSSHIPMENT PERMITS AND PACIFIC INSULAR AREA FISHING.—Section 204 (16 U.S.C. 1824) is amended—

Reports.

(1) by inserting “or subsection (d)” in the first sentence of subsection (b)(7) after “under paragraph (6)”;

(2) by striking “the regulations promulgated to implement any such plan” in subsection (b)(7)(A) and inserting “any applicable Federal or State fishing regulations”;

(3) by inserting “or subsection (d)” in subsection (b)(7)(D) after “paragraph (6)(B)”;

(4) by adding at the end the following:

“(d) TRANSSHIPMENT PERMITS.—

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

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

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

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

“(3) APPROVAL OF APPLICATION.—The Secretary may approve, in consultation with the appropriate Council or Marine Fisheries Commission, an application for a permit under this section if the Secretary determines that—

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

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

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

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

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

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

“(6) CONDITIONS AND RESTRICTIONS.—The Secretary shall establish and include in each permit under this subsection conditions and restrictions, including those conditions and restrictions set forth in subsection (b)(7), which shall be com-

plied with by the owner and operator of the vessel for which the permit is issued.

“(7) FEES.—The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit, except that the Secretary shall waive the fee for the permit if the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation.

“(e) PACIFIC INSULAR AREAS.—

“(1) NEGOTIATION OF PACIFIC INSULAR AREA FISHERY AGREEMENTS.—The Secretary of State, with the concurrence of the Secretary and in consultation with any appropriate Council, may negotiate and enter into a Pacific Insular Area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to a Pacific Insular Area—

“(A) in the case of American Samoa, Guam, or the Northern Mariana Islands, at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which such agreement applies; and

“(B) in the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, at the request of the Western Pacific Council.

“(2) AGREEMENT TERMS AND CONDITIONS.—A Pacific Insular Area fishery agreement—

“(A) shall not be considered to supersede any governing international fishery agreement currently in effect under this Act, but shall provide an alternative basis for the conduct of foreign fishing within the exclusive economic zone adjacent to Pacific Insular Areas;

“(B) shall be negotiated and implemented consistent only with the governing international fishery agreement provisions of this title specifically made applicable in this subsection;

“(C) may not be negotiated with a nation that is in violation of a governing international fishery agreement in effect under this Act;

“(D) shall not be entered into if it is determined by the Governor of the applicable Pacific Insular Area with respect to agreements initiated under paragraph (1)(A), or the Western Pacific Council with respect to agreements initiated under paragraph (1)(B), that such an agreement will adversely affect the fishing activities of the indigenous people of such Pacific Insular Area;

“(E) shall be valid for a period not to exceed three years and shall only become effective according to the procedures in section 203; and

“(F) shall require the foreign nation and its fishing vessels to comply with the requirements of paragraphs (1), (2), (3) and (4)(A) of section 201(c), section 201(d), and section 201(h).

“(3) PERMITS FOR FOREIGN FISHING.—

“(A) Application for permits for foreign fishing authorized under a Pacific Insular Areas fishing agreement shall be made, considered and approved or disapproved in accordance with paragraphs (3), (4), (5), (6), (7) (A) and (B),

(8), and (9) of subsection (b), and shall include any conditions and restrictions established by the Secretary in consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, the Governor of the applicable Pacific Insular Area, and the appropriate Council.

“(B) If a foreign nation notifies the Secretary of State of its acceptance of the requirements of this paragraph, paragraph (2)(F), and paragraph (5), including any conditions and restrictions established under subparagraph (A), the Secretary of State shall promptly transmit such notification to the Secretary. Upon receipt of any payment required under a Pacific Insular Area fishing agreement, the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all of the requirements, conditions, and restrictions established under this subsection which apply to the fishing vessel for which the permit is issued.

“(4) MARINE CONSERVATION PLANS.—

“(A) Prior to entering into a Pacific Insular Area fishery agreement, the Western Pacific Council and the appropriate Governor shall develop a 3-year marine conservation plan detailing uses for funds to be collected by the Secretary pursuant to such agreement. Such plan shall be consistent with any applicable fishery management plan, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects. Conservation and management objectives shall include, but not be limited to—

“(i) establishment of Pacific Insular Area observer programs, approved by the Secretary in consultation with the Western Pacific Council, that provide observer coverage for foreign fishing under Pacific Insular Area fishery agreements that is at least equal in effectiveness to the program established by the Secretary under section 201(h);

“(ii) conduct of marine and fisheries research, including development of systems for information collection, analysis, evaluation, and reporting;

“(iii) conservation, education, and enforcement activities related to marine and coastal management, such as living marine resource assessments, habitat monitoring and coastal studies;

“(iv) grants to the University of Hawaii for technical assistance projects by the Pacific Island Network, such as education and training in the development and implementation of sustainable marine resources development projects, scientific research, and conservation strategies; and

“(v) western Pacific community-based demonstration projects under section 112(b) of the Sustainable Fisheries Act and other coastal improvement projects to foster and promote the management, conservation, and economic enhancement of the Pacific Insular Areas.

“(B) In the case of American Samoa, Guam, and the Northern Mariana Islands, the appropriate Governor, with the concurrence of the Western Pacific Council, shall develop the marine conservation plan described in subparagraph (A) and submit such plan to the Secretary for approval. In the case of other Pacific Insular Areas, the Western Pacific Council shall develop and submit the marine conservation plan described in subparagraph (A) to the Secretary for approval.

“(C) If a Governor or the Western Pacific Council intends to request that the Secretary of State renew a Pacific Insular Area fishery agreement, a subsequent 3-year plan shall be submitted to the Secretary for approval by the end of the second year of the existing 3-year plan.

“(5) RECIPROCAL CONDITIONS.—Except as expressly provided otherwise in this subsection, a Pacific Insular Area fishing agreement may include terms similar to the terms applicable to United States fishing vessels for access to similar fisheries in waters subject to the fisheries jurisdiction of another nation.

“(6) USE OF PAYMENTS BY AMERICAN SAMOA, GUAM, NORTHERN MARIANA ISLANDS.—Any payments received by the Secretary under a Pacific Insular Area fishery agreement for American Samoa, Guam, or the Northern Mariana Islands shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which those funds were collected. Amounts deposited in the Treasury of a Pacific Insular Area shall be available, without appropriation or fiscal year limitation, to the Governor of the Pacific Insular Area—

“(A) to carry out the purposes of this subsection;

“(B) to compensate (i) the Western Pacific Council for mutually agreed upon administrative costs incurred relating to any Pacific Insular Area fishery agreement for such Pacific Insular Area, and (ii) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(A); and

“(C) to implement a marine conservation plan developed and approved under paragraph (4).

“(7) WESTERN PACIFIC SUSTAINABLE FISHERIES FUND.—There is established in the United States Treasury a Western Pacific Sustainable Fisheries Fund into which any payments received by the Secretary under a Pacific Insular Area fishery agreement for any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands shall be deposited. The Western Pacific Sustainable Fisheries Fund shall be made available, without appropriation or fiscal year limitation, to the Secretary, who shall provide such funds only to—

“(A) the Western Pacific Council for the purpose of carrying out the provisions of this subsection, including implementation of a marine conservation plan approved under paragraph (4);

“(B) the Secretary of State for mutually agreed upon travel expenses for no more than 2 Federal representatives incurred as a direct result of complying with paragraph (1)(B); and

“(C) the Western Pacific Council to meet conservation and management objectives in the State of Hawaii if monies

remain in the Western Pacific Sustainable Fisheries Fund after the funding requirements of subparagraphs (A) and (B) have been satisfied.

Amounts deposited in such fund shall not diminish funding received by the Western Pacific Council for the purpose of carrying out other responsibilities under this Act.

“(8) USE OF FINES AND PENALTIES.—In the case of violations occurring within the exclusive economic zone off American Samoa, Guam, or the Northern Mariana Islands, amounts received by the Secretary which are attributable to fines or penalties imposed under this Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the exclusive economic zone in which the violation occurred, to be used for fisheries enforcement and for implementation of a marine conservation plan under paragraph (4).”.

(e) ATLANTIC HERRING TRANSSHIPMENT.—Within 30 days of receiving an application, the Secretary shall, under section 204(d) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, issue permits to up to fourteen Canadian transport vessels that are not equipped for fish harvesting or processing, for the transshipment, within the boundaries of the State of Maine or within the portion of the exclusive economic zone east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State, of Atlantic herring harvested by United States fishermen within the area described and used solely in sardine processing. In issuing a permit pursuant to this subsection, the Secretary shall provide a waiver under section 201(h)(2)(C) of the Magnuson Fishery Conservation and Management Act, as amended by this Act: *Provided*, That such vessels comply with Federal or State monitoring and reporting requirements for the Atlantic herring fishery, including the stationing of United States observers aboard such vessels, if necessary.

(f) LARGE SCALE DRIFTNET FISHING.—Section 206 (16 U.S.C. 1826) is amended—

(1) in subsection (e), by striking paragraphs (3) and (4), and redesignating paragraphs (5) and (6) as (3) and (4), respectively; and

(2) in subsection (f), by striking “(e)(6),” and inserting “(e)(4).”.

(g) RUSSIAN FISHING IN THE BERING SEA.—No later than September 30, 1997, the North Pacific Fishery Management Council, in consultation with the North Pacific and Bering Sea Advisory Body, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing the institutional structures in Russia pertaining to stock assessment, management, and enforcement for fishery harvests in the Bering Sea, and recommendations for improving coordination between the United States and Russia for managing and conserving Bering Sea fishery resources of mutual concern.

Reports.

SEC. 106. NATIONAL STANDARDS.

(a) Section 301(a)(5) (16 U.S.C. 1851(a)(5)) is amended by striking “promote” and inserting “consider”.

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

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

“(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

“(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.”.

SEC. 107. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) Section 302(a) (16 U.S.C. 1852(a)) is amended—

(1) by inserting “(1)” after the subsection heading;

(2) by redesignating paragraphs (1) through (8) as subparagraphs (A) through (H), respectively;

(3) by striking “section 304(f)(3)” wherever it appears and inserting “paragraph (3)”;

(4) in paragraph (1)(B), as amended—

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

(B) by inserting “North Carolina, and” after “except”;

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

(D) by striking “12” and inserting “13”;

(5) by striking paragraph (1)(F), as redesignated, and inserting the following:

“(F) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State), and including one appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).”;

(6) by indenting the sentence at the end thereof and inserting “(2)” before “Each Council”; and

(7) by adding at the end the following:

“(3) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.”.

(b) Section 302(b) (16 U.S.C. 1852(b)) is amended—

(1) by striking “subsection (b)(2)” in paragraphs (1)(C) and (3), and inserting in both places “paragraphs (2) and (5)”;

(2) by striking the last sentence in paragraph (3) and inserting the following: “Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.”; and

(3) by striking paragraph (5) and inserting after paragraph (4) the following:

“(5)(A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph.

Regulations.

“(B) Representation shall be rotated among the tribes taking into consideration—

“(i) the qualifications of the individuals on the list referred to in subparagraph (A),

“(ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and

“(iii) the geographic area in which the tribe of the representative is located.

