

**Agenda**  
**Joint Administrative Policy and Budget/Personnel Committees**

**Gulf of Mexico Fishery Management Council**  
**Hilton Riverside-Jefferson Ballroom**  
**New Orleans, Louisiana**

**Monday, August 10, 2015**  
**8:30 a.m. – 12:00 p.m.**

- I. Adoption of Agenda **(Tab G, No. 1)** – Boyd/Riechers
- II. Approval of March 2015 Joint Budget/Personnel Committee Minutes **(Tab G, No. 2)** – Boyd/Riechers
- III. Action Guide and Next Steps **(Tab G, No. 3)**
- IV. Discuss Combining Administrative Policy and Budget/Personnel Committees **(Tab G, No. 4)** – Gregory
- V. Discuss Historical Performance of Council Scoping Meetings **(Tab G, No. 5)**  
Gregory/Muehlstein
- VI. Review of AP Staggered Terms **(Tab G, No. 6)** – Gregory
- VII. Discuss Procedures for AP Appointments with respect to the Council's Fishing Violation Policy **(Tab G, No. 7)** – Gregory
- VIII. Review of SOPPs Revisions **(Tab G, No. 8)** – Gregory
- IX. Review of MSA Reauthorization Bills – Gregory
  - a. New MSA House & Senate Measures **(Tab G, No. 9a)**
  - b. Shortened Track Changes: House & Senate MSA Bills **(Tab G, No. 9b)**
  - c. Review of HR Bill 1335 **(Tab G, No. 9c)**
  - d. Review of S Bill 1403 **(Tab G, No. 9d)**
- X. Discuss Recent NOAA EFH 5-Year Review Budget Enhancement **(Tab G, No.10)** – Gregory
- XI. Other Business – Boyd/Riechers

**Administrative Policy Members:**

Doug Boyd, Chair

Pam Dana, V. Chair

John Greene

Camp Matens

David Walker

Nick Wiley/Martha Bademan

Staff: Gregory/Readinger

**Budget/Personnel Members:**

Robin Riechers, Chair

Vacant, V. Chair

Leann Bosarge

Doug Boyd

Camp Matens

David Walker

Roy Williams

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GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

JOINT ADMINISTRATIVE POLICY AND BUDGET/PERSONNEL COMMITTEES

Golden Nugget Casino Biloxi, Mississippi

March 30, 2015

**ADMINISTRATIVE POLICY VOTING MEMBERS**

- Doug Boyd.....Texas
- Pamela Dana.....Florida
- Martha Bademan (designee for Nick Wiley).....Florida
- John Greene.....Alabama
- Campo Matens.....Louisiana
- Corky Perret.....Mississippi
- David Walker.....Alabama

**BUDGET/PERSONNEL VOTING MEMBERS**

- Lance Robinson (designee for Robin Riechers).....Texas
- Leann Bosarge.....Mississippi
- Campo Matens.....Louisiana
- Corky Perret.....Mississippi
- David Walker.....Alabama
- Roy Williams.....FLorida

**NON-VOTING MEMBERS**

- Kevin Anson.....Alabama
- Jason Brand.....USCG
- Roy Crabtree.....NMFS, SERO, St. Petersburg, Florida
- Dale Diaz (designee for Jamie Miller).....Mississippi
- Dave Donaldson.....GSMFC
- Myron Fischer (designee for Randy Pausina).....Louisiana
- Harlon Pearce.....Louisiana
- John Sanchez.....Florida
- Greg Stunz.....Texas

**STAFF**

- Stephen Atran.....Senior Fishery Biologist
- Assane Diagne.....Economist
- John Froeschke.....Fishery Biologist/Statistician
- Doug Gregory.....Executive Director
- Karen Hoak.....Administrative and Financial Assistant
- Ava Lasseter.....Anthropologist
- Mara Levy.....NOAA General Counsel
- Cathy Readinger.....Administrative Officer
- Ryan Rindone.....Fishery Biologist/SEDAR Liaison

1 Bernadine Roy.....Office Manager  
2 Charlotte Schiaffo.....Research & Human Resource Librarian  
3 Bryan Schoonard.....GIS Analyst  
4

5 **OTHER PARTICIPANTS**

6 Pam Anderson.....Panama City, FL  
7 Randy Boggs.....Orange Beach, AL  
8 Steve Branstetter.....NMFS  
9 J.P. Brooker.....Ocean Conservancy, St. Petersburg, FL  
10 Michael Drexler.....Ocean Conservancy, St. Petersburg, FL  
11 Cynthia Fenyk.....NOAA  
12 Martin Fisher.....FL  
13 Chuck Guilford.....FL  
14 Ken Haddad.....American Sportfishing Association, Lloyd, FL  
15 Chad Hanson.....Pew Environmental Trusts  
16 Betty Harder.....FL  
17 Ben Hartig.....SAFMC  
18 Bill Kelly.....FKCFA, FL  
19 Kristin McConnell.....EDF, Austin, TX  
20 Jack McGovern.....NMFS  
21 George Niles.....Summerland Key, FL  
22 Daniel Padron.....Key West, FL  
23 Bonnie Ponwith.....SEFSC  
24 Andy Strelcheck.....NMFS  
25 Jenny Thompson.....Oceana, Lafayette, LA  
26 Bob Zales.....Panama City, FL

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30 The Joint Administrative Policy and Budget/Personnel Committees  
31 of the Gulf of Mexico Fishery Management Council convened at the  
32 Golden Nugget Casino Hotel, Biloxi, Mississippi, Monday morning,  
33 March 30, 2015, and was called to order at 8:30 a.m. by Chairman  
34 Doug Boyd.

35  
36 **ADOPTION OF AGENDA**  
37 **APPROVAL MINUTES**  
38 **ACTION GUIDE AND NEXT STEPS**  
39

40 **CHAIRMAN DOUG BOYD:** Good morning, everyone. First on the  
41 agenda is a Joint Administrative Policy and Budget/Personnel  
42 Committee meeting. Mr. Riechers, who is Chairman of the  
43 Budget/Personnel Committee, is not here today and his Vice  
44 Chairman, Corky, is here and Corky is going to jump in at any  
45 time, but I will kind of guide us through here.

46  
47 The Administrative Policy Committee, we have all the members  
48 present and Budget/Personnel, we have all the members present

1 and in total, it's about thirteen and so this is almost a  
2 committee of the whole this morning. If anybody has any  
3 questions, please feel free to ask them.  
4

5 The first thing is the Adoption of the Agenda. Does anyone have  
6 any comments on the agenda or changes to the agenda or additions  
7 to the agenda? Mr. Gregory, did you have one?  
8

9 **EXECUTIVE DIRECTOR DOUGLAS GREGORY:** I would like to add two  
10 items to Other Business. One is the request of the council to  
11 allow us to -- We have a policy in our admin handbook to talk  
12 about paying for health insurance on unpaid leave and I would  
13 like to reconsider some of that. I also would like to bring up  
14 the subject of directors' reports and see if we want to continue  
15 that activity or not.  
16

17 **CHAIRMAN BOYD:** Those two are noted. We have a motion to adopt  
18 the agenda and is there a second from one of the committee  
19 members? Ms. Bosarge seconds. Any opposition to adopting the  
20 agenda? Hearing none, the agenda is approved.  
21

22 I assume everyone has poured over the minutes of the two  
23 committee meetings and are there any changes, any additions, any  
24 corrections to the minutes? Hearing none, I will entertain a  
25 motion to adopt the minutes.  
26

27 **MR. CORKY PERRET:** So moved, Mr. Chairman.  
28

29 **MS. LEANN BOSARGE:** Second.  
30

31 **CHAIRMAN BOYD:** Second by Ms. Bosarge. Any opposition to  
32 adopting the minutes? Hearing none, the minutes are adopted.  
33 The next thing on the agenda is the Approval of the Minutes from  
34 the Budget/Personnel Committee. Corky, do you want to handle  
35 that one?  
36

37 **MR. PERRET:** Okay. The October 2014 Joint Budget/Personnel  
38 Committee members, are there any suggested modifications or if  
39 not, I will entertain a motion for approval. It's moved by Mr.  
40 Matens and second by --  
41

42 **CHAIRMAN BOYD:** I will second.  
43

44 **MR. PERRET:** Second by Mr. Boyd. Any opposition to approval of  
45 the minutes? Hearing none, the minutes are approved as written.  
46 I guess Action Guide and Next Steps is G-3. Any comments from  
47 anyone on that? Mr. Boyd, have you got any comments?  
48

1 **CHAIRMAN BOYD:** I don't have any comments. Anybody else? The  
2 action guide is more for your reference, so that you can see  
3 what's coming up and what we're working on in the different  
4 committees. If you have any questions, this would be the time.  
5 Hearing none, the next item is Review of the 2014 Carryover and  
6 2015 Budget, Tab G, Number 4, and Cathy.

7  
8 **REVIEW OF 2014 CARRYOVER AND 2015 BUDGET**  
9

10 **MS. CATHY READINGER:** Thank you. As most of you know, we  
11 requested and we received approval from NOAA to carryover  
12 funding from 2014 into 2015. These funds were planned  
13 activities in 2014. The council received approval from NOAA for  
14 a twelve-month no-cost extension that totaled \$1.1 million.

15  
16 This is for activities that we couldn't hold in 2014, but which  
17 we needed to hold in 2015. The cost categories for those  
18 activities included \$365,000 for personnel, \$331,000 for  
19 activities and that included mostly travel. \$23,000 in  
20 associated supplies and \$340,000 in contracts and \$43,000 in  
21 other expenses, which basically included acquiring additional  
22 office space. That's kind of the update for that particular one  
23 and does anyone have any questions?

24  
25 I will move on to the update on the 2015 budget. At the February  
26 CCC meeting, the Executive Director and the Chair of the Council  
27 were advised that the Gulf Council's funding level for 2015  
28 would be \$3.519 million. That's only \$86,000 more than our 2014  
29 level.

30  
31 We had submitted a budget for \$3.5199, or only \$842 more than  
32 our actual funding and so we just simply adjusted the cost  
33 category in supplies. We reduced that by \$842 and resubmitted  
34 the budget to NOAA.

35  
36 However, as of today, we have not received any 2015 funds, but  
37 the Program Officer recently indicated we should get those by  
38 the end of the week. There are a few councils who actually ran  
39 out of money and they couldn't even meet payroll.

40  
41 **EXECUTIVE DIRECTOR GREGORY:** I would like to add to that that my  
42 understanding is this is very unusual, to be three months into a  
43 year and not have any money allocated to us for our budget this  
44 year. One council has indicated that they are just going to  
45 assign all expenses incurred since January to their 2014  
46 carryover budget.

47  
48 I would like to do the same, not knowing if NOAA would allow us,

1 but just since we haven't received any money and we are spending  
2 2014 money now, to go ahead and put that in our 2014 budget. If  
3 we have to amend our budget to account for it, that's fine, but  
4 I just wanted to bring that to your attention to see if there  
5 was any objection to us trying to do that.

6  
7 **CHAIRMAN BOYD:** Any comments from the joint committee?

8  
9 **MS. BOSARGE:** Just a question. How long can we keep going on  
10 that surplus that we have?

11  
12 **EXECUTIVE DIRECTOR GREGORY:** We had a pretty good surplus and so  
13 we're not in any trouble and we expect to get 2015 money within  
14 a week or so.

15  
16 **MR. ROY WILLIAMS:** So how has this -- Are you on the calendar  
17 year? You work on a calendar year, right, unlike NMFS? How  
18 have you been paying salaries and so on for January and February  
19 and March so far?

20  
21 **EXECUTIVE DIRECTOR GREGORY:** We are paying everything out of our  
22 2014 funds and that's why I want to actually remove what we've  
23 paid to date out of the 2015 budget and so that saves that. We  
24 have plenty of carryover funds in 2014 and so we're not in any  
25 condition where we're likely to run out of money, but other  
26 councils have run out of money and have indicated to NMFS, at  
27 least maybe a month ago, that they could not make payroll, but  
28 we are not in that position.

29  
30 **CHAIRMAN BOYD:** Mr. Gregory, when we get to the end of this  
31 funding period, this 2015 or 2016 funding period, the multiyear,  
32 are we going to cause ourselves a problem because we put some of  
33 this money back into 2014 and we'll have a surplus then?

34  
35 **EXECUTIVE DIRECTOR GREGORY:** It's likely at the end of the five-  
36 year grant we just started that we would have a surplus then and  
37 we had a surplus at the end of the two previous five-year grants  
38 and NMFS allowed us to carry it over for activities. What I am  
39 proposing to do that's different than what NMFS has allowed us  
40 to do in the past is they said you can carryover funds from the  
41 end of your five-year grant into the next year if you have  
42 activities that you were planning to do that you didn't  
43 complete.

44  
45 What I am proposing to do is use 2014 money for new activities  
46 in 2015, simply because we technically don't have 2015 money  
47 yet. I don't know if they will approve that or not, but it's  
48 worth a try, because it does provide us with a cushion at the

1 end of the five-year period.

2  
3 **MR. PERRET:** What happens if we send the letter and the agency  
4 says no? Where are we financially, budget-wise, so on and so  
5 forth?

6  
7 **EXECUTIVE DIRECTOR GREGORY:** We're okay. Our 2015 budget is  
8 essentially a level funding budget for 2014 and given our  
9 expenditures for 2014, not including any carryover from previous  
10 years, we had a surplus of a couple hundred thousand and so no  
11 matter which way we go, we're not going to be in any financial  
12 constraints of any kind.

13  
14 **MR. PERRET:** The letter, if we decide to send it, that goes to  
15 the Region or Headquarters or both?

16  
17 **MS. READINGER:** It would be initiated at the Regional Office and  
18 then they were submit it, if they approved, to NOAA Grants in  
19 D.C.

20  
21 **MR. PERRET:** Are you more comfortable with a letter of  
22 recommendation from the council to send the letter forward or  
23 you can do it without council direction?

24  
25 **MS. READINGER:** I'm sorry, Corky, but can you repeat that?

26  
27 **EXECUTIVE DIRECTOR GREGORY:** Do we need to actually write a  
28 letter saying we're going to do this or do we just do it and see  
29 what answer we get? What's the best way forward to do this?

30  
31 **MS. READINGER:** You can simply go ahead and charge those 2015  
32 activities to the 2014 budget. However, if you wanted to do  
33 that, I would suggest trying to amend the 2015 budget, because  
34 we've spent \$545,000, year to date, of 2015 funds. That's a  
35 half-a-million.

36  
37 We have a 10 percent variance before we have to get NOAA  
38 approval and so until I know what that final number would be, I  
39 don't know if we would really need their approval. Regardless,  
40 we are still going to be okay in both years, both grant years.  
41 I anticipate not spending all of the 2014 money even in doing  
42 this and if we do charge back the 2014 expenses to the 2014  
43 award, we are still going to be fine.

44  
45 **MR. PERRET:** It sounds like we've got a timing problem and from  
46 a funding standpoint, we should be okay. In fact, I like when I  
47 hear the word "surplus" and so I have a question. If this  
48 committee and council decided that they wanted to provide a one-

1 time increase in liaison funds to the states and the Gulf States  
2 Commission of say \$10,000 each, can our budget afford that?

3  
4 **MS. READINGER:** I would say yes, Corky, given the amount of  
5 travel activities that were included in the 2014 carryover and  
6 the amount of travel activities that we have in the 2015 budget.  
7 As you know, we try to budget for full attendance and we  
8 recently restructured the SSC and so we will achieve a cost  
9 savings there and given the lack of full attendance, you will  
10 have funds left from there and I don't think \$60,000 will be an  
11 issue, if you give \$10,000 to each state and one \$10,000  
12 allocation to Gulf States.

13  
14 **MR. PERRET:** Thank you, Cathy. **With that, I would like to move**  
15 **that we recommend to the council that we have a one-time**  
16 **increase of \$10,000 to the states and the Commission for their**  
17 **liaison contracts.**

18  
19 **CHAIRMAN BOYD:** We have a motion. Is there a second?

20  
21 **MR. MATENS:** Second.

22  
23 **CHAIRMAN BOYD:** We have a second by Mr. Matens. Is there  
24 discussion?

25  
26 **MR. PERRET:** I would just say, having been a state director in  
27 two states, I know how hard and how much time state employees  
28 spend on council activities and the liaison contract has gone up  
29 very, very little since we started providing liaison funds in  
30 1979 or 1980 and I am confident that the states can put this  
31 money to good use and that would release \$10,000 per state of  
32 state money that they could use for other things and so I just  
33 think it's the right thing to do if the budget allows it. Cathy  
34 has got a comment, Mr. Chairman.

35  
36 **CHAIRMAN BOYD:** All right, Cathy, and I have a question. Didn't  
37 we have a one-time increase last year?

38  
39 **EXECUTIVE DIRECTOR GREGORY:** Twice.

40  
41 **CHAIRMAN BOYD:** Twice? That would be a tradition in Harlon's  
42 state, to have a one-time twice. We are going to talk about  
43 three times and it's a done deal, I think.

44  
45 **MR. PERRET:** This is a one-time for this particular budget year  
46 and so one time thus far.

47  
48 **MS. READINGER:** On that note, I was just going to give you an

1 overview. As you know, you did have two amendments to the state  
2 liaison contracts last year and that was up to \$65,000 and so we  
3 had one state that reported \$66,000 in liaison expenses and one  
4 reported exactly \$65,000 and another one reported \$124,000 and  
5 one that reported \$57,000 and another one reported \$43,000 and  
6 \$47,000 and so they definitely do exceed the \$35,000 that we  
7 typically give them.

8  
9 **MR. KEVIN ANSON:** Just one more note. I was reviewing some  
10 South Atlantic Council documents from 2013 and their budget  
11 ranged from about \$52,000 to \$57,000 for each of the states for  
12 their liaison expenses and so at \$35,000, we're at much less  
13 than what the going rate would be or what similar states receive  
14 in the Southeast Region.

15  
16 **EXECUTIVE DIRECTOR GREGORY:** Each council does it differently.  
17 Now, I was just pointing out the South Atlantic has four states  
18 and so four times that might be the same as what we're doing  
19 with five states plus the commission. I don't know if the South  
20 Atlantic gives money to the Atlantic States Commission, because  
21 that's the entire east coast.

