

103^D CONGRESS
2^D SESSION

S. 2138

To amend the Magnuson Fishery Conservation and Management Act.

IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 16), 1994

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

A BILL

To amend the Magnuson Fishery Conservation and
Management Act.

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

3 FINDINGS, PURPOSES, AND POLICY

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

6 (1) in paragraph (a)(2) by—

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

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

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

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

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

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

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

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

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

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

4 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

17 FOREIGN FISHING

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

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

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

1 PERMITS FOR FOREIGN FISHING

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

4 “(b) APPLICATIONS AND PERMITS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

paragraph (7), and upon payment of the applicable fees established pursuant to paragraph (10) and confirmation of any bonds or financial assurances that may be required for such fishing, the Secretary shall thereupon issue a permit for the vessel.”.

LARGE-SCALE DRIFTNET FISHING

SEC. 5. Section 206 of the Act (16 U.S.C. 1826) is amended by deleting subsection 206(e), and by redesignating subsections (f), (g), and (h) as subsections (e), (f), and (g), respectively.

NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

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

“(1) Conservation and management measures shall prevent overfishing and rebuild depleted stocks. Such measures shall be designed to achieve, on a continuing basis, the optimum yield from each fishery.”.

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

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

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

3 REGIONAL FISHERY MANAGEMENT COUNCILS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 CONTENTS OF FISHERY MANAGEMENT PLANS

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

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

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

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

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

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

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

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

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

22 “(6) establish a process for specifying—

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(B) described in this subsection; and

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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(i) present participation in the fishery,

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

13 “(iii) the economics of the fishery,

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

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

18 “(vi) any other relevant considerations;

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

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

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

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

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

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

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

7 “(3) when required by court order.

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

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

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

6 PRE-RULEMAKING PROCEDURES

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

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

11 “(a) DATA COLLECTION PROGRAMS.—

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

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

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

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

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

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

1 “(b) FISHERIES RESEARCH.—

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

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

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

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

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

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

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

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

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

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

16 “(c) INCIDENTAL HARVEST RESEARCH.—

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

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

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

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

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

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

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

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

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

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

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

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

13 “(e) REVIEW BY THE SECRETARY.—

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

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

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

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

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

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

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

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

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

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

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

25 “(f) PREPARATION BY THE SECRETARY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 conservation and management measures for the
2 fishery.

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

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

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

13 “(iii) promote international conservation.

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

16 “(i) the Secretary of State;

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

21 “(iii) appropriate Councils.

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

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

3 RULEMAKING

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

7 “**SEC. 305. RULEMAKING.**

8 “(a) PROPOSED REGULATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

5 “(c) EMERGENCY ACTIONS.—

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

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

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

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

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

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

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

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

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

8 “(d) ESTABLISHMENT OF FEES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(i) JUDICIAL REVIEW.—

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

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

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

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

13 “(4) Upon a motion by the person who files a
14 complaint under this subsection, the appropriate
15 court shall assign the matter for hearing at the ear-
16 liest possible date and shall expedite the matter in
17 every possible way.”.

19 SEC. 11. Section 306(c)(1) of the Act (16 U.S.C.
20 1856(c)(1)) is amended by—

23 (2) deleting the period from the end of subpara-
24 graph (B) and replacing it with “; and”; and

(3) by inserting immediately after subparagraph (B) of the following new subparagraph:

1 “(C) the owner or operator of the vessel
2 submits reports on the tonnage of fish received
3 from U.S. vessels and the locations from which
4 such fish were harvested, in accordance with
5 such procedures as the Secretary by regulation
6 shall prescribe.”.

7 PROHIBITED ACTS

8 SEC. 12. (a) Section 307(1)(L) of the Act (16 U.S.C.
9 1857(1)(L)) is amended to read as follows:

10 “(L) to forcibly assault, resist, oppose, im-
11 pede, intimidate, or interfere with any observer
12 on a vessel under this Act, or any data collector
13 employed by or under contract to the National
14 Marine Fisheries Service;”.

15 (b) Section 307(1)(M) of the Act (16 U.S.C.
16 1857(1)(M)) is amended by deleting “; or” after the word
17 “nation” and inserting the following: “: *Provided*, That—

18 “(i) a vessel used to engage in large-scale
19 driftnet fishing is deemed to be subject to the juris-
20 diction of the United States if it is used to engage
21 in such fishing shoreward of the outer boundary of
22 the exclusive economic zone of the United States, it
23 is a vessel of the United States, it is a stateless ves-
24 sel, or it is a foreign-flag vessel and the flag-state
25 authorizes the United States to exercise jurisdiction
26 over it, and

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

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

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

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

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

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

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

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

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

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

10 CIVIL PENALTIES AND PERMIT SANCTIONS

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

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

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

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

6 ENFORCEMENT

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

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

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

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

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

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

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

6 OBSERVERS WAGES AS MARITIME LIENS

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

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

14 CONFORMING AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 AUTHORIZATION OF APPROPRIATIONS

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

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

○

S 2138 IS—2

S 2138 IS—3

S 2138 IS—4

S 2138 IS—5

S 2138 IS—6

S 2138 IS—7