“(C) A vacancy occurring prior to the expiration of any term shall be filled in the same manner as set out in subparagraphs (A) and (B), except that the Secretary may use the list from which the vacating representative was chosen.

“(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraphs (2) or (5) if—

“(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

“(B) the member is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307(1)(O).”.

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

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

(2) by striking “shall, until January 1, 1992,” and all that follows through “GS-16” and inserting “shall receive compensation at the daily rate for GS-15, step 7”.

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

“(5) At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.”.

(e) Section 302(g) (16 U.S.C. 1852(g)) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following:

“(4) The Secretary shall establish advisory panels to assist in the collection and evaluation of information relevant to the development of any fishery management plan or plan amendment for a fishery to which subsection (a)(3) applies. Each advisory panel shall participate in all aspects of the development of the plan or amendment; be balanced in its representation of commercial, recreational, and other interests; and consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from among—

“(A) members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

“(B) other interested persons.”.

(f) Section 302(h) (16 U.S.C. 1852(h)) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time (and promptly whenever changes in conservation and management measures in another fishery substantially affect the fishery for which such plan was developed);”;

(2) in paragraph (2)—

(A) by striking “section 204(b)(4)(C),” in paragraph (2) and inserting “section 204(b)(4)(C) or section 204(d),”;

(B) by striking “304(c)(2)” and inserting “304(c)(4);”

and

(3) by striking “304(f)(3)” in paragraph (5) and inserting “subsection (a)(3)”.

(g) Section 302 is amended further by striking subsection (i), and by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(h) Section 302(i), as redesignated, is amended—

(1) by striking “of the Councils” in paragraph (1) and inserting “established under subsection (g)”;

(2) by striking “of a Council:” in paragraph (2) and inserting “established under subsection (g).”;

(3) by striking “Council’s” in paragraph (2)(C);

(4) by adding the following at the end of paragraph (2)(C): “The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c), in which case public notice shall be given immediately.”;

(5) by adding the following at the end of paragraph (2)(D): “All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.”;

(6) by striking paragraph (2)(E) and inserting:

“(E) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.”;

Records.

(7) by striking “by the Council” the first place it appears in paragraph (2)(F);

Certification.

(8) by inserting “or the Secretary, as appropriate” in paragraph (2)(F) after “of the Council”;

(9) by striking “303(d)” each place it appears in paragraph (2)(F) and inserting “402(b)”; and

(10) by striking “303(d)” in paragraph (4) and inserting “402(b)”.

(i) Section 302(j), as redesignated, is amended—

(1) by inserting “and Recusal” after “Interest” in the subsection heading;

(2) by striking paragraph (1) and inserting the following:

“(1) For the purposes of this subsection—

“(A) the term ‘affected individual’ means an individual who—

“(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or

“(ii) is a voting member of a Council appointed—

“(I) under subsection (b)(2); or

“(II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

“(B) the term ‘designated official’ means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).”;

(3) by striking “(1)(A)” in paragraph (3)(A) and inserting “(1)(A)(i)”;

(4) by striking “(1)(B) or (C)” in paragraph (3)(B) and inserting “(1)(A)(ii)”;

(5) by striking “(1)(B) or (C)” in paragraph (4) and inserting “(1)(A)(ii)”;

(6)(A) by striking “and” at the end of paragraph (5)(A);

(B) by striking the period at the end of paragraph (5)(B) and inserting a semicolon and the word “and”; and

(C) by adding at the end of paragraph (5) the following:

“(C) be kept on file by the Secretary for use in reviewing determinations under paragraph (7)(B) and made available for public inspection at reasonable hours.”;

(7) by striking “(1)(B) or (C)” in paragraph (6) and inserting “(1)(A)(ii)”;

(8) by redesignating paragraph (7) as paragraph (8) and inserting after paragraph (6) the following:

“(7)(A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph

(2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

“(B) At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

“(C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

“(D) Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the record how he or she would have voted on such decision if he or she had voted.

“(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph (C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.

Regulations.

“(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of the Sustainable Fisheries Act, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and which allow for the making of determinations under subparagraphs (B) and (C).”; and

(9) by striking “(1)(B) or (C)” in paragraph (8), as redesignated, and inserting “(1)(A)(ii)”.

SEC. 108. FISHERY MANAGEMENT PLANS.

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

(1) in paragraph (1)(A) by inserting “and rebuild overfished stocks” after “overfishing”;

(2) by inserting “commercial, recreational, and charter fishing in” in paragraph (5) after “with respect to”;

(3) by striking paragraph (7) and inserting the following:

“(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;”;

(4) by striking “and” at the end of paragraph (8);

(5) by inserting “and fishing communities” after “fisheries” in paragraph (9)(A);

(6) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(7) by adding at the end the following:

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

“(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

“(A) minimize bycatch; and

“(B) minimize the mortality of bycatch which cannot be avoided;

“(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

“(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

“(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.”.

(b) IMPLEMENTATION.—Not later than 24 months after the date of enactment of this Act, each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this section.

(c) DISCRETIONARY PROVISIONS.—Section 303(b) (16 U.S.C. 1853(b)) is amended—

(1) by striking paragraph (3) and inserting the following:

“(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

“(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

“(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

“(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;”;

(2) by striking “system for limiting access to” in paragraph (6) and inserting “limited access system for”;

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(3) by striking “fishery” in subparagraph (E) of paragraph (6) and inserting “fishery and any affected fishing communities”;

(4) by inserting “one or more” in paragraph (8) after “require that”;

(5) by striking “and” at the end of paragraph (9);

(6) by redesignating paragraph (10) as paragraph (12); and

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

“(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

“(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and”.

(d) REGULATIONS.—Section 303 (16 U.S.C. 1853) is amended by striking subsection (c) and inserting the following:

“(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

“(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

“(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.”.

(e) INDIVIDUAL FISHING QUOTAS.—Subsection 303 (16 U.S.C. 1853) is amended further by striking subsections (d), (e), and (f), and inserting the following:

“(d) INDIVIDUAL FISHING QUOTAS.—

“(1)(A) A Council may not submit and the Secretary may not approve or implement before October 1, 2000, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program.

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

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

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

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

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

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

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

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

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

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

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

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

“(5) In submitting and approving any new individual fishing quota program on or after October 1, 2000, the Councils and the Secretary shall consider the report of the National Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program—

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

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

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

(f) INDIVIDUAL FISHING QUOTA REPORT.—(1) Not later than October 1, 1998, the National Academy of Sciences, in consultation with the Secretary of Commerce and the Regional Fishery Management Councils, shall submit to the Congress a comprehensive final report on individual fishing quotas, which shall include rec-

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note.

ommendations to implement a national policy with respect to individual fishing quotas. The report shall address all aspects of such quotas, including an analysis of—

(A) the effects of limiting or prohibiting the transferability of such quotas;

(B) mechanisms to prevent foreign control of the harvest of United States fisheries under individual fishing quota programs, including mechanisms to prohibit persons who are not eligible to be deemed a citizen of the United States for the purpose of operating a vessel in the coastwise trade under section 2(a) and section 2(c) of the Shipping Act, 1916 (46 U.S.C. 802 (a) and (c)) from holding individual fishing quotas;

(C) the impact of limiting the duration of individual fishing quota programs;

(D) the impact of authorizing Federal permits to process a quantity of fish that correspond to individual fishing quotas, and of the value created for recipients of any such permits, including a comparison of such value to the value of the corresponding individual fishing quotas;

(E) mechanisms to provide for diversity and to minimize adverse social and economic impacts on fishing communities, other fisheries affected by the displacement of vessels, and any impacts associated with the shifting of capital value from fishing vessels to individual fishing quotas, as well as the use of capital construction funds to purchase individual fishing quotas;

(F) mechanisms to provide for effective monitoring and enforcement, including the inspection of fish harvested and incentives to reduce bycatch, and in particular economic discards;

(G) threshold criteria for determining whether a fishery may be considered for individual fishing quota management, including criteria related to the geographical range, population dynamics and condition of a fish stock, the socioeconomic characteristics of a fishery (including participants' involvement in multiple fisheries in the region), and participation by commercial, charter, and recreational fishing sectors in the fishery;

(H) mechanisms to ensure that vessel owners, vessel masters, crew members, and United States fish processors are treated fairly and equitably in initial allocations, to require persons holding individual fishing quotas to be on board the vessel using such quotas, and to facilitate new entry under individual fishing quota programs;

(I) potential social and economic costs and benefits to the nation, individual fishing quota recipients, and any recipients of Federal permits described in subparagraph (D) under individual fishing quota programs, including from capital gains revenue, the allocation of such quotas or permits through Federal auctions, annual fees and transfer fees at various levels, or other measures;

(J) the value created for recipients of individual fishing quotas, including a comparison of such value to the value of the fish harvested under such quotas and to the value of permits created by other types of limited access systems, and the effects of creating such value on fishery management and conservation; and

(K) such other matters as the National Academy of Sciences deems appropriate.

(2) The report shall include a detailed analysis of individual fishing quota programs already implemented in the United States, including the impacts: of any limits on transferability, on past and present participants, on fishing communities, on the rate and total amount of bycatch (including economic and regulatory discards) in the fishery, on the safety of life and vessels in the fishery, on any excess harvesting or processing capacity in the fishery, on any gear conflicts in the fishery, on product quality from the fishery, on the effectiveness of enforcement in the fishery, on the size and composition of fishing vessel fleets, on the economic value created by individual fishing quotas for initial recipients and non-recipients, on conservation of the fishery resource, on fishermen who rely on participation in several fisheries, on the success in meeting any fishery management plan goals, and the fairness and effectiveness of the methods used for allocating quotas and controlling transferability. The report shall also include any information about individual fishing quota programs in other countries that may be useful.

(3) The report shall identify and analyze alternative conservation and management measures, including other limited access systems such as individual transferable effort systems, that could accomplish the same objectives as individual fishing quota programs, as well as characteristics that are unique to individual fishing quota programs.

(4) The Secretary of Commerce shall, in consultation with the National Academy of Sciences, the Councils, the fishing industry, affected States, conservation organizations and other interested persons, establish two individual fishing quota review groups to assist in the preparation of the report, which shall represent: (A) Alaska, Hawaii, and the other Pacific coastal States; and (B) Atlantic coastal States and the Gulf of Mexico coastal States. The Secretary shall, to the extent practicable, achieve a balanced representation of viewpoints among the individuals on each review group. The review groups shall be deemed to be advisory panels under section 302(g) of the Magnuson Fishery Conservation and Management Act, as amended by this Act.

Establishment.

(5) The Secretary of Commerce, in consultation with the National Academy of Sciences and the Councils, shall conduct public hearings in each Council region to obtain comments on individual fishing quotas for use by the National Academy of Sciences in preparing the report required by this subsection. The National Academy of Sciences shall submit a draft report to the Secretary of Commerce by January 1, 1998. The Secretary of Commerce shall publish in the Federal Register a notice and opportunity for public comment on the draft of the report, or any revision thereof. A detailed summary of comments received and views presented at the hearings, including any dissenting views, shall be included by the National Academy of Sciences in the final report.