22  
23 Other councils -- Some councils don't give any state liaison  
24 money. This is not something Magnuson has mandated. This is  
25 something the councils individually decide to do and then one  
26 council, I think the Pacific Council, actually keeps track  
27 themselves the amount of time and effort that state employees  
28 put into documents and they pay accordingly.

29  
30 Some states might get \$100,000 in a year, but in that council,  
31 the state biologists are actively involved in writing plans and  
32 doing stuff like that. They just don't attend meetings and give  
33 advice. Each council does it differently and there is no --  
34 It's not part of the Magnuson Act or anything that we have to  
35 do.

36  
37 **CHAIRMAN BOYD:** Corky, I was being a little bit flip a while  
38 ago, but my point would be that if we think that there is a need  
39 and there is a true need in the state and there is more activity  
40 by the states, maybe we ought to look at increasing the annual  
41 funding rather than doing it as a one-time deal multiple times.

42  
43 **MR. PERRET:** I totally concur with that, Mr. Boyd. I think one  
44 thing the states do a poor job of, me included -- Mr. Gregory  
45 mentioned that biologists in the states in the Pacific do a lot  
46 of drafting and working on FMPs and amendments and so on and so  
47 forth.

48

1 I can assure in the two states that I worked in that biologists  
2 do the very same thing. We just weren't smart enough to bill  
3 the council for the amount of time, but there is a lot of people  
4 in the state agencies that are involved in council activities  
5 that are never on those reports that go in, because we simply  
6 basically would put we get \$25,000 or \$35,000 and let's make  
7 sure we get to that level and then we just don't even put the  
8 rest down.

9  
10 The states, from that aspect, have been lax in actually putting  
11 the total amount of time down, but your suggestion is something  
12 I think is something very well worth considering and hopefully  
13 in the future we address it that way rather than having these  
14 one-time increases, but since I heard "surplus" and "money", I  
15 think anything we can do to help our state regulatory agencies  
16 and management agencies, we should do it.

17  
18 **CHAIRMAN BOYD:** We have a motion on the board. Any further  
19 discussion? **The motion is to recommend to the council that we**  
20 **have a one-time increase of \$10,000 to the states and the**  
21 **commission for the liaison contracts.**

22  
23 **MR. DAVID WALKER:** I don't know if we need to make it clear and  
24 does it need to read "to each state" or just "to the states"?

25  
26 **MR. PERRET:** Did you get that? **To each Gulf state and the Gulf**  
27 **States Commission.**

28  
29 **MR. CAMPO MATENS:** I hope this isn't picking a nit, but would  
30 you be comfortable with deleting the words "one-time"?

31  
32 **MR. PERRET:** **I have no problem with it.** I just want to make  
33 sure if we've got a surplus and the budget allows that we  
34 provide this increase to these groups.

35  
36 **CHAIRMAN BOYD:** Any further comments?

37  
38 **MS. READINGER:** That would be to Calendar Year 2015 starting,  
39 correct?

40  
41 **CHAIRMAN BOYD:** Did we actually change the motion, Corky, your  
42 motion?

43  
44 **MR. PERRET:** I can read it both ways. Starting in this year  
45 we're going to give them ten-grand and next year we're going to  
46 increase it also and so on and so forth. I am all for that, but  
47 you know I -- Cathy, the liaison contract now is \$35,000 and so  
48 this would bring it to \$45,000 for this year and \$45,000 next

1 year and so on if this passed in the council?

2

3 **MS. READINGER:** That's the way I read the motion, Corky.

4

5 **MR. PERRET:** Okay. That's the way I am reading it too and that  
6 was Mr. Boyd's comment and I don't know if it was a suggestion  
7 and so I agree with this. Let's up it to \$45,000. Thank you.

8

9 **CHAIRMAN BOYD:** If you want to make this clear, after "\$10,000",  
10 you could say "to a total of \$45,000" and that would make it  
11 clear.

12

13 **MR. PERRET:** To a total of \$45,000 to each. Thank you, Mr.  
14 Boyd. Thank you, Cathy.

15

16 **CHAIRMAN BOYD:** We have basically a new motion. We have changed  
17 from a one-time to a permanent. The motion is to recommend to  
18 the council that starting in 2015 we have an increase of  
19 \$10,000, to a total of \$45,000, to each of the states and the  
20 Gulf States Commission for liaison contracts. Any further  
21 discussion? **All in favor say aye; opposed same sign. The**  
22 **motion carries.**

23

24 **MS. READINGER:** That concludes my report.

25

26 **CHAIRMAN BOYD:** All right. Thank you. Next on the agenda is  
27 Number VI, Tab G-5, and Mr. Gregory.

28

29

#### **REVIEW OF BENEFITS ANALYSES BY MARKLEY CONSULTANTS**

30

31 **EXECUTIVE DIRECTOR GREGORY:** Tab G-5 is a staff summary of the  
32 retirement plan study done by Markley Actuarial. The council  
33 approved early last year and we did an RFP and we selected this  
34 contractor to look at our 401K plan.

35

36 He looked at it in two ways. He looked to see -- We had trouble  
37 last year and we tried to move to Vanguard to handle our 401K  
38 and Vanguard did not want to handle us. I mean we're a  
39 relatively small company, but we have a unique situation where  
40 we're a government 401K.

41

42 In the 1980s, when we started this, government agencies could  
43 have 401K, but in 1986 or 1989, a decision was made to disallow  
44 401K for government entities, but those that already existed  
45 were grandfathered in. We were grandfathered in and some other  
46 rulings said that government entities did not have to file  
47 certain forms with the IRS that other non-profit and for-profit  
48 companies have to file to be compliant with something called

1 ERISA.

2  
3 Because we weren't filing those forms, Vanguard was  
4 uncomfortable with us and so we wanted somebody to look at this  
5 and see if we could find a way out and the study concluded that,  
6 one, we should restate our plan, which everybody has to do  
7 before next year, April of next year, and that we also could  
8 write a letter to the IRS asking for a letter of determination  
9 about our plan.

10  
11 We run into problems like this on a regular basis because we're  
12 not a government agency, but we're also not a for-profit.  
13 Places like Vanguard and Bank of America, you would think, as  
14 big as they are, they would understand this. We are not unique  
15 in that we're an instrumentality of the federal government, but  
16 we don't fit their categories.

17  
18 We ended up staying with ING, but we negotiated lower rates with  
19 ING along the lines of what our trustees recommended and we're  
20 in the process of making that transition now.

21  
22 He evaluated that and gave us some ideas of how to move forward  
23 and get clarification on the status of our 401K with the IRS and  
24 in case we did want to go to another company in the future and  
25 he also looked at or the company looked at -- We met with Mr.  
26 Markley directly, but the company looked at our benefits  
27 analysis.

28  
29 In other words, is staff getting the equivalent retirement  
30 benefits that a federal employee would get? The conclusion was  
31 that, and it's in this document, at the bottom. I will just  
32 read it. An employee hired around 2010 who is between the ages  
33 of say thirty-eight and forty-one would have an equivalent  
34 benefit under each plan.

35  
36 Prior to about four or five years ago, the council had a  
37 matching program that was inadequate. About four or five years  
38 ago, the council increased the contributions to 6 percent from 4  
39 percent and also increased the amount of matching that an  
40 employee could do. With our current plan, it appears that we're  
41 on target and we're equivalent to the federal government.

42  
43 In general, there were seventeen participants that were  
44 analyzed, all seventeen of the staff. Eight had higher  
45 replacement ratios under the government plan and two had  
46 equivalent ratios and seven had better ratios under the council  
47 plan and these seven were the younger employees, because it  
48 projects out much more, their benefits, if they were to fully

1 match.

2  
3 Two employees were behind the federal government and these are  
4 our long-term employees and so the conclusion was, based on the  
5 projection of benefits, future employees will receive the  
6 comparable benefits and so we're right on target and we don't  
7 need to make any changes.

8  
9 There was a recommendation that we try to develop a mechanism  
10 for enhancing the contributions to the two employees that may be  
11 behind and Mr. Markley's group recommended some elaborate, Cathy  
12 and I thought elaborate, defined benefit-type plan, like a  
13 pension, and we think a simpler way to go is simply to modify  
14 our 401K contract, agreement, so that instead of having to give  
15 every employee an equal percentage contribution when a  
16 contribution is made, like that 6 percent, that anything above  
17 that 6 percent could be done on a variable basis.

18  
19 It could be a decision of myself and the trustees of whether to  
20 do that in the future and so that gives us the more flexibility  
21 that can address that discrepancy, but, in general, it looks  
22 like our current plan is right on target with the federal  
23 government and there is no makeup or anything that needs to be  
24 done in a large way.

25  
26 **MR. PERRET:** What about this recommendation that the council  
27 implement a plan to replace some portion of the benefit provided  
28 by the applicable government plan that is not provided by the  
29 council plan? The example is given of a range and so where did  
30 that -- That recommendation came from Markley?

31  
32 **EXECUTIVE DIRECTOR GREGORY:** Yes.

33  
34 **MR. PERRET:** If so, what would the suggested number be? There  
35 is quite a difference between 33 and 100 percent.

36  
37 **EXECUTIVE DIRECTOR GREGORY:** Well, no particular amount is  
38 suggested, but it's something for the council to develop  
39 flexibility and I would say to evaluate a way forward in the  
40 future. What we're going to do with our 401K plan is make a  
41 change so that council contributions can be made at a variable  
42 percentage. Let's say I could get 1 percent and somebody else  
43 could get 5 percent and there has to be a decision process for  
44 how that's done and that would be worked out with the trustees.

45  
46 **MR. PERRET:** Do we need to take any action at this time?

47  
48 **EXECUTIVE DIRECTOR GREGORY:** No.

1  
2 **CHAIRMAN BOYD:** Any further discussion? Moving to the next  
3 agenda item, Review and Approval of Early Retirement Health  
4 Plan, Mr. Gregory.

5  
6 **REVIEW AND APPROVAL OF EARLY RETIREMENT HEALTH PLAN**

7  
8 **EXECUTIVE DIRECTOR GREGORY:** I will refer you to Tab G, Number  
9 6. Another thing that we asked Markley to look at was the  
10 potential for providing health insurance for early retirees.  
11 Our current early retirement system basically says if you're got  
12 ten years of service and you're fifty-five years or older that  
13 you, quote, can retire early.

14  
15 The only benefit that you get from doing that today is that you  
16 get to keep some percentage of your sick leave when you leave  
17 the council, up to a maximum of 150 days. That's the only  
18 benefit we have now.

19  
20 In looking at providing health insurance for early retirees, we  
21 concluded to not go with the ten years and fifty-five as a  
22 definition of early retirement, but go with twenty years. You  
23 have got to have twenty years of service, something substantial,  
24 a substantial contribution to the council, and be fifty-five  
25 years of age.

26  
27 The analysis that was provided to us was quite complex and so  
28 Cathy went through each employee, looking at their age and the  
29 amount of time they've been in service to the council, assuming,  
30 if they took advantage of this, giving a percent increase in  
31 health insurance costs that the Markley Consulting Firm provided  
32 to us.

33  
34 We calculated, in five-year intervals, what the cost would be to  
35 the council if every existing employee took advantage of this  
36 when the met the criteria of twenty years of service and at  
37 least fifty-five years of age.

38  
39 At the bottom of the document, if you would scroll down to the  
40 bottom, you will see what other councils are doing. The  
41 Northeast Council doesn't do anything like this and the Mid-  
42 Atlantic Council pays 75 percent of pre-Medicare coverage and 75  
43 percent of Medigap coverage, once somebody meets that age.

44  
45 The South Atlantic Council is doing the same thing we're doing  
46 and they're looking at options. The Caribbean Council provides  
47 100 percent of coverage to Medicare age. The North Pacific  
48 Council, it's hard to determine what they do, because they are

1 under the State of Alaska plan.

2  
3 The Pacific Council provides a subsidy in a post-employment  
4 health program, but we weren't able to get details on that. The  
5 Western Pacific Council provides 100 percent coverage for the  
6 remainder of life and that was from their Executive Director.

7  
8 What I am proposing here is that the council consider and  
9 approve the adoption of an early retirement health benefits  
10 coverage, either at a 100 percent coverage level or a 75 percent  
11 coverage level, and you will see, again, it's the younger  
12 employees, when they get to age fifty-five, the costs go up to a  
13 maximum of \$236,000, which is within our budgets. By the time  
14 we get to 2040 or 2044, that's a relatively small amount of  
15 money.

16  
17 It's not something that is going to stress the budget at all and  
18 it will provide a benefit to people that have really donated  
19 many years of service to the council and so I would like a  
20 motion on that, to choose one of those coverage levels, if you  
21 are agreeable.

22  
23 **MR. PERRET:** Doug, I may be the only one confused. So are we  
24 talking about only, quote, unquote, early retirement, fifty-five  
25 age and twenty years of service, or what if it's the employee is  
26 sixty-five and has got thirty-five or forty years employment?  
27 Are we talking the same thing?

28  
29 **EXECUTIVE DIRECTOR GREGORY:** Right. At sixty-five, you're  
30 eligible for Medicare and so under this proposal, there would be  
31 no cost to the council, because we are not proposing that the  
32 council also pay any aspect of the Medigap coverage and so this  
33 early retirement program would end once a person reaches sixty-  
34 five.

35  
36 **MR. PERRET:** If I may, Mr. Chairman, in the last motion relative  
37 to the Markley study and all, you compared it to federal  
38 retirement and so on and so forth and I've been around here long  
39 enough that the council staff, and I totally concur, are always  
40 looking for the best benefit. If it's the State of Florida  
41 benefit, great, or if the feds are better, great and so on so  
42 forth. What is the federal system on healthcare? Can one of  
43 you guys answer that, please?

44  
45 **EXECUTIVE DIRECTOR GREGORY:** Cathy, do you know?

46  
47 **MR. PERRET:** I know in the State of Mississippi, for example, a  
48 retiree with fifty years, and correct me if I'm wrong, gets

1 nothing from the state. In Louisiana, they are picking up 75  
2 percent of my healthcare as a retiree and I don't know what the  
3 other states are, but what is the federal system?

4  
5 **DR. BRANSTETTER:** You get your healthcare, but you wind up  
6 paying for it and the state doesn't subsidize any of it.

7  
8 **MR. PERRET:** But you pay what percentage, 50 percent or 100  
9 percent or all of it?

10  
11 **DR. BRANSTETTER:** If you want to pay for it, you can get your  
12 full healthcare coverage that you have.

13  
14 **MR. PERRET:** I still don't have the answer I am trying to -- If  
15 a federal employee at age fifty-five and twenty years of service  
16 quits, does the government pick up any portion of their  
17 healthcare?

18  
19 **DR. BRANSTETTER:** None.

20  
21 **MR. PERRET:** Zero. So that's the answer. Now, in the last go-  
22 round, you wanted to be comparable to federal employees with  
23 Markley and if you want to be comparable to federal employees  
24 with health, it's going to be zero. Cathy seems to want to  
25 correct me.

26  
27 **MS. READINGER:** No, I don't want to correct anything, but I just  
28 would like to ask Steve -- You know the government has a large  
29 pool that they can get reduced premiums per month and so yes,  
30 they may pay for 100 percent of those premiums, but my  
31 understanding for family coverage is it would be a much, much  
32 lower, substantially lower, than what the council employees are  
33 able to pay, because we have a small pool of employees.

34  
35 Yes, they may have to pay for 100 percent of theirs, but that  
36 100 percent probably is still going to be much less than the  
37 council employees getting a subsidy and so I think that's a huge  
38 factor that you need to consider.

39  
40 **CHAIRMAN BOYD:** I have a question, Doug. If I remember,  
41 correctly we allow accrued sick leave to be rolled over and be  
42 paid at retirement and is that correct? Okay. So if someone  
43 has accrued sick leave, let's say the maximum, and we do this  
44 plan, does this replace the payment of that accrued sick leave,  
45 since we're continuing to pay and we may even pay at a higher  
46 rate?

47  
48 **EXECUTIVE DIRECTOR GREGORY:** No, that is not something that I

1 considered or proposed here. They are two separate things.

2  
3 **MR. PERRET:** But they would keep their sick leave dollars and we  
4 would pay them for it?

5  
6 **EXECUTIVE DIRECTOR GREGORY:** They would get only up -- I think  
7 half of their existing sick leave upon termination, if they've  
8 been in service for ten years and are age fifty-five or older.  
9 They would get half of their sick leave up to a maximum of 150  
10 days.

11  
12 **CHAIRMAN BOYD:** My thought all along was that the reason we  
13 allow that is to help in retirement, to help pay additional  
14 healthcare premiums. So if we're going to pay it, it seems like  
15 what we're doing is double-dipping then, from my perspective.

16  
17 **EXECUTIVE DIRECTOR GREGORY:** I do not know. I wasn't here when  
18 the council adopted that policy and I don't know why that policy  
19 was put in place. Cathy, do you recall when the sick leave  
20 policy was put in place and what the rationale was?

21  
22 **MS. READINGER:** It was in 1984 when the council first  
23 established a 401K plan and you go through an adoption agreement  
24 and you can establish certain early retirement ages and then  
25 regular retirement ages. At the time, that was just one of the  
26 ages that the council selected. I don't recall their rationale  
27 for that, but, as you said, it only really pertains to a sick  
28 leave payout.

29  
30 On the other hand of that, if you've had an employee who has had  
31 to be a caregiver or who has had illnesses or whatever, they  
32 might not have a huge balance whenever they get ready to retire  
33 and so I think you need to consider that, too.

34  
35 I would like to truly find out what a family rate for federal  
36 employees would be versus a single rate and compare those rates  
37 to the council employee rates. Again, I think you're going to  
38 see a huge disparity.

39  
40 **MR. WILLIAMS:** Corky had asked earlier when he was talking about  
41 what the state benefits are on this kind of thing and in the  
42 case of Florida, they pay five-dollars per month per year of  
43 service, up to thirty years. If you have worked for the state  
44 for thirty-five years, you got credit for thirty years of  
45 service and so they would pay \$150 a month. If you had worked  
46 for them for twenty years, they would pay you a hundred dollars  
47 a month and that's what Florida pays.

