

Calendar No. 697

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-398

FLORIDA FISHERIES IMPROVEMENT ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1403



DECEMBER 9, 2016.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1403]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1403) to amend the Magnuson-Stevens Fishery Conservation and Management Act to promote sustainable conservation and management for the Gulf of Mexico and South Atlantic fisheries and the communities that rely on them, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1403 is to amend the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 et seq.) to promote sustainable conservation and management for the Gulf of Mexico and South Atlantic fisheries and the communities that rely on them.

BACKGROUND AND NEEDS

Fisheries play an important role in the culture, food security, environment, and economy of the United States. In 2013, the average U.S. resident consumed 14.5 pounds of fish and shellfish. While the United States exported 3.3 billion pounds of edible fishery products, valued at \$5.6 billion, the United States imported \$18 billion worth of edible fishery products in 2013.¹ Both commercial and rec-

¹National Marine Fisheries Service, Fisheries of the United States, 2013, U.S. Department of Commerce, Current Fishery Statistics No. 2012, 2014, 124 pp, available at <http://www.st.nmfs.noaa.gov/commercial-fisheries/fus/fus13/index> (accessed June 17, 2015).

reational fisheries have extensive economic impacts. In 2011, the domestic commercial seafood industry supported approximately 1.2 million full-time and part-time jobs including fishermen, processors, and retailers. In landings revenue alone, finfish and shellfish landings were valued at \$5.3 billion in 2011. Also in 2011, approximately 11 million recreational saltwater fishermen helped to support more than 450,000 jobs and to generate nearly \$70 billion in sales, including fishing gear and fishing trips.² Marine fisheries resources in the United States are managed under State and Federal authorities. Fisheries in the U.S. Exclusive Economic Zone (U.S. EEZ) are managed under the authority of the MSA.³ The U.S. EEZ is the largest in the world: it extends from coastal State boundaries to 200 nautical miles from shore, encompassing about 3.4 million square nautical miles of area. Within a few miles of shore, States are responsible for fisheries management, often in coordination with neighboring States and with the Federal Government. Most States' seaward boundaries extend three miles from shore; however, the seaward boundaries of Texas, Puerto Rico, and the Gulf Coast of Florida are at nine nautical miles. In 2012, Louisiana claimed State jurisdiction out to over 10 miles.⁴

In 1976, Congress passed the Fishery Conservation and Management Act,⁵ which established a "fishery conservation zone" extending 200 miles from the shores of the United States, gave the United States exclusive authority to manage fishery resources within that zone, and excluded most foreign fishing fleets from those waters. In 1983, the Act was amended to reflect President Reagan's proclamation establishing the U.S. EEZ 200 nautical miles offshore of the United States⁶ consistent with the United Nations Convention on the Law of the Sea.⁷ The Act was retitled the Magnuson Fishery Conservation and Management Act in 1980⁸ to honor the leadership of Senator Warren Magnuson in the Act's original passage; in 1996, Senator Ted Stevens' contributions were recognized when his name was appended to the title.⁹ The original version of the Act, in addition to establishing U.S. control over the fishery resources off our shores, also established eight Regional Fishery Management Councils: New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf, Pacific, North Pacific, and Western Pacific.¹⁰ The Fishery Management Councils (Councils) include State, Federal, industry, and scientific representatives, and they are primarily responsible for developing fishery management plans for fisheries in their respective regions.¹¹ The Federal Government provides science and administrative support for the management of fisheries in Federal waters, primarily through the National Oceanic and Atmospheric

²National Marine Fisheries Service, Fisheries Economics of the United States, 2011, U.S. Department of Commerce, NOAA Technical Memorandum NMFS-F/SPO-118, 2012, 175 pp, available at <https://www.st.nmfs.noaa.gov/st5/publication/index.html> (accessed October 30, 2013).

³16 U.S.C. 1801 et seq.

⁴Louisiana (State), Senate Bill 145 Act No 366, 2011, available at <http://www.legis.la.gov/legis/ViewDocument.aspx?d=760938> (accessed June 17, 2015).

⁵P.L. 94-265.

⁶48 Fed. Reg. 10605.

⁷J. Rolleri, "Taking Stock: The Magnuson-Stevens Act Revisited; Background Materials on the MSA," prepared for the 8th Marine Law Symposium, November 4-5, 2010, Roger Williams University School of Law, Bristol, RI.

⁸P.L. 96-561.

⁹P.L. 104-208.

¹⁰For each Council's area of responsibility, see http://www.nmfs.noaa.gov/sfa/reg_svcs/councils.htm (accessed October 30, 2013).

¹¹16 U.S.C. 1852.

Administration's (NOAA) National Marine Fisheries Service (NMFS). NMFS is subdivided into six regional offices and corresponding Science Centers: Alaska, Northeast, Northwest, Pacific Islands, Southeast and Caribbean, and Southwest.¹²

Enforcing Federal fisheries laws is a collaborative effort amongst several Federal agencies, including NOAA and NMFS, the U.S. Coast Guard (USCG), the Department of Justice (DOJ), and the Department of State (DOS). The USCG enforces fisheries laws at sea and is the primary Federal presence over the entire U.S. EEZ. Annually, the USCG conducts an average of 5,500 boardings on domestic fishing vessels in support of the MSA. Violation and penalty decisions are made by NMFS, in consultation with the DOJ for significant prosecution cases. The USCG also is responsible for protecting the U.S. EEZ from foreign vessel encroachment and works with both NOAA and the DOS to enforce violations of foreign vessels taking resources from U.S. waters. NMFS, the Interstate Marine Fisheries Commissions, and the USCG also work with State enforcement agencies through a cooperative enforcement program, which authorizes States to enforce Federal fisheries laws as well as their own regulations. The Gulf of Mexico Fishery Management Council (Gulf of Mexico Council) prepares fishery management plans to manage fishery resources in the Federal waters of the Gulf of Mexico. The Gulf of Mexico Council is responsible for the following fishery management plans: coastal migratory pelagics, which comprises 5 species including cobia and king mackerel (managed jointly with the South Atlantic Fishery Management Council (South Atlantic Council)); red drum; reef fish, which includes 11 snappers, 11 groupers, and 9 other species such as amberjacks and tilefishes; shrimp, which includes 4 shrimp species; spiny lobster (managed jointly with the South Atlantic Council); and corals and coral reefs, which includes dozens of coral species.¹³ In 2013, Gulf of Mexico commercial fishermen landed 1.45 billion pounds of fish valued at \$905 million.¹⁴

On April 20, 2010, an explosion occurred on the Mobile Offshore Drilling Unit Deepwater Horizon. Eleven men perished in the explosion. Soon after, it became clear that the damaged oil well, known as the Macondo well, was leaking oil into the Gulf of Mexico. In August 2010, the well was largely brought under control, but it was not until September 19, 2010, that the well was permanently sealed. According to final government estimates, a total of 4.9 million barrels (more than 200 million gallons) of oil were released from the Macondo well.¹⁵ Natural resource science and restoration efforts in the Gulf of Mexico are supported by a variety of sources, including the Gulf Environmental Benefit Fund, Gulf of Mexico Research Initiative, the Gulf Coast Ecosystem Restoration Task Force established by Executive Order, the Natural Resource

¹²National Marine Fisheries Service. 2013. Fisheries of the United States, 2012. U.S. Department of Commerce, Current Fishery Statistics No. 2012: p. 108. Available at: <http://www.st.nmfs.noaa.gov/commercial-fisheries/fus/fus12/index> (accessed October 30, 2013).

