

## **A BILL**

To authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2003, 2004, 2005, 2006 and 2007, and for other purposes.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

1    **SEC. 1. SHORT TITLE.**

2    This Act may be cited as the "Fishery Conservation and Management Amendments Act of  
3    2003".

4    **SEC. 2. AMENDMENT OF MAGNUSON-STEVEN'S FISHERY CONSERVATION  
5    AND MANAGEMENT ACT.**

6    Except as otherwise expressly provided, whenever in this Act an amendment or repeal is  
7    expressed in terms of an amendment to, or repeal of, a section or other provision, the reference  
8    shall be considered to be made to a section or other provision of the Magnuson-Stevens Fishery  
9    Conservation and Management Act (16 U.S.C. § 1801 et seq.).

10   **SEC. 3. DEFINITIONS.**

11   (a) U.S. CITIZEN - Section 3(16 U.S.C. §1802)is amended by adding a new subsection (4) as  
12   follows: "(4) The term "U.S. citizen" means an individual who is a citizen of the United States,  
13   or a corporation, partnership, association, or any other entity that meets the U.S. ownership  
14   requirements contained in Section 12102(c)(1)and(2)of title 46, United States Code", and  
15   renumbering existing subsections (4) through (45) of Section 3 accordingly.

1 (b) EEZ INNER BOUNDARY.- Section 3(11) (16 U.S.C. § 1802(11)) is amended by striking  
2 "line coterminous with the seaward boundary of each of the coastal States." and inserting "line-  
3 "(A) coterminous with the seaward boundary of each of the several coastal States;  
4 "(B) three marine leagues from the coastline of the Commonwealth of Puerto  
5 Rico;  
6 "(C) three geographical miles from the coastlines of American Samoa, the Virgin  
7 Islands, Guam, and the Commonwealth of the Northern Mariana Islands,  
8 respectively; and  
9 "(D) the baseline from which the breadth of the territorial sea is measured in  
10 accordance with international law of any other Commonwealth, territory, or  
11 possession of the United States not referred to in subparagraph (B) or (C).".

12 (c) "OVERFISHED" DEFINED.- Section 3 (16 U.S.C. § 1802) is amended-

13 (1) in paragraph (29), by striking "terms 'overfishing' and 'overfished' mean" and  
14 inserting "term 'overfishing' means";

15 (2) by redesignating paragraphs (30) through (45) as paragraphs (31) through (46),  
16 respectively; and

17 (3) by inserting after paragraph (29) the following new paragraph: "(30) The term  
18 'overfished', with respect to a stock or fishery, means a stock or fishery whose size is  
19 below the range that is likely to occur for a stock or fishery that has not been subjected to  
20 overfishing.".

21 (d) TECHNICAL AMENDMENT.- Section 3 (16 U.S.C. § 1802) is amended by striking  
22 paragraph (35), defining the term "special areas", that was-

1 (1) added by section 301(b) of the Act entitled "An Act to provide for the designation of  
2 the Flower Garden Banks National Marine Sanctuary", approved March 9, 1992 (Public  
3 Law No. 102-251; 106 Stat. 62); and  
4 (2) given effect by section 405(a) of the Sustainable Fisheries Act (16 U.S.C. § 1802  
5 note).

6 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

7 Section 4 (16 U.S.C. § 1803) is amended by striking paragraphs (1) through (4) and inserting the  
8 following new paragraph to read as follows: "There are authorized to be appropriated to the  
9 Department of Commerce, for the purposes of carrying out this Act, \$269,391,000 in fiscal year  
10 2003, \$296,697,000 in fiscal year 2004, and such sums as may be necessary for fiscal years  
11 2005-7.”.

12 **SEC. 5. TREATY ON PACIFIC COAST ALBACORE TUNA.**

13 (a) FOREIGN FISHING UNDER TREATY; IMPLEMENTATION. - Section 202(e) (16 U.S.C.  
14 § 18212(e)) is amended by adding at the end the following new subsection:

15 "(6) TREATY ON PACIFIC COAST ALBACORE TUNA VESSELS.-

16 “(A) Notwithstanding section 201, foreign fishing may be conducted pursuant to the  
17 Treaty between the Government of the United States of America and the Government of  
18 Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at  
19 Washington May 26, 1981, including its Annexes and any amendments thereto.

20 “(B) The Secretary of Commerce, with the concurrence of the Secretary of State, may

1 promulgate regulations necessary to discharge the obligations of the United States of  
2 America under the Treaty between the Government of the United States of America and  
3 the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges,  
4 signed at Washington May 26, 1981, including its Annexes and any amendments  
5 thereto."

6 (b) TECHNICAL AMENDMENTS. -

7 (1) Section 201(a)(1) (16 U.S.C. § 1821(a)(1)) is amended to read as follows:

8 "(1) is authorized under subsections (b) or (c), section 202(e)(6), or section 204(e), or  
9 under a permit issued under section 204(d);"

10 "(2) Section 204(a)(16 U.S.C. § 1824 (a)) is amended by inserting "or the fishing  
11 is authorized under section 202(e)(6)" after "for such vessel".

12 "(3) Section 307(2)(B) (16 U.S.C. § 1857(2)(B)) is amended by inserting "and  
13 foreign fishing permitted under section 202(e)(6)" after "under section 201(i)".

14 **SEC. 6. MONITORING OF PACIFIC INSULAR AREA FISHERIES.**

15 (a) WAIVER AUTHORITY.- Section 201(h)(2)(B) (16 U.S.C. § 1821(h)(2)(B)) is amended by  
16 striking "that is at least equal in effectiveness to the program established by the Secretary" and  
17 inserting "or other monitoring program that the Secretary determines is adequate to monitor  
18 harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the  
19 agreement".

