



Magnuson-Stevens Fishery Conservation and Management Act

Public Law 94-265

As amended through October 11, 1996

AN ACT

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

J.Feder version (12/19/96)

SEC. 2. FINDINGS, PURPOSES, AND POLICY 16 U.S.C. 1801

(a) **FINDINGS.**--The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

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(2) Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

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(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.

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(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

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(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

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(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

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(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.

(b) PURPOSES.--It is therefore declared to be the purposes of the Congress in this Act--

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(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources[, and fishery resources in the special areas]*;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

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(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

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(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;

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(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and

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(7) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.

(c) POLICY.--It is further declared to be the policy of the Congress in this Act--

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

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(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; considers efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act;

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(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

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(6) to foster and maintain the diversity of fisheries in the United States; and

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(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

SEC. 3. DEFINITIONS 16 U.S.C. 1802

As used in this Act, unless the context otherwise requires--

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

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(2) The term "bycatch" means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

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(3) The term "charter fishing" means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.

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(4) The term "commercial fishing" means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that--

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(6) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

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(7) The term "Continental Shelf fishery resources" means the following:

CNIDARIA

Bamboo Coral--*Acanella* spp.;

Black Coral--*Antipathes* spp.;

Gold Coral--*Callogorgia* spp.;

Precious Red Coral--*Corallium* spp.;

Bamboo Coral--*Keratoisis* spp.; and

Gold Coral--*Parazoanthus* spp.

CRUSTACEA

Tanner Crab--*Chionoecetes tanneri*;

Tanner Crab--*Chionoecetes opilio*;

Tanner Crab--*Chionoecetes angulatus*;

Tanner Crab--*Chionoecetes bairdi*;

King Crab--*Paralithodes camtschatica*;

King Crab--*Paralithodes platypus*;

King Crab--*Paralithodes brevipes*;

Lobster--*Homarus americanus*;

Dungeness Crab--*Cancer magister*;

California King Crab--*Paralithodes californiensis*;

California King Crab--*Paralithodes rathbuni*;

Golden King Crab--*Lithodes aequispinus*;

Northern Stone Crab--*Lithodes maja*;
Stone Crab--*Menippe mercenaria*; and
Deep-sea Red Crab--*Chaceon quinquegens*.

MOLLUSKS

Red Abalone--*Haliotis rufescens*;
Pink Abalone--*Haliotis corrugata*;
Japanese Abalone--*Haliotis kamtschatkana*;
Queen Conch--*Strombus gigas*;
Surf Clam--*Spisula solidissima*; and
Ocean Quahog--*Arctica islandica*.

SPONGES

Glove Sponge--*Spongia cheiris*;
Sheepswool Sponge--*Hippiospongia lachne*;
Grass Sponge--*Spongia graminea*; and
Yellow Sponge--*Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either--

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil, of the Continental Shelf which appertains to the United States, and publishes notices of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(8) The term "Council" means any Regional Fishery Management Council established under section 302.

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(9) The term "economic discards" means fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons.

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(10) The term "essential fish habitat" means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.

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(11) The term "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

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(12) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

(13) The term "fishery" means--

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(14) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(15) The term "fishing" means--

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish; (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

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(16) The term "fishing community" means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

(17) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for--

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(18) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(19) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

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(20) The term "highly migratory species" means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).

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(21) The term "individual fishing quota" means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).

(22) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

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(23) The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(24) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

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(25) The term "migratory range" means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

(26) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

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(27) The term "observer" means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.

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(28) The term "optimum", with respect to the yield from a fishery, means the amount of fish which--

(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

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(29) The terms "overfishing" and "overfished" mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

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(30) The term "Pacific Insular Area" means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.

(31) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

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(32) The term "recreational fishing" means fishing for sport or pleasure.

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(33) The term "regulatory discards" means fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

(34) The term "Secretary" means the Secretary of Commerce or his designee.

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(35) The term "special areas" means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.[1]

(36) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or

possession of the United States.

(37) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(38) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

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(39) The term "tuna species" means the following:

Albacore Tuna--Thunnus alalunga;

Bigeye Tuna--Thunnus obesus;

Bluefin Tuna--Thunnus thynnus;

Skipjack Tuna--Katsuwonus pelamis; and

Yellowfin Tuna--Thunnus albacares.

(40) The term "United States", when used in a geographical context, means all the States thereof.

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(41) The term "United States fish processors" means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

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(42) The term "United States harvested fish" means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under this Act.

97-453, 100-239

(43) The term "vessel of the United States" means--

(A) any vessel documented under chapter 121 of title 46, United States Code;

(B) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

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(44) The term "vessel subject to the jurisdiction of the United States" has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).

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(45) The term "waters of a foreign nation" means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

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SEC. 4. AUTHORIZATION OF APPROPRIATIONS 16 U.S.C. 1803

There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act, not to exceed the following sums:

- (1) \$147,000,000 for fiscal year 1996;
- (2) \$151,000,000 for fiscal year 1997;
- (3) \$155,000,000 for fiscal year 1998; and
- (4) \$159,000,000 for fiscal year 1999.

TITLE I -- UNITED STATES RIGHTS AND AUTHORITY REGARDING

FISH AND FISHERY RESOURCES

SEC. 101. UNITED STATES SOVEREIGN RIGHTS TO 16 U.S.C. 1811

FISH AND FISHERY MANAGEMENT AUTHORITY

99-659, 102-251

(a) **IN THE EXCLUSIVE ECONOMIC ZONE.**--Except as provided in section 102, the United States claims, and will exercise in the manner provided for in this Act, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone [and special areas]*.

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(b) **BEYOND THE EXCLUSIVE ECONOMIC ZONE.**--The United States claims, and will exercise in the manner provided for in this Act, exclusive fishery management authority over the following:

- (1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to any such species during the time they are found within any waters of a foreign nation.

(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

[(3) All fishery resources in the special areas.]*

SEC. 102. HIGHLY MIGRATORY SPECIES 16 U.S.C. 1812

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The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and shall promote the achievement of optimum yield of such species throughout their range, both within and beyond the exclusive economic zone.

[J.Feder version 12/19/96]

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[]¹ Section 102(10) of Public Law 104-297 appears to codify the definition of "special areas" at paragraph 36 after the definition of "State." Section 405(a) of Public Law 104-297 appears to add a redundant definition of "special areas" and create numerous numbering conflicts in the definitions. The editors assume Congress intends to add one definition of "special areas" in alphabetical order.

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Numbers in boldface indicate the number of the Public Law that amended the following provision. Boldface comments marked with asterisks were inserted by the editors.

*Bracketed material with an asterisk is text that is added, or replaces underlined language, and will be effective on the date the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary enters into force for the United States. See P.L. 102-251