¹³Gulf of Mexico Fishery Management Council, Species listed in the fishery management plans of the Gulf of Mexico Fishery Management Council, 2012, available at <http://www.gulfcouncil.org/Beta/GMFMWeb/downloads/species%20managed.pdf> (accessed November 4, 2013).

¹⁴National Marine Fisheries Service, Fisheries of the United States, 2013, U.S. Department of Commerce, Current Fishery Statistics No. 2012, 2014, 124 pp, available at <http://www.st.nmfs.noaa.gov/commercial-fisheries/fus/fus13/index> (accessed June 17, 2015).

¹⁵CRS report R41531, Deepwater Horizon Oil Spill: The Fate of the Oil, by J. L. Ramseur.

Damage Assessment Process prescribed by the Oil Pollution Act of 1990,¹⁶ and the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2011.¹⁷ During the summer of 2010, many State and Federal fishing areas were closed due to the oil spill; at the height of these closures, on June 2, 2010, over one-third of the U.S. EEZ in the Gulf of Mexico was closed to fishing.¹⁸ However, after testing by the Food and Drug Administration, NOAA, and other Federal and State agencies, these waters were gradually reopened; by fall 2011 all Federal and most State fishing areas had been reopened.¹⁹ On April 29, 2015, the Committee held a hearing to review these recovery efforts, entitled, “Five Years After Deepwater Horizon: Improvements and Challenges in Prevention and Response.”

The South Atlantic Council, headquartered in Charleston, South Carolina, is responsible for the conservation and management of fish stocks within the Federal 200-mile limit of the Atlantic off the coasts of North Carolina, South Carolina, Georgia, and east Florida to Key West.²⁰ The South Atlantic Council is responsible for the following fishery management plans: snapper grouper complex, which includes 20 species of sea basses and groupers, wreckfish, 14 snapper species, 7 porgies, and 18 other fish species; coastal migratory pelagics (managed jointly with the Gulf of Mexico Council); coral and live bottom habitat, which includes many coral species; dolphinfish and wahoo; golden crab; shrimp, which includes 5 species of shrimp; spiny lobster (managed jointly with the Gulf of Mexico Council); and Sargassum, a type of floating marine vegetation that provides important habitat and is therefore limited to harvest. The snapper grouper complex is the only fishery management plan under the South Atlantic Council’s jurisdiction that contains species that are considered overfished.²¹ Collectively, the commercial fishermen in the South Atlantic region landed 91.5 million pounds of catch valued at \$160 million in 2013.²² NMFS recently announced that black sea bass, a popular fish for both recreational and commercial fishermen in the southeast, has been rebuilt.²³ The southern stock was declared overfished in 2005, and the South Atlantic Council at that time opted to reduce the annual catch limits for black sea bass and to keep them at those reduced levels until the stock rebuilt. As a result of this management success, it is pos-

¹⁶ 33 U.S.C. 2701 et seq.

¹⁷ P.L. 112—141, Subtitle F.

¹⁸ NOAA Fisheries, Southeast Regional Office, Deepwater Horizon/BP Oil Spill: Size and Percent Coverage of Fishing Area Closures Due to BP Oil Spill, available at http://sero.nmfs.noaa.gov/deepwater_horizon/size_percent_closure/index.html (accessed November 1, 2013).

¹⁹ U.S. Food and Drug Administration, Gulf of Mexico Oil Spill, available at <http://www.fda.gov/food/ucm210970.htm> (accessed November 1, 2013).

²⁰ South Atlantic Fishery Management Council, About SAFMC, available at <http://safmc.net/about-us/about-safmc> (accessed November 1, 2013).

²¹ South Atlantic Fishery Management Council, Fishery Management Plans/Amendments, available at <http://safmc.net/resource-library/fishery-management-plans-amendments> (accessed November 1, 2013).

²² National Marine Fisheries Service, Fisheries of the United States, 2013, U.S. Department of Commerce, Current Fishery Statistics No. 2012, 2014, 124 pp, available at <http://www.st.nmfs.noaa.gov/commercial-fisheries/fus/fus13/index> (accessed June 17, 2015).

²³ NOAA Fisheries, Southeast Regional Office, Back in Black: Black Sea Bass Stock is Rebuilt, available at http://sero.nmfs.noaa.gov/documents/main_articles/html/ (accessed November 1, 2013).

sible that the next season’s allowable catch could be nearly double what fishermen have had access to in recent years.²⁴

Improvements in the Estimation of Fish Stocks

To set catch limits and understand the health of fish stocks, fisheries managers need to collect and use accurate, timely data about the fishery. The primary tool that NMFS uses to support fisheries decision-making is a “stock assessment.” Stock assessments rely on data about the catch, abundance, and biology of a fish stock. Catch data can come from: dockside monitoring records, often collected in partnership with States; logbooks, records from commercial fishing vessels; observers, who ride along on fishing trips to monitor bycatch and discards; and surveys and sampling to estimate recreational harvest. With respect to the latter, since 2007, NMFS has been implementing a new Marine Recreational Information Program (MRIP) in response to recommendations from a National Research Council report on recreational fishing survey methods and requirements of the most recent MSA reauthorization. Abundance data can be collected in fishery-independent surveys, carried out by one of NOAA’s fishery research vessels or by a contracted commercial fishing vessel. When fishery-independent data are unavailable, abundance of a stock can be inferred using information about the catch rate. Finally, basic biological data about a stock, such as age structure, reproductive rate, and size, are vital to the stock assessment process.²⁵ In 2014, based on recommendations from the National Research Council and results from a series of multi-year pilot projects, the MRIP began a transition from a phone-based to a mail-based recreational fishing survey. Rather than randomly dialing the phone numbers of people who live in coastal counties, the surveys are sent to people in the fishing license database and include a response incentive.²⁶