1 **MR. PERRET:** Towards your health premium?  
2  
3 **MR. WILLIAMS:** Towards your health premium, yes.  
4  
5 **CHAIRMAN BOYD:** I think the benefit here is significant. I  
6 think the dollars to the council are going to be small, because  
7 we're talking about a retirement taking place between fifty-five  
8 and sixty-four, basically, with twenty years of service. It's  
9 going to be a small amount of dollars, but a large benefit.  
10  
11 **MR. PERRET:** Are you ready for a motion, Mr. Chairman?  
12  
13 **CHAIRMAN BOYD:** Yes, sir.  
14  
15 **MR. PERRET:** I move that we request the council for approval of  
16 implementing an early retirement plan with a 75 percent subsidy.  
17  
18 **CHAIRMAN BOYD:** Do we have a second for this motion?  
19  
20 **MS. BOSARGE:** Second.  
21  
22 **CHAIRMAN BOYD:** Ms. Bosarge seconds. Is there further  
23 discussion?  
24  
25 **MR. PERRET:** I have a question. Now, Mr. Gregory, the early  
26 retirement is age fifty-five and a minimum of twenty years of  
27 service, so I well understand that? Okay. That's my motion.  
28  
29 **CHAIRMAN BOYD:** Is there committee discussion? This is a joint  
30 committee and so I'm assuming we can all make motions and talk.  
31  
32 **MS. READINGER:** I think you need to -- Corky, if you want to  
33 clarify that the early retirement plan with a 75 percent subsidy  
34 is a subsidy for healthcare insurance premiums payable up to  
35 Medicare eligibility.  
36  
37 **CHAIRMAN BOYD:** Yes, that clarifies. Again, just for  
38 clarification, and I am repeating, but we're talking about  
39 twenty years of service, a minimum age of fifty-five, and a  
40 maximum age, basically, of sixty-four, because you will be under  
41 Medicare that next year. Somewhere in that area, you've got to  
42 obtain twenty years of service and so you could do it at fifty-  
43 five or you could do it at sixty or fifty-seven or whatever it  
44 is. Any further questions?  
45  
46 Let me read it, since there was a change. The motion is to  
47 request that the council implement an early retirement plan with  
48 a 75 percent subsidy for healthcare premiums up to Medicare

1 eligibility.

2  
3 **MR. PERRET:** I guess technically, after "plan", we should say  
4 "for its staff". It's not for the council members and we don't  
5 want anybody thinking we're getting any. Retirement plan for  
6 staff or does everybody understand we're talking about the  
7 staff?

8  
9 **CHAIRMAN BOYD:** That's up to you. It's your motion.

10  
11 **MR. PERRET:** Mr. Gregory, do we need to clarify it any or are we  
12 clear on what the intent of the motion is?

13  
14 **EXECUTIVE DIRECTOR GREGORY:** Yes, we're clear.

15  
16 **CHAIRMAN BOYD:** All right. **All in favor please say aye;**  
17 **opposed. Hearing no one opposed, the motion carries.**

18  
19 **REVIEW OF TERM LIMITS FROM OTHER COUNCILS**

20  
21 **EXECUTIVE DIRECTOR GREGORY:** The next item is Tab G, Number 7.  
22 At the last meeting when we were talking about restructuring the  
23 SSC and also putting term limits and staggered terms and  
24 categorizing the AP members, the council concluded and said we  
25 did not want to categorize AP members and asked me to look into  
26 what other councils were doing with term limits and staggered  
27 terms.

28  
29 We have that here and one council does have staggered terms.  
30 What I am recommending, based on this analysis, is that we don't  
31 consider hard term limits and that your reappointment process in  
32 essence is a term limit in itself and that we don't go to  
33 staggered terms, because of the potential confusion with that,  
34 particularly the confusion among members of the panels who won't  
35 know if their time is up this year or next year or whatever.

36  
37 I think status quo on that is what we're recommending. I would  
38 recommend that beginning this year with the appointments that we  
39 consider doing three-year appointments instead of two-year  
40 appointments. Some councils do that and that puts it on the  
41 same schedule as council appointments. That's just the only  
42 consideration. I don't know if you want a motion if you want to  
43 consider a three-year term limit or not. That would require a  
44 motion.

45  
46 **MR. WILLIAMS:** I was going to suggest that we do approve a  
47 three-year appointment for the SSC members. Toward that end, I  
48 would move that the SSC serve three-year appointments.

1  
2 **CHAIRMAN BOYD:** We have a motion on the board and do we have a  
3 second? Hearing no second, the motion fails.  
4  
5 **MR. PERRET:** Roy, you specifically wanted this only for the SSC  
6 and not the SSC and the AP?  
7  
8 **MR. WILLIAMS:** Can I modify it then to --  
9  
10 **EXECUTIVE DIRECTOR GREGORY:** Yes, Corky. I am developing a  
11 reputation for changing my mind.  
12  
13 **CHAIRMAN BOYD:** The motion failed for lack of a second and is  
14 there another motion, based on Mr. Gregory's request?  
15  
16 **MR. MATENS:** I would move that we go back to Mr. Gregory's  
17 original, original proposal, where we had staggered terms on the  
18 APs, but as I recall correctly, Mr. Gregory, not in the Science  
19 Committee and is that a correct statement?  
20  
21 **EXECUTIVE DIRECTOR GREGORY:** That's what I was presenting at the  
22 last council meeting.  
23  
24 **MR. MATENS:** To that point accordingly, I move that the SSC  
25 serves with three-year appointments. Mr. Gregory, I liked your  
26 original proposal, but I just don't remember what it was.  
27  
28 **EXECUTIVE DIRECTOR GREGORY:** The original proposal was to do  
29 something similar that the council has and after three terms, a  
30 council member can't get back on until they wait a year. I was  
31 proposing something similar to that for the AP and there was  
32 some concern expressed by the public about that and so the  
33 council asked me in January to go look and see what the other  
34 councils had done and that's what I presented here in Tab G-7.  
35  
36 In discussing it and looking at what the other councils have  
37 done, staff has just decided that a hard term limit, where if  
38 somebody was appointed to an AP for two years or three years and  
39 they did it three times and then they would have to get off was  
40 something that we didn't really feel strongly about.  
41  
42 The staggered terms, some people pointed out that there could be  
43 confusion is on more than one AP and they've got a staggered  
44 term for this year on that AP and another year on a different AP  
45 and different members. It could be confusion, because we do  
46 have confusion with the public and AP members when it comes up  
47 to reappointment.  
48

1 Hopefully we resolved most of those this year with our online  
2 application, but it will be interesting when we get into the AP  
3 selection process as to what kind of confusion rises its head at  
4 that time.

5  
6 **MR. MATENS:** Notwithstanding that issue, I agree that AP members  
7 shouldn't term out and should be able to stay should they be  
8 reappointed. I also feel like and think that the staggered  
9 terms offer some benefit for us. The fact that people might get  
10 confused about whether they go on or off, that's a different  
11 sort. We're dealing with adults here.

12  
13 In the case of the SSC, we never really talked about -- Did we  
14 talk about staggered terms with the SSC? I don't believe that  
15 we did. I am comfortable with the SSC staying like it is, but  
16 the APs being two or three-year terms or three-year terms and  
17 staggered terms. I would like to see that and how do I  
18 verbalize that, because I am getting confused, too.

19  
20 **EXECUTIVE DIRECTOR GREGORY:** What I proposed with the staggered  
21 terms was to have a three-year appointment instead of the two-  
22 year appointment. Then people would, this year, everybody that  
23 gets appointed, we would simply go down the list of each  
24 committee alphabetically and go 1, 2, 3, 1, 2, 3. That would be  
25 their initial starting term.

26  
27 Then say if somebody is selected to be a one-year person, next  
28 year they would be up for reappointment for three years and so  
29 it would only be one, two, and three for this first year. Then  
30 everybody would be on a three-year appointment and we would only  
31 have to deal with a third of the AP in any one year, but we  
32 would have to do it every year, whereas now we're dealing with  
33 the entire AP at one time, but we only do it every two years and  
34 so it's a tradeoff.

35  
36 Maybe this might be something that could be considered in full  
37 council, after we go through the AP process and see how smooth  
38 it is.

39  
40 **MR. MATENS:** That's fine and, again, correct me if I'm  
41 misinformed here, but if we do nothing Vis-à-vis the science  
42 committee, we're okay at status quo, right? Okay. **Vis-à-vis a**  
43 **motion, I move that the AP members serve three-year terms**  
44 **without term limits and that those terms be determined in the**  
45 **June meeting to be one-year, two-year, or three-year terms.**

46  
47 **CHAIRMAN BOYD:** There is a motion on the board by Camp Matens  
48 and do we have a second for the motion?

1  
2 **EXECUTIVE DIRECTOR GREGORY:** You said in June and you are  
3 appointing AP members at this council meeting. We are going to  
4 do SSC appointments in June.  
5  
6 **MR. MATENS:** I am sorry. **Just delete after "be determined" and**  
7 **"be determined thereafter".**  
8  
9 **EXECUTIVE DIRECTOR GREGORY:** I would suggest if this motion is  
10 approved by the council that we also consider making the SSC  
11 appointments for three-year terms, just so that we're dealing  
12 with them on the same cycle.  
13  
14 **MR. MATENS:** I agree.  
15  
16 **CHAIRMAN BOYD:** If this does pass -- Well, I will wait and ask  
17 the question if we get a second. I need a second for this  
18 motion by Camp. All right. I have a second by Lance and now  
19 questions.  
20  
21 **MR. PERRET:** Mr. Matens, would you be amenable to for AP and SSC  
22 and take them both up at the same time?  
23  
24 **MR. MATENS:** Can you help me with that?  
25  
26 **MR. PERRET:** In other words, we're talking only about the AP  
27 members and three-year terms and I say let's do the same thing  
28 for the S&S members and make it three years also in the same  
29 motion.  
30  
31 **MR. MATENS:** I agree.  
32  
33 **MR. PERRET:** Okay and I second that modified motion. Thank you.  
34  
35 **EXECUTIVE DIRECTOR GREGORY:** Mr. Matens, I don't know if this  
36 motion was what you said. The last phrase "and those term  
37 durations be determined thereafter", that's not explicit. You  
38 said you did not want the SSC to have staggered terms, but you  
39 did want the AP to have staggered terms.  
40  
41 **MR. MATENS:** That is correct. I was thinking we could clean  
42 that up later. The AP would have staggered terms of one, two,  
43 or three years. The SSC would not have staggered terms.  
44  
45 **EXECUTIVE DIRECTOR GREGORY:** Karen, leave that in there like you  
46 just had it and after "limits", take out that phrase that says  
47 "and those term durations be determined thereafter" and now put  
48 in that for the AP -- The AP will have staggered terms, but the

1 SSC will not.  
2  
3 **MR. MATENS:** To that point, the staggered terms would be one,  
4 two, or three years, please.  
5  
6 **CHAIRMAN BOYD:** The way I understand it is that the reason for  
7 the one, two, or three is just to get us started and then it  
8 would be three-year terms, but those three-year terms would be  
9 staggered. It's an administrative issue for the council and for  
10 staff to try to get things done. I had Lance second and are you  
11 okay with the change? Lance is okay.  
12  
13 **MS. BADEMAN:** I had the same problem Doug did and I'm good now.  
14  
15 **CHAIRMAN BOYD:** Okay. Any further discussion? Let me read it,  
16 since we've had a bunch of -- Myron.  
17  
18 **MR. MYRON FISCHER:** So this would me that we vote on AP members  
19 annually and we would be voting on a third of the AP slate every  
20 year? Okay.  
21  
22 **CHAIRMAN BOYD:** That's my interpretation. Mr. Gregory, is that  
23 your interpretation?  
24  
25 **EXECUTIVE DIRECTOR GREGORY:** Yes.  
26  
27 **CHAIRMAN BOYD:** Okay. Let me read it, since we've had some  
28 changes. Pam.  
29  
30 **DR. PAMELA DANA:** Thank you, Chairman Boyd. I still don't  
31 understand this motion, I mean the way I'm reading it. During  
32 this council meeting if we're voting on AP members to fill the  
33 various APs and we are giving them a three-year term, where does  
34 -- I don't understand how the staggering comes in, because they  
35 are all given a three-year term, everyone that's appointed.  
36  
37 **CHAIRMAN BOYD:** Yes, the timing is not good on this motion  
38 versus the appointments. Mr. Gregory, do you have a  
39 clarification?  
40  
41 **EXECUTIVE DIRECTOR GREGORY:** The way we originally suggested  
42 this, for this first year, for 2015 to 2016, a third of the  
43 appointments you make at this meeting will be for a one-year  
44 period and a third will be for two years and a third will be for  
45 three years.  
46  
47 Then next year you will take up those seats that got a one-year  
48 appointment and reconsider them for a three-year appointment and

1 so only in this year will people have one, two, or three-year  
2 appointments. For every year thereafter, it will be an ongoing  
3 three-year appointment.

4  
5 **DR. DANA:** If I am looking at the one-year third, two-year  
6 third, and three year and if I'm a candidate and I get selected  
7 and I get selected to be on an AP for one year versus the person  
8 who gets selected for three years, that sends kind of a weird  
9 message. Why am I just getting a one-year and then have to go  
10 up for reapplication and why somebody else gets three years? It  
11 may not be any intention other than trying to make it staggered  
12 and that's what we're trying to do, but I think the impression  
13 might be misunderstood.

14  
15 **MR. FISCHER:** Mr. Chair, two quick questions. This is not a  
16 committee of the whole and this is the two joint committees?  
17 Okay. So I don't have the opportunity to vote against this.

18  
19 If someone is voted down by this council, now we have to vote  
20 him down annually and every time he puts his name up, we would  
21 be basically voting him down. I would prefer voting him down  
22 just once every three years.

23  
24 **CHAIRMAN BOYD:** I am not sure I understood it that way. If I  
25 understand this, what we're trying to do is get to a three-year  
26 term and it's just that this first time there would be a one,  
27 two, and a three and then we would roll back in and we would  
28 have to do it -- We would have to reappoint them for a three-  
29 year term after the first year or the second year, but we are  
30 trying to get a three-year term with no malice towards anybody's  
31 appointment.

32  
33 **MR. FISCHER:** Correct, but let's say on a committee on pelagics  
34 and so every year we would be voting on a third of the pelagics  
35 and so someone who doesn't make the cut would be putting his  
36 name back up every year, because we're voting on some annually,  
37 which is okay, but I am just saying that --

38  
39 **CHAIRMAN BOYD:** Yes and you're talking about resubmissions.  
40 Yes, that could happen. Just like getting on the council if  
41 you're not a state person.

42  
43 **DR. BONNIE PONWITH:** Speaking just from a logistics standpoint  
44 and no opinions on ups and downs and good ideas or not, but Dr.  
45 Dana's point is a good one that if someone is appointed for a  
46 year that it sends a concerning message and the way to  
47 counteract that would be to say that this an attempt to stagger  
48 memberships.

1  
2 From a science standpoint, I will weigh in on that and say  
3 staggered memberships is a smart idea. You don't want 100  
4 percent of any committee to senesce at the same point, because  
5 then you end up with complete turnover and it makes it very,  
6 very difficult to have continuity on some of these longer-term  
7 projects.

8  
9 To get around the one-year problem, if I understand it correctly  
10 to be one year and then they would be up for reconsideration for  
11 another full term and that term would then be the three-year  
12 term, that would be a total of four years together. If that's  
13 how it worked, the other approach would be to say if it's a --  
14 The intent is to get at staggered three-year terms and instead  
15 of doing one, two, and three that first year to achieve that, do  
16 two, three, and four.

17  
18 The catch with doing two, three, and four is if the intent then  
19 is to revisit them and re-nominate them, that person who is on a  
20 four-year term would then be serving seven years in a row and so  
21 there are all kinds of permutations in how to do this, but the  
22 notion of staggering is a good one.

23  
24 **MR. HARLON PEARCE:** I am not on this committee and, Myron,  
25 there's so many guys on this committee you could have raised  
26 your hand and they wouldn't have noticed. There would have been  
27 no problem at all.

28  
29 I am sort of in Pam's camp a little bit. I understand what  
30 you're doing, but if I'm somebody that's appointed for one year  
31 and half of these APs don't meet sometimes for two or three  
32 years, I mean I am going to say what am I doing here and why am  
33 I here? I am a little concerned about that. I do like the  
34 staggered idea, but I am just really figuring how people are  
35 going to take it when they're put on for one year.

36  
37 **DR. DANA:** I could support this motion if -- I agree with Bonnie  
38 that I think staggering is a good thing, because the new folks  
39 can learn from those who have served for a while and et cetera.  
40 There is good reasons for staggering.

41  
42 If when we appoint the total body of the AP for three-year  
43 terms, if we chose those one-year, two-year, and three-year  
44 thirds by maybe a lottery of sorts -- Doug Gregory, you might  
45 want to listen to this.

46  
47 If, rather than choosing the individual people to serve one  
48 year, individual people for two years and three years, if there

1 was a lottery or some way that you just choose one-third out of  
2 a hat and those guys get one year or you review them after the  
3 year or whatever, reappoint, rather than choose upfront names of  
4 who is going to do the one, two, and three.

5  
6 **EXECUTIVE DIRECTOR GREGORY:** To me, it's six to one. I was  
7 simply going to -- My idea was to list everybody alphabetically  
8 and go 1, 2, 3. If you do a lottery, it's the same sort of  
9 thing. I wasn't going to say I like this person and he gets a  
10 three and I don't like that one and he gets a one. It was going  
11 to be totally objective and arbitrary.

12  
13 **DR. DANA:** That addresses my concern then. That was basically  
14 it.

15  
16 **CHAIRMAN BOYD:** We could have Mr. Atran write a program that  
17 does random selection. I know he could do it.

18  
19 **DR. GREG STUNZ:** What if we looked at more of a half-full  
20 approach and just added a year to some of the members that are  
21 currently serving? Then nobody gets penalized or whatever you  
22 want to call it. For a year upfront, you just ask a few people  
23 to serve an additional year and then that staggers those  
24 appointments.

25  
26 **EXECUTIVE DIRECTOR GREGORY:** The other approach would be to make  
27 three, four, and five-year appointments. Instead of one, two,  
28 and three, you just start the other way or two, three, and four.  
29 If you don't -- The truth of the matter is that not all of our  
30 APs meet every year and so yes, somebody could be appointed for  
31 one year and the AP would never meet, but that would be a  
32 consideration at each appointment level. It's part of this sort  
33 of concern that made me and the staff I was working with change  
34 our minds about this.