20 (b) MARINE CONSERVATION PLANS.- Section 204(e)(4)(A)(i) (16 U.S.C. §  
21 1824(e)(4)(A)(i)) is amended to read as follows: "(i) Pacific Insular Area observer programs, or

- 1 other monitoring programs, that the Secretary determines are adequate to monitor the harvest,
- 2 bycatch, and compliance

1 with the laws of the United States by foreign fishing vessels that fish under Pacific Insular Area  
2 fishing agreements;".

3 **SEC. 7. CARIBBEAN COUNCIL JURISDICTION.**

4 Section 302(a)(1)(D) (16 U.S.C. § 1852(a)(1)(D)) is amended by inserting "and of  
5 commonwealths, territories, and possessions of the United States in the Caribbean Sea" after  
6 "seaward of such States".

7 **SEC. 8. NOTICE OF COUNCIL MEETINGS.**

8 (a) REGULAR AND EMERGENCY MEETINGS.- The first sentence of section 302(i)(2)(C)  
9 (16 U.S.C. § 1852(i)(2)(C)) is amended-

10 (1) by striking "published in local newspapers" and inserting "provided by any means  
11 that will result in wide publicity"; and

12 (2) by striking "and such notice" through "wide publicity".

13 (b) CLOSED MEETINGS.- Section 302(i)(3)(B) (16 U.S.C. § 1852(i)(3)(B)) is amended by  
14 striking "notify local newspapers" and inserting "provide notice by any means that will result in  
15 wide publicity".

16 **SEC. 9. FISHERY MANAGEMENT PLAN REQUIREMENTS.**

17 Section 303(a)(5) (16 U.S.C. § 1853(a)(5)) is amended by inserting "harvest and processing  
18 revenues (by species), production costs, capital expenditures, and other fishing or processing  
19 expenses", after "number of hauls,".

1     **SEC. 10. SUBMISSION OF ECONOMIC DATA.**

2     Section 303(b)(7) (16 U.S.C. § 1853(b)(7)) is amended by striking "(other than economic data)".

3     **SEC. 11 INDIVIDUAL FISHING QUOTAS**

4     (a) Section 303 (16 U.S.C. § 1853) is amended --

5         (1) by striking subsection (d), and

6         (2) inserting the following --

7     “(d) INDIVIDUAL FISHING QUOTA PROGRAMS.

8         “(1) IN GENERAL. In addition to complying with the requirements of section 301(a) of  
9         this Act and subsections (a)(9) and (b)(6) of this section, any individual fishing quota  
10         program submitted and approved after the effective date of this Act --

11             “(A) shall provide for administration of the program by the Secretary in  
12             accordance with the terms of the plan;

13             “(B) shall, if established in a fishery that is overfished or subject to a rebuilding  
14             plan, assist in its rebuilding; and, if established in a fishery that is determined by  
15             the Secretary or the Council to have excess capacity, contribute to reducing  
16             capacity; and

17             “(C) shall contribute to improved economic performance in the fishery.

18     “(2) ALLOCATIONS AND TRANSFERS. Any such individual fishing quota program  
19     shall -

20             “(A) establish procedures to ensure fair and equitable initial allocations, including  
21             consideration of (i) current and historical harvests, (ii) employment in the

1 harvesting and processing sectors, and (iii) investments in the fishery;

2 “(B) provide to the extent practicable that initial allocations maintain the basic  
3 cultural and social framework of the fishery, especially the roles of small owner-  
4 operator fishermen and the sustained participation of fishing communities that  
5 depend on these fisheries;

6 “(C) include measures to assist, when necessary and appropriate, entry-level and  
7 small-scale fishermen, captains, and crew, through set-asides of initial and  
8 secondary harvesting allocations, and including where appropriate a  
9 recommendation for the provision of economic assistance in the purchase of IFQ  
10 shares;

11 “(D) ensure that individual quota holders do not acquire an excessive share of the  
12 total quota in the program; and, to that end, establish a maximum share, expressed  
13 as a percentage of the total quota, that an individual quota holder is permitted to  
14 own;

15 “(E) prohibit any person other than a U.S. citizen or a permanent resident alien  
16 from acquiring quota;

17 “(F) authorize individual quotas to be held by or issued under the system to  
18 fishing vessel owners, fishermen, crew members, fishing communities, and other  
19 persons as specified by the Council;

20 “(G) consider, and provide for if appropriate, an auction system or other program  
21 to collect royalties for the initial distribution of allocations in an individual  
22 fishing quota program, provided that –

1 “(i) such a system is administered in such a way that the resulting  
2 distribution of quota shares conforms with the biological, social and  
3 economic goals of the program, and

4 “(ii) except to the extent such revenues are deposited in the Fishery  
5 Observer Fund established pursuant to section 403(e) hereof, the revenues  
6 generated through such a royalty program shall be deposited in the  
7 Limited Access System Administration Fund established pursuant to  
8 section 305(h)(5)(B) and available subject to annual appropriations;

9 “(H) establish a policy on the transferability of quota shares (through sale or  
10 lease), including a policy on any conditions that apply to the transferability of  
11 quota shares; and

12 “(I) establish a program to monitor transfers (including sales and leases) of quota  
13 shares in secondary markets.

14 “(3) COST RECOVERY. Any such individual fishing quota program shall --

15 “(A) develop a methodology and the means to identify and assess the  
16 management, science, data collection, observer coverage, and enforcement  
17 programs that are directly related to and in support of the program; and

18 “(B) provide, under section 304(d)(2) for a program of fees paid by quota holders  
19 that will cover the costs of management, science, data collection and analysis,  
20 observer coverage and enforcement activities.