Even with the best available and most recent data possible, uncertainty in the dynamic ocean ecosystem persists. In addition to that scientific uncertainty, managers take into account “management uncertainty,” which arises due to inaccurate or late reporting of catch or bycatch in a fishery. In spite of efforts to improve recreational data collection, fisheries with a large recreational component often have additional uncertainty resulting from the difficulty in reliably recording catches by numerous geographically dispersed fishermen. Stock assessments with a high degree of uncertainty can lead to management actions, such as lower catch limits for that stock, to deal with that uncertainty. However, collecting additional data to reduce uncertainty can be a costly proposition.²⁷ Improvements in data collection through better methods or advancements in technology can reduce uncertainty in scientific and catch data, thereby reducing catch buffers based on uncertainty and resulting

²⁴ National Marine Fisheries Service, Southeast Regional Office, Rebuilding the population, available at http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/bsb/ppi/rebuilding/index.html (accessed November 1, 2013).

²⁵ National Marine Fisheries Service, Fish Stock Assessment 101 Series: Part 1—Data Required for Assessing U.S. Fish Stocks, 2012, available at http://www.nmfs.noaa.gov/stories/2012/05/05_23_12stock_assessment_101_part1.html (accessed October 30, 2013).

²⁶ NOAA Office of Science and Technology, Improving the MRIP Fishing Effort Survey, 2014, available at <http://www.st.nmfs.noaa.gov/recreational-fisheries/program-overview/mrip-effort-survey> (accessed June 18, 2015).

²⁷ CRS Report R42563, Ending Overfishing and Rebuilding Fish Stocks in U.S. Federal Waters, H. F. Upton and E. H. Buck.

in better fishery management.²⁸ The Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a hearing on May 20, 2015, titled, “Improvements and Innovations in Fishery Management and Data Collection,” which focused on the importance of reliable fishery data and how innovative methods for collection can improve the accuracy of stock assessments.

Red Snapper Management

NMFS has classified the red snapper stock in the Gulf of Mexico as overfished, but the stock is managed under a rebuilding plan that recent stock assessments have indicated is rebuilding. In September 2013, the Monterey Bay Aquarium Seafood Watch Program moved Gulf of Mexico commercial red snapper from a fish to “avoid” to a “good alternative.” The total allowable catch of the stock is split between the commercial (51 percent) and recreational (49 percent) fishing sectors, an allocation established in 1990 based on historical landing data. Since 2007, NMFS has managed the commercial fishery for Gulf of Mexico red snapper as an individual fishing quota program, in which the permissible quota is held by individuals and corporations. However, recreational fishermen are chafing under what they feel is an unfairly low proportion of catch allocation. Because the recreational fishery is managed using a bag limit (2 fish) and a size limit (at least 16 inches), the recreational sector is meeting its quota sooner by catching larger fish more easily.

The 2014 recreational season in Federal waters, which was originally projected to be two weeks longer than the previous year, was limited to nine days following a March 26, 2014, decision by the United States District Court for the District of Columbia.²⁹ In this decision, NMFS was found in pertinent part to have failed to require adequate accountability measures to prohibit the retention of fish after the recreational quota had been harvested. Following this ruling, NOAA announced an emergency action to set red snapper accountability measures for the 2014 recreational fishery in the Gulf of Mexico.³⁰ After taking into account the 2013 season catch and inconsistent seasons in several States, the recreational red snapper season was shortened from an anticipated 40 days to nine days. The 2015 recreational season, in Federal waters, was also limited to nine days.³¹

The management decisions of Gulf States can also impact the management of red snapper; some of these interactions were reviewed in the subcommittee’s hearing on March 19, 2013, “Developments and Opportunities in U.S. Fisheries Management.” This Congress, several bills have been introduced that would alter the relationship between the authorities of the Gulf States and the Department of Commerce with respect to red snapper management:

²⁸ R.D. Methot, A Scientific Perspective on Challenges and Successes with Annual Catch Limits, and Possibilities to Improve Fishery Sustainability. Available at http://www.nmfs.noaa.gov/sfa/laws_policies/national_standards/documents/methot_2013_monf.pdf (accessed July 13, 2015).

²⁹ *Guindon vs. Pritzker*, WL 1274076; D.D.C. Mar. 26, 2014.

³⁰ National Marine Fisheries Service, Emergency Action to Set Red Snapper Accountability measures for the Recreational Sector of the Gulf of Mexico Reef Fish Fishery, 2014, available at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/rs_2014_rec_documents/pdfs/gulf_rs_2014_emergency_action_ea.pdf (accessed June 18, 2015).

³¹ National Marine Fisheries Service, Frequently Asked Questions: 2014 Recreational Gulf Red Snapper Season, 2014, available at <http://myfwc.com/media/2806534/FAQ-Gulf-Red-Snapper.pdf> (accessed June 18, 2015).

S. 55, the Offshore Fairness Act; H.R. 981, the Red Snapper Regulatory Reform Act; and S. 105, the Red Snapper Management Improvement Act. All three bills are pending before relevant committees. In addition, an amendment to the FY 2016 Commerce, Justice, Science and Related Agencies Appropriation bill (H. Amdt. 339), was accepted by voice vote to prohibit the use of funds by NOAA to enforce red snapper recreational quotas for private, for-hire, or recreational fishermen in Federal waters of the Gulf of Mexico.

Fisheries Disaster Relief

Commercial fishery failures can be declared when fishermen endure economic hardships resulting from fish population declines or other disruptions to the fishery. Declines in fishery resource abundance may result from several factors, such as natural environmental variations, human effects on the environment (e.g., pollution), and overfishing. Direct Federal financial assistance has been provided to fishermen and fishing communities in the form of grants, job retraining, employment, and low interest loans. Assistance also has included fishery data collection, resource restoration, research, and fishing capacity reduction programs to prevent or lessen the effects of future disruptions to fisheries. However, disasters too often are not declared in a timely manner. Since 2010, it has taken an average of 241 days, and as many as 529 days, for the Secretary of Commerce to come to a decision about the fishery disaster request.³² This time lag can have serious economic consequences for the communities affected. For example, oyster biomass in Florida's Apalachicola Bay collapsed by 80 percent, with a direct impact on more than 2,000 jobs.³³ The delay between the request and declaration for this fishery was nearly a year.