35  
36 **CHAIRMAN BOYD:** To kind of get us out of this discussion with  
37 that suggestion, why don't we put in this motion that we  
38 recommend that the initial terms be assigned as three, four, and  
39 five years and then we don't have the problem that Dr. Dana is  
40 talking about? I don't have a problem with that. Committee  
41 members? Mr. Matens, this is your motion.

42  
43 **MR. MATENS:** I am fine with that.

44  
45 **CHAIRMAN BOYD:** Lance is okay with that. Mr. Gregory, does that  
46 cause you a problem?

47  
48 **EXECUTIVE DIRECTOR GREGORY:** Currently, we have two-year

1 appointments and so somebody is going to get a five-year  
2 appointment. At the opposite end, that seems a bit extreme,  
3 too.

4  
5 **MR. PERRET:** We've got members that have been on for twenty  
6 years.

7  
8 **EXECUTIVE DIRECTOR GREGORY:** Yes, we do. The council can remove  
9 anyone at any time without cause also.

10  
11 **DR. DANA:** I felt that we don't really need to add this new part  
12 to the motion. I think the motion before was sufficient, based  
13 on the fact of what Doug had said on how they planned to make it  
14 a random -- Whatever Doug said before.

15  
16 **CHAIRMAN BOYD:** So your concern is that you just don't want to  
17 send the wrong message.

18  
19 **DR. DANA:** Absolutely and he has --

20  
21 **CHAIRMAN BOYD:** So doing it in a random format and not in a  
22 selection format, then you're okay with it.

23  
24 **DR. DANA:** Correct. The fact that Doug and his team have a plan  
25 to make sure that we are not hand-selecting who gets the one,  
26 two, and three and that there is some reasoning behind it, kind  
27 of like what Greg Stunz had also said, so long as they are  
28 concerned about that, then maybe we leave that to the staff to  
29 determine the staggering part.

30  
31 **EXECUTIVE DIRECTOR GREGORY:** Karen, don't add that random  
32 selection stuff and just -- I understand what you want and I  
33 didn't realize it at first, but yes, the concern, I think, was  
34 we weren't going to go into the closed session and I was not  
35 going to ask the council to actually select people for one, two,  
36 and three-year terms. That was not my intent and I didn't even  
37 think about that until just now.

38  
39 The selection would be done administratively afterwards through  
40 an objective process. It could be a random lottery type of  
41 thing or it could be the proposal of ABC like I was suggesting  
42 and I am open for suggestions. I don't think that process has  
43 to be in a motion, as long as it's done in an objective manner.

44  
45 **MR. JOHN SANCHEZ:** I am not on the committee, but I don't know.  
46 Listening to the discussion, it seems like Greg's idea was the  
47 best. Just put everybody at three and if there is ever somebody  
48 that's problematic, we have the ability to get them off and that

1 keeps it simple and that addresses the fact that some of these  
2 committees don't meet for a year or two and if you go randomly  
3 or arbitrarily and do that, you may not capture some of those  
4 people that never get to attend the first meeting because we  
5 didn't have an AP meeting. If we just said, all right,  
6 everybody at three and here's where you're at and boom, boom,  
7 boom and just go on. It's easy.

8  
9 **EXECUTIVE DIRECTOR GREGORY:** The other reason we initially  
10 suggested staggered terms was the confusion we had in 2013 with  
11 doing the AP and the SSC appointments at the same time and the  
12 process we had at the time.

13  
14 We have now implemented an online application process. The  
15 public that has used that and applied has praised what we've  
16 done. The next step of this, the next phase, is to see how well  
17 this helps your selection process at this meeting. If the  
18 selection process goes smoothly, then our original intent for  
19 staggered terms is moot.

20  
21 That was the history of it. There was a lot of confusion in  
22 April of 2013 in Gulfport and we were trying to figure out ways  
23 to reduce the confusion and I think the online application is  
24 working well. We still have not solved the problem of people  
25 who forget or don't apply and then later decide they intended to  
26 and wanted to and they have contacted individual council  
27 members.

28  
29 I think we will still have to deal with that at this meeting and  
30 maybe we can come up with a way to solve that in the future. We  
31 did, with people that we knew had been on APs for a long time  
32 that did not apply, we did send them a second email specifically  
33 to contact them. In one case, I got a response and in another  
34 case, I didn't. We will talk about that in closed session.

35  
36 The process, at least so far, has gone very smoothly and so if  
37 this motion does pass, I would suggest that we don't vote on it  
38 in full council until after the AP selection, so we see how well  
39 that goes.

40  
41 **MR. PERRET:** With what Mr. Gregory has just said and looking at  
42 the agenda, we will be doing the advisory panel appointments on  
43 Wednesday A.M. and this dual committee won't take this stuff up  
44 until Thursday A.M. With all due consideration and so on for my  
45 friend, Mr. Matens, I would move we table this until full  
46 council takes up this issue in its Administrative Policy/Budget  
47 Committee report, which is Thursday morning. Table it to  
48 Thursday morning for the full council. That is my motion.

1  
2 **CHAIRMAN BOYD:** All right. Do we have a second for the motion  
3 to table? I don't know my -- I didn't bring my book, but it  
4 does require a second. I do not hear a second and so the motion  
5 fails for lack of a second.

6  
7 We have the motion before you and I will read it since it's been  
8 changed several times. It's to recommend that the AP and SSC  
9 members have three-year terms without term limits. The AP will  
10 have staggered terms, but the SSC will not. Let's vote on this  
11 one. **All in favor say aye; opposed same sign. Hearing no**  
12 **opposition, the motion carries.**

13  
14 **CONSIDERATION TO CHANGE TITLE AND APPOINTMENTS FOR SELECTED APS**

15  
16 **EXECUTIVE DIRECTOR GREGORY:** The next item is Tab G, Number 8.  
17 This is something the council has not discussed before, but I  
18 wanted to bring it to your attention before the selection  
19 process.

20  
21 If my recommendation here is accepted by the committee, then we  
22 will have to bring it up before the council before the AP  
23 selection. When we do the AP selection, we never advertise for  
24 the Law Enforcement AP, because they are on the AP because of  
25 their job titles, but we call it an AP and we have other  
26 committees that are kind of not the same as a regular AP, the  
27 SEDAR, the Outreach and Education, and a proposed Aquaculture AP  
28 that we've got to form once the Aquaculture FMP is implemented.

29  
30 The SEDAR AP or group -- We are proposing to change the -- Not  
31 call these particular committees advisory panels, but call them  
32 technical committees, just to try to keep some clarification of  
33 purpose.

34  
35 The SEDAR Technical Committee is made up of people that we think  
36 would serve well in a pool of expertise from the Gulf to attend  
37 SEDAR stock assessments and provide assistance in developing the  
38 stock assessment. These can be scientists or these can be  
39 industry people.

40  
41 Currently, anybody on an existing AP or an existing SSC is  
42 eligible to go to a SEDAR meeting and what that means is by  
43 being eligible is SEDAR pays their travel costs and not the Gulf  
44 Council and so the more people we can get on this SEDAR what we  
45 used to call a pool and now call an AP, the more expertise we  
46 can provide to the process without us having to pay their  
47 travel.

1 Staff has suggested that any state or federal employee or  
2 scientist be automatically eligible for this AP and so we can  
3 pick and choose expertise from around the state, among the  
4 states, when we need it and the other thing, the main thing  
5 we're suggesting, is that for these particular committees that  
6 we let the appointment process be done jointly by myself and the  
7 Chair of the council, instead of having the full council vote on  
8 them.

9  
10 SEDAR is unique in that respect. There comes a time during the  
11 year and we had an episode or an instance this last year when we  
12 wanted to add two people to the SEDAR process and the council  
13 said no, we're going to wait until April and so we missed an  
14 opportunity to have some expertise available at a stock  
15 assessment.

16  
17 The other committee is the Outreach and Education and this is a  
18 mixture of people that are on the committee based upon their job  
19 titles. We have communications people from each Gulf state  
20 serving on this and those people are actually selected by the  
21 directors of the states as to who should be their communications  
22 specialist.

23  
24 We would like to expand that what we would call obligated seat  
25 to the four Sea Grant programs in the Gulf of Mexico and have a  
26 communications specialist from each state plus one from each of  
27 the four Sea Grant programs and then maybe a couple of other  
28 people from outside those designated seats and, again, have that  
29 selection be done by the Executive Director and the Chairman.

30  
31 The Aquaculture AP, the FMP specifically says what the  
32 membership is going to be. It's going to be council staff, NMFS  
33 staff, and then some other people from universities or private  
34 scientists.

35  
36 With each of these, these are not just people from the public  
37 that apply and get appointed. For Law Enforcement, this is  
38 strictly by job title and for these other committees, it's a  
39 mixture of the two and to reduce confusion and, particularly  
40 with SEDAR, to increase their flexibility, we would like to have  
41 those appointments done just by the ED and the Chair alone and  
42 not by the full council vote.

43  
44 Of course, the full council at any time can oversee that and  
45 change direction on something and for the SMZ Monitoring Team,  
46 we are proposing that we just eliminate that committee  
47 altogether and if something comes up that requires a monitoring  
48 team, we deal with it on an ad hoc basis as a working group.

1  
2 That was designed originally in the early 1990s in Amendment 5  
3 for states that wanted to request a special management zone in  
4 federal waters to restrict fishing activity because of  
5 artificial reef development and very little activity has been  
6 done in this area. The last activity was in 2006 and so the  
7 team has not met since 2006.

8  
9 We actually list this team under the SSC, but we would like to  
10 eliminate that committee altogether and so our staff  
11 recommendation is that approval -- We are seeking approval to  
12 retitle the APs discussed above as technical committees with  
13 appointments made jointly by the Executive Director and the  
14 Council Chair.

15  
16 **CHAIRMAN BOYD:** All right. Doug, are you expecting a motion to  
17 come that lists these recommendations in the motion and is that  
18 what you want?

19  
20 **EXECUTIVE DIRECTOR GREGORY:** The first recommendation is really  
21 what we're looking for and I guess the second recommendation to  
22 allow us to include state and federal scientists as being  
23 automatically qualified for SEDAR, but if you give that  
24 authority to the Executive Director and the Chairman, we can  
25 handle that. The only real motion is that first paragraph that  
26 I just read.

27  
28 **MR. PERRET:** You've got to have a motion to do away with the  
29 SMZ.

30  
31 **EXECUTIVE DIRECTOR GREGORY:** And another motion to do away with  
32 the SMZ Monitoring Team. Sorry.

33  
34 **MR. PERRET:** I am going to try and bring you and I within our  
35 timeframe if the joint committee agrees. **I would like to move**  
36 **that we recommend to the council the retitling of the SEDAR,**  
37 **Outreach and Education, and Aquaculture APs as technical**  
38 **committees with appointments to the SEDAR, Outreach and**  
39 **Education, and the Aquaculture Technical Committees made jointly**  
40 **by the Executive Director and Council Chair.** That is my motion.  
41 I changed the language as discussed above because we're not  
42 including that SMZ thing in this motion. That's going to be a  
43 separate motion.

44  
45 **CHAIRMAN BOYD:** You have a motion before you and do we have a  
46 second? We have a second by Roy Williams. Is there discussion  
47 on this motion?

48

1 **MS. MARA LEVY:** I just want to point out that that's fine and  
2 you can call them whatever you like to help folks understand  
3 what they are, but for purposes of the Magnuson Act, all the  
4 committees or panels that you appoint are advisory panels under  
5 the Act and so all of the same requirements apply, the open  
6 meetings, et cetera, et cetera, because they have that exemption  
7 from the Federal Advisory Committee Act. Whatever you want to  
8 name them is fine, but just know that they are all advisory  
9 panels under the Magnuson Act.

10  
11 **CHAIRMAN BOYD:** Kevin, you and Doug understand that and you've  
12 all got it? Okay. We have a motion before us and any further  
13 discussion? **All in favor say aye; opposed. Hearing no**  
14 **opposition, the motion carries.**

15  
16 **MR. PERRET:** Mr. Chairman, I have one other motion and that is  
17 we recommend to the council that we discontinue the SMZ  
18 Monitoring Team and reconstituting it as a working group on an  
19 as needed basis.

20  
21 **CHAIRMAN BOYD:** I have a motion and is there a second? Roy  
22 Williams seconds. Is there discussion? **Any opposition to this**  
23 **motion? Hearing no opposition, the motion carries.**

24  
25 **MS. LEVY:** For this motion, discontinuation of this group and  
26 reinstitute -- Because it's separate from the other one, if it's  
27 going to be reinstated, does the council need to convene the  
28 group again and pick the people, because it's not included in  
29 that other motion that talks about the Executive Director and  
30 the Chair and so I just want to make sure what it's actually  
31 doing.

32  
33 **CHAIRMAN BOYD:** That's the way I interpreted it.

34  
35 **EXECUTIVE DIRECTOR GREGORY:** Yes, that was our intent and  
36 clearly we would be consulting with the council on that.

37  
38 **CHAIRMAN BOYD:** **That motion carried.** We are into Other Business  
39 and, Mr. Gregory, you had two things in Other Business.

40  
41 **OTHER BUSINESS**

42  
43 **EXECUTIVE DIRECTOR GREGORY:** Basically this is a chapter out of  
44 our administrative handbook and it says that if somebody is on  
45 unpaid leave for the first thirty days of unpaid leave that we  
46 will pay their health insurance.

47  
48 After that first thirty days of unpaid leave, they have to pay

1 their own health insurance and what I am proposing to add is the  
2 phrase that starts after "Family Medical Leave Act", it's called  
3 -- The fifth line from the bottom, it starts "or due to a  
4 medical condition that extends beyond the Family Medical Leave  
5 period". That's the phrase I have added to this.

6  
7 The intent of this is that if we have someone out that has gone  
8 through the Family Medical Leave period of 120 days and we are  
9 obligated to pay their health insurance during that Family  
10 Medical Leave period, but if their illness is severe enough that  
11 they are still out of the office beyond that Family Medical  
12 Leave and we want to -- They have used all of their regular  
13 leave and they have to go on unpaid leave that we will continue  
14 to pay their health insurance as long as we keep them on unpaid  
15 leave.

16  
17 It seems a bit difficult to take someone that is having a severe  
18 medical condition and that has no income coming in to also ask  
19 them to pay for their own health insurance and so with this  
20 phrase added, we wouldn't be asking them to automatically pay  
21 their health insurance after thirty days.

22  
23 That would be an administrative decision by myself and the  
24 supervisor, in consultation with the personnel chair, that we  
25 would make, how long we would go that route, but this seems to  
26 be a humane thing to do, a good thing to do, for an employee,  
27 that we don't make them pay for health insurance while they are  
28 in such a dire strait.

29  
30 **CHAIRMAN BOYD:** I assume, Mr. Gregory, you are looking for a  
31 motion on this one.

32  
33 **EXECUTIVE DIRECTOR GREGORY:** Right. I would like a motion that  
34 basically would say for an employee that is on extended medical  
35 unpaid leave that they do not have to pay their own health  
36 insurance.

37  
38 **DR. DANA:** So moved.

39  
40 **CHAIRMAN BOYD:** I have a couple of questions, but let's see if  
41 we can get a motion.

42  
43 **DR. DANA:** So moved.

44  
45 **CHAIRMAN BOYD:** All right. Dr. Dana and do we have a second?  
46 From Corky. My question would be is the amount that we're going  
47 to pay -- They don't have to pay and does that mean that the  
48 council pays 100 percent or 50 percent or 20 percent? Can I

1 have some clarification there?

2  
3 **EXECUTIVE DIRECTOR GREGORY:** The intent here is for the council  
4 to pay 100 percent, which is about \$1,400 a month, I believe.  
5 Is that ballpark, Cathy?

6  
7 **MR. PERRET:** For how long?

8  
9 **EXECUTIVE DIRECTOR GREGORY:** The duration would be my decision,  
10 in consultation with the personnel chair and the supervisor of  
11 the employee, because clearly once someone goes through FMLA  
12 leave, we can terminate their employment at any time if they  
13 can't come back to work after 120 days. It would be a  
14 determination we would make in house, administratively.

15  
16 **MS. READINGER:** I was just going to add that if the condition is  
17 severe enough and they qualified for Social Security disability,  
18 then I think they are eligible for Medicare benefits and so you  
19 might want to consider that also.

20  
21 **EXECUTIVE DIRECTOR GREGORY:** No, that would be our decision  
22 administratively. We certainly wouldn't be paying for something  
23 that we didn't think was warranted.

24  
25 I can't foresee that, because we do have a long-term disability  
26 plan for employees, but this is just something as an interim  
27 thing and whenever you have a situation like this, we would  
28 certainly be consulting with the Department of Commerce labor  
29 lawyers in doing that. Even though Florida is technically an  
30 at-will state, where you can fire anybody without cause at any  
31 time, nobody does that. It's not wise. Before terminating any  
32 employee, a lawyer would be consulted.

33  
34 **MR. KEVIN ANSON:** That addressed my question and I certainly  
35 understand the intent of what you're trying to do, Doug, but  
36 circumstances change from one situation to the next and trying  
37 not to establish precedent and such and what that might bear for  
38 the next person or persons that come after that and the legal  
39 issues that might transpire from that. That would be my concern  
40 and so if you're consulting with the DOC lawyers, then that's  
41 great.

42  
43 **CHAIRMAN BOYD:** My only concern is what Corky voiced a minute  
44 ago, that there seems to be no end to it. If it had some  
45 termination point, when Medicare kicks in or when disability  
46 kicks in, the disability policy, or some other reason, some  
47 limit, so that it's not ad infinitum.

48

1 **EXECUTIVE DIRECTOR GREGORY:** I understand that technicality, but  
2 I don't foresee that ever really happening. I mean I can't see  
3 that. This is an effort to be more humane, but it's not  
4 something that would keep somebody on. I mean we have a small  
5 staff and we need -- We can't afford to have somebody out for an  
6 extended period of time. It's a burden on the rest of the staff  
7 and so it's not something that's going to be ad infinitum.

8  
9 **CHAIRMAN BOYD:** All right. We have a motion and it's been  
10 seconded. Any further discussion?

11  
12 **EXECUTIVE DIRECTOR GREGORY:** The motion is to add that phrase to  
13 our current administrative handbook and it's highlighted.

14  
15 **CHAIRMAN BOYD:** Mara, any comments? Okay. Thank you. All  
16 right. The motion is on the board and I am not going to read  
17 the whole thing. **All in favor say aye; opposed. Hearing no**  
18 **opposition, the motion carries.**

19  
20 **EXECUTIVE DIRECTOR GREGORY:** We are over time and the topic of  
21 discussing state directors reports, maybe we can put that in  
22 Other Business for the council.