1 “(4) PROGRAM APPROVAL, REVIEW AND ADMINISTRATION.--

2 “(A) Any group of fishermen, constituting at least 1/3 of those actively engaged  
3 in participation in a fishery for which an individual fishing quota program is  
4 sought, may submit a petition to the Secretary requesting that the relevant Council  
5 or Councils with authority over the fishery be authorized to initiate the  
6 development of an individual quota program for that fishery. Any such petition  
7 must clearly state the fishery to which it would apply.

8 “(B) Upon the receipt of any such petition, the Secretary shall review all of the  
9 signatures on the petition; and if he determines that the signatures on the petition  
10 represent at least 1/3 of the active participants in the fishery, the Secretary shall  
11 certify the petition to the appropriate Council or Councils.

12 “(C) Upon receiving a certified petition from the Secretary, the relevant Council  
13 or Councils with authority over the fishery may initiate consideration of a fishery  
14 management plan or amendment to establish an individual quota program for that  
15 fishery, under the procedures, guidelines and standards contained in this Act or  
16 other applicable law. A Council may not initiate a fishery management plan or  
17 amendment to establish an individual fishing quota program for a fishery unless  
18 the Secretary has certified an appropriate petition.

19 “(D) A Council may not submit to the Secretary for approval any fishery  
20 management plan or amendment that contains an individual fishery quota  
21 program unless the final

1 version of the program has been approved by a majority of the fishermen in a  
2 referendum conducted by the Secretary.

3 “(E) The Secretary shall determine procedures and eligibility requirements for the  
4 referendum referred to in subparagraph (D), and shall, prior to conducting a  
5 referendum, certify the eligible participants in the referendum. Any person who  
6 is actively engaged in participation in the fishery under consideration shall be  
7 eligible to participate in the referendum.

8 “(F) Any such individual fishing quota program shall--

9 “(i) include provisions for the regular monitoring and review of the  
10 operations of the program, with a formal and detailed review required five  
11 years after the establishment of the program and every five years  
12 thereafter which reviews shall be reported to the Secretary within 90 days  
13 after the review has been completed;

14 “(ii) include an effective system for monitoring the harvests of participants  
15 in the program; and

16 “(iii) include an appeals process for administrative review of  
17 determinations with respect to the Secretary’s decisions regarding  
18 administration of the individual fishing quota program.

19 “(5) An individual fishing quota program, or any permit that authorizes fishing, shall not  
20 create, or be construed to create, any right, title, or interest in or to any fish before the  
21 fish is harvested,

1 and may be revoked or limited at any time without compensation, if necessary for the  
2 conservation and management of the fishery.

3 “(6) For purposes of this subsection, any reference to a Council includes the Secretary  
4 with respect to actions taken under Section 304 (g).”

5 (b) Section 304 (16 U.S.C. § 1854) is amended --

6 (1) by deleting the phrase “management and enforcement” in subsection (d)(2)(A), and  
7 inserting “management, science, data collection, observer coverage and enforcement”;  
8 and

9 (2) by deleting subparagraph (d)(2)(B), and inserting in lieu thereof the following –

10 “(B) Such fees shall be collected at either the time of the landing, filing of a  
11 landing report, or sale of such fish during a fishing season or in the last quarter of  
12 the calendar year in which the fish is harvested. With respect to a program under  
13 subparagraph (2)(A)(ii), such fees shall not exceed 3 percent of the ex-vessel  
14 value of fish harvested. With respect to a program under subparagraph (2)(A)(i),  
15 the fees to be established and collected by the Secretary under this paragraph are  
16 the following –

17 “(i) with respect to any initial allocation under a limited access system  
18 established after the effective date of this Act, an initial allocation fee in  
19 an amount, determined by the Secretary, equal to 1 percent of the ex-  
20 vessel value of fish authorized to be caught in the first year under an  
21 individual quota, that shall be collected from the person to whom the  
22 individual fishing quota is first issued.

1 “(ii) an annual fee in an amount, determined by the Secretary, not to  
2 exceed 3 percent of the ex-vessel value of fish transferred, based upon the  
3 most recent year in which the quota was fished, that shall be collected  
4 from the holder of the individual fishing quota share.

5 “(iii) a transfer fee in an amount, determined by the Secretary, equal to  
6 1 percent of the average ex-vessel value, over the previous year, of the  
7 fish that are transferred, that shall be collected from a person who  
8 permanently transfers the individual quota share to another person.”

9 (c) Section 304 (16 U.S.C. § 1854) is amended by deleting everything in paragraph  
10 304(d)(2)(C)(1) after “section 305(h)(5)(B)”.

## 11 **SEC. 12. ACTION BY THE SECRETARY.**

12 (a) REVIEW OF PLANS AND INITIAL REGULATIONS.- Section 304(a)(1) (16 U.S.C.  
13 § 1854(a)(1)) is amended--

14 (1) in the introductory language, by inserting "and any proposed implementing  
15 regulations prepared under section 303(c)(1)," before "the Secretary shall-";

16 (2) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C),  
17 respectively;

18 (3) by inserting before subparagraph (B), as so redesignated, the following new  
19 subparagraph:

20 "(A)(i) immediately make a preliminary evaluation of the management plan or  
21 amendment for purposes of deciding whether it is-

1 "(I) consistent with the national standards, the other provisions of  
2 this Act, and other applicable law; and

3 "(II) sufficient in scope and substance to warrant review under this  
4 subsection;

5 "(ii) if that decision is affirmative with respect to both subclauses (I) and  
6 (II) of clause (i), implement subparagraphs (B) and (C) with respect to the  
7 plan or amendment; and

8 "(iii) if that decision is negative with respect to either subclause (I) or (II)  
9 of clause (i), disapprove the plan or amendment and notify the Council in  
10 writing of the disapproval and of those matters specified under paragraph  
11 (3)(A), (B), and (C) with respect to the plan or amendment;" and

12 (4) by amending subparagraph (C), as so redesignated, to read as follows:

13 "(C) by the 15th day following transmittal of the plan or amendment, and  
14 proposed implementing regulations, publish in the *Federal Register*-

15 "(i) a notice stating that the plan or amendment is available and that  
16 written data, views, or comments of interested persons on the plan or  
17 amendment may be submitted to the Secretary during the 50-day period  
18 beginning on the date the notice is published; and

19 "(ii) any proposed implementing regulations that are consistent with the  
20 fishery management plan or amendment, this Act, and any other  
21 applicable law, for a comment period of 50 days, except that the Secretary  
22 may include such technical changes to the Council's proposed regulations

1 as may be necessary for clarity, along with an explanation of those  
2 changes."