Reports.
Federal Register,
publication.

(6) Section 210 of Public Law 104-134 is hereby repealed.

16 USC 1851
note.

(g) NORTH PACIFIC LOAN PROGRAM.—(1) By not later than October 1, 1997 the North Pacific Fishery Management Council shall recommend to the Secretary of Commerce a program which

uses the full amount of fees authorized to be used under section 303(d)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the halibut and sablefish fisheries off Alaska to guarantee obligations in accordance with such section.

(2)(A) For the purposes of this subsection, the phrase “fishermen who fish from small vessels” in section 303(d)(4)(A)(i) of such Act shall mean fishermen wishing to purchase individual fishing quotas for use from Category B, Category C, or Category D vessels, as defined in part 676.20(c) of title 50, Code of Federal Regulations (as revised as of October 1, 1995), whose aggregate ownership of individual fishing quotas will not exceed the equivalent of a total of 50,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made if the guarantee is approved, who will participate aboard the fishing vessel in the harvest of fish caught under such quotas, who have at least 150 days of experience working as part of the harvesting crew in any United States commercial fishery, and who do not own in whole or in part any Category A or Category B vessel, as defined in such part and title of the Code of Federal Regulations.

(B) For the purposes of this subsection, the phrase “entry level fishermen” in section 303(d)(4)(A)(ii) of such Act shall mean fishermen who do not own any individual fishing quotas, who wish to obtain the equivalent of not more than a total of 8,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made, and who will participate aboard the fishing vessel in the harvest of fish caught under such quotas.

(h) COMMUNITY DEVELOPMENT QUOTA REPORT.—Not later than October 1, 1998, the National Academy of Sciences, in consultation with the Secretary, the North Pacific and Western Pacific Councils, communities and organizations participating in the program, participants in affected fisheries, and the affected States, shall submit to the Secretary of Commerce and Congress a comprehensive report on the performance and effectiveness of the community development quota programs under the authority of the North Pacific and Western Pacific Councils. The report shall—

(1) evaluate the extent to which such programs have met the objective of providing communities with the means to develop ongoing commercial fishing activities;

(2) evaluate the manner and extent to which such programs have resulted in the communities and residents—

(A) receiving employment opportunities in commercial fishing and processing; and

(B) obtaining the capital necessary to invest in commercial fishing, fish processing, and commercial fishing support projects (including infrastructure to support commercial fishing);

(3) evaluate the social and economic conditions in the participating communities and the extent to which alternative private sector employment opportunities exist;

(4) evaluate the economic impacts on participants in the affected fisheries, taking into account the condition of the fishery resource, the market, and other relevant factors;

(5) recommend a proposed schedule for accomplishing the developmental purposes of community development quotas; and

(6) address such other matters as the National Academy of Sciences deems appropriate.

Reports.
16 USC 1855
note.

(i) **EXISTING QUOTA PLANS.**—Nothing in this Act or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

16 USC 1853
note.

SEC. 109. ACTION BY THE SECRETARY.

(a) **SECRETARIAL REVIEW OF PLANS AND REGULATIONS.**—Section 304 (16 U.S.C. 1854) is amended by striking subsections (a) and (b) and inserting the following:

“(a) **REVIEW OF PLANS.**—

“(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

“(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

“(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

Federal Register,
publication.

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

“(A) take into account the information, views, and comments received from interested persons;

“(B) consult with the Secretary of State with respect to foreign fishing; and

“(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

“(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

Notice.

“(A) the applicable law with which the plan or amendment is inconsistent;

“(B) the nature of such inconsistencies; and

“(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

“(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

“(5) For purposes of this subsection and subsection (b), the term ‘immediately’ means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

“(b) **REVIEW OF REGULATIONS.**—

“(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

Federal Register,
publication.

“(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

Notification.

“(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

“(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

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publication.

“(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.”.

(b) PREPARATION BY THE SECRETARY.—Section 304(c) (16 U.S.C. 1854(c)) is amended—

(1) by striking the subsection heading and inserting “PREPARATION AND REVIEW OF SECRETARIAL PLANS”;

(2) by striking “or” at the end of paragraph (1)(A);

(3) by striking all that follows “further revised plan” in paragraph (1) and inserting “or amendment; or”;

(4) by inserting after subparagraph (1)(B), as amended, the following new subparagraph:

“(C) the Secretary is given authority to prepare such plan or amendment under this section.”;

(5) by striking paragraph (2) and inserting:

“(2) In preparing any plan or amendment under this subsection, the Secretary shall—

“(A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and

“(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.”;

(6) by inserting “for a fishery under the authority of a Council” after “paragraph (1)” in paragraph (3);

(7) by striking “system described in section 303(b)(6)” in paragraph (3) and inserting “system, including any individual fishing quota program”; and

(8) by inserting after paragraph (3) the following new paragraphs:

“(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately—

“(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

“(B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

Federal Register,
publication.

“(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

“(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

“(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.”.

Regulations.

Federal Register,
publication.

(c) INDIVIDUAL FISHING QUOTA AND COMMUNITY DEVELOPMENT QUOTA FEES.—Section 304(d) (16 U.S.C. 1854(d)) is amended—

(1) by inserting “(1)” immediately before the first sentence; and

(2) by inserting at the end the following:

“(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any—

“(i) individual fishing quota program; and

“(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

“(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

“(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be

deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

“(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.”.

16 USC 1854
note.

(d) DELAY OF FEES.—Notwithstanding any other provision of law, the Secretary shall not begin the collection of fees under section 304(d)(2) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the surf clam and ocean (including mahogany) quahog fishery or in the wreckfish fishery until after January 1, 2000.

(e) OVERFISHING.—Section 304(e) (16 U.S.C. 1854(e)) is amended to read as follows:

“(e) REBUILDING OVERFISHED FISHERIES.—

Reports.

“(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council’s geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

Notification.

“(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

Federal Register,
publication.

“(3) Within one year of an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

“(A) to end overfishing in the fishery and to rebuild affected stocks of fish; or

“(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

“(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

“(A) specify a time period for ending overfishing and rebuilding the fishery that shall—

“(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

“(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

“(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

“(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

“(5) If, within the one-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

“(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

“(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

“(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

“(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.”

Notification.

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—Section 304(f) is amended by striking paragraph (3).

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—Section 304 (16 U.S.C. 1854) is amended further by striking subsection (g) and inserting the following:

“(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—(1) PREPARATION AND IMPLEMENTATION OF PLAN OR PLAN AMENDMENT.—The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall—

“(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

“(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

“(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

“(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

“(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

“(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

“(G) ensure that conservation and management measures under this subsection—

“(i) promote international conservation of the affected fishery;

“(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

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

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

“(2) CERTAIN FISH EXCLUDED FROM ‘BYCATCH’ DEFINITION.—Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d) that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.”

(h) COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY.—(1) The Secretary of Commerce shall—

(A) establish an advisory panel under section 302(g)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species;

(B) conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;

(C) to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and

(D) complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.

(2) Based on the study under paragraph (1)(D) and consistent with the requirements of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000.

(i) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—Section 304, as amended, is further amended by adding at the end the following:

“(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.”

(j) AMERICAN LOBSTER FISHERY.—Section 304(h) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, shall not apply to the American Lobster Fishery Management Plan.

16 USC 1854
note.

SEC. 110. OTHER REQUIREMENTS AND AUTHORITY.

(a) Section 305 (18 U.S.C. 1855) is amended—

(1) by striking the title and subsection (a);

(2) by redesignating subsection (b) as subsection (f); and

(3) by inserting the following before subsection (c):

“SEC. 305. OTHER REQUIREMENTS AND AUTHORITY.

“(a) GEAR EVALUATION AND NOTIFICATION OF ENTRY.—

“(1) Not later than 18 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries—

“(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 303(a); and

Federal Register,
publication.

	“(B) to which section 302(a)(3) applies and all fishing gear used in such fisheries.
Guidelines.	“(2) The Secretary shall include with such list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).
Effective date.	“(3) Effective 180 days after the publication of such list, no person or vessel may employ fishing gear or engage in a fishery not included on such list without giving 90 days advance written notice to the appropriate Council, or the Secretary with respect to a fishery to which section 302(a)(3) applies. A signed return receipt shall serve as adequate evidence of such notice and as the date upon which the 90-day period begins.
Publication.	“(4) A Council may submit to the Secretary any proposed changes to such list or such guidelines the Council deems appropriate. The Secretary shall publish a revised list, after notice and an opportunity for public comment, upon receiving any such proposed changes from a Council.
	“(5) A Council may request the Secretary to promulgate emergency regulations under subsection (c) to prohibit any persons or vessels from using an unlisted fishing gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary for fisheries to which section 302(a)(3) applies, determines that such unlisted gear or unlisted fishery would compromise the effectiveness of conservation and management efforts under this Act.
	“(6) Nothing in this subsection shall be construed to permit a person or vessel to engage in fishing or employ fishing gear when such fishing or gear is prohibited or restricted by regulation under a fishery management plan or plan amendment, or under other applicable law.
Regulations. Guidelines.	“(b) FISH HABITAT.—(1)(A) The Secretary shall, within 6 months of the date of enactment of the Sustainable Fisheries Act, establish by regulation guidelines to assist the Councils in the description and identification of essential fish habitat in fishery management plans (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat. The Secretary shall set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitat and for the review and updating of such identifications based on new scientific evidence or other relevant information.
	“(B) The Secretary, in consultation with participants in the fishery, shall provide each Council with recommendations and information regarding each fishery under that Council’s authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.
	“(C) The Secretary shall review programs administered by the Department of Commerce and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.
	“(D) The Secretary shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.
	“(2) Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed

to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.

“(3) Each Council—

“(A) may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and

“(B) shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority.

“(4)(A) If the Secretary receives information from a Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.

“(B) Within 30 days after receiving a recommendation under subparagraph (A), a Federal agency shall provide a detailed response in writing to any Council commenting under paragraph (3) and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.”

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

(1) in the heading by striking “ACTIONS” and inserting “ACTIONS AND INTERIM MEASURES”;

(2) in paragraphs (1) and (2)—

(A) by striking “involving” and inserting “or that interim measures are needed to reduce overfishing for”;

and

(B) by inserting “or interim measures” after “emergency regulations”;

(C) by inserting “or overfishing” after “emergency”;

and

(3) in paragraph (3)—

(A) by inserting “or interim measure” after “emergency regulation” each place such term appears;

(B) by striking subparagraph (B);

(C) by redesignating subparagraph (C) as subparagraph (D); and

(D) by inserting after subparagraph (A) the following:

“(B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 180 days, provided the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation

for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;

“(C) that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, *Provided*, That the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary’s action; and”.

16 USC 1855.

(c) Section 305(e) is amended—

(1) by striking “12291, dated February 17, 1981,” and inserting “12866, dated September 30, 1993,”; and

(2) by striking “subsection (c) or section 304(a) and (b)” and inserting “subsections (a), (b), and (c) of section 304”.

