

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2138

To amend the Magnuson Fishery Conservation and Management Act.

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IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 16), 1994

Mr. KERRY (for himself and Mr. STEVENS) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Magnuson Fishery Conservation and Management Act.

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

3                               FINDINGS, PURPOSES, AND POLICY

4       SECTION 1. Section 2 of the Act (16 U.S.C. 1801)  
5 is amended—

6                       (1) in paragraph (a)(2) by—

7                               (A) inserting “resource” between “fishery”  
8                               and “conservation”; and

9                               (B) deleting “and” before “(B)”, and add-  
10                              ing after the second occurrence of “threatened”

1           “, and (C) direct and indirect habitat losses  
2           have resulted in diminished capacity to support  
3           existing fishing levels”;

4           (2) in paragraph (a)(6) by inserting “to provide  
5           long-term protection for essential marine and estua-  
6           rine fish habitats,” between “conservation,” and  
7           “and to realize”;

8           (3) by adding new paragraphs (a) (9) and (10)  
9           to read as follows:

10           “(9) The greatest long-term threat to the viabil-  
11           ity of commercial and recreational fisheries is the  
12           continuing loss of marine and estuarine habitats on  
13           a national level. Habitat considerations must receive  
14           increased attention in the conservation and manage-  
15           ment of fishery resources of the United States.

16           “(10) Fishery habitat protection can be  
17           achieved through direct advocacy for fishery habitats  
18           by the Secretary in the implementation of existing  
19           Federal procedures for interagency consultation and  
20           the application of other Federal statutes under the  
21           Secretary’s purview.”; and

22           (4) by adding a new paragraph (b)(7) to read  
23           as follows:

24           “(7) to promote the advocacy of fishery habitat  
25           protection in the review of projects conducted under

1 Federal permits, licenses, or other authorities that  
2 affect, or have the potential to affect, fishery  
3 habitats.”.

4 DEFINITIONS

5 SEC. 2. Section 3 of the Act (16 U.S.C. 1802) is  
6 amended—

7 (1) by renumbering subsections (6) through  
8 (31) as subsections (7) through (32), respectively,  
9 and by adding a new subsection (6) as follows:

10 “(6) The term ‘essential fish habitat’ means  
11 any area formally identified by a Council or by the  
12 Secretary for species managed under section  
13 304(g)(3) that is—

14 “(A) landward of the outer boundary of  
15 the exclusive economic zone and essential to the  
16 life cycle of marine, estuarine, anadromous, or  
17 catadromous species; or

18 “(B) essential to the production of opti-  
19 mum yield throughout the range of one or more  
20 fisheries under management by a Council or by  
21 the Secretary under section 304(g)(3); or

22 “(C) meeting other criteria or guidance as  
23 provided by the Secretary to the Councils.”;  
24 and

1           (2) by further amending renumbered section  
2           3(22) of the Act by revising the text and adding a  
3           new paragraph (C) to read as follows:

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

6                   “(A) which will provide the greatest overall  
7                   benefit to the Nation, with particular reference  
8                   to food production and recreational opportuni-  
9                   ties;

10                   “(B) which is prescribed on the basis of  
11                   the maximum sustainable yield from a fishery,  
12                   as modified by any relevant economic, social, or  
13                   ecological factor; and

14                   “(C) which ensures the rebuilding of de-  
15                   pleted stocks to a level consistent with produc-  
16                   ing the maximum sustainable yield.”.

17                                   FOREIGN FISHING

18           SEC. 3. (a) Section 201(a)(1) of the Act (16 U.S.C.  
19           1821(a)(1)) is revised to read as follows:

20                   “(1) is authorized under subsection (b) or (c),  
21                   or is approved under section 204(b)(6)(A)(ii);”.

22           (b) Section 201 of the Act (16 U.S.C. 1821) is  
23           amended by deleting section (g), (h), (i), and (j) as sub-  
24           sections 201(f), and by redesignating subsections (f), (g),  
25           (h), and (i), respectively.

## 1 PERMITS FOR FOREIGN FISHING

2 SEC. 4. (a) Section 204(b)(1) of the Act (16 U.S.C.  
3 1824(b)(1)) is amended to read as follows:

4 “(b) APPLICATIONS AND PERMITS.—

5 “(1) ELIGIBILITY.—(A) Except as provided in  
6 subparagraph (B), each foreign nation with which  
7 the United States has entered into a governing  
8 international fishery agreement shall submit an ap-  
9 plication to the Secretary of State each year for a  
10 permit for each of its fishing vessels that wishes to  
11 engage in fishing described in subsection (a).

12 “(B) An owner of a vessel other than a vessel  
13 of the United States, who wishes to engage in the  
14 transshipment at sea of fish products in the exclu-  
15 sive economic zone or within the boundary of any  
16 State, may submit an application to the Secretary  
17 each year for a permit for a vessel belonging to that  
18 owner, whether or not such vessel is subject to an  
19 international fishery agreement described in section  
20 201 (b) or (c).

21 “(C) No permit issued under this section may  
22 be valid for longer than a year; and section 558(c)  
23 of title 5, United States Code, does not apply to the  
24 renewal of any such permit.”.

1 (b) Section 204(b)(4) of the Act (16 U.S.C.  
2 1824(b)(4)) is amended by—

3 (1) inserting “submitted under paragraph  
4 (1)(A)” after the words “any application”;

5 (2) redesignating subparagraphs (A), (B), and  
6 (C) as subparagraphs (i), (ii) and (iii);

7 (3) redesignating paragraph (4) as paragraph  
8 (4)(A); and

9 (4) inserting a new paragraph (4)(B) to read as  
10 follows:

11 “(B) Upon receipt of any application sub-  
12 mitted under paragraph (1)(B) which complies  
13 with the requirements of paragraph (3), the  
14 Secretary shall promptly transmit copies of the  
15 application or summary as indicated under sub-  
16 paragraphs (A)(ii) and (iii).”.

17 (c) Section 204(b)(5) of the Act (16 U.S.C.  
18 1824(b)(5)) is amended by replacing the words “under  
19 paragraph (4)(C)” with the words “submitted under para-  
20 graph (1)(A)”.

21 (d) Section 204(b)(6) of the Act (16 U.S.C.  
22 1824(b)(6)) is amended by—

23 (1) replacing the phrase “transmitted under  
24 paragraph (4)(A)” with the phrase “submitted  
25 under paragraph 1(A)” in paragraph (6)(A);

1 (2) redesignating paragraph (6)(A) as para-  
2 graph (6)(A)(i); and

3 (3) adding a new subparagraph (A)(ii), as fol-  
4 lows:

5 “(ii) In the case of any application submit-  
6 ted under paragraph (1)(B), the Secretary may  
7 approve the application upon determining that  
8 the activity described in the application will be  
9 in the interest of the United States and will  
10 meet the applicable requirements of this Act,  
11 and that the owners or operators have agreed  
12 to comply with requirements set forth in section  
13 201(c)(2) and have established any bonds or fi-  
14 nancial assurances that may be required by the  
15 Secretary; or the Secretary may disapprove all  
16 or any portion of the application.”.

17 (e) Section 204(b)(8) of the Act (16 U.S.C.  
18 1824(b)(8)) is amended by inserting the words “, or the  
19 agent for the foreign vessel owner for any application sub-  
20 mitted under paragraph (1)(B)” at the end of subpara-  
21 graph (A).