23  
24 **CHAIRMAN BOYD:** Okay. That's fine. Do you want to just say a  
25 one-liner about what you're talking about?

26  
27 **EXECUTIVE DIRECTOR GREGORY:** Originally, the council had a  
28 policy for state directors and the Regional Director to provide  
29 verbal reports to the council at the end of each council  
30 meeting.

31  
32 That became problematic because of people's schedules and so  
33 then we transitioned to the directors providing written reports  
34 to the council and we put it in the briefing book and just left  
35 it at that.

36  
37 Over time, some directors are doing it on a regular basis and  
38 other directors are not and so I wanted to ask the council if we  
39 wanted to continue that obligation or just drop it altogether.

40  
41 **CHAIRMAN BOYD:** Okay. We will take that up in Other Business at  
42 the council meeting. That concludes the business of the Joint  
43 Administrative Policy and Budget/Personnel Committee. Corky,  
44 are you all right with that?

45  
46 All right. We are going to move to the Law Enforcement  
47 Committee, but I would like to take a ten-minute break. I think  
48 it's warranted at this point, but please come back promptly,

1 because Mr. Atran has a full agenda and we may even have to  
2 postpone part of it to the full council and so let's come back  
3 in let's say 10:25.

4

5 (Whereupon, the meeting adjourned at 10:15 a.m., March 30,  
6 2015.)

7

8

- - -

9

## Administrative Policy & Budget/Personnel Committee: Action Schedule & Next Steps for Tab G

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### Agenda Item IV: Combining Admin. Policy and Budget/Personnel Committees (Tab G, No. 4)

**Timeline Status:** Initial Discussion. Since the Council Chair will be developing a new committee roster after the August meeting this action needs to be addressed at the August Council meeting.

**Background:** Staff is suggesting the integration of the Administrative Policy and Budget/Personnel Committees. Most of the other Councils have only a single committee for these functions.

**The Next Step:** Decide to keep the committees as separate Administrative Committees or make a motion to combine the committees into one.

---

### Agenda Item V: Historical Performance of Scoping Meetings (Tab G, No. 5)

**Timeline Status:** Initial Review

**Background:** Staff is proposing to put less emphasis on Scoping Hearings and more on holding Advisory Panel meetings. Each series of Scoping Hearings take two weeks to complete and attendance is typically so low as to make them ineffective. Our AP and SSC meetings, as well as the Council meetings and associated public testimony provide extensive information that NMFS can use to support their scoping process.

**The Next Step:** No motion is necessary. For future actions, ongoing Council consideration to place more emphasis on using our Advisory Panels for stakeholder input and less on scoping hearings may provide more complete information for the Council's decision-making process.

---

### Agenda Item VI: Review of AP Staggered Terms (Tab G, No. 6)

**Timeline Status:** Initial Review

**Background:** After the Council decided on creating 3-year staggered terms for AP members, staff implemented a schedule for the existing APs whereby about a third of the committees were to be reappointed in 2016, 2017, or 2018 and then three years henceforth.

**The Next Step:** Only action needed is to determine the initial reappointment schedule for the newly created Ad Hoc Private Recreational Committee.

---

### Agenda Item VII: AP Appointments and Fishing Violations (Tab G, No. 7)

**Timeline Status:** Review of Council policy on consideration of fishing violations in the AP appointment process.

**Background:** At one point in the 1980s the Council decided, as an unwritten policy, not to consider fishing violations as a criteria for appointing boat owners who were not present on the vessel at the

time of the violation. This policy was changed in June, 2015. Also due to difficulties in obtaining background checks for fishery violations from the Gulf States, the Council in 2011 decided not to conduct such background checks. In 2014, the Council re-initiated background checks for fishery violations but to date we have only relied on NOAA information which contains only federal violations. Concern was expressed at the June 2015 meeting that state level background checks should be conducted as well. In addition some of the long-standing AP members who were removed are requesting a time frame in which they would become eligible for appointment.

**The Next Step:** Establish a Council policy for the SOPPs regarding the responsibility of boat owners and a look-back time frame for consideration of past violations. Also decide whether to conduct background checks through States.

---

### **Agenda Item VIII: Review of SOPPs Revisions (Tab G, No. 8)**

**Timeline Status:** Ongoing review.

**Background:** Staff has updated the SOPPs based on the Ad Hoc Committee's comments and NOAA comments accepted by the Council in previous meetings. We now have a few track changes for consideration based on Council decisions with regard to AP and SSC appointments and a few other items.

**The Next Step:** To review existing track changes and decide which ones to include in the SOPPs.

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### **Agenda Item IX: Review of MSA Reauthorization Bills (Tab G, No. 9)**

**Timeline Status:** Initial Review

**Background:** Both the House and Senate have offered MSA reauthorization bills that staff will review in preparation for the possibility that the Council may be asked to testify at a future hearing. NOAA General Counsel, at the Council Coordination Committee meeting in June, advised the Councils they could no longer provide testimony or letters supporting or opposing any action proposed by Congress, but rather, the Council can only describe the potential impacts of proposed actions.

**The Next Step:** To provide staff with guidance as to the potential impacts of proposed measures in Congressional bills.

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### **Agenda Item X: Discuss Recent EFH 5-Year Review Budget Enhancement (Tab G, No. 10)**

**Timeline Status:** Review of Administrative Action related to budget enhancement.

**Background:** The NMFS has given the Council an increase of \$100K in its administrative budget to facilitate the upcoming 5-year review of Essential Fish Habitat as mandated by the implementing regulations. We have advertised to fill a position, to extend through 2016, to compile updated literature and to conduct the needed review.

**The Next Step:** No action is needed.

---

## Proposal to Combine the Administrative Policy and Budget/Personnel Council Committees

The Council elects a Council Chair each August who is charged with developing a new committee roster for Council consideration in October. Any changes in the number or type of committees are best considered at or before the August Council meeting.

Staff is requesting the Gulf Council consider integrating the current Administrative Policy and Budget/Personnel Committees that the Council has to handle administrative policy, budgeting, and personnel matters. Most of the activities in the past few years associated with these two committees have been related to the Statement of Organization Practices and Procedures (SOPPs)/Administrative Handbook and budgeting matters. Since personnel matters were delegated to the Executive Director in 2012, the Council's involvement in personnel issues has been greatly reduced.

According to the Council SOPPs (Pages 9 and 10) the functions of the two committees are described below.

*Functions of the **Administrative Policy Committee** are to address policy matters regarding revision and amendments to the Council's Statement of Organization, Practices and Procedures (SOPPs), the Administrative Handbook, amendments to the Magnuson-Stevens Act and other matters relevant to Council policies and operational procedures.*

*The **Budget/Personnel Committee**, with the assistance of the Executive Director and Administrative Officer, develops budget and fiscal policy, prepares the Council budget, monitors budget and fiscal activities, and, as appropriate, makes recommendations to the Council. With the assistance of the Executive Director, the Committee develops personnel policy and other appropriate personnel matters.*

Half of the other Councils have all administrative related functions combined into a single committee and two Councils use two committees for the various administrative functions (see below).

NEFMC:	Executive Committee
MAFMC:	Executive Committee
SAFMC:	Personnel & Executive Finance Committees
CFMC:	None
PFMC:	Budget & Legislative Committees
NPFMC:	Executive/Finance Committee
WPFMC:	Executive/Budget Committee

**Council Action:** Decide to keep the Administrative Policy and Budget/Personnel committees as separate committees or make a motion to combine the current committee functions into a single committee called the Administrative/Finance Committee.

## Historical Performance of Gulf Council Scoping hearings

Staff is proposing the Council consider putting less emphasis on scoping hearings and more on holding Advisory Panel (AP) meetings for stakeholder input in the early stages of plan amendments. Please note that our AP and SSC meetings, as well as the Council meetings and associated public testimony, provide extensive opportunities for the public to provide information to the Council that NMFS can use to support their scoping process, and by extension, the NEPA requirements.

Each series of hearings takes staff approximately two weeks to complete and given the resources required for both scoping and public hearings, the scoping hearings may not be adequately fulfilling the Council's or NMFS' needs with regard to the NEPA scoping process requirements. Since 2011, the Council has held 48 scoping hearings for 6 amendments and 75 public hearings for 8 amendments. During the past 4.5 years, attendance at scoping hearings has been approximately one-third of the attendance at public hearings. In total, 635 people attended these scoping hearings and 1,493 people attended public hearings. Average attendance at scoping hearings was 13 attendees, whereas at public hearings it was 20 attendees. Also, the average median number of attendees at scoping hearings was 10, whereas the average median number of attendees at the public hearings was 19, almost twice as many. Interestingly, regardless of the type of hearing, about half of them were attended by 5 or less people.

The entire Council process, including AP and SSC meetings, public hearings, Council meetings and Council meeting testimony, together forms the largest part of the informal NEPA Scoping Process for NMFS. As it is the NMFS' responsibility, not the Council's, to fulfill scoping requirements, they publish a Notice of Intent in the Federal Register once they determine an Environmental Impact Statement (EIS) is needed. Not every action requires scoping as a scoping process is only required by NEPA when an EIS is anticipated, and is not a required part of an Environmental Assessment (EA) or Framework Amendment process. The majority of Council actions involve EAs, not EISs.

We think the relatively poor attendance at the scoping hearings may be due because they occur too early in the Council process to get the public's attention. Staff is suggesting we replace traditional scoping hearings with a series of online scoping workshops, in addition to the input we get from the appropriate AP(s) or SSC(s). We believe this combination of stakeholder input would provide the Council with a more in-depth review of options papers to help the Council identify issues and potential solutions at these early stages.

Staff also suggests we hold more AP meetings throughout the year. However, the time and effort required to conduct 3 to 4 series of hearings a year that we have been doing (including both scoping and public) are detracting from efforts that might more productively be spent in working with our APs.

No immediate Council action is necessary on this topic. Staff does request that for future amendments, the Council consider placing more emphasis on using our APs and online capabilities for stakeholder input and less on in-person scoping hearings.

**Assignment of Staggered Terms for the Gulf Council Advisory Panels**

The Gulf Council, in April, decided to establish three-year terms for advisory panel membership with no term limits. The Council also established a staggered system for appointments whereby a third of the total membership will be reconsidered by the Council each year.

In order to accomplish staggered terms for the advisory panels it was necessary to assign, on a one-time basis, one, two, and three-year terms to the various advisory panels. Thereafter, the appointments will be made every three years. With this new process, the Council will make appointments to one-third of the AP seats on an annual basis rather than making appointments to all the advisory panel seats every two years. Given that people can serve on multiple panels it was deemed too confusing to stagger membership terms within each panel so the panels as a whole were used to establish staggered terms.

Below is a list of the Council Advisory Panels, along with the number of years each panel will serve initially and the future reconsideration schedule.

**1 Year Appointment** **Number of Members**

Ad Hoc Artificial Substrate	16
Ad Hoc Red Snapper IFQ	17
Data Collection	<u>19</u>
Total	52
Review years: 2016, 2019, 2022, 2025 . . .	

**2 Year Appointment**

Ad Hoc Reef Fish Headboat	14
Coastal Migratory Pelagics	18
Red Drum	17
Spiny Lobster	<u>6</u>
Total	55
Review years: 2017, 2020, 2023, 2026 . . .	

**3 Year Appointment**

Ad Hoc Red Snapper Charter For-Hire	19
Shrimp	13
Reef Fish	23
Coral	<u>6</u>
Total	61
Review years: 2018, 2021, 2024, 2027 . . .	

Staff recommends the proposed **Ad Hoc Private Recreational Committee** be considered for a one-year initial staggered term since that group currently has the fewest members and because it is an ad hoc panel.

Staff also recommends that the advisory panel membership reviews be conducted during the summer Council meeting. Staff puts together an annual membership book that includes all Council, SSC, and AP memberships. Moving SSC and AP appointments to the summer meeting will require fewer updates.

## Advisory Panel Membership & Fishing Violation Policy

### 2010 SOPPs

The following excerpt was taken from the 2010 SOPPs: “Persons are ineligible for membership and are automatically removed from an AP if that person has been convicted of any felony offense or is determined by NOAA's Office of Law Enforcement or have violated any federal or state marine resource law or regulations within the previous five years. ‘Determined to have violated’ includes but is not limited to final administrative decisions of NOAA, or any other final assignment of guilt, responsibility, or liability for a violation, including but not limited to settlement agreements, final orders, or any other final agency action assigning liability for a violation. For purposes of this policy, such marine resource violations are those regulating harvest and reporting.”

*During a closed Council session in April 2011 it was decided to change the guidance for AP appointments and de-emphasize the violation aspect because Council staff had determined that the process for conducting background checks with both NOAA and the States was challenging because it was difficult to get comparable reports from each State.*

### 2012 SOPPs

Below is the modified excerpt the Council has followed since 2012 that replaced the older guidance on AP membership criteria related to fishing violations: “Membership on an AP is determined by the Council during a closed session of its Council meetings and is based on the application provided by the applicant as well as the Council members’ knowledge of the applicant. Consideration for appointment may include the appropriate interest, experience, and past performance as well as other factors such as a record of fishery violations. AP members serve at the pleasure of the Council and may be removed at any time without cause.”

*In 2014, the Council removed an AP member due to a fishery violation and decided to reinstate background checks through NOAA Law Enforcement. The NOAA background checks do not include State agency citations.*

*Sometime in the 1980’s the Council decided to not hold boat owners responsible for violations made by a vessel captain in the above AP appointment process but this decision was never codified in the SOPPs. At the June, 2015 Council meeting during a closed session the Council decided to hold boat owners responsible for crew violations and did not appoint and removed current AP members whose captain had a violation. Some of those boat owners have inquired as to how long they must wait before they can be considered for an appointment.*

### Council Clarification Requested by Staff

Staff is requesting clarification on the following aspects of this policy.

1. Should boat owners be held responsible for violations by a crew when the owner is not present?
2. What historical time frame is appropriate for consideration of a violation in an AP appointment?
  - a. Should the time frame include only the date of the initial violation, the date of the Notice of Violation and Assessment (which can be 4 years later), or the actual settlement date?
3. Should we conduct background checks for violations by AP applicants and current members with State marine agencies in addition to NOAA?

GULF OF MEXICO FISHERY  
MANAGEMENT COUNCIL  
STATEMENT OF ORGANIZATION  
PRACTICES AND PROCEDURES

August 2015--Draft



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**NOTE: This draft of the SOPPs includes changes (not in track changes) made by the Council in January 2015 and earlier based on comments by NMFS and the Council's Ad Hoc Review Committee. The track changes in this version are the result of Council action and staff review since January 2015.**

**Doug Gregory, Executive Director**

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# **GULF OF MEXICO FISHERY MANAGEMENT COUNCIL**

## **STATEMENT OF ORGANIZATION, PRACTICES, AND PROCEDURES**

Pursuant to Section 302(f)(6) of the Magnuson-Stevens Fishery Conservation and Management Act (hereinafter referred to as the Act) (18 U.S.C. § 1801 *et seq.*, Public Law 94-265, as amended) each Regional Fishery Management Council is responsible for determining its organization and prescribing its practices and procedures for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must publish and make available to the public a statement of its organization, practices, and procedures. As required by the Act, the Gulf of Mexico Fishery Management Council (Council) has prepared and is hereby publishing its revised Statement of Organization, Practices, and Procedures, originally published September 13, 1977 (42 FR, No. 177). The revised document is available at the Council Headquarters: 2203 North Lois Avenue, Suite 1100, Tampa, Florida, 33607 and on the Council's web site at [www.gulfcouncil.org](http://www.gulfcouncil.org).

### **1.0 Council Functions and Responsibilities**

In accordance with the requirements of the Act, the Council shall:

- A. Prepare and submit to the Secretary or his or her delegate a fishery management plan with respect to each fishery requiring conservation and management within the Council's geographic area of authority and such plan amendments as are necessary.
- B. Review and comment on applications for foreign fishing transmitted to the Council under a governing international fishery agreement by the Secretary of State under the terms of the Act.
- C. Prepare comments on any fishery management plan or amendments prepared by the Secretary which are transmitted to the Council under Section 304(c)(4) of the Act.
- D. Conduct public hearings at appropriate times and locations in the Council's membership area, to allow interested persons an opportunity to be heard in the development of fishery management plans and amendments, and with respect to the administration and implementation of the provisions of the Act. When conducting a hearing outside Council's usual jurisdiction, the Council will first consult with the Council in that area.
- E. Submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary.
- F. Review on a continuing basis, and revise as appropriate, the assessments and specifications contained in each fishery management plan for each fishery within its geographical area with regard to:
  - (1) The present and probable future condition of the fishery;

- (2) The maximum sustainable yield from the fishery;
  - (3) The optimum yield from the fishery;
  - (4) The capacity and the extent to which fishing vessels of the United States will harvest the optimum yield on an annual basis;
  - (5) The portion of such optimum yield on an annual basis which will not be harvested by fishing vessels of the United States and can be made available for foreign fishing.
- G. Develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations established by mechanisms and processes under the Act.
- H. Develop multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, in the manner prescribed in the Act.
- I. Conduct any other activities which are required by or provided for in the Act or which are necessary and appropriate to the foregoing functions.

The Council expects to participate in international negotiations concerning any fishery matters under the cognizance of the Council. The Council also expects to be consulted during preliminary discussions leading to U.S. positions on international fishery matters, including the allocation of fishery resources to other nations within its area of authority.

## **2.0 Council Organization**

### **2.1 Council Composition and Jurisdiction**

The Council shall have a total of 17 voting members, and four nonvoting members, appointed pursuant to provisions of the Act.

The geographical area of authority of the Council includes the federal waters off of the states of Texas, Louisiana, Mississippi, Alabama, and Florida; and the Council has authority over the fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico seaward of such states.

#### **2.1.1 Voting Members**

Eleven of the voting members (at least one of whom shall be appointed from each state) shall be appointed by the Secretary, or his delegate, from a list of qualified individuals submitted by the governor of each applicable constituent state.

The remaining six voting Council members shall be the principal state official, who must be a full-time employee of the state agency, with marine fishery management responsibility and expertise in each of the five constituent states, as designated by the governors of the states or the designee of such official; and the Regional Administrator, Southeast Region, National Marine

Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), or his designee.