SUMMARY OF PROVISIONS

If enacted, S. 1403, the Florida Fisheries Improvement Act of 2015, would do the following:

- Repeal section 407(d) of the MSA (16 U.S.C. 1883(d)).
- Require both the Gulf of Mexico Council and the South Atlantic Council to review the allocation of fishing privileges.
- Increase public involvement in the scientific and statistical processes that inform fishery management.
- Allow fishery facilities to make use of capital construction funds.
 - Allow for more than 10 years of rebuilding for fish stocks managed under an international agreement.
 - Require a plan to conduct stock assessments for all stocks currently managed.
 - Require a report on better use of fisheries data.
 - Speed up the timeline for fishery disaster declaration.

³²National Marine Fisheries Service, Fishery Disaster Determinations, available at <http://www.nmfs.noaa.gov/sfa/management/disaster/determinations/sero.html#acc64> (accessed October 15, 2015).

³³Florida Fish and Wildlife Conservation Commission, 2012-2013 Florida Gulf Coast Oyster Disaster Report, available at <http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cnty-plan-acsc/20122013floridagulfcoastoysterdisasterreport.pdf?sfvrsn=2> (accessed July 13, 2015).

LEGISLATIVE HISTORY

S. 1403 was introduced by Senator Rubio on May 20, 2015. On June 25, 2015, the Committee met in open Executive Session and, by a voice vote, ordered S. 1403 to be reported favorably with an amendment in the nature of a substitute. It is cosponsored by Senator Nelson. On May 20, 2015, the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a hearing on methods to reduce uncertainty titled, "Improvements and Innovations in Fishery Management and Data Collection."

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 1403 as reported would not create any new programs or impose any new regulatory requirements, and therefore would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

The legislation is not expected to have a negative impact on the Nation's economy.

PRIVACY

The reported bill is not expected to impact the personal privacy of individuals.

PAPERWORK

S. 1403 would require a study from the National Academies of Science (NAS) on allocation of fishing privileges and guidance on criteria for making allocation decisions, and mandate a report to Congress on this study. S. 1403 also would require the Secretary of Commerce to develop a report on better facilitation of data, analysis, stock assessments, and surveys from nongovernmental sources and submit this report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives not later than one year after the date of the enactment of this Act. It would require scientific and statistical committees to provide reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. Finally, S. 1403 would require the Secretary of Commerce to develop a plan to conduct stock assessments and to publish this plan in the Federal Register.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents.

This section would designate the short title of this bill as the, “Florida Fisheries Improvement Act” and would provide a table of contents for the bill.

Section 2. References to the Magnuson-Stevens Fishery Conservation and Management Act.

This section would specify that all amendments and repeals in this bill apply to the MSA unless otherwise indicated.

TITLE I— CONSERVATION AND MANAGEMENT

Section 101. Regional Fishery Management Councils.

The amendments made under this section would harmonize the rules for nomination of South Atlantic Council members so that they are the same as those for the Gulf of Mexico Council members. The amendments would remove the expiration date for certain requirements regarding individuals nominated for appointment to the Gulf of Mexico Council and, as provided by this section, the South Atlantic Council. They would add a requirement that scientific and statistical committees provide advice and reports to the management councils in a way that allows for public involvement. They also would require the Council to make a video or audio webcast of meetings of the Council and each meeting of the scientific and statistical committees available within 30 days of such meetings. Finally, the amendments would give the Council the authority to use alternative fishery management methods in a recreational or mixed-use fishery.

Section 102. Contents of fishery management plans.

The amendment made under this section would provide an exception for creating annual catch limits, regulations, or annual specifications if the fish species has a mean life cycle of 12 months or less or spawns and recruits beyond State waters and the exclusive economic zone, unless the Secretary of Commerce has determined the fishery is subject to overfishing. It also would limit the establishment of catch limits, regulations, or specifications if doing so will affect the requirements of the MSA to prevent overfishing while achieving maximum sustainable yield or rebuilding the fishery.

Section 103. Funding for stock assessments, surveys, and data collection.

The amendment made under this section would allow the Secretary of Commerce or the Secretary of the Treasury to pay for the costs of stock assessments, surveys, and data collection in fisheries out of sums received as fines, penalties, and forfeitures of property.

Section 104. Capital construction.

The amendments made under this section would add fishery facilities as eligible for funds under the capital construction fund of the MSA. They would define “agreement fishery facility” as land or sea-based operations, land, or equipment used for processing, distributing, or holding fish, or for aquaculture. They also would add a requirement that these fishery facilities be owned by a U.S. citizen or at least 75 percent owned by U.S. citizens. The amendments under this section also would define the tax treatment of fishery facilities under nonqualified and qualified withdrawals from the capital construction fund, and of containers under nonqualified withdrawals.

Section 105. Fisheries disaster relief.

The amendment made under this section would require the Secretary of Commerce to make a decision about a request for funds for fisheries disaster relief within 90 days after receiving an estimate of the economic impact of the fishery disaster.

Section 106. Regional fishery conservation and management authorities.

The amendment made under this section would require both the Gulf of Mexico Council and the South Atlantic Council to review the allocation of fishing privileges among the commercial, recreational, and charter components of any fisheries managed under fishery management plans. It also would allow the Council to delay action for up to three one-year periods.

Section 107. Study of allocations in mixed-use fisheries.

This section would require a study from the NAS to provide guidance on criteria for allocating fishing privileges and identify sources of information that would be useful in making allocation decisions. It also would require a report from the NAS to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives on this study.

TITLE II— FISHERY INFORMATION, RESEARCH, AND DEVELOPMENT

Section 201. Fisheries research.

This section would require the Secretary of Commerce to develop a plan to conduct stock assessments for all stocks for which there is a fishery management plan in effect and to publish it in the Federal Register on the same publication schedule as the strategic plan for fisheries research. For fish stocks which have already had assessments done, this plan would include a schedule for updating the stock assessment, and require the completion of a new stock assessment or an update of the most recent stock assessment. For fish stocks which have not previously had an assessment, this plan would establish a schedule for conducting an initial stock assessment, require completion of this initial assessment within 3 years of the schedule’s publication in the Federal Register, and identify data and analysis that would reduce uncertainty and improve accuracy of future stock assessments. This data and analysis would include data from nongovernmental sources, including fishermen,

fishing communities, universities, and research institutions. This section would waive the stock assessment requirement if the Secretary of Commerce determines that it is not necessary.

Section 202. Improving science.

This section would require the Secretary of Commerce to develop a report on better facilitation of data, analysis, stock assessments, and surveys from nongovernmental sources and submit this report to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Natural Resources of the House of Representatives. The report would identify types of data and analysis that can be reliably used, including as the basis for establishing conservation and management measures. This would include setting standards for data collection, use, and analysis in stock assessments and surveys, and providing recommendations for data collection and analysis. It also would consider the possibility of establishing a registry of people who could provide fishery information and whether the recommendations of the report are practicable.