3 (b) REVIEW OF PROPOSED MODIFICATIONS.

4 (1) Paragraph (1) of section 304(b) (16 U.S.C. § 1854(b)) is amended to read as follows:

5 "(1)(A) Upon transmittal by the Council to the Secretary of regulations proposed under  
6 section 303(c)(2), the Secretary shall immediately initiate an evaluation of the proposed  
7 regulations to determine whether they are consistent with the fishery management plan,  
8 plan amendment, this Act, and other applicable law.

9 "(B) If the Secretary determines that the regulations are consistent, the Secretary  
10 shall, within 15 days of transmittal, publish such regulations in the *Federal*  
11 *Register*, with such technical changes as may be necessary for clarity and an  
12 explanation of those changes, for a public comment period of 15 to 60 days,  
13 unless the Secretary finds good cause not to publish a notice of proposed  
14 rulemaking in accordance with section 553 of title 5, United States Code.

15 "(C) If the Secretary determines that the regulations are not consistent, the  
16 Secretary shall, within 15 days of transmittal, notify the Council in writing of the  
17 inconsistencies and provide recommendations on revisions that would make the  
18 proposed regulations consistent with the fishery management plan, plan  
19 amendment, this Act, and other applicable law."

20 (2) Section 304(b)(2)(16 U.S.C. § 1854(b)(2)) is amended by striking "paragraph (1)(B)"  
21 and inserting "paragraph (1)(C)".

22 (3) Section 304(b)(3) (16 U.S.C. § 1854(b)(3)) is amended by striking "paragraph (1)(A)"

1 and inserting "paragraph (1)(B), and within 45 days after the end of the comment period  
2 under subsection (a)(1)(C)".

3 (4) Section 304(b)(16 U.S.C. § 1854(b)) is amended by adding at the end the following  
4 paragraph (4):

5 "(4) For regulatory actions, other than those proposed by a Council under  
6 section 303(c), that are taken in accordance with a fishery management plan, the  
7 Secretary shall process the actions in accordance with the plan. If the Secretary  
8 determines that the actions are consistent with the plan, this Act, and other  
9 applicable law, the Secretary shall publish in the *Federal Register* a notice of the  
10 actions. The Secretary may find good cause not to publish a notice of proposed  
11 rulemaking in accordance with section 553 of title 5, United States Code."

### 12 **SEC. 13. REBUILDING OVERFISHED FISHERIES**

13 (a) Section 304(e)(1)(16 U.S.C. § 1854) is amended-

14 (1) by striking "or" and inserting a "comma" after "that are overfished";

15 (2) by striking the "period" and inserting ", or have overfishing occurring." after "are  
16 approaching a condition of being overfished"; and

17 (3) by adding "and overfished" after "using the criteria for overfishing".

1 (b) Section 304(e)(3) (16 U.S.C. § 1854) is amended by deleting "Within one year of an  
2 identification under paragraph (1)" and by inserting in its place "Within one year of an  
3 identification that a fishery is overfished or approaching a condition of being overfished,".

4 **SEC. 14. EMERGENCY REGULATIONS.**

5 (a) LENGTHENING OF SECOND EMERGENCY PERIOD.- Section 305(c)(3)(B) (16 U.S.C.  
6 § 1855(c)(3)(B)) is amended by striking "180 days" the second time it appears and inserting "186  
7 days".

8 (b) TECHNICAL AMENDMENT.- Section 305(c)(3)(D) (16 U.S.C. § 1855(c)(3)(D)) is  
9 amended by inserting "or interim measures" after "emergency regulations".

10 **SEC. 15. JUDICIAL REVIEW OF CERTAIN ACTIONS OF THE SECRETARY.**

11 Section 305(f) (16 U.S.C. § 1855(f)) is amended-

12 (a) in paragraph (1), by inserting "or becomes final agency action" after "*Federal Register*";

13 (b) in paragraph (2), by inserting "and actions that determine eligibility under a limited access  
14 system" after "recreational fishing"; and

15 (c) in paragraph (3)(B), by inserting "or action" after "regulations".

16 **SEC. 16. INCREASE IN MAXIMUM PENALTIES.**

17 (a) CIVIL PENALTIES.- Section 308(a) (16 U.S.C. § 1858(a)) is amended by striking  
18 "\$100,000" and inserting "\$200,000".

19 (b) CRIMINAL PENALTIES.- Section 309(b) (16 U.S.C. § 1859(b)) is amended

1 (1) by striking "\$100,000" and inserting "\$200,000; and

2 (2) by striking "\$200,000" each place it appears and inserting "\$400,000".

3 **SEC. 17. SUBPOENA POWER FOR INVESTIGATIONS.**

4 Section 308(f) (16 U.S.C. § 1858(f)) is amended-

5 (a) in the first sentence -

6 (1) by inserting "investigation or" before "hearing"; and

7 (2) by striking "section," and inserting "Act or any other marine resource law enforced by  
8 the Secretary,"; and

9 (b) in the second sentence by inserting "for the purposes of conducting any hearing" after  
10 "summoned".