### **2.1.2 Non-Voting Members**

The non-voting members of the Council shall be:

- (a) The Regional Director of the United States Fish and Wildlife Service (USFWS) for the Council's geographical area or his designee;
- (b) The Commander or designee of the Coast Guard Districts as designated by the Commandant of the Coast Guard;
- (c) The Executive Director of the Gulf States Marine Fisheries Commission (GSMFC) or his designee;
- (d) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

Non-voting members of the Council may serve on committees of the Council and may serve as chairpersons of committees and, as members of the committee, may initiate and second motions, as well as vote on matters that pertain to the committee. At meetings of the Council, non-voting members may neither initiate or second motions, nor vote on matters that may be classified as business of the Council. They may, however, participate fully in discussions of such matters.

## **2.2 Oath of Office**

As trustees of the nation's fishery resources, all at-large and obligatory voting members appointed to the Council must take the following oath of office: "I, [name of the person taking oath], as a duly appointed member of a Regional Fishery Management Council established under the Magnuson-Stevens Fishery Conservation and Management Act, hereby promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation. I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fisheries resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources. I commit myself to uphold the provisions, standards, and requirements of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law, and shall conduct myself at all times according to the rules of conduct prescribed by the Secretary of Commerce. This oath is given freely and without mental reservation or purpose of evasion."

## **2.3 Terms of Council Members, Removal, and Council Officers**

### **2.3.1 Term of Appointment -- Voting Members**

Voting members shall be appointed for a term of three years. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy. No member may serve more than three

consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.

### **2.3.2 Removal**

Council members appointed by the Secretary may be removed from office in accordance with Section 302(b)(6) of the Act (see 50 CFR § 600.230 for the details of this process).

### **2.3.3 Officers**

The Council elects during the first meeting each year after the date upon which Council members are appointed from among the voting members, by majority vote of the voting members present and voting, a Council Chair who shall serve a term not to exceed one year unless sooner replaced, and a Council Vice Chair who shall serve for a one-year term ending when a successor has been duly elected, unless sooner replaced. Such election shall usually be the last order of business at said meeting. The Chair and the Vice Chair can serve no more than two consecutive terms.

The Chair, or in the Chair's absence the Vice Chair, of the Council has authority to convene and adjourn meetings and public hearings and designate members of the Council, to attend meetings and public hearings. The Chair will control meetings and hearings by recognizing speakers, establishing the order of business, and designating members of the Council and its advisory bodies as members of committees and working groups. The Chair or Vice Chair may, in order to create a quorum, serve as an ex-officio voting member of any of the Council's committees of which he/she is not already a member.

It shall be the policy that in the absence of any Committee's Chair and Vice Chair, the Council Chair shall either preside and exercise the duties of that office as herein provided or appoint a member of the Committee to serve as interim Chair. If the Council Chair is also absent, then the Council Vice-Chair will preside and exercise the duties of that office as herein provided. Individuals are elected or appointed to the offices of the Council Chair and Council Vice-Chair even though they may be state officials. Alternate representatives (designee or principal) do not assume these offices, but may participate as members of the committees.

### **2.4 Designees**

The Act authorizes only the principal state officials, the Regional Administrator, and the nonvoting members to designate individuals to attend Council meetings in their absence. The Chair of the Council and NMFS Regional Administrator must be notified in writing who will serve as designee at least 48 hours before the individual may vote on any issue before the Council. The written appointment must include, the name, address, and position of the individual designated. A designee may not name another designee. However, such officials may submit to the Chair, in advance, a list of several individuals who may act as designee, provided that the list designates who would serve if more than one designee is in attendance. Such designees must be a resident of the state, and be knowledgeable and experienced in the fishery resources of the geographic area of concern to the Council.

## 2.5 Scientific and Statistical Committee (SSC)

The Council has established a Standing SSC and Special SSCs for individual management units to provide expert scientific and technical advice to the Council. The SSC shall review and comment on the scientific adequacy of such statistical, biological, economic, social, and other scientific information as is relevant to the Council's development and amendment of any fishery management plan.

The Standing SSC will consist of 18 individuals that include at least 7 stock assessment or quantitative biologists/ecologists; 3 ecosystem scientists; 3 economists; 3 quantitative anthropologists/sociologists; and 2 other scientists. The Special SSCs will consist of no more than 5 members for each Special SSC. The Special Socioeconomic SSC will be comprised of 2 economists and 2 Anthropologists/Sociologists.

### 2.5.1 Objectives and Duties

The SSC shall provide the Council ongoing scientific advice for fishery management decisions, including recommendations for preventing overfishing and achieving rebuilding targets, and reviews of reports on stock status and health, by-catch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. The SSC may also recommend priorities for future research needs.

The Standing SSC and one or more Special SSCs may meet as a single body (SSC) to deliberate and advise on appropriate fishery management units. For each managed stock or assemblage of stocks, they shall recommend an acceptable biological catch (ABC) and overfishing level (OFL) that takes into account scientific uncertainty. The SSC may also comment on the scientific appropriateness and socioeconomic consequences of various alternatives for accountability measures (AMs) to be implemented if annual catch limits (ACLs) are exceeded.

#### Multi-Year Research Priorities

The SSC shall develop multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall: (a) establish priorities for 5-year periods, and (b) be updated as necessary. The Council may revise the plan and will submit it to the Secretary and the regional science centers of NMFS for their consideration in developing research priorities and budgets for the region of the Council.

#### Review of FMPs, Amendments, and Framework Procedure Actions

The SSC will advise the Council on the adequacy of scientific information and supporting analyses for proposed management measures and alternatives in FMPs and amendments, including environmental impact statement (EIS) or environmental assessment (EA), regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA). The SSC will also provide a determination of whether these are based on the best scientific information available, and may provide advice as to the effectiveness of the measures in achieving the objectives of the FMP or amendment. The emphasis of the SSC will be upon evaluating scientific data and logic

on which the management measures are based rather than selecting management measures. They will assess the appropriateness of the problem statements and adequacy of the objectives in solving the problems and may suggest additional or revised problems, objectives, and management measures and may indicate which of the measures are most effective in achieving the objectives.

The SSC will also advise the Council on the adequacy of scientific information and supporting analyses in the stock assessment update, whether these are based on the best scientific information available, related scientific documents, and the content of the stock assessment reports. This advice from the SSC will be the basis for the Council to set annual catch limits (ACL), and accountability measures (AM) in the stock assessment. The Council may also set annual catch targets below ACL to further account for uncertainty.

### **2.5.2 Members and Chair**

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

Members and officers of the SSC shall be appointed for a period of ~~two~~-three years without term limits and may be reappointed at the pleasure of the Council. Membership on an SSC is determined by the Council during a closed session of its Council meetings and is based on the application provided by the applicant as well as the Council members' knowledge of the applicant. Consideration for appointment may include the appropriate interest, experience, and past performance as well as other factors such as a record of fishery violations. SSC members serve at the pleasure of the Council and may be removed at any time without cause.

~~Reappointments shall be made at the Council meeting falling on a date nearest to April 1st.~~  
Appointment of new members may be made at any Council session.

Each member of the SSC shall be treated as an affected individual for purposes of financial interest disclosure and recusal provisions for SSC members as specified in the Act. Statements of Financial Interest (SOFI) disclosures for SSC members will be reviewed annually by the Council prior to appointment, and when updated by an SSC member reporting any substantial changes in financial interest. Statement of Financial Interest disclosures will be kept on file by the Regional Administrator.

A Chair and Vice Chair for the Standing SSC shall be elected by its members or may be designated by the Council at its discretion from the membership of the Standing SSC. The Chair or Vice Chair shall preside when the SSC is convened and will be responsible for summarizing committee consensus when advice is requested by the Council.

### **2.5.3 Administrative Provisions**

The SSC Chair or his designee will, at the request of the Council Chair, attend the Council meeting to report on the SSC recommendations and rationale. (The SSC should attend and meet with the Council to the extent practicable.)

The procedural guidelines of Section 302(i)(2) of the Act (as amended) shall apply to the conduct of business at the meetings of the Council, advisory panels (APs), and SSCs. The Council's SSCs will meet with the approval of the Executive Director.

#### **2.5.4 Subcommittees/Working Groups**

The Council may form subcommittees of the SSC or working groups that include SSC participation, as needed, to provide recommendations for management consistent with the Act and other applicable federal laws and regulations.

The Council has formed the Southeast Data Assessment and Review (SEDAR) Technical Committee to provide a pool of expertise in addition to the membership of the SSC and APs. These panels may also be called upon to review other relevant information and provide recommendations to the SSC or Council, as requested.

#### **2.6 Advisory Panels (APs)/Fishing Industry Advisory Committees (FIACs)**

The Council has established APs, which serve as fishing industry advisory committees, and will form such panels as it deems necessary or appropriate to assist in carrying out assigned functions under the law. An AP shall normally be established for each fishery management unit identified by the Council.

##### **2.6.1 Objectives and Duties**

For each FMP or amendment under consideration, the APs provide advice concerning the recommended optimum yield (OY), the management measures and allocations under consideration, the supporting documentation to any regulatory action, management objectives, and any other advice the APs deem appropriate or as required by the Council.

##### **2.6.2 Members and Chair**

The APs shall generally be composed of members who are residents of the five state geographical area. Each AP shall be selected so as to provide for geographical, commercial, recreational, marketing, or other interests in accordance with functions and purposes of the panel with such membership established in a manner that provides fair representation to commercial and recreational fishing interests. Membership on an AP is determined by the Council during a closed session of its Council meetings and is based on the application provided by the applicant as well as the Council members' knowledge of the applicant. Consideration for appointment may include the appropriate interest, experience, and past performance as well as other factors such as a record of fishery violations. AP members serve at the pleasure of the Council and may be removed at any time without cause. No person may serve on more than two APs at any one time, however, service on any Ad Hoc or Special AP, as designated by the Council, will not be counted in the limitation to serving on more than two APs at the same time. Each AP shall be limited to a membership of 20 persons unless otherwise specified by the Council. Only federal and state members of the Law Enforcement AP, as designated by the Council, may have designees represent them at meetings.

A Chair and Vice Chair for each AP shall be elected by members of the AP or may be designated by the Council at its discretion. The Chair or Vice Chair shall preside at each AP meeting. The Council may designate one or more members to meet with each AP.

Members and officers of the APs shall be appointed by the Council for a period of ~~two~~<sup>three</sup> years without term limits and may be removed or reappointed at the pleasure of the Council.

~~Reappointments shall be made at the Council meeting falling on a date nearest to April 1st. Appointment of new members may be made at any Council session, the terms of such appointments to end on April 1st on odd years.~~

### **2.6.3 Administrative Provisions**

The procedural guidelines of Section 302(I) (2) of the Act (as amended) shall apply to the conduct of business at the meetings of the Council, APs, and SSCs. The Council's APs will meet with the approval of the Council Chair.

## **2.7 Committees**

Members and officers of the committees are appointed by the Council from nominations by the Council Chair.

Committees will report to the Council and the convened Council will take action on the committee recommendations. No action of any committee is final without the approval of the Council, except as provided for under 2.7.4.d.

While certain Council members are nonvoting members of the Council, they may vote when participating as members of a standing committee in making non-binding recommendations to the Council.

The Council Chair may designate one or more members to meet with the SSC as needed.

The Council Chair may appoint such ad hoc or special committees, with concurrence of the Council, as are needed to conduct the orderly business of the Council. Such ad hoc committees cease to exist after having completed the business assigned to them.

### **2.7.1 Council Appointments to Outside Committees**

The Chair, with Council approval, shall appoint members as needed to the following committees:

- International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee
- Southeast Data, Assessment, and Review (SEDAR) Workshop Panelists (In conjunction with the Executive Director)
- National Marine Fisheries Service (NMFS) Highly Migratory Species (HMS) Advisory Panel
- Southeast Aquatic Resources Partnership (SARP)
- Coral Reef Task Force (Working Committees)

- Artificial Reef Subcommittee of the Technical Coordinating Committee (TCC)

The Chair, with Council approval, shall also appoint members to other committees or advisory groups as necessary and add the names to this list.

### **2.7.2 Standing Committees**

The following listed committees, and other committees which the Council may appoint, are considered the standing committees of the Council:

#### Administrative Committees

Administrative Policy Committee  
Artificial Reef Committee  
Budget/Personnel Committee  
Data Collection Committee  
Gulf SEDAR  
Habitat Protection Committee  
Law Enforcement Committee  
Outreach and Education Committee

#### Fishery Management Committees

Coastal Migratory Pelagics (Mackerel)  
Coral  
Marine Reserves  
Migratory Species (Billfish, Swordfish, Shark, Tuna)  
Red Drum  
Reef Fish  
Shrimp  
Spiny Lobster  
Sustainable Fisheries/Ecosystem  
Other Management Committees Approved by the Council

### **2.7.3 Committee Composition**

Lists of committee members are available on the Council website and from the Council office.

### **2.7.4 Committee Functions**

- (a) Administrative Policy:

Functions of the Administrative Policy Committee are to address policy matters regarding revision and amendments to the Council's Statement of Organization, Practices and Procedures (SOPPs), the Administrative Handbook, amendments to the Magnuson-Stevens Act and other matters relevant to Council policies and operational procedures.

(b) Artificial Reef:

The Artificial Reef Committee develops general and site specific guidelines for the Council in reviewing placement of artificial reefs. The Committee reviews such projects and makes recommendations to the Council for comment to federal and state regulatory agencies. Projects are reviewed to minimize adverse effects on trawling fisheries, insure against adverse impacts on adjacent natural fishery habitat, and optimize use of available artificial reef material and sites.

(c) Budget/Personnel:

The Budget/Personnel Committee, with the assistance of the Executive Director and Administrative Officer, develops budget and fiscal policy, prepares the Council budget, monitors budget and fiscal activities, and, as appropriate, makes recommendations to the Council. With the assistance of the Executive Director, the Committee develops personnel policy and other appropriate personnel matters.

(d) Habitat Protection:

The Habitat Protection Committee (HPC) assures in each fishery management plan that habitat significant to the fishery is adequately defined and that recommendations are included in the plan for changes in habitat policies of responsible agencies. The Committee may make recommendations concerning any activity undertaken, or proposed to be undertaken, by any state or federal agency that may affect the habitat of a fishery resource under its jurisdiction, and shall make recommendations concerning any such activity that is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction. The Committee also monitors activities throughout the geographical area of the Council to determine if any such activity has significant impacts on essential fish habitat (EFH) or on a fishery which is subject to management under a plan, and recommends comment to the Council when deemed appropriate.

If time or meeting constraints do not allow the Council to develop a letter of comments on a project, the HPC shall develop comments by meeting or conference call meeting. If time constraints would not allow such a meeting, the staff, in consultation with the HPC Chair, Council Chair, and Executive Director, will develop a draft letter of Council comments and provide copies to the HPC and all Council members for review. The final letter that states the committee is acting on behalf of the Council will be signed by the Council Chair and communicated to the appropriate agency, with copies concurrently provided to Council members, NMFS, and appropriate Habitat AP(s).

(e) Data Collection:

The Data Collection Committee reviews and advises the Council on the data requirements for managing each fishery, the statistical methodology needed, and on all issues related to data and data collection.

(f) Gulf SEDAR

The Gulf SEDAR Committee is comprised of the Council Chair and the Coastal Migratory Pelagics, Red Drum and Reef Fish Management Committee Chairs. This committee reviews and advises on SEDAR stock assessment priorities.

(g) Law Enforcement:

The Law Enforcement Committee reviews, monitors, and makes recommendations on law enforcement requirements of plans and regulations. It also reviews the policy recommendations of the Law Enforcement AP and other law enforcement issues.

(h) Outreach and Education:

To help further the Council communications goal by aiding in the long-term planning of communications projects, which includes outreach and education, and setting the strategic direction, priorities, and focus of the communication efforts undertaken by the Council.

(i) Fishery Management:

Each fishery management committee provides liaison and reviews results of the appropriate APs between the respective fisheries AP, SSC, and the Council; assists panels in assigned tasks; monitors work of each panel; and monitors work of the contractors and staff in the development and drafting of fishery management plans.

### **3.0 Council Meetings**

The Council will meet at the call of the Council Chair or upon request of a majority of its voting members. Meetings will ordinarily be held in plenary sessions, but may be in subgroups or in individual sessions.

The presiding officer at any Council meeting will be the Council Chair, Council Vice Chair, or in their absences, a member of the Council elected by the voting members present to serve as temporary Chair.

All participants are to keep electronic devices on silent or vibrating mode during Council meetings.

The procedural guidelines of Section 302(i)(2) of the Act (as amended) shall apply to the conduct of business at the meetings of the Council, APs, and SSCs.

#### **3.1 Notice – Regular and Emergency Meetings**

Timely public notice of each regular and each emergency meeting of the Council, SSC and AP, including time, place, and agenda of the meeting, shall be published in the Federal Register, and appropriate news media notice given to local newspapers in the major fishing ports of the Council region (and in other major fishing ports having a direct interest in the affected fishery). Such notice may be given by other means which will result in wide publicity. Notice of each emergency meeting must be promptly announced through the appropriate news media. If notice

of an emergency meeting is not published prior to the meeting, it should be published in the Federal Register as soon as possible after the meeting, including notification of NMFS (50 CFR § 600.135.)

Requests for disability-related accommodations should be processed in accordance with DAO 215-10.

### **3.1.1 Agendas**

A suggested agenda will be prepared for each Council meeting by the Executive Director with the approval of the Council Chair. Agenda items may be recommended to the Executive Director by other Council members and by staff members. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under Section 305(c), in which case public notice shall be given immediately.

## **3.2 Conduct of Meetings**

### **3.2.1 Written Statement and Oral Testimony**

Meetings will be conducted in a manner to permit the greatest possible participation by all Council members and the public. As per MSA Section 302(i)(2)(D), “Interested persons shall be permitted to present oral or written statements regarding matters on the agenda at meetings. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.” The Council follows this policy at all of its publicly noticed meetings, including those of its advisory committees.

Oral or written communications provided to the Council, its members, or its staff that relate to matters within the Council’s purview are public in nature. All written comments will be posted on the Council’s website for viewing by Council members and the public. Knowingly and willfully submitting false information to the Council is a violation of Federal Law (MSA § 307(1)(I)).