22 (f) Section 204(b)(9) of the Act (16 U.S.C.  
23 1824(b)(9)) is amended by—

24 (1) inserting the words “paragraph (1)(A) of”  
25 after the phrase “by a foreign nation under”;

1           (2) redesignating paragraph (9) as paragraph  
2           (9)(A); and

3           (3) adding a new paragraph (9)(B) to read as  
4           follows:

5                   “(B) If the Secretary does not approve any  
6                   application submitted by a foreign vessel owner  
7                   under paragraph (1)(B) of this subsection, the  
8                   Secretary shall promptly inform the vessel  
9                   owner of the disapproval and the reasons there-  
10                  fore. The owner, after taking into consideration  
11                  the reasons for disapproval, may submit a re-  
12                  vised application under this subsection.”.

13          (g) Section 204(b)(11) of the Act (16 U.S.C.  
14 1824(b)(11)) is amended by—

15           (1) inserting the words “submitting an applica-  
16           tion under paragraph (1)(A)” after the words “If a  
17           foreign nation”;

18           (2) redesignating paragraph (11) as paragraph  
19           (11)(A); and

20           (3) adding a new paragraph (11)(B), to read as  
21           follows:

22                   “(B) If the vessel owner submitting an ap-  
23                   plication under paragraph (1)(B) notifies the  
24                   Secretary of acceptance of the conditions and  
25                   restrictions established by the Secretary under

1 paragraph (7), and upon payment of the appli-  
2 cable fees established pursuant to paragraph  
3 (10) and confirmation of any bonds or financial  
4 assurances that may be required for such fish-  
5 ing, the Secretary shall thereupon issue a per-  
6 mit for the vessel.”.

7 LARGE-SCALE DRIFTNET FISHING

8 SEC. 5. Section 206 of the Act (16 U.S.C. 1826) is  
9 amended by deleting subsection 206(e), and by redesignat-  
10 ing subsections (f), (g), and (h) as subsections (e), (f),  
11 and (g), respectively.

12 NATIONAL STANDARDS FOR FISHERY CONSERVATION AND  
13 MANAGEMENT

14 SEC. 6. (a) Section 301(a) of the Act (16 U.S.C.  
15 1851) is amended by revising subsection (1) to read as  
16 follows:

17 “(1) Conservation and management measures  
18 shall prevent overfishing and rebuild depleted stocks.  
19 Such measures shall be designed to achieve, on a  
20 continuing basis, the optimum yield from each fish-  
21 ery.”.

22 (b) Section 301(a) of the Act (16 U.S.C. 1851) is  
23 amended by adding a new subsection 8 to read as follows:

24 “(8) Conservation and management measures  
25 shall, to the extent practicable, minimize the inciden-  
26 tal catch of non-target living marine resources that

1 results in the unnecessary waste of those re-  
2 sources.”.

3 REGIONAL FISHERY MANAGEMENT COUNCILS

4 SEC. 7. (a) Section 302(a) of the Act (16 U.S.C.  
5 1852(a)) is amended by revising subsection (a)(6) to read  
6 as follows:

7 “(6) PACIFIC COUNCIL.—The Pacific Fishery  
8 Management Council shall consist of the States of  
9 California, Oregon, Washington, and Idaho and shall  
10 have authority over the fisheries in the Pacific  
11 Ocean seaward of such States. The Pacific Council  
12 shall have 14 voting members, including 8 appointed  
13 by the Secretary in accordance with subsection  
14 (b)(2) (at least one of whom shall be appointed from  
15 each such State), and including one appointed from  
16 an Indian tribe with Federally recognized fishing  
17 rights from California, Oregon, Washington, or  
18 Idaho.”.

19 (b) Section 302(b) of the Act (16 U.S.C. 1852(b))  
20 is amended—

21 (1) by revising paragraph (C) of subsection  
22 (b)(1) to read as follows:

23 “(C) The members required to be ap-  
24 pointed by the Secretary in accordance with  
25 subsections (b) (2) and (5)”;

1           (2) by renumbering subsection (5) as subsection  
2           (6), and inserting a new subsection (5) to read as  
3           follows:

4           “(5)(A) The Secretary shall appoint to the Pa-  
5           cific Fishery Management Council one representa-  
6           tive, designated by the Secretary of the Interior, of  
7           an Indian tribe with Federally recognized fishing  
8           rights from California, Oregon, Washington, or  
9           Idaho, from a list of not less than three individuals  
10          submitted by the tribal governments. The represent-  
11          ative shall serve for a term of three years and may  
12          not be reappointed to the consecutive term.

13          “(B) Representation shall be rotated among the  
14          tribes taking into consideration—

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

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

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

22          “(C) A vacancy occurring prior to the expira-  
23          tion of any term shall be filled in the same manner  
24          set out in subparagraphs (A) and (B), except that  
25          the Secretary may use the list from which the

1 vacating representative was chosen. A representative  
2 appointed to fill such a vacancy may not be  
3 reappointed to a consecutive term.”; and

4 (3) by replacing the words “subsection (b)(2)”  
5 in renumbered subsection (6) with the words “sub-  
6 sections (b) (2) and (5)”.

7 (c) Section 302(h) of the Act (16 U.S.C. 1852(h))  
8 is amended by redesignating subparagraphs (2) through  
9 (6) as subparagraphs (3) through (7), respectively, and  
10 by adding a new subparagraph (2) as follows:

11 “(2) take immediate action to prepare an  
12 amendment to the applicable fishery management  
13 plan or to submit proposed regulations—

14 “(A) to prevent overfishing of a stock or  
15 stock complex, as defined in the fishery man-  
16 agement plan, from occurring whenever such  
17 stock or stock complex, as identified under sec-  
18 tion 304(h), is determined to be approaching an  
19 overfished condition, or

20 “(B) to stop overfishing of the stock or  
21 stock complex, and to restore the stock to a  
22 condition that is consistent with producing the  
23 maximum sustainable yield when such stock or  
24 stock complex is determined to be overfished.

1 A Council shall submit a plan amendment or pro-  
2 posed regulations to the Secretary within 1 year  
3 from the date of transmittal of the report on the  
4 status of stocks, as required under section 304(h),  
5 to the Council for those stocks that are approaching  
6 a condition of being overfished or are overfished.”

7 (d) Section 302(i) of the Act (16 U.S.C. 1853(i)) is  
8 amended—

9 (1) in subparagraph (1)(A) by deleting “and”  
10 before “(B)”;

11 (2) in subparagraph (1)(B) by deleting the pe-  
12 riod and replacing it with “; and”;

13 (3) by adding a new subparagraph (1)(C) to  
14 read:

15 “(C) shall be responsible for identifying es-  
16 sential fish habitats.”; and

17 (4) by adding a new paragraph (3) as follows:

18 “(3) By December 31, 1995, and annually  
19 thereafter, the Councils shall submit for publication  
20 by the Secretary a listing of all essential fish habi-  
21 tats identified pursuant to subparagraph (1)(C) for  
22 all fishery management plans in effect on that  
23 date.”.

24 (e) Section 302(k) of the Act (16 U.S.C. 1852(k))  
25 is amended by adding a new subparagraph (8) as follows:

1           “(8)(A) An affected individual who has a finan-  
2           cial interest that would be significantly affected by  
3           a Council decision may not participate in the Coun-  
4           cil’s deliberations relating to that decision, unless  
5           such individual receives a written authorization  
6           under subparagraph (B) or (C) below. An affected  
7           individual who may not participate may comment or  
8           testify on the decision as a member of the public.

9           “(B)(i) At the request of an affected individual,  
10          or at the initiative of the appropriate regional direc-  
11          tor, the regional director shall make a determination  
12          for the record whether the individual has a financial  
13          interest that would be significantly affected by a  
14          Council decision.