11 **SEC. 18. PERMIT SANCTIONS.**

12 (a) EFFECT OF PERMIT TRANSFER.- Section 308(g)(3) (16 U.S.C. § 1858(g)(3)) is amended-

13 (1) by inserting "a permit, or any interest in a permit," after "a vessel," in the first  
14 sentence;

15 (2) by inserting "permit, or interest in a permit," after "a vessel," in the second sentence;

16 and

17 (3) by inserting ", permit, or interest" after "the vessel" in the second sentence.

18 (b) PERMIT REINSTATEMENT UPON PAYMENT OF SETTLEMENT AMOUNT.-

19 Section 308(g)(4) (16 U.S.C. § 1858(g)(4)) is amended-

20 (1) by striking "civil penalty or criminal fine," and inserting "civil penalty, criminal fine,

1 or any amount in settlement of a civil forfeiture," and

2 (2) by striking "penalty or fine" and inserting "penalty, fine, or settlement amount".

3 **SEC. 19. FORFEITURE OF CATCH FOR CITATION.**- Section 310(a) (16 U.S.C. §  
4 1860(a)) is amended-

5 (a) by striking "(other than" through "sufficient sanction)"; and

6 (b) by inserting ", except that no fishing vessel shall be subject to forfeiture as a result of any act  
7 for which issuance of a citation under section 311(c) is sufficient sanction" before the period at  
8 the end of the first sentence.

9 **SEC. 20. FISHING CAPACITY REDUCTION PROGRAM** – Section 312(b)-(e) is  
10 amended-

11 (a) by striking section 312(b)-(e), and

12 (b) inserting the following: "(b) FISHING CAPACITY REDUCTION PROGRAM.-

13 “(1) The Secretary may conduct a fishing capacity reduction program (referred to in this  
14 section as the "program") in a fishery under the authority of the Secretary, a Council or a  
15 State if the Secretary determines that the program-

16 “(A) is necessary to improve either the fishery's conservation and management or the  
17 fishery's economic efficiency, stability, safety, wellbeing, organizational effectiveness, or  
18 subsequent rationalization;

19 “(B) is consistent with the Federal or State fishery management plan or program in effect  
20 for such fishery, as appropriate, and that the fishery management plan-

1 “(i) will prevent replacement of the fishing capacity that the program removes through a  
2 moratorium on new entrants, practicable restrictions on vessel upgrades, and measures  
3 that take into account any latent fishing capacity in the fishery's fleet; and

4 “(ii) establishes a specified or target total allowable catch or other measures that  
5 trigger fishery closure or adjustments; and

6 “(C) is cost-effective and, in the instance of a program involving an industry-fee  
7 system, prospectively capable of repaying any debt obligation incurred under  
8 section 1111 of title XI of the Merchant Marine Act, 1936.

9 “(2) The objective of the program shall be to obtain the maximum sustained reduction in  
10 fishing capacity at the least cost and in a minimum period of time. To achieve that  
11 objective, the Secretary is authorized to pay-

12 “(A) the owner of a fishing vessel, if the permit authorizing the participation of  
13 the vessel in the fishery is surrendered for permanent revocation and the vessel  
14 owner and permit holder relinquish any claim associated with the vessel or permit  
15 that could qualify such owner or holder for any present or future limited access  
16 system permit in the fishery for which the program is established and such vessel  
17 is-

18 “(i) scrapped, or

19 “(ii) subjected to title restrictions (including, but not limited to, loss of the  
20 vessel's fisheries endorsement) by the Secretary of the department in  
21 which the Coast Guard is operating, that permanently prohibit and  
22 effectively prevent its use in domestic fishing, or

1 “(B) the holder of a permit authorizing participation in the fishery, if such permit  
2 is surrendered for permanent revocation, and such holder relinquishes any claim  
3 associated with the permit and vessel used to harvest fishery resources under the  
4 permit that could qualify such holder for any present or future limited access  
5 system permit in the fishery for which the program is established.

6 “(3) Participation in the program shall be voluntary, but the Secretary shall ensure  
7 compliance by all who do participate.

8 “(4) The harvester proponents of each program and the Secretary may consult, as  
9 appropriate, with interested parties during the development and implementation of any  
10 program under this section.

11 “(c) PROGRAM FUNDING.

12 “(1) The program may be funded by any combination of amounts-

13 “(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August  
14 11,1939 (15 U.S.C. § 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);

15 “(B) appropriated for the purposes of this section;

16 “(C) provided under an industry fee system established under subsection (d) and  
17 in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

18 “(D) provided by any State or other public or private or non-profit organization.

19 “(2) All funds for the program, including any fees established under subsection (d), shall  
20 be paid into the fishing capacity reduction funds established under section 1111 of title  
21 XI of the Merchant Marine Act, 1936.

22 “(d) INDUSTRY FEE SYSTEM.

1 “(1) (A) If an industry fee system is necessary to fund the program, the Secretary may  
2 conduct a referendum on such system. Prior to the referendum, the Secretary shall-

3 “(i) identify, to the extent, practicable, and notify all permit or vessel owners who  
4 would be affected by the program; and

5 “(ii) make available to such owners information about the industry fee  
6 system describing the schedule, procedures, and eligibility requirements  
7 for the referendum; the proposed program; and the amount and duration  
8 and any other terms and conditions of the proposed fee system.

9 “(B) The industry fee system shall be approved if the referendum votes which are  
10 cast in favor of the proposed system constitute a two-thirds majority of the  
11 participants voting.