Materials submitted to Council members or staff for distribution prior to or during a Council meeting will be treated as all other written comments and will be posted to the website and will be maintained by the Council as part of the permanent record.

### **3.2.2 Quorum and Roll Call Voting**

A majority of voting members constitutes a quorum (*MSA § 302(e)(1)*).

Decisions of the Council are by majority vote of the voting members present and voting (except for proposed removal of Council members which requires an affirmative vote by two-thirds of the members). An abstention does not affect the unanimity of a vote.

A roll call vote will be held on any motion before the Council at the request of any voting member. Votes for the approval of management plans or plan amendments and other roll call votes are recorded by name of Council member and how they voted. A vote may not be taken until the motion before the Council is recorded in written form visible to each Council member and the public present in the meeting room.

Decisions by consensus are permitted except where the issue is Council approval of a/an:

- (a) FMP;
- (b) Amendment to a FMP;
- (c) Proposed regulation;
- (d) Secretarial FMP or amendment; and
- (e) Council finding that an emergency exists involving any fishery.

### **3.2.3 Approval or Amendment of Fishery Management Plan and Finding of Fishery Emergency**

A vote is required for Council approval or amendment of a fishery management plan (including any proposed regulations), a Council finding that an emergency exists involving any fishery, or Council comments to the Secretary on fishery management plans developed by the Secretary. A final vote may not be taken until the motion before the Council is recorded in written form, visible to each Council member present and the public. The written motion, as voted on, must be preserved as part of the record or minutes of the meeting. For a vote on a Council finding that an emergency exists in a fishery, the exact number of votes (for, against, and abstaining) must be preserved as part of the record of the meeting.

### **3.2.4 Procedure for Proposed Regulations**

The Council shall prepare any proposed regulations which it deems necessary to carry out any FMP or any amendment to an FMP, which is prepared by it. Such proposed regulations shall be submitted to the Secretary or his delegate, together with such plan or amendment, for action by the Secretary or his delegate, pursuant to Sections 304 and 305 of the Act. The Council delegates the authority to the Chair of the Council to review any editorial changes to the regulations between now and the time they are submitted to the Secretary and deem those changes as necessary and appropriate.

### **3.2.5 Parliamentary Procedure; Consensus**

Meetings will generally be conducted in accordance with Roberts Rules of Order, Newly Revised unless otherwise specified in the SOPPs.

### **3.2.6 Dissenting Votes; Minority Written Statement**

Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal state officials raising federalism issues, may submit a written statement (minority report) of their reasons for dissent. If any Council member elects to file a minority report, it should be submitted to NMFS at the same time as that of the majority.

### **3.2.7 Consideration of Information from Interested Parties**

Interested persons shall be permitted to present oral or written statements regarding matters on the agenda at all publicly noticed meetings of the Council or any of its advisory bodies. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral, written, or email statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.

It is the policy of the Council to afford interested parties an opportunity to review and respond to new data or other information which may be used by the Council as a basis for its management decisions. For purposes of this policy, this new information includes the technical data and analyses developed and compiled in printed, unpublished form by NMFS, state agencies or universities, Council staff, or other entities associated with the Council, which has not previously been distributed to the public, and which is used in the decision-making process. The Council will, through its news releases, notify the public of the availability of new information. Examples of such new information include, but are not to be limited to, stock assessments, scientific assessment group reports, and staff analyses of alternative management strategies. Copies of such documents will be distributed, as soon as available, to Sea Grant extension agents and affected fishery associations for distribution to the public. Members of the public may, by contacting the Council Executive Director, be included on a mailing list to receive such documents for a specific fishery.

Under circumstances beyond the Council's control, new information developed by NMFS, state agencies or universities, Council staff, or other entities associated with the Council may not be available in time for distribution before the Council meeting, and may be presented to the appropriate management committee at the meeting where final action is to be taken. In this situation, the public shall be advised at the earliest possible time to attend the committee session to receive this information. In addition, the relevant committee session shall be scheduled at the earliest available time during the committee meetings. The Council's consideration and final action on that item shall be scheduled as late as possible on the Council agenda in order to allow the maximum time for review and response by all interested parties.

It is also the policy of the Council to consider, and to allow other interested members of the public to consider, new information prepared and offered by interested members of the public before it takes final action, if this new information is provided to the Council as specified herein. For purposes of this policy, this new information consists of data and analyses developed by or for that person which has not been submitted previously to the Council.

Responses to the new information by interested members of the public may be through testimony at public hearings or at the Council session where final action will be taken, or by submitting written statements at the public hearings or to the Council office. Summaries of oral testimony from hearings and the written statements, if received in the Council office at least seven days before the first day of the Council meeting, will be posted on the Council's web site.

New information prepared by the public may be provided to the Council in the same manner as responses to any other new information. However, members of the public are encouraged to provide their new information either by submitting documents at a public hearing or by mail to the Council office at least fourteen days in advance of the Council meeting so that it can be included in the briefing book. New information submitted by NMFS, state agencies or universities, Council staff, or other entities associated with the Council at least fourteen days in advance of the Council meeting will also be included in the briefing book. This assures that the appropriate committee and Council members will have an opportunity to read the new information. New information received in the Council office between five and fourteen days before the meeting will be duplicated by staff and handed out at the meeting.

Members of the public should bring at least 40 copies of any new information, not previously submitted, to the meeting to be passed out to Council members and members of the public at or before the time testimony before the Council is scheduled on the agenda item to which the new information relates. However, such persons should be aware that under the Council's policy on public testimony the Council Chair may limit the time allowed for each presentation consistent with the total time available and the number of persons registered to testify.

If a resource problem warrants consideration of emergency action or the most expedient action possible, then the Council's distribution of new information under the policy shall be consistent with the urgency of the action. New information will not, however, be accepted after the close of public testimony.

### **3.3 Record**

Detailed minutes, except for any closed session, will be kept of each meeting. The minutes, records and other documents which were made available to or prepared for or by the Council, a committee, or panel incident to the meeting shall be available on the Council's web site or for public inspection and copying at the office of the Council, except for minutes and records of closed sessions. Such available minutes and records will be on the Council website (50 CFR § 600.150(b)) and, upon request, distributed to the public.

Minutes include a record of persons present and their organizational affiliations when available; a complete and accurate description of matters discussed and conclusions reached; and certification of accuracy by the Chairperson of the Council, SSC, or AP as appropriate.

### **3.4 Closed Meetings**

The Council shall close its meeting, or portion thereof, and the meetings, or portion thereof, of the SSCs or APs which concern matters or information that bears a national security classification and may close such meetings, or portion thereof, that concerns matters, or information pertaining to national security, employment (personnel) matters including appointment of members of scientific or fishery advisory groups, briefings on litigation, the public decorum, or medical condition of members of the Council or members of the advisory groups, taking into consideration the privacy interests of individuals that will be discussed. Actions that affect the public, although based on discussions in closed meetings, must be taken in public. Notice of such closed meeting, or portion thereof, shall be provided for as per MSA

Section 302(i)(3)(A) & (B) and 50 CFR § 600.135, except that any brief closure of a portion of a meeting may be held, not to exceed 2 hours, with the concurrence of the NOAA General Counsel, without such notice to discuss employment (personnel) matters or other internal administrative matters.

### **3.5 Frequency and Duration**

The Council will meet in plenary session at least four times per calendar year. The duration of each meeting will vary according to need.

### **3.6 Location**

The Council meetings will ordinarily be held within the five state geographical area. However, if the Council determines that the best interests of the work of the Council, its committees, advisory groups or panels, in joint management actions with other Councils, will be better served, meetings may be held outside of the five state area, particularly in any of the constituent states affected by a joint management plan. Public access will be given primary consideration in meeting plans. The Council Chair with input from staff will select the meeting sites for the Council with the understanding that members are given adequate advance notice.

### **3.7 Public Hearings/Scoping Meetings**

#### **3.7.1 Public Participation/Location**

The Council shall conduct public hearings at appropriate times and in appropriate geographic locations as determined by the Council so as to allow all interested persons an opportunity to be heard in the development of FMPs and amendments thereto, and to receive input with regard to other matters of concern to the Council with respect to its mission and the administration and implementation of the provisions of the Act. Interested parties may appear in person and/or submit comments in electronic or written form to the Council.

#### **3.7.2 Hearing Notices**

Hearing notices will be prepared and issued in the same manner as meeting notices. In addition, local media will be used to publicize meetings so as to maximize public awareness.

#### **3.7.3 Council Hearing Officers**

When it is determined by the Council that a hearing is appropriate, the Council Chair will designate at least one member of the Council to officiate. The designated official in charge will provide for maximum participation and expression of viewpoints by all those present. All meetings will be conducted in an orderly, business manner.

#### **3.7.4 Records of Participants/Views**

Records of the participants and their views, whether orally or written, will be made available to the Council and retained as official Council records.

### **3.8 Council Member Compensation**

Council members whose eligibility for compensation has been established in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Act) and NOAA guidelines will be paid on a contract basis without deductions being made for Social Security or federal and state income taxes. The level of compensation for authorized Council members shall be as established in accordance with Section 302(d) of the Act and the Federal rule (50 CFR § 600.245).

Compensation will be paid to eligible Council members for time spent in the performance of official duties for the Council and as authorized by the Council or the Council Chair. Payment will be made for a full day's pay whether the duties performed are in excess of or less than eight hours a day for physical attendance at authorized meetings. Payment for authorized participation in conference calls, webinars, or any other electronic meeting that does not require the member to be physically present to participate will be paid at the half-day rate if the electronic meeting is less than four hours. Payment for participation in an electronic meeting that has a duration of four hours or more will be paid at the full day's pay rate. The time is compensable where the individual member is required to expend a significant private effort which substantially disrupts the daily routine to the extent that a work day is lost to the member. "Homework" time in preparation for formal Council meetings is not compensable. Non-government Council members receive compensation for:

- A. Days spent in actual attendance at a meeting of the Council or jointly with another Council.
- B. Travel on the day preceding or following a scheduled meeting that precluded the member from conducting his normal business on the day in question.
- C. Meetings of standing committees of the Council if approved in advance by the Chair.
- D. Individual member meeting with scientific and technical advisors when approved in advance by the Chair and a substantial portion of any day is needed.
- E. Conducting or attending hearings when authorized in advance by the Chair.
- F. Other meetings involving Council business when approved in advance by the Chair.

### **3.9 Stipends**

Subject to the availability of appropriations, the Secretary of Commerce will pay a stipend per meeting day attended to members of the SSC who are not state marine fisheries employees or federal employees. Payment will be made for a full day's pay whether the duties performed are in excess of or less than eight hours a day for physical attendance at authorized meetings. Payment for authorized participation in conference calls, webinars, or any other electronic meeting that does not require the member to be physically present to participate will be paid at the half-day rate if the electronic meeting is less than four hours. Payment for participation in an electronic meeting that has a duration of four hours or more will be paid at the full day's pay

rate. Stipends will be paid to eligible members for attendance at meetings of the SSC, SEDAR, and other meetings to represent the Council SSC, and to give presentations to the Council on behalf of the SSC.

## **4.0 Employment Practices**

### **4.1 Staffing**

Subject to the Council's practices and procedures and according to personnel authority provided by the Secretary, the Council may establish positions, recruit, hire, compensate, and dismiss staff deemed necessary to carrying out the decisions and desires of the Council. Each position must be justified during the budget process described in 2 CFR § 215, or prior to filling a new position established during the course of the cooperative agreement year. The Council Executive Director has the responsibility to prepare lists of eligible candidates, as appropriate, for each position. The Council has authorized the Executive Director to recruit, hire, compensate, and dismiss all permanent, probationary, and temporary personnel. In the absence of the Executive Director, routine daily activities will be handled by the Deputy Executive Director, and in the absence of both the Executive Director and the Deputy Executive Director, routine daily activities will be handled by the Administrative Officer. The Council, when it deems appropriate and after notification to NOAA Office of General Counsel, may employ on a temporary basis a legal counsel to advise it on matters of importance to the Council consistent with 50 CFR § 600.120.

A file for each employee containing appointment information, security information, biographical data and other official documentation will be maintained by the Executive Director under security and safeguard conditions required of files subject to the Privacy Act. Except as otherwise provided for by law, each employee may have access to his/her individual file; but files are otherwise available to others only pursuant to the Privacy Act and Freedom of Information Act in consultation with NOAA legal counsel.

#### Staff Functions

Staff positions and functions are listed in Appendix A of the Council's Administrative Handbook. Other positions may be authorized as deemed necessary by the Council. Experts, consultants, and temporary personnel may be employed to provide additional Council staff support as required. Position descriptions for the Executive Director and for each staff member are available at the Council Headquarters in Tampa, Florida.

### **4.2 Experts and Consultants**

Experts, consultants, and temporary personnel may be employed to provide additional Council staff support as required.

### **4.3 Detail of Government Employees**

Authority is provided for the temporary transfer of state, local, and federal government employees to the Council staff. The Council may authorize requests for such personnel.

#### **4.4 Personnel Actions**

Dismissal for permanent employees will be made for misconduct, unsatisfactory performance, and/or lack of funds. Dismissal for probationary employees may be for any cause. In the event of dismissal for lack of funds, a reasonable notice will be given to the permanent employee. New employees shall be subject to a probationary period of a minimum of six months, which may be extended up to 12 (twelve) months, during which the individual's fitness for continued employment shall be evaluated. Annual pay rates for staff positions shall be based on 5 U.S.C. § 5332.

#### **4.5 Salary and Wages**

In setting rates of pay for Council staff, the principle of equal pay for equal work shall be followed. Variations in basic rates of pay shall be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

#### **4.6 Council Member and Staff Legal Protections**

In conducting official Council business, Council members and staff generally have the same protection from individual tort liability as Federal employees on official actions, and are protected by the Federal workmen's compensation statute, by the minimum wage/maximum hour provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (FLSA), and by the rights of access and confidentiality provisions of the Privacy Act. Council staff is also eligible for unemployment compensation in the same manner as Federal employees. Overtime payments shall be made in accordance with the provisions of the FLSA.

#### **4.7 Recruitment and Anti-Discrimination Policy**

All activities supported in whole or in part by federal funds shall be operated under a policy of equal employment opportunity. Council staff positions shall be filled solely on the basis of merit, fitness for duty, competence, and qualifications. The Council is an Equal Employment Opportunity Employer. All employment actions will be free from discrimination based on race, religion, color, national origin, sex, age, disability, sexual orientation, status as a parent, and reprisal. See 50 CFR § 600.120.

Except for complaints alleging discrimination based on sexual orientation and status as a parent, complaints by employees alleging discrimination on any basis listed above will be processed in accordance with 29 CFR § 1614. Employees alleging discrimination on the basis of sexual orientation and status as a parent will have their complaints processed in accordance with Department Administrative Order (DAO) 215-11. Employees must contact an EEO Counselor at NOAA's Office of Civil Rights, 301-713-050 or 800-452-6728 (voice), 301-713-0982 TDD, within 45 days of the date of the alleged discrimination.

#### **4.8 General Harassment Policy**

The Council has a zero-tolerance policy for harassment on the basis of race, religion, color, national origin, sex, age, disability, sexual orientation, and reprisal. Any employee who believes he or she has been harassed or believes he or she has witnessed harassment is encouraged to report the harassment to a supervisor or manager. The supervisor or manager should then follow the steps set forth in DAO 202-955. Any complaints of harassment on the basis of sexual orientation should be handled in accordance with DAO 215-11. The provisions of these DAOs are entirely separate from the EEO complaint process, and must be followed whether or not an employee has filed an EEO complaint. The Council's Harassment Policy is intended to ensure that staff members work in an environment free of harassment in all their interactions, including interactions with Council members, other staff members, and the public during the course of official Council meetings, advisory body meetings, or committee meetings.

#### **4.9 Whistleblower Protection**

It is the intent of the Council to adhere to all applicable laws and regulations. The underlying purpose of this Employee Protection Policy is to encourage the organization's goal of full legal compliance. The support of all employees is necessary to achieving this result. To this end, any employee who reasonably believes that a policy, practice, or activity of the Council is in violation of law has a right to file a complaint with the U.S. Department of Commerce's Office of Inspector General. This right notwithstanding, any employee with such concerns is encouraged to report those concerns to the Council for review and any necessary correction.

The Council will not retaliate against employees who disclose or threaten to disclose to the Department, any activity, policy, or practice of the Council that the employee reasonably believes is in violation of a law, or a rule, or regulation mandated pursuant to law or is in violation of a clear mandate of public policy concerning the health, safety, welfare, or protection of the environment.

#### **4.10 Leave**

[Employment practices follows 50 CFR 600.120.](#) Details of all of the Council's leave policies are located in the Administrative Handbook. A copy can be obtained by calling the Council office or accessed on the web at:

<http://www.gulfcouncil.org/Beta/GMFMWeb/downloads/Administrative%20Handbook.pdf>

##### **4.10.1 Leave Accounting**

One account shall be maintained to pay for unused sick or annual leave as authorized, and will be funded from the Council's annual operating allowances. Funds may be deposited into this account at the end of the budget period if unobligated balances remain. Interest earned on this account will be maintained in the account, along with the principal, for the purpose of payment of unused annual and sick leave only. This account, including interest, may be carried over from year to year. Budgeting for accrued leave will be identified in the "Other" object class categories section of the SF-424A.

#### **4.10.2 Annual Leave**

Full-time staff members earn annual leave of 13 to 26 days per year, prorated per biweekly pay periods, based upon the collective number of years of creditable service with the Council. Annual leave is accrued incrementally based on a corresponding number of hours per pay period and is granted as follows:

<u>Years of Service</u>	<u>Working Days of Leave per Year (Hours per Pay-Period)</u>	
Under 3	13 days	(4 hours)
3 to 15	20 days	(6 hours)
15 and over	26 days	(8 hours)

#### **4.10.3 Sick Leave**

Council full-time employees are granted 13 days of paid sick leave annually, prorated per biweekly pay period. Sick leave accrues and is available immediately upon hiring. Sick leave accrual is cumulative throughout an employee's tenure with the Council.

#### **4.10.4 Advanced Leave**

An advance of sick leave of no more than six weeks may be granted to an employee upon approval by the Executive Director only after the employee has exhausted all sick, annual, and compensatory leave, and the employee has not received sufficient leave donations to cover a medical need. Advanced sick leave shall be repaid using sick, annual, and/or compensatory leave as it is accrued. If the employee is still unable to return to work after this extended leave period, the employee may be granted extended leave without pay or terminated, except in the event of a qualified Family and Medical Leave Act situation. A signed promise of repayment must be executed prior to receiving advanced sick leave.