15          “(ii) If the regional director determines that an  
16          affected individual’s financial interest would be sig-  
17          nificantly affected by a Council decision, the regional  
18          director may authorize the individual’s participation  
19          in the decision if the director determines in writing  
20          that the need for the individual’s participation out-  
21          weighs the potential for a conflict of interest.

22          “(C) Any Council member may submit a writ-  
23          ten request to the Assistant Administrator for Fish-  
24          eries, National Oceanic and Atmospheric Adminis-  
25          tration, to review any determination by the regional

1 director under subparagraph (B). Such review shall  
2 be completed within 90 days of receipt of the re-  
3 quest.

4 “(D) If the Council makes a decision before the  
5 Assistant Administrator for Fisheries has reviewed a  
6 determination or authorization under subparagraph  
7 (C), the eventual ruling may not be treated as cause  
8 for the invalidation or reconsideration of the deci-  
9 sion.

10 “(E) The Secretary is authorized to issue  
11 guidelines with respect to making the determinations  
12 under sections 8 (A) and (B).”.

13 CONTENTS OF FISHERY MANAGEMENT PLANS

14 SEC. 8. Section 303 of the Act (16 U.S.C. 1853) is  
15 amended in its entirety to read as follows:

16 **“SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS  
17 AND REGULATIONS.**

18 “(a) FISHERY MANAGEMENT PLANS.—Before under-  
19 taking management of any fishery, the Council or the Sec-  
20 retary shall prepare a fishery management plan, which  
21 shall—

22 “(1) contain a description of the fishery, includ-  
23 ing, but not limited to, the number of vessels in-  
24 volved, the type and quantity of fishing gear used,  
25 the species of fish involved and their location, the  
26 cost likely to be incurred in management, actual and

1 potential revenues from the fishery, any recreational  
2 interest in the fishery, and the nature and extent of  
3 foreign fishing and Indian treaty fishing rights, if  
4 any;

5 “(2) assess the impact of the fishery on the  
6 physical environment, with particular attention to  
7 protected species and habitat, and to any stocks of  
8 naturally spawning anadromous fish in the region;

9 “(3) identify the problems to be addressed and  
10 management objectives to be achieved in regulating  
11 the fishery, and outline the primary alternative ap-  
12 proaches to resolving the problems and achieving the  
13 objectives;

14 “(4) specify an objective and measurable defini-  
15 tion of overfishing for each stock or stock complex  
16 in the fishery;

17 “(5) assess and specify the present and prob-  
18 able future condition of, and the maximum sustain-  
19 able yield and optimum yield from, the fishery, and  
20 include a summary of the information utilized in  
21 making such specification;

22 “(6) establish a process for specifying—

23 “(A) the capacity and the extent to which  
24 fishing vessels of the United States, on an an-  
25 nual basis, will harvest the optimum yield,

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

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

10          “(7) assess and specify the nature and extent of  
11          scientific data that are needed for effective manage-  
12          ment of the fishery; and

13          “(8) contain a description, based on guidelines  
14          developed by the Secretary, of all essential fish habi-  
15          tats including—

16                 “(A) the characteristics that make the  
17                 habitats essential to the conservation and man-  
18                 agement of the particular fishery for which the  
19                 plan was prepared;

20                 “(B) the threats facing the continued via-  
21                 bility of each essential fish habitat for the long-  
22                 term maintenance of the specific fishery;

23                 “(C) the adequacy of the existing regu-  
24                 latory regime in providing long-term protection  
25                 for these habitats; and

1           “(D) recommendations for regulatory and  
2           nonregulatory actions that should be considered  
3           to ensure the long-term protection of these  
4           habitats.

5           “(b) TRANSITION.—Councils are encouraged to pre-  
6           pare fishery management plans under the new format to  
7           replace existing fishery management plans. However, any  
8           fishery management plan that has not been replaced by  
9           1 year from enactment shall be deemed a plan for the pur-  
10          poses of the amended Act; the plan’s conservation and  
11          management measures shall be deemed deleted from the  
12          document.

13          “(c) REGULATIONS.—Regulations promulgated to  
14          conserve and manage a fishery—

15                 “(1) shall contain the conservation and manage-  
16                 ment measures, applicable to foreign fishing and  
17                 fishing by vessels of the United States, that are—

18                         “(A) necessary and appropriate for the  
19                         conservation and management of the fishery to  
20                         prevent overfishing, and to protect, restore, and  
21                         promote the long-term health and stability of  
22                         the fishery;

23                         “(B) described in this subsection; and

24                         “(C) consistent with the national stand-  
25                         ards, the other provisions of this Act, regula-

1           tions implementing recommendations by inter-  
2           national organizations in which the United  
3           States participates (including but not limited to  
4           closed areas, quotas, and size limits), and any  
5           other applicable law;

6           “(2) shall specify the pertinent data that shall  
7           be submitted to the Secretary with respect to the  
8           fishery, including, but not limited to, information re-  
9           garding the type and quantity of fishing gear used,  
10          catch by species in numbers of fish or weight there-  
11          of, areas in which fishing was engaged in, time of  
12          fishing, number of hauls, and the estimated process-  
13          ing capacity of, and the actual processing capacity  
14          utilized by, United States fish processors;

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

24          “(4) may require a permit to be obtained from  
25          the Secretary, with respect to—

1           “(A) any fishing vessel of the United  
2 States fishing, or wishing to fish, in the exclu-  
3 sive economic zone or for anadromous species  
4 or Continental Shelf fishery resources beyond  
5 such zone;

6           “(B) the operator of any such vessel; and

7           “(C) any United States fish processor who  
8 first receives fish that are subject to the regula-  
9 tions;

10          “(5) may designate zones where, and periods  
11 when, fishing shall be limited, or shall not be per-  
12 mitted, or shall be permitted only by specified types  
13 of fishing vessels or with specified types and quan-  
14 tities of fishing gear;

15          “(6) may establish specified limitations on the  
16 catch of fish (based on area, species, size, number,  
17 weight, sex, incidental catch, total biomass, or other  
18 factors), which are necessary and appropriate for the  
19 conservation and management of the fishery;

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

1           “(8) may incorporate consistent with the na-  
2           tional standards, the other provisions of this Act,  
3           and any other applicable law) the relevant fishery  
4           conservation and management measures of the  
5           coastal States nearest to the fishery;

6           “(9)(A) may establish a system for limiting ac-  
7           cess to the fishery in order to achieve optimum yield  
8           if, in developing such system, the Council and the  
9           Secretary take into account—

10                   “(i) present participation in the fishery,

11                   “(ii) historical fishing practices in, and de-  
12                   pendence on, the fishery,

13                   “(iii) the economics of the fishery,

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

16                   “(v) the cultural and social framework rel-  
17                   evant to the fishery, and

18                   “(vi) any other relevant considerations;

19           “(B) However, regulations may not establish  
20           such a limited access system, except for fisheries  
21           managed under section 304(g)(3), unless such sys-  
22           tem is first approved by a majority of the voting  
23           members, present and voting, of each appropriate  
24           Council;

1           “(10) may require fish processors who first re-  
2           ceive fish that are subject to the regulations to sub-  
3           mit data which are necessary for the conservation  
4           and management of the fishery;

5           “(11) may require that observers be carried on  
6           board a vessel of the United States engaged in fish-  
7           ing for species that are subject to the regulations,  
8           for the purpose of collecting data necessary for the  
9           conservation and management of the fishery; except  
10          that such a vessel shall not be required to carry an  
11          observer on board if the facilities of the vessel for  
12          the quartering of an observer, or for carrying out  
13          observer functions, are so inadequate or unsafe that  
14          the health or safety of the observer or the safe oper-  
15          ation of the vessel would be jeopardized; and

16          “(12) may prescribe such other measures, re-  
17          quirements, or conditions and restrictions as are de-  
18          termined to be necessary and appropriate for the  
19          conservation and management of the fishery.