Section 203. Focusing assets for improved fisheries outcomes.

This section would set limits on the ability of the Senate or the House of Representatives to consider any bill, amendment, or conference report that reduces any amount in the Fisheries Promotion Fund. It would limit the ability of the Senate and the House of Representatives to repeal or amend this section.

Section 204. Gulf of Mexico red snapper catch limits; repeal.

This section would repeal the requirement for separate catch quotas to be set by the Gulf of Mexico Council for recreational and commercial fishing of red snapper.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

MAGNUSON-STEVENSON FISHERY CONSERVATION AND
MANAGEMENT ACT

[16 U.S.C. 1801 et seq.]

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

[16 U.S.C. 1852]

(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 18

voting members, including 12 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 and of commonwealths, territories, and possessions of the United States in the Caribbean Sea (except as provided in paragraph (3). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(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.

(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)(i) The Governor of a State submitting a list of names of individuals for appointment by the Secretary of Commerce to the Gulf of Mexico **[Fisheries]** *Fishery Management Council* or the *South Atlantic Fishery Management Council* under subparagraph (C) shall include—

(I) at least 1 nominee each from the commercial, recreational, and charter fishing sectors; and

(II) at least 1 other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

(ii) Notwithstanding the requirements of subparagraph (C), if the Secretary determines that the list of names submitted by the Governor does not meet the requirements of clause (i) the Secretary shall—

(I) publish a notice in the Federal Register asking the residents of that State to submit the names and pertinent biographical data of individuals who would meet the requirement not met for appointment to the Council; and

(II) add the name of any qualified individual submitted by the public who meets the unmet requirement to the list of names submitted by the Governor.

(iii) For purposes of clause (i) an individual who owns or operates a fish farm outside of the United States shall not be considered to be a representative of the commercial or recreational fishing sector.

[(iv) The requirements of this subparagraph shall expire at the end of fiscal year 2012.]

(E) 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.

(D) The tribal representative appointed under subparagraph (A) may designate as an alternate, during the period of the representative's term, an individual knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.

(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraph (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).

* * * * *

(g) COMMITTEES AND ADVISORY PANELS.—

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

[(B) Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.]

(B) *Each scientific and statistical committee shall—*

(i) provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices; and

(ii) carry out the requirements of this subparagraph in a transparent manner, allowing for public involvement in the process.

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

(D) Each member of a scientific and statistical committee shall be treated as an affected individual for purposes of paragraphs (2), (3)(B), (4), and (5)(A) of subsection (j). The Secretary shall keep disclosures made pursuant to this subparagraph on file.

(E) The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery. The review process, which may include existing committees or panels, is deemed to satisfy the requirements of the guidelines issued pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal year 2001 (Public Law 106-554—Appendix C; 114 Stat. 2763A-153).

(F) In addition to the provisions of section 302(f)(7), the Secretary shall, subject to the availability of appropriations, pay a stipend to members of the scientific and statistical committees or advisory panels who are not employed by the Federal Government or a State marine fisheries agency.

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

(2) Each Council shall establish such 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.

(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.

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

(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) 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;

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

(6) develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g);

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

(A) establish priorities for 5-year periods;

(B) be updated as necessary; and

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

(8) *have the authority to use alternative fishery management measures in a recreational fishery (or the recreational component of a mixed-use fishery), including extraction rates, fishing*

mortality, and harvest control rules, to the extent they are in accordance with the requirements of this Act; and

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

(i) PROCEDURAL MATTERS.—

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

(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, of the Council coordination committee established under subsection (1), and of the scientific and statistical committees or other committees or 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 provided by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website postings alone are not sufficient. 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 sub-

paragraph (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.

(G) Unless closed in accordance with paragraph (3), each Council shall, where practicable, make available on the Internet website of the Council a video or audio webcast of each meeting of the Council and each meeting of the scientific and statistical committee of the Council not later than 30 days after the date of the conclusion of such meeting.

(3)(A) Each Council, the Council Coordination Committee established under subsection (1), scientific and statistical committee, other committees, 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.

(1) Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(B) If any meeting or portion is closed, the Council concerned shall provide notice by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website postings alone are not sufficient, 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.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring the 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.

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SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

[16 U.S.C. 1853]

* * * * *

(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.

(d) LIMITATIONS.—

(1) *IN GENERAL.*—*The requirements under subsection (a)(15) shall not—*

(A) apply to a species in a fishery that has a mean life cycle of 12 months or less, or to a species in a fishery with respect to which all spawning and recruitment occurs beyond State waters and the exclusive economic zone, unless the Secretary has determined the fishery is subject to overfishing of that species; and

(B) limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of this Act.

(2) *CONSTRUCTION.*—*Nothing in this subsection shall be construed to affect any effective date regarding the requirements under subsection (a)(15) otherwise provided for under an international agreement in which the United States participates.*

SEC. 311. ENFORCEMENT.

[16 U.S.C. 1861]

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(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—

(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this Act or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other marine resource law enforced by the Secretary with respect to that fish or other property;

(B) a reward of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount, to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of

property for any violation of any provision of this Act or any other marine resource law enforced by the Secretary;

(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

(D) any valid liens or mortgages against any property that has been forfeited;

(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】;

(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law【.】;
and

(G) the costs of stock assessments, surveys, and data collection in fisheries managed under this Act.

(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.

* * * * *

SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.

[16 U.S.C. 1861a]

(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, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or

(C) undetermined causes.

(2) The Secretary shall make a decision regarding a request under paragraph (1) not later than 90 days after the date the Secretary receives a complete estimate of the economic impact of the fishery resource disaster from the affected State, tribal government, or fishing community.

【(2)】(3) 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)]~~(4) 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)]~~(5) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 2007 through 2013.

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SEC. 313A. GULF OF MEXICO FISHERIES CONSERVATION AND MANAGEMENT.

At least once every 5 years, the Gulf of Mexico Fishery Management Council shall review, in accordance with the provisions of this Act, any allocation of fishing privileges among the commercial, recreational, and charter components of a fishery managed under a fishery management plan prepared by the Council, except that the Council may delay action for not more than 3 additional 1 year periods if necessary.

SEC. 313B. SOUTH ATLANTIC FISHERIES CONSERVATION AND MANAGEMENT.