(d) Section 305, as amended, is further amended by adding at the end the following:

“(g) NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES.—

“(1)(A) In accordance with regulations promulgated by the Secretary pursuant to this paragraph, a Council may establish a fishery negotiation panel to assist in the development of specific conservation and management measures for a fishery under its authority. The Secretary may establish a fishery negotiation panel to assist in the development of specific conservation and management measures required for a fishery under section 304(e)(5), for a fishery for which the Secretary has authority under section 304(g), or for any other fishery with the approval of the appropriate Council.

Regulations.

“(B) No later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations establishing procedures, developed in cooperation with the Administrative Conference of the United States, for the establishment and operation of fishery negotiation panels. Such procedures shall be comparable to the procedures for negotiated rulemaking established by subchapter III of chapter 5 of title 5, United States Code.

Reports.

“(2) If a negotiation panel submits a report, such report shall specify all the areas where consensus was reached by the panel, including, if appropriate, proposed conservation and management measures, as well as any other information submitted by members of the negotiation panel. Upon receipt, the Secretary shall publish such report in the Federal Register for public comment.

Federal Register,
publication.

“(3) Nothing in this subsection shall be construed to require either a Council or the Secretary, whichever is appropriate, to use all or any portion of a report from a negotiation panel established under this subsection in the development of specific conservation and management measures for the fishery for which the panel was established.

“(h) CENTRAL REGISTRY SYSTEM FOR LIMITED ACCESS SYSTEM PERMITS.—

Establishment.

“(1) Within 6 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits estab-

lished under section 303(b)(6) or other Federal law, including individual fishing quotas, which shall provide for the registration of title to, and interests in, such permits, as well as for procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial or nonjudicial foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate by the Secretary. Such registry system shall—

“(A) provide a mechanism for filing notice of a nonjudicial foreclosure or enforcement of a judgment by which the holder of a senior security interest acquires or conveys ownership of a permit, and in the event of a nonjudicial foreclosure, by which the interests of the holders of junior security interests are released when the permit is transferred;

“(B) provide for public access to the information filed under such system, notwithstanding section 402(b); and

“(C) provide such notice and other requirements of applicable law that the Secretary deems necessary for an effective registry system.

“(2) The Secretary shall promulgate such regulations as may be necessary to carry out this subsection, after consulting with the Councils and providing an opportunity for public comment. The Secretary is authorized to contract with non-Federal entities to administer the central registry system.

“(3) To be effective and perfected against any person except the transferor, its heirs and devisees, and persons having actual notice thereof, all security interests, and all sales and other transfers of permits described in paragraph (1), shall be registered in compliance with the regulations promulgated under paragraph (2). Such registration shall constitute the exclusive means of perfection of title to, and security interests in, such permits, except for Federal tax liens thereon, which shall be perfected exclusively in accordance with the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.). The Secretary shall notify both the buyer and seller of a permit if a lien has been filed by the Secretary of the Treasury against the permit before collecting any transfer fee under paragraph (5) of this subsection.

“(4) The priority of security interests shall be determined in order of filing, the first filed having the highest priority. A validly-filed security interest shall remain valid and perfected notwithstanding a change in residence or place of business of the owner of record. For the purposes of this subsection, ‘security interest’ shall include security interests, assignments, liens and other encumbrances of whatever kind.

“(5)(A) Notwithstanding section 304(d)(1), the Secretary shall collect a reasonable fee of not more than one-half of one percent of the value of a limited access system permit upon registration of the title to such permit with the central registry system and upon the transfer of such registered title. Any such fee collected shall be deposited in the Limited Access System Administration Fund established under subparagraph (B).

“(B) There is established in the Treasury a Limited Access System Administration Fund. The Fund shall be available,

Public
information.

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without appropriation or fiscal year limitation, only to the Secretary for the purposes of—

- “(i) administering the central registry system; and
- “(ii) administering and implementing this Act in the fishery in which the fees were collected. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.”.

16 USC 1855
note.

(e) **REGISTRY TRANSITION.**—Security interests on permits described under section 305(h)(1) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, that are effective and perfected by otherwise applicable law on the date of the final regulations implementing section 305(h) shall remain effective and perfected if, within 120 days after such date, the secured party submits evidence satisfactory to the Secretary of Commerce and in compliance with such regulations of the perfection of such security.

SEC. 111. PACIFIC COMMUNITY FISHERIES.

(a) **HAROLD SPARCK MEMORIAL COMMUNITY DEVELOPMENT QUOTA PROGRAM.**—Section 305, as amended, is amended further by adding at the end:

“(i) **ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS.**—

Establishment.

“(1)(A) The North Pacific Council and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program.

“(B) To be eligible to participate in the western Alaska community development quota program under subparagraph (A) a community shall—

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

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

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

“(iv) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to be a Native village;

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

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

“(C)(i) Prior to October 1, 2001, the North Pacific Council may not submit to the Secretary any fishery management plan,

plan amendment, or regulation that allocates to the western Alaska community development quota program a percentage of the total allowable catch of any Bering Sea fishery for which, prior to October 1, 1995, the Council had not approved a percentage of the total allowable catch for allocation to such community development quota program. The expiration of any plan, amendment, or regulation that meets the requirements of clause (ii) prior to October 1, 2001, shall not be construed to prohibit the Council from submitting a revision or extension of such plan, amendment, or regulation to the Secretary if such revision or extension complies with the other requirements of this paragraph.

“(ii) With respect to a fishery management plan, plan amendment, or regulation for a Bering Sea fishery that—

“(I) allocates to the western Alaska community development quota program a percentage of the total allowable catch of such fishery; and

“(II) was approved by the North Pacific Council prior to October 1, 1995;

the Secretary shall, except as provided in clause (iii) and after approval of such plan, amendment, or regulation under section 304, allocate to the program the percentage of the total allowable catch described in such plan, amendment, or regulation. Prior to October 1, 2001, the percentage submitted by the Council and approved by the Secretary for any such plan, amendment, or regulation shall be no greater than the percentage approved by the Council for such fishery prior to October 1, 1995.

“(iii) The Secretary shall phase in the percentage for community development quotas approved in 1995 by the North Pacific Council for the Bering Sea crab fisheries as follows:

“(I) 3.5 percent of the total allowable catch of each such fishery for 1998 shall be allocated to the western Alaska community development quota program;

“(II) 5 percent of the total allowable catch of each such fishery for 1999 shall be allocated to the western Alaska community development quota program; and

“(III) 7.5 percent of the total allowable catch of each such fishery for 2000 and thereafter shall be allocated to the western Alaska community development quota program, unless the North Pacific Council submits and the Secretary approves a percentage that is no greater than 7.5 percent of the total allowable catch of each such fishery for 2001 or the North Pacific Council submits and the Secretary approves any other percentage on or after October 1, 2001.

“(D) This paragraph shall not be construed to require the North Pacific Council to resubmit, or the Secretary to reapprove, any fishery management plan or plan amendment approved by the North Pacific Council prior to October 1, 1995, that includes a community development quota program, or any regulations to implement such plan or amendment.

“(2)(A) The Western Pacific Council and the Secretary may establish a western Pacific community development program for any fishery under the authority of such Council in order to provide access to such fishery for western Pacific communities that participate in the program.

“(B) To be eligible to participate in the western Pacific community development program, a community shall—

“(i) be located within the Western Pacific Regional Fishery Management Area;

“(ii) meet criteria developed by the Western Pacific Council, approved by the Secretary and published in the Federal Register;

“(iii) consist of community residents who are descended from the aboriginal people indigenous to the area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the Western Pacific region;

“(iv) not have previously developed harvesting or processing capability sufficient to support substantial participation in fisheries in the Western Pacific Regional Fishery Management Area; and

“(v) develop and submit a Community Development Plan to the Western Pacific Council and the Secretary.

“(C) In developing the criteria for eligible communities under subparagraph (B)(ii), the Western Pacific Council shall base such criteria on traditional fishing practices in or dependence on the fishery, the cultural and social framework relevant to the fishery, and economic barriers to access to the fishery.

“(D) For the purposes of this subsection ‘Western Pacific Regional Fishery Management Area’ means the area under the jurisdiction of the Western Pacific Council, or an island within such area.

“(E) Notwithstanding any other provision of this Act, the Western Pacific Council shall take into account traditional indigenous fishing practices in preparing any fishery management plan.

“(3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

“(4) After the date of enactment of the Sustainable Fisheries Act, the North Pacific Council and Western Pacific Council may not submit to the Secretary a community development quota program that is not in compliance with this subsection.”.

16 USC 1855
note.

(b) WESTERN PACIFIC DEMONSTRATION PROJECTS.—(1) The Secretary of Commerce and the Secretary of the Interior are authorized to make direct grants to eligible western Pacific communities, as recommended by the Western Pacific Fishery Management Council, for the purpose of establishing not less than three and not more than five fishery demonstration projects to foster and promote traditional indigenous fishing practices. The total amount of grants awarded under this subsection shall not exceed \$500,000 in each fiscal year.

(2) Demonstration projects funded pursuant to this subsection shall foster and promote the involvement of western Pacific communities in western Pacific fisheries and may—

(A) identify and apply traditional indigenous fishing practices;

(B) develop or enhance western Pacific community-based fishing opportunities; and

(C) involve research, community education, or the acquisition of materials and equipment necessary to carry out any such demonstration project.

(3)(A) The Western Pacific Fishery Management Council, in consultation with the Secretary of Commerce, shall establish an advisory panel under section 302(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(g)) to evaluate, determine the relative merits of, and annually rank applications for such grants. The panel shall consist of not more than 8 individuals who are knowledgeable or experienced in traditional indigenous fishery practices of western Pacific communities and who are not members or employees of the Western Pacific Fishery Management Council.

(B) If the Secretary of Commerce or the Secretary of the Interior awards a grant for a demonstration project not in accordance with the rank given to such project by the advisory panel, the Secretary shall provide a detailed written explanation of the reasons therefor.

(4) The Western Pacific Fishery Management Council shall, with the assistance of such advisory panel, submit an annual report to the Congress assessing the status and progress of demonstration projects carried out under this subsection.

Reports.

(5) Appropriate Federal agencies may provide technical assistance to western Pacific community-based entities to assist in carrying out demonstration projects under this subsection.

(6) For the purposes of this subsection, 'western Pacific community' shall mean a community eligible to participate under section 305(i)(2)(B) of the Magnuson Fishery Conservation and Management Act, as amended by this Act.

SEC. 112. STATE JURISDICTION.

(a) Paragraph (3) of section 306(a) (16 U.S.C. 1856(a)) is amended to read as follows:

“(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

“(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

“(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not

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apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

“(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this Act is approved and implemented for such fishery.”

Termination
date.

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

“(3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).”

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

(1) by striking “(4)(C); and” in subparagraph (A) and inserting “(4)(C) or has received a permit under section 204(d);”;

(2) by striking the period at the end of subparagraph (B) and inserting a semicolon and the word “and”; and

(3) by inserting after subparagraph (B) the following:

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“(C) the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.”