20          “(d) CONFIDENTIALITY OF STATISTICS.—Any statis-  
21          tic submitted to the Secretary by any person in compliance  
22          with any requirement under regulations promulgated  
23          under section 305 shall be confidential and shall not be  
24          disclosed, for a period of three years following the year  
25          of submission to the Secretary, except—

1           “(1) to Federal employees and Council employ-  
2           ees who are responsible for management plan devel-  
3           opment and monitoring;

4           “(2) to State employees pursuant to an agree-  
5           ment with the Secretary that prevents public disclo-  
6           sure of the identity or business of any person; or

7           “(3) when required by court order.

8           The Secretary shall, by regulation, prescribe such proce-  
9           dures as may be necessary to preserve such confidentiality,  
10          except that the Secretary may release or make public any  
11          such statistics in any aggregate or summary form which  
12          does not directly or indirectly disclose the identity or busi-  
13          ness of any person who submits such statistics. Nothing  
14          in this subsection shall be interpreted or construed to pre-  
15          vent the use for conservation and management purposes  
16          by the Secretary, or with the approval of the Secretary,  
17          the Council, of any statistic submitted in compliance with  
18          a requirement under regulations promulgated under sec-  
19          tion 305.

20          “(e) RESTRICTION ON USE OF CERTAIN DATA.—The  
21          Secretary shall promulgate regulations to restrict the use,  
22          in civil enforcement or criminal proceedings under this  
23          Act, the Marine Mammal Protection Act of 1972 (16  
24          U.S.C. 1361 et seq.), or the Endangered Species Act (16  
25          U.S.C. 1531 et seq.), of information collected by voluntary

1 fishery data collectors, including sea samplers, while  
2 aboard any vessel for conservation and management pur-  
3 poses if the presence of such a fishery data collector  
4 aboard is not required by any of such Acts or regulations  
5 thereunder.”.

6 PRE-RULEMAKING PROCEDURES

7 SEC. 9. Section 304 of the Act “**ACTION BY THE**  
8 **SECRETARY**” (16 U.S.C. 1854) is amended in its entirety  
9 to read as follows:

10 “**SEC. 304. PRE-RULEMAKING PROCEDURES.**

11 “(a) DATA COLLECTION PROGRAMS.—

12 “(1) If a Council determines that additional in-  
13 formation and data (other than information and  
14 data that would disclose proprietary or confidential  
15 commercial or financial information regarding fish-  
16 ing operations or fish processing operations) would  
17 be beneficial for the purposes of determining wheth-  
18 er a fishery is in need of management, the Council  
19 may request that the Secretary implement a data  
20 collection program for the fishery which would pro-  
21 vide the types of information and data (other than  
22 information and data that would disclose proprietary  
23 or confidential commercial or financial information  
24 regarding fishing operations or fish processing oper-  
25 ations) specified by the Council. The Secretary shall  
26 approve such a data collection program if he deter-

1 mines that the need is justified, and shall promul-  
2 gate regulations to implement the program within  
3 60 days after such determination is made. If the  
4 Secretary determines that the need for a data collec-  
5 tion program is not justified, the Secretary shall in-  
6 form the Council of the reasons for such determina-  
7 tion in writing. The determinations of the Secretary  
8 under this subsection regarding a Council request  
9 shall be made within a reasonable period of time  
10 after he receives that request.

11 “(2) The Secretary shall establish by regulation  
12 a nation-wide mandatory data collection program to  
13 provide basic fisheries performance data. The pro-  
14 gram shall—

15 “(A) integrate data collection programs  
16 under existing fishery management plans into a  
17 non-duplicative data collection and management  
18 system;

19 “(B) include all species of fish within the  
20 geographical areas of authority of the Councils;  
21 and

22 “(C) coordinate with other data collection  
23 programs conducted by the Secretary, other  
24 Federal agencies, or by the States, to ensure  
25 completeness and to avoid duplication.

1 “(b) FISHERIES RESEARCH.—

2 “(1) The Secretary shall initiate and maintain,  
3 in cooperation with the Councils, a comprehensive  
4 program of fishery research to carry out and further  
5 the purposes policy, and provisions of this Act. Such  
6 program shall be designed to acquire knowledge and  
7 information, including statistics, on fishery conserva-  
8 tion and management and on the economics of the  
9 fisheries.

10 “(2) Within 1 year after the date of enactment  
11 of the Fishery Conservation Amendments of 1990,  
12 and at least every three years thereafter, the Sec-  
13 retary shall develop publish in the Federal Register  
14 a strategic plan for fisheries research for the 5 years  
15 immediately following such publication. The plan  
16 shall—

17 “(A) identify and describe a comprehensive  
18 program with a limited number of priority ob-  
19 jectives for research in each of the areas speci-  
20 fied in paragraph (2);

21 “(B) indicate the goals and timetables for  
22 the program described in subparagraph (A);  
23 and

1           “(C) provide a role for affected commercial  
2 fishermen in such research, including involve-  
3 ment in field testing.

4           “(3) The areas of research referred to in para-  
5 graph (a) are as follows:

6           “(A) Research to support fishery conserva-  
7 tion and management, including research on  
8 the economics of fisheries and biological re-  
9 search concerning the interdependence of fish-  
10 eries or stocks or fish, the impact of pollution  
11 on fish populations, the impact of wetland and  
12 estuarine degradation, and other matters bear-  
13 ing upon the abundance and availability of fish.

14           “(B) Conservation engineering research,  
15 including the study of fish behavior and the de-  
16 velopment and testing of new gear technology  
17 and fishing techniques to minimize the harvest  
18 of nontarget species and promote efficient har-  
19 vest of target species.

20           “(C) Information management research,  
21 including the development of a fishery informa-  
22 tion base and an information management sys-  
23 tem that will permit the full use of data in the  
24 support of effective fishery conservation and  
25 management.

1           “(4) In developing the plan required under  
2 paragraph (1), the Secretary shall consult with rel-  
3 evant federal agencies, scientific and technical ex-  
4 perts, and other interested persons, public and pri-  
5 vate, and shall publish a proposed plan in the Fed-  
6 eral Register for the purpose of receiving public  
7 comment on the plan. The Secretary shall ensure  
8 that affected commercial fishermen are actively in-  
9 volved in the development of the portion of the plan  
10 pertaining to conservation engineering research.  
11 Upon final publication in the Federal Register, the  
12 plan shall be submitted by the Secretary to the Com-  
13 mittee on Commerce, Science, and Transportation of  
14 the Senate and the Committee on Merchant Marine  
15 and Fisheries of the House of Representatives.

16           “(c) INCIDENTAL HARVEST RESEARCH.—

17           “(1) Within 9 months after the date of enact-  
18 ment of the Fishery Conservation Amendments of  
19 1990, the Secretary shall, after consultation with the  
20 Gulf of Mexico Fishery Management Council and  
21 South Atlantic Fishery Management Council, estab-  
22 lish by regulation a 3-year program to assess the im-  
23 pact on fishery resources of incidental harvest by the  
24 shrimp trawl fishery within the authority of such  
25 Councils.

1           “(2) The program established pursuant to para-  
2 graph (1) shall provide for the identification of  
3 stocks of fish which are subject to significant inci-  
4 dental harvest in the course of normal shrimp trawl  
5 fishing activity.