At least once every 5 years, the South Atlantic Fishery Management Council shall review, in accordance with the provisions of this Act, any allocation of fishing privileges among the commercial, recreational, and charter components of a fishery managed under a fishery management plan prepared by the Council, except that the Council may delay action for not more than 3 additional 1 year periods if necessary.

SEC. 404. FISHERIES RESEARCH.

[16 U.S.C. 1881c]

(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.

(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 that will permit the full use of information in the support of effective fishery conservation and management.

(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 development 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.

(e) STOCK ASSESSMENT PLAN.—

(1) *IN GENERAL.*—*The Secretary, in consultation with the Councils, shall develop and publish in the Federal Register, on the same schedule as required for the strategic plan required under subsection (b), a plan to conduct stock assessments for all stocks of fish for which a fishery management plan is in effect under this Act.*

(2) *CONTENTS.*—*The plan shall—*

(A) for each stock of fish for which a stock assessment has previously been conducted—

(i) establish a schedule for updating the stock assessment that is reasonable given the biology and characteristics of the stock; and

(ii) subject to the availability of appropriations, require completion of a new stock assessment, or an update of the most recent stock assessment—

(I) at least once every 5 years, except a Council may delay action for not more than 3 additional 1-year periods; or

(II) within such other time period specified and justified by the Secretary in the plan;

(B) for each economically important stock of fish for which a stock assessment has not previously been conducted—

(i) establish a schedule for conducting an initial stock assessment that is reasonable given the biology and characteristics of the stock; and

(ii) subject to the availability of appropriations, require completion of the initial stock assessment not later than 3 years after the date that the plan is published in the Federal Register unless another time period is specified and justified by the Secretary in the plan; and

(C) identify data and analysis, especially concerning recreational fishing, that, if available, would reduce uncertainty in and improve the accuracy of future stock assessments, including whether that data and analysis could be provided by nongovernmental sources, including fishermen, fishing communities, universities, and research institutions.

(3) WAIVER OF STOCK ASSESSMENT REQUIREMENT.—Notwithstanding subparagraphs (A)(ii) and (B)(ii) of paragraph (2), a stock assessment shall not be required for a stock of fish in the plan if the Secretary determines that such a stock assessment is not necessary and justifies the determination in the Federal Register notice required by this subsection.

(f) IMPROVING DATA COLLECTION AND ANALYSIS.—

(1) IN GENERAL.—The Secretary, in consultation with the scientific and statistical committees of the Councils established under section 302(g), shall develop and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on facilitating greater incorporation of data, analysis, stock assessments, and surveys from nongovernmental sources, including fishermen, fishing communities, universities, and research institutions, into fisheries management decisions.

(2) CONTENT.—The report under paragraph (1) shall—

(A) identify types of data and analysis, especially concerning recreational fishing, that can be reliably used for purposes of this Act and the basis for establishing conservation and management measures as required by section 303(a)(1), including setting standards for the collection and use of that data and analysis in stock assessments and surveys and for other purposes;

(B) provide specific recommendations for collecting data and performing analyses identified as necessary to reduce the uncertainty referred to in section 404(e)(2)(C);

(C) consider the extent to which it is possible to establish a registry of persons providing such information; and

(D) consider the extent to which the acceptance and use of data and analysis identified in the report in fishery management decisions is practicable.

SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.

[16 U.S.C. 1883]

(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 a limited access privilege 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.

(b) **PROHIBITION.**—In addition to the restrictions under section 303(d)(1)(A), the Gulf Council may not, prior to October 1, 2002, 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, 2002, 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 a limited access privilege 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—

(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.]

AN ACT TO AUTHORIZE THE FEDERAL SURPLUS COMMODITIES CORPORATION TO PURCHASE AND DISTRIBUTE SURPLUS PRODUCTS OF THE FISHING INDUSTRY, APPROVED AUGUST 11, 1939.

[53 Stat. 1411, chapter 696]

SEC. 2. PROMOTION OF THE FREE FLOW OF DOMESTICALLY PRODUCED FISHERY PRODUCTS.

[15 U.S.C. 713c-3]

* * * * *

(b) TRANSFER OF FUNDS.—

(1) The Secretary of Agriculture shall transfer to the Secretary each fiscal year, [beginning with the fiscal year commencing July 1, 1954, and ending on June 30, 1957,] from [moneys] *monies* made available to carry out the provisions of section 32 of such Act of August 24, 1935, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which [shall be maintained in a separate fund only for—

[(A) use by the Secretary—

[(i) to provide financial assistance for the purpose of carrying out fisheries research and development projects approved under subsection (c),

[(ii) to implement the national fisheries research and development program provided for under subsection (d);

[(iii) to implement the Northwest Atlantic Ocean Fisheries Reinvestment Program established under section 314 of the Magnuson-Stevens Fishery Conservation and Management Act; and

[(iv) to fund the Federal share of a fishing capacity reduction program established under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act; and

[(B) the provision of moneys, subject to paragraph (2), to carry out the purposes of the Fisheries Promotion Fund established under section 208(a) of the Fish and Seafood Promotion Act of 1986.] *shall only be used for the purposes described under subsection (c).*

[(2) There are transferred from the fund established under paragraph (1) to the Fisheries Promotion Fund referred to in paragraph (1)(B) \$750,000 in fiscal year 1987, \$3,000,000 in each of fiscal years 1988 and 1989, and \$2,000,000 in each of fiscal years 1990 and 1991.]

(2) LIMITATIONS ON BILLS TRANSFERRING FUNDS.—

(A) *IN GENERAL.*—*It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that reduces any amount in the fund referred to in paragraph (1) in a manner that is inconsistent with such paragraph.*

(B) *LIMITATION ON CHANGES TO THIS PARAGRAPH.*—*It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that would repeal or otherwise amend this paragraph.*

(C) *WAIVER.*—*A provision of this paragraph may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.*

(D) *APPEALS.*—*An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on the point of order raised under this paragraph.*

(E) RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.—This paragraph is enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and is deemed to be part of the rules of each house, respectively, but applicable only with respect to the procedure to be followed in the House in the case of a bill, resolution, amendment, or conference report under this paragraph, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

* * * * *

TITLE 46. SHIPPING SUBTITLE V. MERCHANT MARINE PART
C. FINANCIAL ASSISTANCE PROGRAMS CHAPTER 535.
CAPITAL CONSTRUCTION FUNDS

§ 53501. Definitions

In this chapter:

(1) AGREEMENT FISHERY FACILITY.—The term “agreement fishery facility” means an eligible fishery facility or a qualified fishery facility that is subject to an agreement under this chapter.