16 USC 1856
note.

(d) INTERIM AUTHORITY FOR DUNGENESS CRAB.—(1) Subject to the provisions of this subsection and notwithstanding section 306(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(a)), the States of Washington, Oregon, and California may each enforce State laws and regulations governing fish harvesting and processing against any vessel operating in the exclusive economic zone off each respective State in a fishery for Dungeness crab (*Cancer magister*) for which there is no fishery management plan implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

Applicability.

(2) Any law or regulation promulgated under this subsection shall apply equally to vessels operating in the exclusive economic zone and adjacent State waters and shall be limited to—

(A) establishment of season opening and closing dates, including presoak dates for crab pots;

(B) setting of minimum sizes and crab meat recovery rates;

(C) restrictions on the retention of crab of a certain sex; and

(D) closure of areas or pot limitations to meet the harvest requirements arising under the jurisdiction of United States v. Washington, subproceeding 89-3.

(3) With respect to the States of Washington, Oregon, and California—

(A) any State law limiting entry to a fishery subject to regulation under this subsection may not be enforced against a vessel that is operating in the exclusive economic zone off that State and is not registered under the law of that State, if the vessel is otherwise legally fishing in the exclusive economic zone, except that State laws regulating landings may be enforced; and

(B) no vessel may harvest or process fish which is subject to regulation under this subsection unless under an appropriate State permit or pursuant to a Federal court order.

(4) The authority provided under this subsection to regulate the Dungeness crab fishery shall terminate on October 1, 1999, or when a fishery management plan is implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) for such fishery, whichever date is earlier.

(5) Nothing in this subsection shall reduce the authority of any State, as such authority existed on July 1, 1996, to regulate fishing, fish processing, or landing of fish.

(6)(A) It is the sense of Congress that the Pacific Fishery Management Council, at the earliest practicable date, should develop and submit to the Secretary fishery management plans for shellfish fisheries conducted in the geographic area of authority of the Council, especially Dungeness crab, which are not subject to a fishery management plan on the date of enactment of this Act.

(B) Not later than December 1, 1997, the Pacific Fishery Management Council shall provide a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives describing the progress in developing the fishery management plans referred to in subparagraph (A) and any impediments to such progress.

Termination
date.

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SEC. 113. PROHIBITED ACTS.

(a) Section 307(1)(J)(i) (16 U.S.C. 1857(1)(J)(i)) is amended—

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

(2) by inserting before the semicolon the following: “, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.)”.

(b) Section 307(1)(K) (16 U.S.C. 1857(1)(K)) is amended—

(1) by striking “knowingly steal or without authorization, to” and inserting “to steal or attempt to steal or to negligently and without authorization”; and

(2) by striking “gear, or attempt to do so,” and insert “gear;”.

(c) Section 307(1)(L) (16 U.S.C. 1857(1)(L)) is amended to read as follows:

“(L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act;”.

(d) Section 307(1) (16 U.S.C. 1857(1)) is amended—

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

(2) by striking “pollock.” in subparagraph (N) and inserting “pollock; or”; and

(3) by adding at the end the following:

“(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A).”.

(e) Section 307(2)(A) (16 U.S.C. 1857(2)(A)) is amended to read as follows:

“(A) in fishing within the boundaries of any State, except—

“(i) recreational fishing permitted under section 201(i);

“(ii) fish processing permitted under section 306(c);

or

“(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);”.

(f) Section 307(2)(B) (16 U.S.C. 1857(2)(B)) is amended—

(1) by striking “(j)” and inserting “(i)”; and

(2) by striking “204(b) or (c)” and inserting “204(b), (c), or (d)”.

(g) Section 307(3) (16 U.S.C. 1857(3)) is amended to read as follows:

“(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(d) or section 306(c) to receive such fish;”.

(h) Section 307(4) (16 U.S.C. 1857(4)) is amended by inserting “or within the boundaries of any State” after “zone”.

SEC. 114. CIVIL PENALTIES AND PERMIT SANCTIONS; REBUTTABLE PRESUMPTIONS.

(a) Section 308(a) (16 U.S.C. 1858(a)) is amended by striking “ability to pay,” and adding at the end the following new sentence: “In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, *Provided*, That the information is served on the Secretary at least 30 days prior to an administrative hearing.”.

(b) The first sentence of section 308(b) (16 U.S.C. 1858(b)) is amended to read as follows: “Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate dis-

trict by filing a complaint against the Secretary in such court within 30 days from the date of such order.”.

(c) Section 308(g)(1)(C) (16 U.S.C. 1858(g)(1)(C)) is amended by striking the matter from “or (C) any” through “overdue,” and inserting the following: “(C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue.”.

(d) Section 310(e) (16 U.S.C. 1860(e)) is amended by adding at the end the following new paragraph:

“(3) For purposes of this Act, it shall be a rebuttable presumption that any vessel that is shoreward of the outer boundary of the exclusive economic zone of the United States or beyond the exclusive economic zone of any nation, and that has gear on board that is capable of use for large-scale driftnet fishing, is engaged in such fishing.”.

SEC. 115. ENFORCEMENT.

(a) The second sentence of section 311(d) (16 U.S.C. 1861(d)) is amended—

(1) by striking “Guam, any Commonwealth, territory, or” and inserting “Guam or any”; and

(2) by inserting a comma before the period and the following: “and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands”.

(b) Section 311(e)(1) (16 U.S.C. 1861(e)(1)) is amended—

(1) by striking “fishery” each place it appears and inserting “marine”;

(2) by inserting “of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount,” after “reward” in subparagraph (B), and

(3) by striking subparagraph (E) and inserting the following:

“(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), as made applicable by section 310(c) of this Act or by any other marine resource law enforced by the Secretary, to seizures made by the Secretary, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and”.

(c) Section 311(e)(2) (16 U.S.C. 1861(e)(2)) is amended to read as follows:

“(2) Any person found in an administrative or judicial proceeding to have violated this Act or any other marine resource law enforced by the Secretary shall be liable for the cost incurred in the sale, storage, care, and maintenance of any fish or other property lawfully seized in connection with the violation.”.

(d) Section 311 (16 U.S.C. 1861) is amended by redesignating subsection (g) as subsection (h), and by inserting the following after subsection (f):

“(g) ENFORCEMENT IN THE PACIFIC INSULAR AREAS.—The Secretary, in consultation with the Governors of the Pacific Insular Areas and the Western Pacific Council, shall to the extent practicable support cooperative enforcement agreements between Federal and Pacific Insular Area authorities.”

(e) Section 311 (16 U.S.C. 1861), as amended by subsection (d), is amended by striking “201(b), (c),” in subsection (i)(1), as redesignated, and inserting “201(b) or (c), or section 204(d),”.

SEC. 116. TRANSITION TO SUSTAINABLE FISHERIES.

16 USC 1861a.

(a) Section 312 is amended to read as follows:

“SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.

“(a) FISHERIES DISASTER RELIEF.—(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

“(A) natural causes;

“(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures; or

“(C) undetermined causes.

“(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

“(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

“(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 1996, 1997, 1998, and 1999.

“(b) FISHING CAPACITY REDUCTION PROGRAM.—(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, or the Governor of a State for fisheries under State authority, may conduct a fishing capacity reduction program (referred to in this section as the ‘program’) in a fishery if the Secretary determines that the program—

“(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

“(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan—

Appropriation
authorization.

“(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

“(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

“(C) is cost-effective and capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

“(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay—

“(A) the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or

“(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.

“(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

“(4) The Secretary shall consult, as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

“(c) PROGRAM FUNDING.—(1) The program may be funded by any combination of amounts—

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

“(B) appropriated for the purposes of this section;

“(C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

“(D) provided from any State or other public sources or private or non-profit organizations.

“(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

“(d) INDUSTRY FEE SYSTEM.—(1)(A) If an industry fee system is necessary to fund the program, the Secretary, at the request of the appropriate Council, may conduct a referendum on such

system. Prior to the referendum, the Secretary, in consultation with the Council, shall—

Notification.

“(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

“(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

“(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute a two-thirds majority of the participants voting.

“(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees for a program established under this section shall—

“(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

“(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

“(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish; and

“(D) be in effect only until such time as the debt obligation has been fully paid.

Federal Register, publication.

“(e) IMPLEMENTATION PLAN.—(1) The Secretary, in consultation with the appropriate Council or State and other interested parties, shall prepare and publish in the Federal Register for a 60-day public comment period an implementation plan, including proposed regulations, for each program. The implementation plan shall—

“(A) define criteria for determining types and numbers of vessels which are eligible for participation in the program taking into account characteristics of the fishery, the requirements of applicable fishery management plans, the needs of fishing communities, and the need to minimize program costs; and

“(B) establish procedures for program participation (such as submission of owner bid under an auction system or fair market-value assessment) including any terms and conditions for participation which the Secretary deems to be reasonably necessary to meet the goals of the program.

“(2) During the 60-day public comment period—

Public information.

“(A) the Secretary shall conduct a public hearing in each State affected by the program; and

“(B) the appropriate Council or State shall submit its comments and recommendations, if any, regarding the plan and regulations.

Federal Register, publication.

“(3) Within 45 days after the close of the public comment period, the Secretary, in consultation with the appropriate Council or State, shall analyze the public comment received and publish in the Federal Register a final implementation plan for the program

and regulations for its implementation. The Secretary may not adopt a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a referendum under this section.”.

(b) **STUDY OF FEDERAL INVESTMENT.**—The Secretary of Commerce shall establish a task force comprised of interested parties to study and report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives within 2 years of the date of enactment of this Act on the role of the Federal Government in—

Establishment.
Reports.
16 USC 1861a
note.

(1) subsidizing the expansion and contraction of fishing capacity in fishing fleets managed under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

(2) otherwise influencing the aggregate capital investments in fisheries.

(c) Section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c3(b)(1)(A)) is amended—

15 USC 713c-3.

(1) by striking “and” at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting a semicolon and the word “and”; and

(3) by adding at the end the following new clause:

“(iv) to fund the Federal share of a fishing capacity reduction program established under section 312 of the Magnuson Fishery Conservation and Management Act; and”.

SEC. 117. NORTH PACIFIC AND NORTHWEST ATLANTIC OCEAN FISHERIES.

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

(1) by striking “RESEARCH PLAN” in the section heading and inserting “CONSERVATION”;

(2) in subsection (a) by striking “North Pacific Fishery Management Council” and inserting “North Pacific Council”; and

(3) by adding at the end the following:

“(f) **BYCATCH REDUCTION.**—In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

“(g) **BYCATCH REDUCTION INCENTIVES.**—(1) Notwithstanding section 304(d), the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this Act, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed \$25,000 per vessel per season. Any fines collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.

“(2)(A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, *Provided*, That—

“(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

“(ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.

“(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

“(h) CATCH MEASUREMENT.—(1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.

“(2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

Reports.

“(i) FULL RETENTION AND UTILIZATION.—(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

“(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, ‘processing waste’ means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.”.

(b) NORTHWEST ATLANTIC OCEAN FISHERIES.—Section 314 (16 U.S.C. 1863) is amended by striking “1997” in subsection (a)(4) and inserting “1999”.