6           “(3) For stocks of fish identified pursuant to  
7 paragraph (2), with priority given to stocks which  
8 (based upon the best available scientific information)  
9 are considered to be overfished, the Secretary shall  
10 conduct—

11           “(A) a program to collect and evaluate  
12 data on the nature and extent (including the  
13 spatial and temporal distribution) of incidental  
14 mortality of such stocks as a direct result of  
15 shrimp trawl fishing activities;

16           “(B) an assessment of the status and con-  
17 dition of such stocks, including collection of in-  
18 formation which would allow the estimation of  
19 life history parameters with sufficient accuracy  
20 and precision to support sound scientific evalua-  
21 tion of the effects of various management alter-  
22 natives on the status of such stocks; and

23           “(C) a program of data collection and eval-  
24 uation for such stocks on the magnitude and  
25 distribution of fishing mortality and fishing ef-

1 fort by sources of fishing mortality other than  
2 shrimp trawl fishing activity.

3 “(4) The Secretary shall, in cooperation with  
4 affected interests, commence a program to design,  
5 and evaluate the efficacy of, technological devices  
6 and other changes in fishing technology for the re-  
7 duction of incidental mortality of nontarget fishery  
8 resources in the course of shrimp trawl fishing activ-  
9 ity. Such program shall take into account local con-  
10 ditions and include evaluation of any reduction in in-  
11 cidental mortality, as well as any reduction or in-  
12 crease in the retention of shrimp in the course of  
13 normal fishing activity.

14 “(5) The Secretary shall, upon completion of  
15 the programs required by this subsection, submit a  
16 detailed report on the results of such programs to  
17 the Committee on Commerce, Science, and Trans-  
18 portation of the Senate and the Committee on Mer-  
19 chant Marine and Fisheries of the House of Rep-  
20 resentative.

21 “(d) ACTION BY THE SECRETARY AFTER RECEIPT  
22 OF PLAN.—After the Secretary receives a fishery manage-  
23 ment plan, or amendment to such plan, which was pre-  
24 pared by a Council, the Secretary shall—

1           “(1) immediately commence a review of the  
2 management plan or amendment to determine  
3 whether it is consistent with the national standards,  
4 the other provisions of this Act, and any other appli-  
5 cable law; and

6           “(2) immediately publish in the Federal Reg-  
7 ister a notice stating that the plan or amendment is  
8 available and that written data, views, or comments  
9 of interested persons on the document or amend-  
10 ment may be submitted to the Secretary during the  
11 45-day period beginning on the date the notice is  
12 published.

13           “(e) REVIEW BY THE SECRETARY.—

14           “(1) In undertaking the review required under  
15 paragraph (d)(1), the Secretary shall—

16                   “(A) take into account the data, views, and  
17 comments received from interested persons;

18                   “(B) consult with the Secretary of State  
19 with respect to foreign fishing;

20                   “(C) consult with the Secretary of the de-  
21 partment in which the Coast Guard is operating  
22 with respect to enforcement at sea and to fish-  
23 ery access adjustments referred to in section  
24 303(c)(3); and

1           “(D) consult with the Secretary of the In-  
2           terior with respect to plans that affect anad-  
3           romous fisheries.

4           “(2) The Secretary shall approve, disapprove,  
5           or partially disapprove a plan or amendment within  
6           30 days of the end of the comment period under  
7           subsection (d)(2) by written notice to the Council. A  
8           notice of disapproval or partial disapproval shall  
9           specify—

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

12           “(B) the nature of such inconsistency(ies);  
13           and

14           “(C) recommendations concerning the ac-  
15           tions that could be taken by the Council to con-  
16           form such plan or amendment to the require-  
17           ments of applicable law.

18           “(3)(A) If the Secretary disapproves or par-  
19           tially disapproves a plan or amendment, the Council  
20           may submit a revised plan or amendment to the Sec-  
21           retary.

22           “(B) After the Secretary receives a revised plan  
23           or amendment the Secretary shall follow the proce-  
24           dures specified in subsections (d) and (e).

25           “(f) PREPARATION BY THE SECRETARY.—

1           “(1) The Secretary may prepare a fishery man-  
2           agement plan, with respect to any fishery, or any  
3           amendment to any such plan, in accordance with the  
4           national standards, the other provisions of this Act,  
5           and any other applicable law, if—

6                   “(A) the appropriate Council fails to de-  
7                   velop and submit to the Secretary, after a rea-  
8                   sonable period of time, a fishery management  
9                   plan for such fishery, or any necessary amend-  
10                  ment to such plan, if such fishery requires con-  
11                  servation and management; or

12                  “(B) the Secretary disapproves or partially  
13                  disapproves any such plan or amendment, or  
14                  disapproves a revised plan or amendment, and  
15                  the Council involved fails to submit a revised or  
16                  further revised plan or amendment, as the case  
17                  may be.

18           In preparing any such plan or amendment, the Sec-  
19           retary shall consult with the Secretary of State with  
20           respect to foreign fishing and with the Secretary of  
21           the department in which the Coast Guard is operat-  
22           ing with respect to enforcement at sea.

23           “(2) The Secretary shall prepare a fishery man-  
24           agement plan amendment or proposed regulations if  
25           the appropriate Council fails to submit an amend-

1       ment or proposed regulations to the Secretary,  
2       under section 302(h)(2), within 1 year after deter-  
3       mining that any managed stock is overfished.

4               “(3)(A) Whenever, under paragraph (1), the  
5       Secretary prepares a fishery management plan or  
6       amendment, the Secretary shall immediately—

7                       “(i) submit such plan or amendment to the  
8                       appropriate Council for consideration and com-  
9                       ment; and

10                      “(ii) publish in the Federal Register a no-  
11                      tice stating that the plan or amendment is  
12                      available and that written data, views, or com-  
13                      ments of interested persons on the plan or  
14                      amendment may be submitted to the Secretary  
15                      during the 45-day period beginning on the date  
16                      the notice is published.

17                      “(B) The appropriate Council must submit its  
18                      comments and recommendations, if any, regarding  
19                      the plan or amendment to the Secretary before the  
20                      close of the 45-day period referred to in subpara-  
21                      graph (A)(ii). After the close of such 45-day period,  
22                      the Secretary, after taking into account any such  
23                      comments and recommendations, as well as any  
24                      views, data, or comments submitted under subpara-  
25                      graph (A)(ii), may adopt such plan or amendment.

1       “(g) FISHERIES UNDER AUTHORITY OF MORE THAN  
2 ONE COUNCIL.—

3           “(1) Except as provided in paragraph (3), if  
4 any fishery extends beyond the geographical area of  
5 authority of any one Council, the Secretary may—

6           “(A) designate which Council shall prepare  
7 the fishery management plan for such fishery  
8 and any amendment to such plan, and prepare  
9 proposed regulations for such fishery; and

10          “(B) may require that the plan, amend-  
11 ment, and proposed regulations be prepared  
12 jointly by the Councils concerned.

13 No jointly prepared fishery management plan,  
14 amendment, or proposed regulations may be submit-  
15 ted to the Secretary, unless approved by a majority  
16 of the voting members, present and voting, of each  
17 Council concerned.

18           “(2) The Secretary shall establish the bound-  
19 aries between the geographical areas of authority of  
20 adjacent Councils.