12 “(2) Notwithstanding section 304(d) and consistent with an approved industry fee system,  
13 the Secretary is authorized to establish such a system to fund the program and repay debt  
14 obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act,  
15 1936. The fees for a program established under this section shall-

16 “(A) be determined by the Secretary and adjusted from time to time as the  
17 Secretary considers necessary to ensure the availability of sufficient funds to  
18 repay such debt obligations;

19 “(B) not exceed 5 percent of the ex-vessel value of all fish involved in the  
20 program harvested from the fishery for which the program is established;

21 “(C) be deducted by the first ex-vessel purchaser from the proceeds otherwise  
22 payable to the seller and accounted for and forwarded by such fish purchasers to

1 the Secretary in such a manner as the Secretary may establish unless the Secretary  
2 determines that such fees should be collected from the seller; and

3 “(D) be in effect only until such time as the debt obligation has been fully paid.

4 “(e) PROGRAM IMPLEMENTATION.

5 “(1) The Secretary shall propose and adopt framework regulations applicable to  
6 implementing all programs under this section.

7 “(2) The Secretary shall implement each program under this section by proposing and  
8 adopting regulations that shall, together with the framework regulations, establish each  
9 program and control its implementation.

10 “(3) The harvester proponents of each program shall, before the Secretary proposes such  
11 regulation, provide to the Secretary a proposed implementation plan that, among other  
12 matters:

13 “(A) proposes the types and numbers of vessels or permits that are eligible to participate  
14 in the program and the manner in which the program shall proceed, taking into account:

15 “(i) the requirements of this section;

16 “(ii) the requirements of the framework regulations;

17 “(iii) the characteristics of the fishery;

18 “(iv) the requirements of the applicable fishery management plan and any amendment  
19 that such plan may require to support the proposed program;

20 “(v) the general needs and desires of harvesters in the fishery;

21 “(vi) the need to minimize program costs; and

1 “(vii) other matters, including, but not limited to, the manner in which such proponents  
2 propose to fund the program to ensure its cost effectiveness, as well as any relevant  
3 factors demonstrating the potential for, or necessary to obtain, the support and general  
4 cooperation of a substantial number of affected harvesters in the fishery (or portion of the  
5 fishery) for which the program is intended; and

6 “(B) suggests proposed procedures for program participation (such as submission  
7 of owner bids under an auction system or fair market-value assessment),  
8 including any terms and condition for participation, that the harvester proponents  
9 deem to be reasonably necessary to meet the program's proposed objectives.

10 “(4) The Secretary shall contract with each person participating in a program, and each  
11 such contract shall, in addition to including such other matters as the Secretary deems  
12 necessary and appropriate to effectively implement each program (including, but not  
13 limited to, penalties for contract non-performance) be consistent with the framework and  
14 implementing regulations and all other applicable law.

15 “(5) Each program not involving fair market assessment shall involve a reduction auction  
16 that scores the reduction price of each bid offer by the data relevant to each bidder under  
17 an appropriate fisheries productivity factor. If the Secretary accepts bids, the Secretary  
18 shall accept each bid in the rank order of its bid score, with each bid whose reduction  
19 price is the lowest percentage of the productivity factor being first accepted over each bid  
20 whose reduction factor is the next lowest percentage of the productivity factor.

21 “(6) Each program shall proceed by the Secretary issuing invitations to bid setting out the  
22 terms and conditions for participation consistent with the framework and implementing

1 regulations. Each bid that the Secretary receives in response to the invitation to bid shall  
2 constitute an irrevocable offer from the bidder."

3 **SEC. 21. COLLECTION OF INFORMATION.**

4 (a) PROGRAMS INITIATED BY SECRETARY.- Section 402(a) (16 U.S.C. § 1881a(a)) is  
5 amended-

6 (1) by striking "COUNCIL REQUESTS." and inserting "COLLECTION PROGRAMS.";

7 (2) by redesignating the existing text as paragraph (1);

8 (3) in paragraph (1), as so redesignated -

9 (A) by inserting "(1) COUNCIL REQUESTS." before "If a Council"; and

10 (B) by striking "subsection" in the last sentence and inserting "paragraph"; and

11 (4) by inserting after redesignated paragraph (1) a new paragraph to read as follows:

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

17 (b) COLLECTION OF CERTAIN INFORMATION REGARDING BUSINESS

18 OPERATIONS.- Section 402(a) (16 U.S.C. § 1881a(a)) is amended by striking "(other than  
19 information that would disclose proprietary or confidential commercial or financial information  
20 regarding fishing operations or fish processing operations)" each place it appears in paragraph  
21 (1), as so redesignated by subsection (a).

1     **SEC. 22. ACCESS TO CERTAIN INFORMATION.**

2     (a) CERTAIN STATE EMPLOYEES.- Section 402(b)(1) (16 U.S.C. § 1881a(b)(1)) is amended-

3             (1) by redesignating subparagraphs (B) through (F) as subparagraphs (C) through (G),  
4             respectively; and

5             (2) by inserting after subparagraph (A) a new subparagraph to read as follows: "(B) to  
6             State employees who are responsible for fishery management plan monitoring, if the  
7             States employing those employees have entered into a fishery enforcement agreement  
8             with the Secretary and the agreement is in effect;".

9     (b) DETERMINATIONS UNDER LIMITED ACCESS SYSTEM.- Section 402(b)(1) (16 U.S.C.  
10     § 1881a(b)(1)) is amended-

11            (1) in subparagraph (F), as so redesignated by subsection (a) of this section, by striking  
12            "or" at the end;

13            (2) in subparagraph (G), as so redesignated by subsection (a), by striking the period at the  
14            end and inserting "; or"; and

15            (3) by adding at the end a new subparagraph to read as follows:     "(H) when such  
16            information is required by the Secretary for any determination under a limited access  
17            system."