TITLE II—FISHERY MONITORING AND RESEARCH

SEC. 201. CHANGE OF TITLE.

The heading of title IV (16 U.S.C. 1881 et seq.) is amended to read as follows:

“TITLE IV—FISHERY MONITORING AND RESEARCH”.

SEC. 202. REGISTRATION AND INFORMATION MANAGEMENT.

Title IV (16 U.S.C. 1881 et seq.) is amended by inserting after the title heading the following:

“SEC. 401. REGISTRATION AND INFORMATION MANAGEMENT.

16 USC 1881.

“(a) STANDARDIZED FISHING VESSEL REGISTRATION AND INFORMATION MANAGEMENT SYSTEM.—The Secretary shall, in cooperation with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, develop recommendations for implementation of a standardized fishing vessel registration and information management system on a regional basis. The recommendations shall be developed after consultation with interested governmental and nongovernmental parties and shall—

“(1) be designed to standardize the requirements of vessel registration and information collection systems required by this Act, the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), and any other marine resource law implemented by the Secretary, and, with the permission of a State, any marine resource law implemented by such State;

“(2) integrate information collection programs under existing fishery management plans into a non-duplicative information collection and management system;

“(3) avoid duplication of existing State, tribal, or Federal systems and shall utilize, to the maximum extent practicable, information collected from existing systems;

“(4) provide for implementation of the system through cooperative agreements with appropriate State, regional, or tribal entities and Marine Fisheries Commissions;

“(5) provide for funding (subject to appropriations) to assist appropriate State, regional, or tribal entities and Marine Fisheries Commissions in implementation;

“(6) establish standardized units of measurement, nomenclature, and formats for the collection and submission of information;

“(7) minimize the paperwork required for vessels registered under the system;

“(8) include all species of fish within the geographic areas of authority of the Councils and all fishing vessels including charter fishing vessels, but excluding recreational fishing vessels;

“(9) require United States fish processors, and fish dealers and other first ex-vessel purchasers of fish that are subject to the proposed system, to submit information (other than economic information) which may be necessary to meet the goals of the proposed system; and

“(10) include procedures necessary to ensure—

“(A) the confidentiality of information collected under this section in accordance with section 402(b); and

“(B) the timely release or availability to the public of information collected under this section consistent with section 402(b).

“(b) FISHING VESSEL REGISTRATION.—The proposed registration system should, at a minimum, obtain the following information for each fishing vessel—

“(1) the name and official number or other identification, together with the name and address of the owner or operator or both;

“(2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation (catcher, catcher processor, or other), and such other pertinent information with respect to vessel characteristics as the Secretary may require; and

“(3) identification (by species, gear type, geographic area of operations, and season) of the fisheries in which the fishing vessel participates.

“(c) FISHERY INFORMATION.—The proposed information management system should, at a minimum, provide basic fisheries performance information for each fishery, including—

“(1) the number of vessels participating in the fishery including charter fishing vessels;

“(2) the time period in which the fishery occurs;

“(3) the approximate geographic location or official reporting area where the fishery occurs;

“(4) a description of fishing gear used in the fishery, including the amount and type of such gear and the appropriate unit of fishing effort; and

“(5) other information required under subsection 303(a)(5) or requested by the Council under section 402.

“(d) USE OF REGISTRATION.—Any registration recommended under this section shall not be considered a permit for the purposes of this Act, and the Secretary may not propose to revoke, suspend, deny, or impose any other conditions or restrictions on any such registration or the use of such registration under this Act.

Federal Register,
publication.

“(e) PUBLIC COMMENT.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register for a 60-day public comment period a proposal that would provide for implementation of a standardized fishing vessel registration and information collection system that meets the requirements of subsections (a) through (c). The proposal shall include—

“(1) a description of the arrangements of the Secretary for consultation and cooperation with the department in which the Coast Guard is operating, the States, the Councils, Marine Fisheries Commissions, the fishing industry and other interested parties; and

“(2) any proposed regulations or legislation necessary to implement the proposal.

Proposals.

“(f) CONGRESSIONAL TRANSMITTAL.—Within 60 days after the end of the comment period and after consideration of comments received under subsection (e), the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a recommended proposal for implementation of a national fishing vessel registration system that includes—

“(1) any modifications made after comment and consultation;

“(2) a proposed implementation schedule, including a schedule for the proposed cooperative agreements required under subsection (a)(4); and

“(3) recommendations for any such additional legislation as the Secretary considers necessary or desirable to implement the proposed system.

“(g) REPORT TO CONGRESS.—Within 15 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall report to Congress on the need to include recreational fishing vessels into a national fishing vessel registration and information collection system. In preparing its report, the Secretary shall cooperate with the Secretary of the department in which the Coast Guard is operating, the States, the Councils, and Marine Fisheries Commissions, and consult with governmental and nongovernmental parties.”

SEC. 203. INFORMATION COLLECTION.

Section 402 is amended to read as follows:

16 USC 1881a.

“SEC. 402. INFORMATION COLLECTION.

“(a) COUNCIL REQUESTS.—If a Council determines that additional information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after receipt of that request.

Regulations.

“(b) CONFIDENTIALITY OF INFORMATION.—(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—

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

“(B) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

“(C) when required by court order;

“(D) when such information is used to verify catch under an individual fishing quota program;

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

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

Regulations.

“(2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

Regulations.

“(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

“(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

“(d) CONTRACTING AUTHORITY.—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

“(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

“(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

“(e) RESOURCE ASSESSMENTS.—(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

“(2) The Secretary, in consultation with the appropriate Council and the fishing industry—

“(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

“(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

“(C) may permit fish harvested during such survey to count toward a vessel’s catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel’s participation in a fishery that counted under the plan for purposes of determining catch history.

“(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.”.

SEC. 204. OBSERVERS.

Section 403 is amended to read as follows:

16 USC 1881b

“SEC. 403. OBSERVERS.

“(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

Regulations.

“(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

“(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

“(b) **TRAINING.**—The Secretary, in cooperation with the appropriate States and the National Sea Grant College Program, shall—

“(1) establish programs to ensure that each observer receives adequate training in collecting and analyzing the information necessary for the conservation and management purposes of the fishery to which such observer is assigned;

“(2) require that an observer demonstrate competence in fisheries science and statistical analysis at a level sufficient to enable such person to fulfill the responsibilities of the position;

“(3) ensure that an observer has received adequate training in basic vessel safety; and

“(4) make use of university and any appropriate private nonprofit organization training facilities and resources, where possible, in carrying out this subsection.

“(c) **OBSERVER STATUS.**—An observer on a vessel and under contract to carry out responsibilities under this Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall be deemed to be a Federal employee for the purpose of compensation under the Federal Employee Compensation Act (5 U.S.C. 8101 et seq.).”.

SEC. 205. FISHERIES RESEARCH.

Section 404 is amended to read as follows:

16 USC 1881c.

“SEC. 404. FISHERIES RESEARCH.

“(a) **IN GENERAL.**—The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics and social characteristics of the fisheries.

Federal Register,
publication.

“(b) **STRATEGIC PLAN.**—Within one year after the date of enactment of the Sustainable Fisheries Act, and at least every 3 years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the 5 years immediately following such publication. The plan shall—

“(1) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in subsection (c);

“(2) indicate goals and timetables for the program described in paragraph (1);

“(3) provide a role for commercial fishermen in such research, including involvement in field testing;

“(4) provide for collection and dissemination, in a timely manner, of complete and accurate information concerning fishing activities, catch, effort, stock assessments, and other research conducted under this section; and

“(5) be developed in cooperation with the Councils and affected States, and provide for coordination with the Councils, affected States, and other research entities.

“(c) **AREAS OF RESEARCH.**—Areas of research are as follows:

“(1) Research to support fishery conservation and management, including but not limited to, biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish, the identification of essential fish habitat, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other factors affecting the abundance and availability of fish.

“(2) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and any adverse effects on essential fish habitat and promote efficient harvest of target species.

“(3) Research on the fisheries, including the social, cultural, and economic relationships among fishing vessel owners, crew, United States fish processors, associated shoreside labor, seafood markets and fishing communities.

“(4) Information management research, including the development of a fishery information base and an information management system under section 401 that will permit the full use of information in the support of effective fishery conservation and management.

Federal Register,
publication.

“(d) **PUBLIC NOTICE.**—In developing the plan required under subsection (a), the Secretary shall consult with relevant Federal, State, and international agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the develop-

ment of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives.”.

SEC. 206. INCIDENTAL HARVEST RESEARCH.

Section 405 is amended to read as follows:

16 USC 1881d.

“SEC. 405. INCIDENTAL HARVEST RESEARCH.

“(a) **COLLECTION OF INFORMATION.**—Within nine months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall, after consultation with the Gulf Council and South Atlantic Council, conclude the collection of information in the program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils. Within the same time period, the Secretary shall make available to the public aggregated summaries of information collected prior to June 30, 1994 under such program.

Public
information.

“(b) **IDENTIFICATION OF STOCK.**—The program concluded pursuant to subsection (a) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

“(c) **COLLECTION AND ASSESSMENT OF SPECIFIC STOCK INFORMATION.**—For stocks of fish identified pursuant to subsection (b), with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

“(1) a program to collect and evaluate information on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

“(2) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

“(3) a program of information collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

“(d) **BYCATCH REDUCTION PROGRAM.**—Not later than 12 months after the enactment of the Sustainable Fisheries Act, the Secretary shall, in cooperation with affected interests, and based upon the best scientific information available, complete a program to—

“(1) develop technological devices and other changes in fishing operations necessary and appropriate to minimize the incidental mortality of bycatch in the course of shrimp trawl activity to the extent practicable, taking into account the level of bycatch mortality in the fishery on November 28, 1990;

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

“(3) assess whether it is practicable to utilize bycatch which is not avoidable.

“(e) **REPORT TO CONGRESS.**—The Secretary shall, within one year of completing the programs required by this section, submit a detailed report on the results of such programs to the Committee

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

“(f) IMPLEMENTATION CRITERIA.—To the extent practicable, any conservation and management measure implemented under this Act to reduce the incidental mortality of bycatch in the course of shrimp trawl fishing shall be consistent with—

“(1) measures applicable to fishing throughout the range in United States waters of the bycatch species concerned; and

“(2) the need to avoid any serious adverse environmental impacts on such bycatch species or the ecology of the affected area.”.

SEC. 207. MISCELLANEOUS RESEARCH.

(a) FISHERIES SYSTEMS RESEARCH.—Section 406 (16 U.S.C. 1882) is amended to read as follows:

“SEC. 406. FISHERIES SYSTEMS RESEARCH.

“(a) ESTABLISHMENT OF PANEL.—Not later than 180 days after the date of enactment of the Sustainable Fisheries Act, the Secretary shall establish an advisory panel under this Act to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities.

“(b) PANEL MEMBERSHIP.—The advisory panel shall consist of not more than 20 individuals and include—

“(1) individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems; and

“(2) representatives from the Councils, States, fishing industry, conservation organizations, or others with expertise in the management of marine resources.