21           “(3)(A) The Secretary shall have authority over  
22 any highly migratory species fishery that is within  
23 the geographical area of authority of more than one  
24 of the following Councils: New England Council,

1 Mid-Atlantic Council, South Atlantic Council, Gulf  
2 Council, and Caribbean Council.

3 “(B) In accordance with the provisions of this  
4 Act and any other applicable law, the Secretary  
5 shall—

6 “(i) identify research and information pri-  
7 orities, including observer requirements and  
8 necessary data collection and analysis for the  
9 conservation and management of highly migra-  
10 tory species;

11 “(ii) prepare and amend fishery manage-  
12 ment plan with respect to highly migratory spe-  
13 cies fisheries to which this paragraph applies;  
14 and

15 “(iii) diligently pursue, through inter-  
16 national entities (such as the International  
17 Commission for the Conservation of Atlantic  
18 Tunas), international fishery management  
19 measures with respect to fishing for highly mi-  
20 gratory species.

21 “(C) In preparing or amending any fishery  
22 management plan and in promulgating any regula-  
23 tions for fisheries covered by this paragraph, the  
24 Secretary shall—

1           “(i) conduct public hearings, at appro-  
2           priate times and in appropriate locations in the  
3           geographical areas concerned, so as to allow in-  
4           terested persons an opportunity to be heard in  
5           the preparation and amendment of the plan and  
6           regulations;

7           “(ii) consult with and consider the com-  
8           ments and views of commissioners and advisory  
9           groups appointed under Acts implementing rel-  
10          evant international fishery agreements pertain-  
11          ing to highly migratory species;

12          “(iii) consult with and consider the com-  
13          ments and views of affected Councils;

14          “(iv) evaluate the likely effects, if any, of  
15          conservation and management measures on par-  
16          ticipants in the affected fisheries and minimize,  
17          to the extent practicable, any disadvantage to  
18          United States fishermen in relation to foreign  
19          competitors; and

20          “(v) review, on a continuing basis (and  
21          promptly whenever a recommendation pertain-  
22          ing to fishing for highly migratory species has  
23          been made under a relevant international fish-  
24          ery agreement), and revise as appropriate, the

1 conservation and management measures for the  
2 fishery.

3 “(D) Conservation and management measures  
4 adopted under this paragraph shall—

5 “(i) take into consideration traditional  
6 fishing patterns of fishing vessels of the United  
7 States and the operating requirements of the  
8 fisheries;

9 “(ii) be fair and equitable in allocating  
10 fishing privileges among United States fisher-  
11 men and not have economic allocation as the  
12 sole purpose; and

13 “(iii) promote international conservation.

14 “(E) In implementing the provisions of this  
15 paragraph, the Secretary shall consult with—

16 “(i) the Secretary of State;

17 “(ii) commissioners and advisory groups  
18 appointed under Acts implementing relevant  
19 international fishery agreements pertaining to  
20 highly migratory species; and

21 “(iii) appropriate Councils.

22 “(h) REPORT ON STATUS OF STOCKS.—The Sec-  
23 retary shall report annually to the Councils the status of  
24 stocks under their jurisdiction and identify those stocks

1 that are approaching a condition of being overfished or  
2 are overfished.”.

3 RULEMAKING

4 SEC. 10. Section 305 of the Act “**IMPLEMENTA-**  
5 **TION OF FISHERY MANAGEMENT PLANS**” (16 U.S.C.  
6 1854) is amended in its entirety to read as follows:

7 “**SEC. 305. RULEMAKING.**

8 “(a) PROPOSED REGULATIONS.—

9 “(1) The Council may submit proposed regula-  
10 tions consistent with an approved plan or amend-  
11 ment, following public hearings as specified in sec-  
12 tion 302(h), for action by the Secretary under this  
13 section.

14 “(A) Such regulations shall be accom-  
15 panied by a fishery impact statement which  
16 shall assess, specify, and describe the likely ef-  
17 fects, if any, of the regulations on—

18 “(i) participants in the fisheries af-  
19 fected by the regulations; and

20 “(ii) participants in the fisheries con-  
21 ducted in adjacent areas under the author-  
22 ity of another Council, after consultation  
23 with such Council and representatives of  
24 those participants.

25 “(B) After the Secretary receives proposed  
26 regulations prepared by a Council, the Sec-

1           retary shall immediately make a preliminary  
2           evaluation of the proposed regulations for pur-  
3           poses of deciding if they are consistent with the  
4           fishery management plan and the national  
5           standards.

6           “(C) If that decision is affirmative, the  
7           Secretary shall immediately publish such regu-  
8           lations, with such changes as may be necessary  
9           for clarity or enforceability, in the Federal Reg-  
10          ister, together with an explanation of those  
11          changes.

12          “(D) If that decision is negative, the Sec-  
13          retary shall notify the Council in writing of the  
14          inconsistencies.

15          “(2) The Secretary may promulgate proposed  
16          regulations consistent with any plan or amendment  
17          prepared by the Secretary.

18          “(3) The comment period on proposed regula-  
19          tions shall be 45 days, except that the Secretary  
20          may shorten the comment period on minor revisions  
21          to existing rules.

22          “(b) IMPLEMENTATION.—The Secretary shall pro-  
23          mulgate final regulations within 45 days after the end of  
24          the comment period under subsection (a)(3). The Sec-  
25          retary must publish an explanation of any substantive dif-

1 ferences between the proposed and final rules. All final  
2 regulations must be consistent with the plan, with the na-  
3 tional standards and other provisions of this Act, and with  
4 other applicable law.

5 “(c) EMERGENCY ACTIONS.—

6 “(1) If the Secretary finds that an emergency  
7 exists involving any fishery, he may promulgate  
8 emergency regulations necessary to address the  
9 emergency, without regard to whether a fishery  
10 management plan exists for such fishery.

11 “(2) If a Council finds that an emergency exists  
12 involving any fishery within its jurisdiction, whether  
13 or not a fishery management plan exists for such  
14 fishery—

15 “(A) the Secretary shall promulgate emer-  
16 gency regulations under paragraph (1) to ad-  
17 dress the emergency if the Council, by unani-  
18 mous vote of the members who are voting mem-  
19 bers, requests the taking of such actions; and

20 “(B) The Secretary may promulgate emer-  
21 gency regulations under paragraph (1) to ad-  
22 dress the emergency if the Council, by less than  
23 a unanimous vote, requests the taking of such  
24 action.

1           “(3) Any emergency regulation which is incon-  
2           sistent with an existing fishery management plan  
3           shall be treated as an amendment to such document  
4           for the period in which such regulation is in effect.  
5           Any emergency regulation promulgated under this  
6           subsection—

7                   “(A) shall be published in the Federal  
8           Register together with the reasons therefor;

9                   “(B) shall remain in effect for not more  
10           than 90 days after the date of publication, ex-  
11           cept that any such regulation may be promul-  
12           gated for an additional period of not more than  
13           270 days: *Provided*, That the public has had an  
14           opportunity to comment on the emergency regu-  
15           lation, and, in the case of a Council rec-  
16           ommendation for emergency regulations, the  
17           Council is actively preparing a fishery manage-  
18           ment plan, amendment, or proposed regulations  
19           to address the emergency on a permanent basis;

20                   “(C) that responds to a public health  
21           emergency may remain in effect until the cir-  
22           cumstances that created the emergency no  
23           longer exist, provided the public has an oppor-  
24           tunity to comment after the regulation is pub-  
25           lished; and

1           “(D) may be terminated by the Secretary  
2           at an earlier date by publication in the Federal  
3           Register of a notice of termination, except for  
4           emergency regulations promulgated under para-  
5           graph (2) in which case such early termination  
6           may be made only upon the agreement of the  
7           Secretary and the Council concerned.