18     **SEC. 23. FUNDING FOR FISHERY OBSERVER PROGRAMS.**

19     (a) OBSERVER PROGRAM FUNDING.

20            (1) Section 403 (16 U.S.C. § 1881(b)) is amended by adding at the end new subsections  
21            to read as follows: "(d) OBSERVER PROGRAM FUNDING MECHANISM. (1) A

1 funding mechanism may be established under this subsection-

2 "(A) upon recommendation of any Council and approval by the Secretary, to  
3 cover the cost of an observer program established by that Council under section  
4 303(b)(8), including an observer program for the North Pacific halibut fishery;  
5 and

6 "(B) by the Secretary, to cover the cost of an observer program to monitor any  
7 fishery managed under this Act or any other Act administered by the Secretary,  
8 including the Northern Pacific halibut fishery.

9 "(2)(A) Each Council, and the Secretary, may exercise broad discretion in developing a  
10 funding mechanism under this subsection, which may include, but is not limited to, a  
11 system of fees, payments collected from the establishment of an Individual Fishing Quota  
12 system, or any other cost recovery mechanism to pay for the cost of-

13 (i) stationing observers on board fishing vessels and United States fish  
14 processors, and

15 (ii) the actual cost of inputting collected data, less any amount received for  
16 such purpose from another source or from an existing surplus in the  
17 Fishery Observer Fund established in subsection(e).

1           "(B) The moneys collected under a funding mechanism established under this  
2           subsection for an observer program shall be-

3                   "(i) deposited into the Fishery Observer Fund established by subsection  
4                   (e); and

5                   "(ii) used only for that observer program, except where an observer  
6                   program directs that all or part of those moneys shall be used for support  
7                   of national or multi-region observer program activities.

8           "(3) Notwithstanding subsection 303(b)(8), and except where provided under subsection  
9           (d)(4), no observer program may be funded through direct contractual agreements made  
10           directly between the owner or operator of a fishing vessel or United States fish processor  
11           and any non-governmental observer provider company.

12           "(4) Fishery management plans and regulations under this Act that allow for direct  
13           contractual agreements between the owner or operator of a fishing vessel or United States  
14           fish processor and any non-governmental observer provider company shall be evaluated  
15           by the appropriate Council with respect to conflict-of-interest concerns that could  
16           potentially undermine the quality of data collected. Within three years of the date of  
17           enactment of the Fishery Conservation and Management Amendments of 2003, the  
18           appropriate Council shall prepare and submit to the Secretary a fishery management plan  
19           amendment or proposed regulations that will remove conflict-of-interest concerns. If  
20           NMFS approves the Council recommendation, the measures must be implemented within  
21           two years of the approval. If the appropriate Council fails to submit to the Secretary a  
22           fishery management plan amendment or proposed regulations to remove conflict of

1 interest concerns within three years of the date of enactment of the Fishery Conservation  
2 and Management Amendments of 2003, or if the Secretary fails to approve the Council's  
3 recommendation, the Secretary shall, within six years of the date of enactment of the  
4 Fishery Conservation and Management Amendments of 2003, develop and implement a  
5 fishery management plan amendment or regulations to remove such concerns.

6 "(e) FISHERY OBSERVER FUND.-

7 "(1) Establishment of Fund.- There is established on the books of the Treasury of the  
8 United States, a fund which shall be known as the Fishery Observer Fund (Fund). The  
9 Fund shall be administered by the Secretary (of Commerce). The Fund shall be available  
10 without appropriation or fiscal year limitation, only to the Secretary for the purposes of  
11 carrying out subsection (d). The Fund shall consist of all moneys deposited into it in  
12 accordance with this section, plus interest on those moneys.

13 "(2) Investment of Amount.-

14 "(a) In general.- It shall be the duty of the Secretary of the Treasury to invest,  
15 at the direction of the Secretary of Commerce such portion of the Fund that is not  
16 currently needed for the purposes of the Observer Program.

17 "(b) Authorized Investments.- Such investments shall be in public debt  
18 obligations with maturities suitable to the needs of the Fund, as determined by  
19 the Secretary of Commerce. Investments in public debt obligations shall bear  
20 interest at rates determined by the Secretary of the Treasury taking into  
21 consideration the current

1 market yield on outstanding marketable obligations of the United States of  
2 comparable maturity.

3 “(3) Sale of Obligation.- Any obligation acquired by the Fund may be sold by the  
4 Secretary of the Treasury at the direction of the Secretary of Commerce at market prices.

5 "(f) CONTRIBUTIONS.- For purposes of carrying out subsections (d) and (e), the  
6 Secretary may accept, solicit, receive, hold, administer, and use gifts, devises,  
7 contributions, and bequests. Funds collected under this subsection shall be deposited in  
8 the Fishery Observer Fund established by subsection (e).".

9 “(2) Section 303(b)(8) (16 U.S.C. § 1853(b)(8)) is amended by inserting ", and  
10 recommend a funding mechanism under section 403(d)(1)(A)" before "; except that such  
11 a vessel".

12 (b) NORTH PACIFIC RESEARCH PLAN.- Section 313 (16 U.S.C. § 1862) is amended-

13 (1) by striking subsections (a), (b), (c), (d), (e), and (i);

14 (2) by redesignating subsections (f), (g), and (h), as subsections (a), (b), and (c),  
15 respectively;

16 (3) in subsection (a), as so redesignated, by striking "and this section"; and

17 (4) in subsection (b), as so redesignated, by striking "North Pacific Fishery Observer  
18 Fund" and inserting "Fishery Observer Fund established under section 403(e)".