“(c) RECOMMENDATIONS.—Prior to selecting advisory panel members, the Secretary shall, with respect to panel members described in subsection (b)(1), solicit recommendations from the National Academy of Sciences.

“(d) REPORT.—Within 2 years after the date of enactment of this Act, the Secretary shall submit to the Congress a completed report of the panel established under this section, which shall include—

“(1) an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities;

“(2) proposed actions by the Secretary and by the Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and

“(3) such other information as may be appropriate.

“(e) PROCEDURAL MATTER.—The advisory panel established under this section shall be deemed an advisory panel under section 302(g).”.

(b) GULF OF MEXICO RED SNAPPER RESEARCH.—Title IV of the Act (16 U.S.C. 1882) is amended by adding the following new section:

16 USC 1883.

“SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.

“(a) INDEPENDENT PEER REVIEW.—(1) Within 30 days of the date of enactment of the Sustainable Fisheries Act, the Secretary shall initiate an independent peer review to evaluate—

“(A) the accuracy and adequacy of fishery statistics used by the Secretary for the red snapper fishery in the Gulf of

Mexico to account for all commercial, recreational, and charter fishing harvests and fishing effort on the stock;

“(B) the appropriateness of the scientific methods, information, and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock and as the basis for the fishery management plan for the Gulf of Mexico red snapper fishery;

“(C) the appropriateness and adequacy of the management measures in the fishery management plan for red snapper in the Gulf of Mexico for conserving and managing the red snapper fishery under this Act; and

“(D) the costs and benefits of all reasonable alternatives to an individual fishing quota program for the red snapper fishery in the Gulf of Mexico.

“(2) The Secretary shall ensure that commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—

“(A) participate in the peer review under this subsection; and

“(B) provide information to the Secretary concerning the review of fishery statistics under this subsection without being subject to penalty under this Act or other applicable law for any past violation of a requirement to report such information to the Secretary.

“(3) The Secretary shall submit a detailed written report on the findings of the peer review conducted under this subsection to the Gulf Council no later than one year after the date of enactment of the Sustainable Fisheries Act.

Reports.

“(b) PROHIBITION.—In addition to the restrictions under section 303(d)(1)(A), the Gulf Council may not, prior to October 1, 2000, undertake or continue the preparation of any fishery management plan, plan amendment or regulation under this Act for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class.

“(c) REFERENDUM.—

“(1) On or after October 1, 2000, the Gulf Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class, only if the preparation of such plan, amendment, or regulation is approved in a referendum conducted under paragraph (2) and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum conducted under paragraph (2).

“(2) The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection.

The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996. Prior to each referendum, the Secretary, in consultation with the Council, shall—

Notification.

“(A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and

“(B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.

“(d) CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—

“(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and

“(2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.”.

16 USC 1881c
note.

SEC. 208. STUDY OF CONTRIBUTION OF BYCATCH TO CHARITABLE ORGANIZATIONS.

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

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

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

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

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

(c) BYCATCH DEFINED.—In this section the term “bycatch” has the meaning given that term in section 3 of the Magnuson Fishery Conservation and Management Act, as amended by section 102 of this Act.

SEC. 209. STUDY OF IDENTIFICATION METHODS FOR HARVEST STOCKS.

(a) IN GENERAL.—The Secretary of Commerce shall conduct a study to determine the best possible method of identifying various Atlantic and Pacific salmon and steelhead stocks in the ocean at time of harvest. The study shall include an assessment of—

(1) coded wire tags;

(2) fin clipping; and

(3) other identification methods.

(b) **REPORT.**—The Secretary shall report the results of the study, together with any recommendations for legislation deemed necessary based on the study, within 6 months after the date of enactment of this Act to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 210. REVIEW OF NORTHEAST FISHERY STOCK ASSESSMENTS.

The National Academy of Sciences, in consultation with regionally recognized fishery experts, shall conduct a peer review of Canadian and United States stock assessments, information collection methodologies, biological assumptions and projections, and other relevant scientific information used as the basis for conservation and management in the Northeast multispecies fishery. The National Academy of Sciences shall submit the results of such review to the Congress and the Secretary of Commerce no later than March 1, 1997.

SEC. 211. CLERICAL AMENDMENTS.

The table of contents is amended by striking the matter relating to title IV and inserting the following:

“Sec. 312. Transition to sustainable fisheries.

“Sec. 313. North Pacific fisheries conservation.

“Sec. 314. Northwest Atlantic Ocean fisheries reinvestment program.

“TITLE IV—FISHERY MONITORING AND RESEARCH

“Sec. 401. Registration and information management.

“Sec. 402. Information collection.

“Sec. 403. Observers.

“Sec. 404. Fisheries research.

“Sec. 405. Incidental harvest research.

“Sec. 406. Fisheries systems research.

“Sec. 407. Gulf of Mexico red snapper research.”.

TITLE III—FISHERIES FINANCING

Fisheries
Financing Act.

SEC. 301. SHORT TITLE.

This title may be cited as the “Fisheries Financing Act”.

46 USC app.
1245 note.

SEC. 302. INDIVIDUAL FISHING QUOTA LOANS.

(a) **AMENDMENT OF MERCHANT MARINE ACT, 1936.**—Section 1104A of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274) is amended—

(1) by striking “or” at the end of subsection (a)(5);

(2) by striking the period at the end of subsection (a)(6) and inserting a semicolon and “or”;

(3) by adding at the end of subsection (a) the following:

“(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).”; and

(4) by striking “paragraph (6)” in the last sentence of subsection (a) and inserting “paragraphs (6) and (7)”; and

(5) by striking “equal to” in the third proviso of subsection (b)(2) and inserting “not to exceed”.

(b) **PROHIBITION.**—Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased

46 USC app.
1274 note.

harvesting capacity within the United States exclusive economic zone.

SEC. 303. FISHERIES FINANCING AND CAPACITY REDUCTION.

(a) CAPACITY REDUCTION AND FINANCING AUTHORITY.—Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), is amended by adding at the end the following new sections:

46 USC app.
1279f.

“SEC. 1111. (a) The Secretary is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to such conditions as the Secretary deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

“(b) Any debt obligation guaranteed under this section shall—

“(1) be treated in the same manner and to the same extent as other obligations guaranteed under this title, except with respect to provisions of this title that by their nature cannot be applied to obligations guaranteed under this section;

“(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

“(3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;

“(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

“(5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2)) and as the exclusive payment security, the fishing fees established under the program; and

“(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

“(c)(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the ‘fund’). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

“(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section: *Provided*, That funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

“(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

“(d) The Secretary is authorized and directed to issue such regulations as the Secretary deems necessary to carry out this section.

“(e) For the purposes of this section, the term ‘program’ means a fishing capacity reduction program established under section 312 of the Magnuson Fishery Conservation and Management Act.

46 USC app.
1279g.

“SEC. 1112. (a) Notwithstanding any other provision of this title, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity

reduction program issued under this title after the date of enactment of the Sustainable Fisheries Act shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this title except with respect to provisions of this title which by their nature can only be applied to obligations guaranteed under this title.

“(b) Notwithstanding any other provisions of this title, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.”.

TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS

SEC. 401. MARINE FISH PROGRAM AUTHORIZATION OF APPROPRIATIONS.

(a) **FISHERIES INFORMATION COLLECTION AND ANALYSIS.**—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out fisheries information and analysis activities under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, \$51,800,000 for fiscal year 1997, and \$52,345,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, the collection, analysis, and dissemination of scientific information necessary for the management of living marine resources and associated marine habitat.

(b) **FISHERIES CONSERVATION AND MANAGEMENT OPERATIONS.**—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out activities relating to fisheries conservation and management operations under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, \$29,028,000 for fiscal year 1997, and \$29,899,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, development, implementation, and enforcement of conservation and management measures to achieve continued optimum use of living marine resources, hatchery operations, habitat conservation, and protected species management.

(c) **FISHERIES STATE AND INDUSTRY COOPERATIVE PROGRAMS.**—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out State and industry cooperative programs under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, \$27,932,000 for fiscal year 1997, and \$28,226,000 for each of the fiscal years 1998, 1999, and 2000. These activities include, but are not limited to, ensuring the quality and safety of seafood products and providing grants to States for improving the management of interstate fisheries.

(d) AUTHORIZATION OF APPROPRIATIONS FOR CHESAPEAKE BAY OFFICE.—Section 2(e) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) by striking “1992 and 1993” and inserting “1997 and 1998”;

(2) by striking “establish” and inserting “operate”;

(3) by striking “306” and inserting “307”; and

(4) by striking “1991” and inserting “1992”.

(e) RELATION TO OTHER LAWS.—Authorizations under this section shall be in addition to monies authorized under the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 3301 et seq.), the Anadromous Fish Conservation Act (16 U.S.C. 757 et seq.), and the Interjurisdictional Fisheries Act (16 U.S.C. 4107 et seq.).

Caritas Christi.

(f) NEW ENGLAND HEALTH PLAN.—The Secretary of Commerce is authorized to provide up to \$2,000,000 from previously appropriated funds to Caritas Christi for the implementation of a health care plan for fishermen in New England if Caritas Christi submits such plan to the Secretary no later than January 1, 1997, and the Secretary, in consultation with the Secretary of Health and Human Services, approves such plan.

SEC. 402. INTERJURISDICTIONAL FISHERIES ACT AMENDMENTS.

(a) REAUTHORIZATION.—Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) by amending subsection (a) to read as follows:

“(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

“(1) \$3,400,000 for fiscal year 1996;

“(2) \$3,900,000 for fiscal year 1997;

“(3) \$4,400,000 for each of the fiscal years 1998, 1999, and 2000.”;

(2) by striking “\$350,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, and \$600,000 for each of the fiscal years 1994 and 1995,” in subsection (c) and inserting “\$700,000 for fiscal year 1997, and \$750,000 for each of the fiscal years 1998, 1999, and 2000,”.

(b) NEW ENGLAND REPORT.—Section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)) is amended by adding at the end the following new paragraph:

“(7) With respect to funds available for the New England region, the Secretary shall submit to the Congress by January 1, 1997, with annual updates thereafter as appropriate, a report on the New England fishing capacity reduction initiative which provides—

“(A) the total number of Northeast multispecies permits in each permit category and calculates the maximum potential fishing capacity of vessels holding such permits based on the principal gear, gross registered tonnage, engine horsepower, length, age, and other relevant characteristics;

“(B) the total number of days at sea available to the permitted Northeast multispecies fishing fleet and the total

days at sea weighted by the maximum potential fishing capacity of the fleet;

“(C) an analysis of the extent to which the weighted days at sea are used by the active participants in the fishery and of the reduction in such days as a result of the fishing capacity reduction program; and

“(D) an estimate of conservation benefits (such as reduction in fishing mortality) directly attributable to the fishing capacity reduction program.”.

SEC. 403. ANADROMOUS FISHERIES AMENDMENTS.

Section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) is amended to read as follows:

“SEC. 4. (a)(1) There are authorized to be appropriated to carry out the purposes of this Act not to exceed the following sums:

Appropriation
authorization.