[(1)](2) AGREEMENT VESSEL.—The term “agreement vessel” means—

(A) an eligible vessel or a qualified vessel that is subject to an agreement under this chapter; and

(B) a barge or container that is part of the complement of a vessel described in subparagraph (A) if provided for in the agreement.

(3) ELIGIBLE FISHERY FACILITY.—

(A) IN GENERAL.—Subject to subparagraph (B), the term “eligible fishery facility” means—

(i) for operations on land—

(I) a structure or an appurtenance thereto designed for unloading and receiving from a vessel, processing, holding pending processing, distribution after processing, or holding pending distribution, of fish from a fishery;

(II) the land necessary for the structure or appurtenance described in subclause (I); and

(III) equipment that is for use with the structure or appurtenance that is necessary to perform a function described in subclause (I);

(ii) for operations not on land, a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, processing fish; or

(iii) for aquaculture, including operations on land or elsewhere—

(I) a structure or an appurtenance thereto designed for aquaculture;

(II) the land necessary for the structure or appurtenance;

(III) equipment that is for use with the structure or appurtenance and that is necessary to perform a function described in subclause (I); and

(IV) a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, aquaculture.

(B) OWNERSHIP REQUIREMENT.—Under subparagraph (A), the structure, appurtenance, land, equipment, or vessel shall be owned by—

(i) an individual who is a citizen of the United States; or

(ii) an entity that is—

(I) a citizen of the United States under section 50501 of this title; and

(II) at least 75 percent owned by citizens of the United States, as determined under section 50501 of this title.

[(2)](4) ELIGIBLE VESSEL.—The term “eligible vessel” means—

(A) a vessel—

(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) documented under the laws of the United States; and

(iii) operated in the foreign or domestic trade of the United States or in the fisheries of the United States; and

(B) a commercial fishing vessel—

(i) constructed in the United States and, if reconstructed, reconstructed in the United States;

(ii) of at least 2 net tons but less than 5 net tons;

(iii) owned by a citizen of the United States;

(iv) having its home port in the United States; and

(v) operated in the commercial fisheries of the United States.

[(3)](5) JOINT REGULATIONS.—The term “joint regulations” means regulations prescribed jointly by the Secretary and the Secretary of the Treasury under section 53502(b) of this title.

[(4)](6) NONCONTIGUOUS TRADE.—The term “noncontiguous trade” means—

(A) trade between—

(i) one of the contiguous 48 States; and

(ii) Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and

(B) trade between—

(i) a place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and

(ii) another place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States.

(7) *QUALIFIED FISHERY FACILITY.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), the term “qualified fishery facility” means—

(i) for operations on land—

(I) a structure or an appurtenance thereto designed for unloading and receiving from a vessel, processing, holding pending processing, distribution after processing, or holding pending distribution, of fish from a fishery;

(II) the land necessary for the structure or appurtenance; and

(III) equipment that is for use with the structure or appurtenance and necessary to perform a function described in subclause (I);

(ii) for operations not on land, a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, processing fish; or

(iii) for aquaculture, including operations on land or elsewhere—

(I) a structure or an appurtenance thereto designed for aquaculture;

(II) the land necessary for the structure or appurtenance;

(III) equipment that is for use with the structure or appurtenance and necessary for performing a function described in subclause (I); and

(IV) a vessel built in the United States.

(B) *OWNERSHIP REQUIREMENT.*—Under subparagraph (A), the structure, appurtenance, land, equipment, or vessel shall be owned by—

(i) an individual who is a citizen of the United States; or

(ii) an entity that is—

(I) a citizen of the United States under section 50501 of this title; and

(II) at least 75 percent owned by citizens of the United States, as determined under section 50501 of this title.

[(5)](8) *QUALIFIED VESSEL.*—The term “qualified vessel” means—

(A) a vessel—

(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) documented under the laws of the United States; and

(iii) agreed, between the Secretary and the person maintaining the capital construction fund established under section 53503 of this title, to be operated in the

United States foreign, Great Lakes, noncontiguous domestic, or short sea transportation **trade** *trade* or in the fisheries of the United States; and

(B) a commercial fishing vessel—

- (i) constructed in the United States and, if reconstructed, reconstructed in the United States;
- (ii) of at least 2 net tons but less than 5 net tons;
- (iii) owned by a citizen of the United States;
- (iv) having its home port in the United States; and
- (v) operated in the commercial fisheries of the United States.

[(6)](9) SECRETARY.—The term “Secretary” means—

[(A) the Secretary of Commerce with respect to an eligible vessel or a qualified vessel operated or to be operated in the fisheries of the United States; and]

(A) the Secretary of Commerce with respect to—

- (i) an eligible vessel or a qualified vessel operated or to be operated in the fisheries of the United States; or*
- (ii) an eligible fishery facility or a qualified fishery facility; and*

(B) the Secretary of Transportation with respect to other vessels.

[(7)](10) SHORT SEA TRANSPORTATION TRADE.—The term “short sea transportation trade” means the carriage by vessel of cargo—

(A) that is—

- (i) contained in intermodal cargo containers and loaded by crane on the vessel; or
- (ii) loaded on the vessel by means of wheeled technology; and

(B) that is—

- (i) loaded at a port in the United States and unloaded either at another port in the United States or at a port in Canada located in the Great Lakes Saint Lawrence Seaway System; or
- (ii) loaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System and unloaded at a port in the United States.

(7) UNITED STATES FOREIGN TRADE.— *(11) UNITED STATES FOREIGN TRADE.* The term “United States foreign trade” includes those areas in domestic trade in which a vessel built with a construction-differential subsidy is allowed to operate under the first sentence of section 506 of the Merchant Marine Act, 1936.

[(8) VESSEL.] (12) VESSEL.— The term “vessel” includes—

(A) cargo handling equipment that the Secretary determines is intended for use primarily on the vessel; and

(B) an ocean-going towing vessel, an ocean-going barge, or a comparable towing vessel or barge operated on the Great Lakes.

§ 53503. Establishing a capital construction fund

(a) **IN GENERAL.**—A citizen of the United States owning or leasing an eligible vessel or *eligible fishery facility* may make an agree-

ment with the Secretary under this chapter to establish a capital construction fund for the vessel[.] or fishery facility.

[(b) ALLOWABLE PURPOSE.—The purpose of the agreement shall be to provide replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for operation in the United States foreign, Great Lakes, noncontiguous domestic, or short sea transportation trade or in the fisheries of the United States.]