19 **SEC. 24. AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT.**

20 (a) CIVIL PENALTIES.- Section 8(a) of the Northern Pacific Halibut Act of 1982 (16 U.S.C.  
21 § 773f(a)) is amended-

1 (1) by striking "\$25,000" and inserting "\$200,000";

2 (2) in the fifth sentence-

3 (A) by striking "violation" and inserting "violator";

4 (B) by striking "and history" and inserting "any history"; and

5 (C) by striking "ability to pay,"; and

6 (3) by adding at the end the following new sentence: "In assessing such penalty, the  
7 Secretary may also consider any information provided by the violator relating to the  
8 ability of the violator to pay, provided that the information is served on the Secretary at  
9 least 30 days prior to an administrative hearing."

10 (b) PERMIT SANCTIONS.- Section 8 of the Northern Pacific Halibut Act of 1982 (16 U.S.C.  
11 § 773f) is amended by adding at the end a new subsection to read as follows: "(e)(1)In  
12 any case in which-

13 "(A) a vessel has been used in the commission of any act prohibited under section  
14 7;

15 "(B) the owner or operator of a vessel or any other person who has been issued or  
16 has applied for a permit under this Act has acted in violation of section 7; or

17 "(C) any amount in settlement of a civil forfeiture imposed on a vessel or other  
18 property, or any civil penalty or criminal fine imposed on a vessel or owner or  
19 operator of a vessel or any other person who has been issued or has applied for a  
20 permit under any marine resource law enforced by the Secretary has not been paid  
21 and is overdue –

22 the Secretary may-

1                   "(i) revoke any permit issued with respect to such vessel or person, with or  
2                   without prejudice to the issuance of subsequent permits;

3                   "(ii) suspend such permit for a period of time considered by the Secretary  
4                   to be appropriate;

5                   "(iii) deny such permit; or

6                   "(iv) impose additional conditions and restrictions on any permit issued to  
7                   or applied for by such vessel or person under this Act and, with respect to  
8                   any foreign fishing vessel, on the approved application of the foreign  
9                   nation involved and on any permit issued under that application.

10                  "(2) In imposing a sanction under this subsection, the Secretary shall take into account-

11                    "(A) the nature, circumstances, extent, and gravity of the prohibited acts for  
12                    which the sanction is imposed; and

13                    "(B) with respect to the violator, the degree of culpability, any history of prior  
14                    offenses, and such other matters as justice may require.

15                  "(3) Transfer of ownership of a vessel, a permit, or any interest in a permit, by sale or  
16                  otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of  
17                  transfer of ownership. Before executing the transfer of ownership of a vessel, permit, or interest  
18                  in a permit, by sale or otherwise, the owner shall disclose in writing to the prospective transferee  
19                  the existence of any permit sanction that will be in effect or pending with respect to the vessel,  
20                  permit, or interest at the time of the transfer.

21                  "(4) In the case of any permit that is suspended under this subsection for nonpayment of a  
22                  civil penalty, criminal fine, or any amount in settlement of a civil forfeiture, the Secretary shall

1      reinstate the

1 permit upon payment of the penalty, fine, or settlement amount and interest thereon at the  
2 prevailing rate.

3 "(5) No sanctions shall be imposed under this section unless there has been prior  
4 opportunity for a hearing on the facts underlying the violation for which the sanction is imposed  
5 either in conjunction with a civil penalty proceeding under this section or otherwise.

6 "(6) For the purposes of this section, the term 'permit' means, without limitation, any  
7 license, certificate, approval, registration, charter, membership, exemption, or other form of  
8 permission issued by the Commission or the Secretary, and includes any quota share or other  
9 transferable quota issued by the Secretary."

10 (c) CRIMINAL PENALTIES.- Section 9(b) of the Northern Pacific Halibut Act of 1982 (16  
11 U.S.C. § 773g(b)) is amended-

12 (1) by striking "\$50,000" and inserting "\$200,000"; and

13 (2) by striking "\$100,000" and inserting "\$400,000".

#### 14 **SEC. 25. MAINE POCKET WATERS.**

15 Section 808(a) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. §  
16 5107a(a)) is amended by striking all after "Federal and State regulations:", and adding the  
17 following:

18 "(1) west of Monhegan Island in the area north of the line 43 degrees 42' 10.0"N, 69  
19 degrees 34' 16.0"W and 43 degrees 42' 15.0"N, 69 degrees 19' 18.0"W;

20 (2) east of Monhegan Island in the area located north of the line 43 degrees 44' 0.0"N,  
21 69 degrees 15' 05.0"W and 43 degrees 48' 10.0"N, 69 degrees 08' 01.0"W;

1 (3) southeast of Matinic Island in the area located north of the line 43 degrees 48' 10.0"N,  
2 69 degrees 08' 01.0"W and 43 degrees 44' 08.0"N, 69 degrees 53' 01.0"W;

3 (4) south of Vinalhaven Island in the area located west of the line 43 degrees 52' 18.5"N,  
4 68 degrees 40' 0.0"W, and 43 degrees 58' 10.5"N, 68 degrees 32' 57.0"W;

5 (5) south of Bois Bubert Island in the area located northwest of the line 44 degrees 19'  
6 16.5"N, 67 degrees 49' 30.0" W, and 44 degrees 23' 40.0"N and 67 degrees 40' 30.0"W."

7 **SEC. 26. WESTERN PACIFIC FISHERY DEMONSTRATION PROJECTS.**

8 Section 111(b) of the Sustainable Fisheries Act (16 U.S.C. § 1855 note) is amended by amending  
9 paragraph (6) to read as follows:

10 "(6) For purposes of this subsection, 'Western Pacific community' shall mean a community  
11 eligible to participate under section 305(i)(2)(B)(i) through (iv) of the Magnuson-Stevens  
12 Fishery Conservation and Management Act (16 U.S.C. § 1855(i)(2)(B)(i) through (iv))."