“(A) \$4,000,000 for fiscal year 1997; and

“(B) \$4,250,000 for each of fiscal years 1998, 1999, and 2000.

“(2) Sums appropriated under this subsection are authorized to remain available until expended.

“(b) Not more than \$625,000 of the funds appropriated under this section in any one fiscal year shall be obligated in any one State.”.

SEC. 404. ATLANTIC COASTAL FISHERIES AMENDMENTS.

(a) DEFINITION.—Paragraph (1) of section 803 of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5102) is amended—

(1) by inserting “and” after the semicolon in subparagraph (A);

(2) by striking “States; and” in subparagraph (B) and inserting “States.”; and

(3) by striking subparagraph (C).

(b) IMPLEMENTATION STANDARD FOR FEDERAL REGULATION.—Subparagraph (A) of section 804(b)(1) of such Act (16 U.S.C. 5103(b)(1)) is amended by striking “necessary to support” and inserting “compatible with”.

(c) AMERICAN LOBSTER MANAGEMENT.—Section 809 (16 U.S.C. 5108) and section 810 of such Act are redesignated as sections 811 and 812, respectively, and the following new sections are inserted at the end of section 808:

16 USC 1851
note.

“SEC. 809. STATE PERMITS VALID IN CERTAIN WATERS.

16 USC 5107a.

“(a) PERMITS.—Notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.), or any requirement of a fishery management plan or coastal fishery management plan to the contrary, a person holding a valid license issued by the State of Maine which lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American lobster in the following areas designated as Federal waters, if such fishing is conducted in such waters in accordance with all other applicable Federal and State regulations:

“(1) west of Monhegan Island in the area located north of the line 43° 42′ 08″ N, 69° 34′ 18″ W and 43° 42′ 15″ N, 69° 19′ 18″ W;

“(2) east of Monhegan Island in the area located west of the line 43° 44′ 00″ N, 69° 15′ 05″ W and 43° 48′ 10″ N, 69° 08′ 01″ W;

“(3) south of Vinalhaven in the area located west of the line 43° 52′ 21″ N, 68° 39′ 54″ W and 43° 48′ 10″ N, 69° 08′ 01″ W; and

“(4) south of Bois Bubert Island in the area located north of the line 44° 19′ 15″ N, 67° 49′ 30″ W and 44° 23′ 45″ N, 67° 40′ 33″ W.

“(b) ENFORCEMENT.—The exemption from Federal fishery permitting requirements granted by subsection (a) may be revoked or suspended by the Secretary in accordance with section 308(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858(g)) for violations of such Act or this Act.

16 USC 5107b.

“SEC. 810. TRANSITION TO MANAGEMENT OF AMERICAN LOBSTER FISHERY BY COMMISSION.

Regulations.

“(a) TEMPORARY LIMITS.—Notwithstanding any other provision of this Act or of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), if no regulations have been issued under section 804(b) of this Act by December 31, 1997, to implement a coastal fishery management plan for American lobster, then the Secretary shall issue interim regulations before March 1, 1998, that will prohibit any vessel that takes lobsters in the exclusive economic zone by a method other than pots or traps from landing lobsters (or any parts thereof) at any location within the United States in excess of—

“(1) 100 lobsters (or parts thereof) for each fishing trip of 24 hours or less duration (up to a maximum of 500 lobsters, or parts thereof, during any 5-day period); or

“(2) 500 lobsters (or parts thereof) for a fishing trip of 5 days or longer.

“(b) SECRETARY TO MONITOR LANDINGS.—Before January 1, 1998, the Secretary shall monitor, on a timely basis, landings of American lobster, and, if the Secretary determines that catches from vessels that take lobsters in the exclusive economic zone by a method other than pots or traps have increased significantly, then the Secretary may, consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801), and after opportunity for public comment and consultation with the Atlantic States Marine Fisheries Commission, implement regulations under section 804(b) of this Act that are necessary for the conservation of American lobster.

“(c) REGULATIONS TO REMAIN IN EFFECT UNTIL PLAN IMPLEMENTED.—Regulations issued under subsection (a) or (b) shall remain in effect until the Secretary implements regulations under section 804(b) of this Act to implement a coastal fishery management plan for American lobster.”

16 USC 5108.

“(d) AUTHORIZATION OF APPROPRIATIONS.—Section 810 of such Act, as amended by this Act, is amended further by striking “1996.” and inserting “1996, and \$7,000,000 for each of the fiscal years 1997, 1998, 1999, and 2000.”

SEC. 405. TECHNICAL AMENDMENTS TO MARITIME BOUNDARY AGREEMENT.

Effective date.
16 USC 1802
note.

“(a) EXECUTION OF PRIOR AMENDMENTS TO DEFINITIONS.—Notwithstanding section 308 of the Act entitled “An Act to provide for the designation of the Flower Garden Banks National Marine

Sanctuary”, approved March 9, 1992 (Public Law 102-251; 106 Stat. 66) hereinafter referred to as the “FGB Act”, section 301(b) of that Act (adding a definition of the term “special areas”) shall take effect on the date of enactment of this Act.

(b) CONFORMING AMENDMENTS.—

(1) Section 301(h)(2)(A) of the FGB Act is repealed.

16 USC 1857.

(2) Section 304 of the FGB Act is repealed.

16 USC 1362.

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

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

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

“(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

“(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.”.

SEC. 406. AMENDMENTS TO THE FISHERIES ACT.

Section 309(b) of the Fisheries Act of 1995 (Public Law 104-43) is amended by striking “July 1, 1996” and inserting “July 1, 1997”.

16 USC 971c
note.

Approved October 11, 1996.

LEGISLATIVE HISTORY—S. 39 (H.R. 39):

HOUSE REPORTS: No. 104-171 accompanying H.R. 39 (Comm. on Resources).

SENATE REPORTS: No. 104-276 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 142 (1996):

Sept. 18, 19, considered and passed Senate.

Sept. 27, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

Oct. 11, Presidential statement.

Notices

Federal Register

Vol. 74, No. 149

Wednesday, August 5, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act

August 3, 2009.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Directive to the Commissioner of U.S. Customs and Border Protection.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Burkina Faso shall be treated as “handloomed and handmade articles” and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Burkina Faso with an appropriate visa will qualify for duty-free treatment.

EFFECTIVE DATE: August 5, 2009.

FOR FURTHER INFORMATION CONTACT: Don Niewiarowski, Jr., International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Sections 112(a) and 112(b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (“AGOA”), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) (“AGOA Acceleration Act”) (19 U.S.C. §§ 3721(a) and (b)(6)); Sections 2 and 5 of Executive Order No. 13191 of January 17, 2001; Sections 25-27 and Paras. 13-14 of Presidential Proclamation 7912 of June 29, 2005.

AGOA provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including handloomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. The AGOA Acceleration Act further

expanded AGOA by adding ethnic printed fabrics to the list of textile and apparel products made in the beneficiary sub-Saharan African countries that may be eligible for the preferential treatment described in section 112(a) of the AGOA. In Executive Order 13191 (January 17, 2001) and Presidential Proclamation 7912 (June 29, 2005), the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, folklore articles, or ethnic printed fabrics. See 66 FR 7271, 7271-72 (January 22, 2001) and 70 FR 37959, 37961 & 63 (June 30, 2005).

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA. See 66 FR 7837. The first digit of the visa number corresponds to one of the groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping “9” is reserved for handmade, handloomed, folklore articles, or ethnic printed fabrics.

CITA consulted with Burkina Faso authorities on July 21, 2009 and has determined that handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, place mats, and tablecloths), and handmade articles made from fabrics handloomed in Burkina Faso, if produced in and exported from Burkina Faso, are eligible for preferential tariff treatment under section 112(a) of the AGOA, as amended. After further consultations with Burkina Faso authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles. In the letter published below, CITA directs the Commissioner of U.S. Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if

accompanied by an appropriate “AGOA visa in grouping 9.”

Maria D’Andrea,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 3, 2009.

Commissioner,
U.S. Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (“CITA”), pursuant to Sections 112(a) and (b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (“AGOA”), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) (“AGOA Acceleration Act”) (19 U.S.C. §§ 3721(a) and (b)(6)), Executive Order No. 13191 of January 17, 2001, and Presidential Proclamation 7912 of June 29, 2005, has determined, effective on August 5, 2009, that the following articles shall be treated as “handloomed, handmade, folklore articles under the AGOA: handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, placemats, and tablecloths), and handmade articles made from handloomed fabrics, if made in Burkina Faso from fabric handloomed in Burkina Faso. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping “9”, in accordance with the provisions of the Visa Arrangement between the Government of Burkina Faso and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After further consultations with Burkina Faso authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles.

Maria D’Andrea,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E9-18839 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-DS

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Dealer and Interview Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 5, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Turner, (305) 361-4482 or Steve.Turner@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishery quotas are established for many species in the fishery management plans developed by both the Gulf of Mexico Reef Fish Fishery Management Council and the South Atlantic Fishery Management Council. The Southeast Fisheries Science Center has been delegated the responsibility to monitor these quotas. To do so in a timely manner, seafood dealers that handle these species are required to report the purchases (landings) of these species. The frequency of these reporting requirements varies depending on the magnitude of the quota (*i.e.*, lower quota usually require more frequent reporting) and the intensity of fishing effort. The most common reporting frequency is twice a month; however, some fishery quotas, *e.g.*, the mackerel gill net, necessitate weekly or by the trip.

In addition, information collection included in this family of forms includes interview with fishermen to gather information on the fishing effort, location and type of gear used on individual trips. This data collection is conducted for a subsample of the fishing trips and vessel/trips in selected commercial fisheries in the Southeast region. Fishing trips and individuals are selected at random to provide a viable statistical sample. These data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations.

II. Method of Collection

Dealer reports may be e-mailed, faxed or mailed. Information from fisherman is obtained by face-to-face interviews.

III. Data

OMB Control Number: 0648-0013.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 13,755.

Estimated Time per Response: Fifteen minutes for a dealer report in the golden crab, rock shrimp and Puerto Rican prohibited coral dealers; 5 minutes for a dealer quota monitoring report in the Coastal Fisheries and mackerel fisheries; 5 minutes for an annual vessel interview; 10 minutes for other interviews; 10 minutes for a dealer and vessel report in the eastern Gulf of Mexico runaround gill mackerel fishery; and 5 minutes for a wreckfish dealer report.

Estimated Total Annual Burden Hours: 1,659.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-18670 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Information for Share Transfer in the Wreckfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 5, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rich Malinowski, (727) 824-5305 or rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) Southeast Region manages the wreckfish fishery of the Exclusive Economic Zone (EEZ) in or from the South Atlantic under the Fishery Management Plan for Snapper-Grouper (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented through regulations at 50 CFR Part 622 under the authority of the Magnuson-Stevens Conservation and Management Act.

The recordkeeping and reporting requirements at 50 CFR Part 622 form the basis for this collection of information. NMFS Southeast Region requests, from participating wreckfish participants, information necessary to transfer ownership of percentage shares. The information collected includes the percentage of the shares transferred, dollar value of the transfer and the name, address, and employer identification number of the transfer recipient. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the