(b) ALLOWABLE PURPOSE.—*The purpose of the agreement shall be—*

(1) *to provide replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for operation in the United States foreign, Great Lakes, noncontiguous domestic, or short sea transportation trade or in the fisheries of the United States;*
or

(2) *to provide for the acquisition, construction, or reconstruction of a fishery facility owned by—*

(A) *an individual who is a citizen of the United States;*

or

(B) *an entity that is—*

(i) *a citizen of the United States under section 50501;*

and

(ii) *at least 75 percent owned by citizens of the United States, as determined under section 50501.*

§ 53504. Deposits and withdrawals

(a) REQUIRED DEPOSITS.—An agreement to establish a capital construction fund shall provide for the deposit in the fund of the amounts agreed to be appropriate to provide for qualified withdrawals under section 53509 of this title.

(b) APPLICABLE REQUIREMENTS.—Deposits in and withdrawals from the fund are subject to the requirements included in the agreement or prescribed by the Secretary by regulation. However, the Secretary may not require a person to deposit in the fund for a taxable year more than 50 percent of that portion of the person's taxable income for that year (as determined under section 53505(a)(1) of this title) that is attributable to the operation of an agreement vessel[.] or an agreement fishery facility.

§ 53505. Ceiling on deposits

(a) MAXIMUM DEPOSITS.—The amount deposited in a capital construction fund for a taxable year may not exceed the sum of—

(1) that portion of the taxable income of the owner or lessee for the taxable year (computed under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1) but without regard to the carryback of net operating loss or net capital loss or this chapter) that is attributable to the operation of agreement vessels or agreement fishery facilities in the foreign or domestic trade of the United States or in the fisheries of the United States;

(2) the amount allowable as a deduction under section 167 of such Code (26 U.S.C. 167) for the taxable year for agreement vessels[;] or agreement fishery facilities;

(3) if the transaction is not taken into account for purposes of paragraph (1), the net proceeds (as defined in joint regulations) from the disposition of an agreement vessel *or agreement fishery facility* or from insurance or indemnity attributable to an agreement vessel *or agreement fishery facility*; and

(4) the receipts from the investment or reinvestment of amounts held in the fund.

(b) REDUCTIONS FOR LESSEES.—For a lessee, the maximum amount that may be deposited for an agreement vessel *or agreement fishery facility* under subsection (a)(2) for any period shall be reduced by any amount the owner is required or permitted, under the capital construction fund agreement, to deposit for that period for the vessel *or fishery facility* under subsection (a)(2).

§ 53509. Qualified withdrawals

(a) IN GENERAL.—Subject to subsection (b), a withdrawal from a capital construction fund is a qualified withdrawal if it is made under the terms of the agreement and is for—

(1) the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a [qualified vessel; or] *qualified vessel, or the acquisition, construction, or reconstruction of a qualified fishery facility; or*

(2) the payment of the principal on indebtedness incurred in the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a [qualified vessel.] *qualified vessel, or the acquisition, construction, or reconstruction, of a qualified fishery facility.*

(b) BARGES AND CONTAINERS.—Except as provided in regulations prescribed by the Secretary, subsection (a) applies to a barge or container only if it is constructed in the United States.

(c) TREATMENT AS NONQUALIFIED WITHDRAWAL.—Under joint regulations, if the Secretary determines that a substantial obligation under an agreement is not being fulfilled, the Secretary, after notice and opportunity for a hearing to the person maintaining the fund, may treat any amount in the fund as an amount withdrawn from the fund in a nonqualified withdrawal.

§ 53510. Tax treatment of qualified withdrawals and basis of property

(a) ORDER OF WITHDRAWALS.—A qualified withdrawal from a capital construction fund shall be treated as made—

- (1) first from the capital account;
- (2) second from the capital gain account; and
- (3) third from the ordinary income account.

(b) ORDINARY INCOME ACCOUNT WITHDRAWALS.—If a portion of a qualified withdrawal for a vessel, barge, [or container] *container, or fishery facility* is made from the ordinary income account, the basis of the vessel, barge, [or container] *container, or fishery facility* shall be reduced by an amount equal to that portion.

(c) CAPITAL GAIN ACCOUNT WITHDRAWALS.—If a portion of a qualified withdrawal for a vessel, barge, [or container] *container, or fishery facility* is made from the capital gain account, the basis of the vessel, barge, [or container] *container, or fishery facility* shall be reduced by an amount equal to that portion.

(d) WITHDRAWALS TO PAY PRINCIPAL.—If a portion of a qualified withdrawal to pay the principal on indebtedness is made from the ordinary income account or the capital gain account, an amount equal to the total reduction that would be required by subsections (b) and (c) if the withdrawal were a qualified withdrawal for a purpose described in those subsections shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, [and containers] *containers, and fishery facilities* owned by the person maintaining the fund. The remaining amount of the withdrawal shall be treated as a nonqualified withdrawal.

(e) GAIN ON PROPERTY WITH REDUCED BASIS.—If property, the basis of which was reduced under subsection (b), (c), or (d), is disposed of, any gain realized on the disposition, to the extent it does not exceed the total reduction in the basis of the property under those subsections, shall be treated as an amount referred to in section 53511(c)(1) of this title withdrawn on the date of disposition of the property. Subject to conditions prescribed in joint regulations, this subsection does not apply to a disposition if there is a redeposit, in an amount determined under joint regulations, that restores the fund as far as practicable to the position it was in before the withdrawal.

§ 53511. Tax treatment of nonqualified withdrawals

* * * * *

(e) NONQUALIFIED WITHDRAWALS.—

(1) IN GENERAL.—The following applicable percentage of any amount that remains in a capital construction fund at the close of the following specified taxable year following the taxable year for which the amount was deposited shall be treated as a nonqualified withdrawal: * * *

(2) EARNINGS.—The earnings of a capital construction fund for any taxable year (except net gains) shall be treated under this subsection as an amount deposited for the taxable year.

(3) CONTRACT FOR QUALIFIED WITHDRAWAL.—Under paragraph (1), an amount shall not be treated as remaining in a capital construction fund at the close of a taxable year to the extent there is a binding contract at the close of the taxable year for a qualified withdrawal of the amount for an identified item for which the withdrawal may be made.

(4) EXCESS EARNINGS.—If the Secretary determines that the balance in a capital construction fund exceeds the amount appropriate to meet the vessel or *fishery facility* construction program objectives of the person that established the fund, the amount of the excess shall be treated as a nonqualified withdrawal under paragraph (1) unless the person develops appropriate program objectives within 3 years to dissipate the excess.

(5) AMOUNTS IN FUND ON JANUARY 1, 1987.—Under this subsection, amounts in a capital construction fund on January 1, 1987, shall be treated as having been deposited in that fund on that date.

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