8           “(d) ESTABLISHMENT OF FEES.—

9           “(1) The Secretary may establish fees for any  
10          permit issued pursuant to this Act. The level of any  
11          such fees shall be fair and equitable to all partici-  
12          pants in the fisheries, and meet the requirements of  
13          section 9701(b) of title 31, United States Code. The  
14          Secretary may enter into a cooperative agreement  
15          with the States concerned, under which the States  
16          administer the permit system; the agreement may  
17          provide that all or part of the fees collected under  
18          this system shall accrue to the States.

19          “(2) The Secretary may establish fees by regu-  
20          lation to pay the costs of implementing conservation  
21          and management measures authorized by this Act,  
22          when it is determined by the Secretary that partici-  
23          pants in the fishery will receive direct and substan-  
24          tial benefits from such measures. The level of any  
25          such fees shall be fair and equitable to all partici-

1 pants in the fisheries, and meet the requirements of  
2 section 9701(b) of title 31, United States Code.

3 “(3) The Secretary shall establish fees on the  
4 value of fish authorized to be taken under individual  
5 harvest shares assigned to persons or vessels pursu-  
6 ant to a limited access system. Fees assessed under  
7 this paragraph shall not exceed 3 percent annually  
8 of the value of fish authorized to be taken under in-  
9 dividual harvest shares. The Secretary shall, by reg-  
10 ulation, prescribe the method of determining the  
11 value of fish authorized to be taken by such shares,  
12 the amount of each respective fee on an annual  
13 basis, and the method of collecting such fees.

14 “(4) The Secretary shall establish fees on the  
15 ex-vessel value of all fish upon the first sale within  
16 the jurisdiction of the United States. Fees under  
17 this paragraph shall not exceed one percent of the  
18 value of such fish. The Secretary shall, by regula-  
19 tion, prescribe the method of determining the value  
20 of such fish and the method of collecting such fees.

21 “(e) FEES CONTINGENT ON APPROPRIATIONS.—The  
22 fees authorized in subsection (d) shall be collected, cred-  
23 ited to the Operations, Research, and Facilities appropria-  
24 tion, and available until expended for the purposes speci-

1 fied in subsection (f), only to the extent and in the  
2 amounts provided in advance in appropriations Acts.

3 “(f) USE OF FEES.—Fees authorized in subsection  
4 (d) may be expended for the following purposes—

5 “(1) collecting, processing, and analyzing eco-  
6 nomic, social, biological, and statistical information  
7 concerning marine recreational and commercial fish-  
8 ing and supporting activities;

9 “(2) placing observers on domestic fishing ves-  
10 sels;

11 “(3) conducting scientific research and publish-  
12 ing information concerning abundance, distribution,  
13 and ecology of marine fish;

14 “(4) conserving and managing stocks of marine  
15 fish, including, but not limited to, developing, mon-  
16 itoring, and implementing fishery management plans  
17 and regulations;

18 “(5) improving enforcement of marine conserva-  
19 tion programs;

20 “(6) educating resource users and the general  
21 public on aspects of marine conservation programs;

22 “(7) carrying out the other provisions of this  
23 Act; and

24 “(8) reducing harvesting capacity, including the  
25 removal from a fishery of fishing vessels and permits

1 issued by the United States Government for fishing  
2 privileges if the Secretary finds that—

3 “(A) the fishery, for which a fishery man-  
4 agement plan is prepared, is determined to be  
5 overfished as defined within that plan;

6 “(B) the fishery is materially affected by a  
7 fishery management plan’s stock recovery re-  
8 quirements;

9 “(C) the fishery is economically depressed;  
10 and

11 “(D) the fishery is managed pursuant to a  
12 limited access program under section 303(c)(9)  
13 of the Act.

14 “(g) RESPONSIBILITY OF THE SECRETARY.—The  
15 Secretary shall have general responsibility to carry out the  
16 provisions of this Act. The Secretary may promulgate such  
17 regulations, in accordance with section 553 of title 5,  
18 United States Code, as may be necessary to discharge  
19 such responsibility.

20 “(h) EFFECT OF CERTAIN LAWS ON CERTAIN TIME  
21 REQUIREMENTS.—The Paperwork Reduction Act of 1980  
22 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act  
23 (5 U.S.C. 601 et seq.), and Executive Order Numbered  
24 12866, dated September 30, 1993, shall be complied with  
25 within the time limitations specified in subsection (b) as

1 they apply to the functions of the Secretary under such  
2 provisions.

3 “(i) JUDICIAL REVIEW.—

4 “(1) Regulations promulgated by the Secretary  
5 under this Act and actions described in paragraph  
6 (2) shall be subject to judicial review to the extent  
7 authorized by, and in accordance with, chapter 7 of  
8 title 5, United States Code, if a complaint for such  
9 review is filed within 30 days after the date on  
10 which the regulations are promulgated or the action  
11 is published in the Federal Register, as applicable;  
12 except that—

13 “(A) section 705 of such title is not appli-  
14 cable, and

15 “(B) the appropriate court shall only set  
16 aside any such regulation or action on a ground  
17 specified in section 706(2) (A), (B), (C), or (D)  
18 of such title.

19 “(2) The actions referred to in paragraph (1)  
20 are actions that are taken by the Secretary under  
21 regulations which implement a fishery management  
22 plan, including but not limited to actions that estab-  
23 lish the date of closure of a fishery to commercial or  
24 recreational fishing.





1           “(ii) it shall be a rebuttable presumption that  
2 any vessel that is shoreward of the outer boundary  
3 of the exclusive economic zone of the United States  
4 or beyond the exclusive economic zone of any nation,  
5 and that has onboard gear that is capable of use for  
6 large-scale driftnet fishing, is engaged in such fish-  
7 ing; or”.

8           (c) Section 307(2)(A) of the Act (16 U.S.C.  
9 1857(2)(A)) is amended to read as follows:

10           “(A) in fishing within the boundaries of  
11 any State, except—

12           “(i) recreational fishing permitted  
13 under section 201(i),

14           “(ii) fish processing permitted under  
15 section 306(c), or

16           “(iii) transshipment at sea of fish  
17 products within the boundaries of any  
18 State in accordance with a permit ap-  
19 proved under section 204(b)(6)(A)(ii);”.

20           (d) Section 307(3) of the Act (16 U.S.C. 1857(3))  
21 is amended to read:

22           “(3) for any vessel of the United States, and  
23 for the owner or operator of any vessel of the United  
24 States, to transfer at sea directly or indirectly, or at-  
25 tempt to so transfer at sea, any United States har-

1 vested fish to any foreign fishing vessel, while such  
2 foreign vessel is within the exclusive economic zone  
3 or within the boundaries of any State except to the  
4 extent that the foreign fishing vessel has been per-  
5 mitted under section 204(b)(6)(B) or section 306(c)  
6 to receive such fish;”.

7 (e) Section 307(4) of the Act (16 U.S.C. § 1857(4))  
8 is amended by adding after the word “zone” the following  
9 phrase, “or within the boundaries of any State”.

10 CIVIL PENALTIES AND PERMIT SANCTIONS

11 SEC. 13. (a) Section 308(b) of the Act (16 U.S.C.  
12 1858(b)) is amended by deleting the first sentence and  
13 substituting the following: “Any person against whom a  
14 civil penalty is assessed under subsection (a), or against  
15 whom a permit sanction is imposed under subsection (g)  
16 (other than a permit suspension for nonpayment of pen-  
17 alty or fine), may obtain review thereof in the United  
18 States district court for the appropriate district by filing  
19 a complaint against the Secretary in such court within 30  
20 days from the date of such order.”.

21 (b) Section 308(g)(1)(C) of the Act (16 U.S.C.  
22 1858(g)(1)(C)) is amended to read as follows:

23 “(C) any amount in settlement of a civil  
24 forfeiture imposed on a vessel or other property,  
25 or any civil penalty or criminal fine imposed on  
26 a vessel or owner or operator of a vessel or any

1 other person who has been issued or has ap-  
2 plied for a permit under any fishery resource  
3 law statute enforced by the Secretary, has  
4 not been paid and is overdue, the Secretary  
5 may—”.

6 ENFORCEMENT

7 SEC. 14. (a) Section 311(e)(1) of the Act (16 U.S.C.  
8 1861(e)(1)) is amended by—

9 (1) substituting the word “marine” for the  
10 word “fishery” in the chapeau, and in subpara-  
11 graphs (A) and (B); and

12 (2) by amending subparagraph (E) to read as  
13 follows:

14 “(E) claims of parties in interest to prop-  
15 erty disposed of under section 612(b) of the  
16 Tariff Act of 1930 (19 U.S.C. 1612(b)), as  
17 made applicable by section 310(c) of this Act or  
18 by any other marine resource law enforced by  
19 the Secretary, to seizures made by the Sec-  
20 retary, in amounts determined by the Secretary  
21 to be applicable to such claims at the time of  
22 seizure; and”.

23 (b) Section 311(e)(2) of the Act (16 U.S.C.  
24 1861(e)(2)) is amended to read as follows:

25 “(2) Any person found in an administrative or  
26 judicial proceeding to have committed any violation

1 of this Act or any other marine resource law en-  
2 forced by the Secretary shall be liable for the cost  
3 incurred in the sale, storage, care, and maintenance  
4 of any fish or other property seized in connection  
5 with the violation.”.

6 OBSERVERS WAGES AS MARITIME LIENS

7 SEC. 15. The Act is amended by adding the following  
8 new section:

9 “SEC. 312. OBSERVERS’ WAGES AS SEAMEN’S  
10 LIENS.—Claims for observers’ wages shall be considered  
11 maritime liens against the vessel and be accorded the same  
12 priority as seamen’s liens under admiralty and general  
13 maritime law.”.

14 CONFORMING AMENDMENTS

15 SEC. 16. (a) Section 2(b)(4) of the Act is amended  
16 by replacing the words “fishery management plan” with  
17 the words “conservation and management measures”.

18 (b) Section 2(b)(5) of the Act is amended by replac-  
19 ing, each time it appears, the word “plans” with the word  
20 “measures”.

21 (c) Section 3(31) of the Act is amended by replacing  
22 the words “for which a fishery management plan prepared  
23 under title III or a preliminary fishery management plan  
24 prepared under section 201(h) has been implemented”  
25 with the words “regulated under this Act”.

1 (d) Section 201(c) of the Act is amended by deleting  
2 the phrase “, including any regulations promulgated to  
3 implement any applicable fishery management plan or any  
4 preliminary fishery management plan”.

5 (e) Section 201 of the Act (16 U.S.C. 1821) is  
6 amended by replacing “(g)” in subsection (a)(2) with  
7 “(f)” and by replacing “(i)” in subsection (c)(2)(D) with  
8 “(h)”.

9 (f) Section 201(g) of the Act is amended by replacing  
10 the words “no fishery management plan for that fishery  
11 will be prepared and implemented” with the words “no  
12 regulations for that fishery will be promulgated”; by re-  
13 placing the phrase “303(a)(5)” with the phrase  
14 “303(c)(2)”; by replacing the phrase “303(b)(2), (3), (4),  
15 (5), and (7)” with the phrase “303(c)(5), (6), (7), (8),  
16 and (10)”; by replacing the words “a fishery management  
17 plan is prepared and implemented” with the words “regu-  
18 lations are promulgated”; and, in the final sentence, by  
19 deleting the words “implementing the applicable fishery  
20 management plan”.

21 (g) Section 201(h) of the Act is amended by replacing  
22 the words “management plans” with the word “regula-  
23 tions”.

1 (h) Section 201(i) of the Act is amended by replacing  
2 the words “fishery management plan implemented” with  
3 the words “regulations promulgated”.

4 (i) Section 204(b)(7)(A) of the Act is amended to  
5 read as follows:

6 “(A) All of the requirements of regulations  
7 promulgated under section 201(g) or under title  
8 III.”.

9 (j) Section 302(h)(3) of the Act (16 U.S.C. 1852(h))  
10 is amended by replacing “204(b)(4)(C)” with  
11 “204(b)(4)(A)(iii)”.

12 (k) Section 302(h)(4) of the Act is amended by re-  
13 placing the words “fishery management plans and amend-  
14 ments to such plans” with the word “regulations”.

15 (l) Section 302(h)(6) of the Act is amended by replac-  
16 ing the phrase “303(a) (3) and (4)” with the phrase  
17 “303(a) (5) and (6)”, and by replacing the phrase  
18 “304(f)(3)” with the phrase “304(g)(3)”.

19 (m) Section 306(b)(1) of the Act is amended by re-  
20 placing in subsection (A), the words “covered by a fishery  
21 management plan implemented” with the words “regula-  
22 tions promulgated”; by replacing, in subsection (B), the  
23 words “fishery management plan” with the word “regula-  
24 tions”; and by replacing the words “such fishery manage-  
25 ment plan and the regulations promulgated to implement

1 such plan” with the words “regulations promulgated for  
2 such fishery”.

3 (n) Section 307(1)(J)(i) of the Act is amended by de-  
4 leting the words “American Lobster Fishery Management  
5 Plan, as implemented by” and the words “, or any succes-  
6 sor to that plan, implemented under this title”.

7 (o) Section 307(2)(B) of the Act (16 U.S.C.  
8 §1857(2)(B)) is amended by replacing “201(j)” with  
9 “201(i)”.

10 (p) Section 311(f) of the Act is amended by replacing  
11 the words “Fishery Management Plan” in the subhead  
12 with the word “Regulations”; by replacing the words  
13 “Fishery Management Plan” in subsection (1) with the  
14 word “regulations”; by replacing the words “fishery man-  
15 agement plan approved” in subsection (2) with the words  
16 “regulations promulgated”; by replacing the words “under  
17 the Northeast Multispecies Fishery Management Plan” in  
18 subsection (3) with the words “for the Northeast  
19 Multispecies fishery”; and by replacing, in subsection (4),  
20 the words “Fishery Management Plan” with the word  
21 “regulations” and the words “that Plan” with the words  
22 “those regulations”.

23 (q) Section 314(c) of the Act is amended by revising  
24 the subhead to read “**MANAGEMENT OF**  
25 **UNDERUTILIZED SPECIES**”; by adding the Phrase “and

1 regulations” after “fishery management plans”; and by re-  
 2 placing the words “covered under such a plan” with the  
 3 words “regulated under this Act”.

4 AUTHORIZATION OF APPROPRIATIONS

5 SEC. 17. Section 406 of the Act (16 U.S.C. 1882)  
 6 is amended by adding at the end the following new para-  
 7 graph:

8 “(20) \$103,218,000 for the fiscal year ending  
 9 September 30, 1994, \$142,502,000 for the fiscal  
 10 year ending September 30, 1995, and such sums as  
 11 may be necessary for fiscal year 1996.”.

○

S 2138 IS—2

S 2138 IS—3

S 2138 IS—4

S 2138 IS—5

S 2138 IS—6

S 2138 IS—7