#### **4.10.5 Family Medical Leave Act of 1993**

The FMLA requires employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. The FMLA also permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances provided both the employer and employee agree. The Council maintains a notice that summarizes FMLA provisions on its information bulletin board in a public work area. Employees should review the FMLA notice or consult with the Administrative Officer for further details. Specific details can also be accessed via the web at [http //www.dol.gov](http://www.dol.gov)

#### **4.10.6 Holidays**

The Council generally recognizes holidays as observed for federal employees and employees are granted the day off with pay as shown in the following:

New Year's Day, January 1  
Martin Luther King's Birthday, Third Monday in January

President's Day, Third Monday in February  
Memorial Day, Last Monday in May  
Independence Day, July 4  
Labor Day, First Monday in September  
Columbus Day, Second Monday in October  
Veterans' Day, November 11  
Thanksgiving, Fourth Thursday and Friday in November  
Christmas Day, December 25  
Other national holidays and related leave granted to federal employees

#### **4.11 Employee Benefits**

The Council provides medical insurance for full-time permanent employees and their families. The Council may also provide life insurance, disability, dental, and a retirement program for all full-time probationary/permanent employees within the budget limitations authorized by the Council.

#### **4.12 Travel Reimbursement for Non-Federal Travelers**

All travel must be authorized and approved in advance by the Executive Director, the Council Chair, Vice Chair, or by Council vote.

Travel performed by Council members, staff or others for the Council is classified into special travel requiring Council Chair or Vice Chair approval or routine travel requiring approval by the Executive Director. Special travel includes approval of Council members to attend any meeting that is not a meeting of the Council, or other Council committee meeting. Routine travel in support of Council business includes the approval of staff, SSC members, AP members, and consultants.

Meeting authorizations will be issued prior to the performance of travel. These will be numbered sequentially and maintained in a file pending payment of the travel vouchers. Travel authorization documents are issued by the Executive Director with delegated authority for approval to the ~~Administrative Officer~~ Travel Coordinator.

Completed travel vouchers will be audited for conformance to current policies and compliance with existing travel allowances. Vouchers will be certified for payment by the Administrative Officer or the Executive Director. Travel policies are specified in the Council's Administrative Handbook.

The Council generally observes the General Service Administration (GSA) reimbursement rates for mileage, commercial transportation, and per diem rates for lodging and meals, and incidental expenses (M&IE) as the per se accounting of actual expenses; additional information may be found in 41 CFR § 301 and will be provided by the Council office upon request. M&IE and lodging will be reimbursed in accordance with GSA's current M&IE and lodging rates unless prior approval is granted by the Executive Director for costs above the limit for the area. (This paragraph was suggested by NMFS and accepted by the Council in January 2015.)

**Language in Handbook:** “When on travel status, lodging and meal costs are reimbursable in amounts as generally allowable in the GSA Travel Regulations or as authorized by the Council or Council Chair or Vice Chair for reimbursement amounts that exceed GSA limits. “

**Note:** The above discrepancy needs to be resolved. DG

#### **4.13 Foreign Travel**

Foreign travel includes travel outside Canada, Mexico, the United States, and any United States territories and possessions. All foreign travel must be approved in advance by the National Ocean and Atmospheric Administration. The Council shall comply with the Fly America Act.

#### **4.14 Training**

Council members appointed after January 12, 2007, shall complete a NMFS training course that will cover a variety of topics relevant to matters before the Council. Such training shall be available as well to existing Council members, staff from regional offices, and regional science centers of NMFS, and may be made available to committee or advisory panel members as resources allow.

#### **4.15 Invitational Travel**

The Executive Director of the Gulf of Mexico Regional Fishery Management Council may accept in-kind and/or actual invitational funds for Council staff travel (including his/her own), only after (1) notifying the NMFS Regional Administrator of the origin and purpose of such funding, and (2) directing such gifts to the Administrator. 50 CFR § 600.125(c).

### **5.0 Standards of Conduct**

#### **5.1 Federal Criminal Statutes**

##### Applicable Statutes:

Council members, as Federal officeholders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds. Among other statutes, the following provisions apply:

- A. 18 U.S.C. § 201 - prohibits offer or acceptance of anything of value to influence any official act;
- B. 18 U.S.C. §§ 203, 205 - prohibits officials from contacting any Federal agency or Federal court on behalf of others concerning a particular matter involving specific parties with the intent to influence Government action if they participated personally and substantially in the matter as a Council member. Furthermore, officials may not receive compensation for the representational activities of others regarding such matters.
- C. 18 U.S.C. § 207 - prohibits a former official permanently from representing others before a Federal agency or Federal court concerning a particular matter involving specific parties in which the official participated personally and substantially as a Federal official or for two years concerning a matter which was under the person's official responsibility during their last year of Government service.
- D. 18 U.S.C. § 208 - prohibits official acts in a matter in which the official has a personal financial interest. This prohibition does not apply to a financial interest of a Council voting member or Executive Director if the official obtains a waiver under 18 U.S.C. § 208(b), or if the disclosure of financial interest in a report has been filed under Section 302(j) of the Act and that individual is in compliance with regulations promulgated under that section.
- E. 18 U.S.C. § 209 - prohibits an official from receiving compensation for performing Federal duties from a source other than the United States Government. This restriction does not apply to an official who has served for 130 days or less in a 365-day period.
- F. 18 U.S.C. §§ 210, 211 - prohibits offer or acceptance of value to procure appointment to public office.
- G. 18 U.S.C. § 1905 - prohibits disclosure of trade secrets or confidential commercial information except as provided by law.
- H. 18 U.S.C. § 1913 - prohibits use of appropriated funds to influence a member of Congress to favor or oppose any legislation or appropriation. However, this prohibition does not apply when responding to a request from a member of Congress or a Congressional Committee. Personal communications of a Council member or employee at his own expense that are identified as such are not prohibited.

## **5.2 General Standards of Conduct**

The Council is responsible for maintaining high standards of ethical conduct. In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Councils must comply with the following standards of conduct:

- A. No employee of the Council shall use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting

the result of an election to or a nomination for any national, state, county or municipal election.

- B. No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election or on account of his or her political affiliation.
- C. No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, either as a political contribution or a personal emolument any money, or anything of value in consideration of either support, or the use of influence, or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.
- D. No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties.
- E. No Council member or employee of the Council shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment which has not been made available to the general public.
- F. No Council member or employee of the Council shall engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.
- G. No Council member or employee of the Council shall use Council property for other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.
- H. Except as provided in 18 U.S.C. § 208, no Council member may participate:
  - (1) Personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest; or
  - (2) In any particular matter that is likely to have a direct and predictable effect on a member's financial interest unless that interest is in harvesting, processing, lobbying, advocacy, or marketing activities and has been disclosed in a report filed pursuant to Section 302(j)(5) of the Act.

For purposes of this subsection, the member's financial interest includes that of the member's spouse, minor child, partner, organization in which the member is serving as officer, director, trustee, partner or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

- I. Employment of relatives is discouraged and will be approved only on a case-by-case basis at the discretion of the Executive Director provided that such employment does not fall under the line of supervision of an incumbent employee.

## **5.3 Financial Disclosures**

### **5.3.1 General**

The Act and 50 CFR § 600.235 require the disclosure by Council members and members of a Scientific and Statistical Committee of any financial interest of the reporting individual in any harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council, or of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The information will be kept on file and made available for public inspection at reasonable hours at the Council office, at Council meetings, and on the Council's web site.

### **5.3.2 Recusal**

As provided for in the regulations promulgated under Section 302(j) of the Act, i.e., 50 CFR §§ 600.225 and 600.235, as amended, an affected individual who is required to disclose a financial interest shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph 2 within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the record how he or she would have voted on such decision if he or she had voted.

If the Council makes a decision before the Secretary has reviewed a determination under subparagraph 3, the eventual ruling may not be treated as cause for the invalidation of reconsideration by the Secretary of such decision.

An affected individual is prohibited from voting in accordance with 50 CFR § 600.235, which provides for the making of determinations.

Section 208 of Title 18, United States Code, does not apply to an affected individual during any time in which that individual is in compliance with the regulations prescribed under Section 302(j) of the Act.

### **5.3.3 Security Investigations**

Security assurances are issued by the Office of Investigation and Security of the Department of Commerce. Security assurances are required for all Council members and are valid for five years. Other staff and advisory group members may be required to obtain clearances at the Council's discretion. Those who have not been cleared may not participate in meetings, closed for reasons of national security, or have access to any classified information. Council staff should maintain adequate records to determine when to initiate renewal requests as clearances expire and to request initial and renewal security clearances.

## **6.0 Financial Management**

The budget and financial management system of the Gulf of Mexico Fishery Management Council provides procedures for and controls over the elements of: budget formulation and execution, fiscal management, procurement, and property management. The management of this system is the responsibility of the Administrative Officer. The following describe the existing Budget and Financial Management System.

### **6.1 Governing Statutes**

The Council's cooperative agreement activities are governed by 2 CFR § 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), 2 CFR § 215 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), 2 CFR § 230 (Cost Principles for Non-Profit Organizations), 48 CFR § 31 (Contract Cost Principles and Procedures), and OMB Circular A-133 (Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations), as applicable, and the terms and conditions of the cooperative agreement. (See 5 CFR § 1310.3 for availability of OMB Circulars.)

### **6.2 Cooperative Agreements and Contracts**

The Council may enter into cooperative agreements with federal agencies, state, and private institutions on matters of mutual interest which further the objectives of the Act. Approval from the Secretary must be obtained prior to entering into such arrangements, and each agreement must specify the nature and extent of Council participation.

### **6.3 Procurement**

The cost and financial management principles outlined in 2 CFR § 200, 2 CFR § 230 and 48 CFR § 31, as applicable, apply to all Council procurement actions.

### **6.4 Check Signatures**

All checks issued will bear two authorizing signatures, these signatures being two of either: the Administrative Officer, the Executive Director or the Senior Fishery Biologist (Deputy Executive Director). All checks for amounts greater than \$2,000 must be manually signed.

### **6.5 Property Management**

All durable or capitalized equipment will be accounted for by an inventory system. A physical inventory of all property and equipment will be made at least once every two years.

A property number will be assigned to all capitalized equipment and property inventory records maintained on all such equipment.

The Council shall comply with the property management standards as stipulated in the applicable uniform administrative requirements.

### **6.6 Real Property**

The leasing, renting, and acquisition of real property and space will be performed in a manner consistent with 2 CFR § 200 or 2 CFR § 230, as applicable.

### **6.7 Accounting System**

Adherence will be made, as a minimum, to the principles in the accounting system accepted by the Council (a Cash Receipts and Disbursement Journal with a monthly Summary of Accounts).

Fiscal controls will be accomplished through a source document supported cash accounting system capable of providing modified accrued expenditures as needed.

### **6.8 Audits**

An independent audit will be conducted at least biennially by DOC Office of Inspector General auditors or an independent public accountant (IPA). The scope of the audit may include: conduct of financial operations; compliance with applicable laws and regulations; economy and efficiency of administrative procedures; and achievement of results. The audit will be conducted in accordance with OMB Circular A-133 or 2 CFR §200, as applicable. The following NOAA personnel will be invited to participate in the audit exit conference: the Grants Officer and a representative of the NMFS, Southeast Regional Office (SERO).

## **6.9 Financial Reporting**

The Federal Cash Flow Financial Report will be submitted to the Grants Officer through the Grants Online web site and in accordance with the reporting procedures contained in the terms and conditions of the award and 2 CFR § 215 or 2 CFR § 200, as applicable. A final report will be submitted within 90 days after expiration of the grant.

Semi-annual financial reports are provided to NOAA, as a condition of the grant process and quarterly budget reports are provided to the Council.

## **7.0 Recordkeeping**

Councils, NMFS Headquarters, Regions, and Science Centers collectively are responsible for maintaining records pertaining to the development of FMPs and amendments within their geographic area of authority. The disposition of such records must be handled in accordance with NAO 205-1, NOAA Records Management Program and DAO 205-1, Department of Commerce Program for Records Management. In the event of litigation, compilation of an administrative record for a court case will be under the direction of NOAA General Counsel.

### **7.1 Definitions**

**Records:** Documentary items that are made or received by an agency of the United States in connection with the transaction of public business. Agencies are legally required to keep these records as evidence of their actions, and they must be maintained in accordance with your agency's records retention schedule or one of the government's general records retention schedules. They can be in any format (i.e. text documents, photos, computer codes, electronic files, CD-ROMS, disks, USB keys, magnetic tapes).

**Non-records:** Items made or acquired solely for reference, extra copies of documents kept for reference/personal convenience (even if it's a copy of something that is a record – only the original is the record), notes taken during a meeting which aren't shared with others, drafts.

**Personal papers:** Materials pertaining solely to your private affairs, for example the telephone bill that you brought in to pay during your lunch break or your personal appointment calendar.

### **7.2 Availability of Records**

In accordance with 50 CFR § 600.150(b), the Council will maintain documents generally available to the public on its Internet site. Documents for posting must include: fishery management plans and their amendments for the fisheries for which the Council is responsible; drafts of fishery management plan amendments under consideration; analysis of actions the Council has under review; minutes or official records of past meetings of the Council and its committees; materials provided to Council members in preparation for meetings; and other Council documents of interest to the public. For documents too large to maintain on the Web site, not available electronically, or seldom requested, the Council will provide copies of the documents for viewing at the Council office during regular business hours or may provide the documents through the mail.

### **7.3 Administrative Records for Fishery Management Plans**

The Council and NMFS Headquarters, Regions and Centers collectively are responsible for maintaining records pertaining to the development of FMPs and amendments. In the event of litigation, compilation of an administrative record for a court case will be under the direction of NOAA General Counsel.

### **7.4 Disposition of Records**

Council records must be handled in accordance with Department of Commerce and NOAA records management office procedures. The Council will abide by the terms of the NOAA Records Management Guide; the NOAA Records Disposition Handbook; and the following records management authorities: NAO 205-1 NOAA Records Management Program; DAO 205-1 Program for Records Management; Federal Records Act of 1950; 44 U.S.C. Chapter 31 Records Management by Agency Heads; 44 U.S.C. Chapter 33 Disposal of Records; and 44 U.S.C. § 101 Federal Management and Promotion of Electronic Government Services

All records and documents created or received by Council employees, while in active duty status, belong to the Federal government. When employees leave the Council, they may not take the original or file copies of records with them. Before any records are disposed of, Council members and employees will coordinate with the NOAA records management office.

### **7.5 Permanent Records**

The designation of a file as “permanent” means that the records are appropriate for offer to the National Archives once the records are 20 years old, unless otherwise specified. Destruction of permanent records is not authorized. Examples of permanent records are Environmental Impact Statements (EIS), Environmental Assessments (EA), annual reports, meeting files that include agendas, minutes, reports, studies, and related correspondence.

### **7.6 Privacy Act Records**

The Council will maintain in its office, under appropriate safeguards in accordance with the Privacy Act (PA), personnel files on employees, experts and consultants under contract, and advisory group members. Maintenance, protection, handling of request for information, and disclosure and disposition of PA records will be provided for in the Secretarial guidelines and regulations.

### **7.7 Freedom of Information Act (FOIA)**

FOIA requests received by the Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NMFS FOIA official to secure a FOIA number and log into the FOIA system. The NMFS Regional Office will obtain clearance from the NOAA General Counsel’s Office concerning the initial determination for denial of requested information. FOIA requests will be controlled and documented in the Region.

## **7.8 Confidentiality of Statistics**

In accordance with Section 302(i)(4) of the Act and in compliance with 50 CFR §§ 600.130, 600.405, 600.425, and NAO 216-100, the Council may establish policies and procedures applicable to it, its committees, and advisory groups to ensure confidentiality of statistics submitted to the Council by federal or state authorities, and information that may be voluntarily submitted to the Council by private persons, including but not limited to procedures that restrict Council employee access and prevent conflicts of interest. In the case of statistics submitted by a state or federal entity, policies and procedures must be consistent with the laws and regulations of the federal or state entity submitting the statistics.

## **7.9 Information Quality**

The Council agrees to abide by the NOAA Information Quality Guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information which it disseminates. The NOAA guidelines also establish an administrative mechanism allowing affected persons to seek and obtain correction of information that does not comply with Office of Management and Budget or NOAA applicable guidelines.

Sections/Language added since the 2014 Hastings Bill or where the House and Senate bills differ

House bill 1335 deleted text is **highlighted** and new text is in **red**. Changes proposed by the Senate bill “Florida Fisheries Improvement Act” are in **blue**. The ellipses . . . indicate sections of MSA that were not proposed to be modified and thus were deleted to shortened the document

**SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.**

(c) **INTER-SECTOR TRADING OF COMMERCIAL CATCH SHARE ALLOCATIONS IN THE GULF OF MEXICO.**—Notwithstanding any other provision of this Act, any commercial fishing catch share allocation in a fishery in the Gulf of Mexico may only be traded by sale or lease within the same commercial fishing sector.

**SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.**

(h) **FUNCTIONS**

(8) have the authority to use alternative fishery management measures in a recreational fishery (or the recreational component of a mixed-use fishery), including extraction rates, fishing mortality, and harvest control rules, to the extent they are in accordance with the requirements of this Act; and

**SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.**

(d) **LIMITATIONS.**—

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

(A) apply to a species in a fishery that has a mean life cycle of 18 months or less, or to a species in a fishery with respect to which all spawning and recruitment occurs beyond State waters and the exclusive economic zone, unless the Secretary has determined the fishery is subject to overfishing of that species; and

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

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

**SEC. 304. ACTION BY THE SECRETARY.**

(d) **ESTABLISHMENT OF FEES.**—

(D) The Secretary shall report annually on the amount collected under this paragraph from each fishery and detail how the funds were spent in the prior year on a fishery-by-fishery basis, to—

(i) Congress; and

(ii) each Council from whose fisheries the fee under this paragraph were collected.

(e) REBUILDING OVERFISHED DEPLETED FISHERIES.—

(A) specify a time period for rebuilding the fishery that shall—

(i) be as short as possible practicable possible, taking into account the status and biology of any overfished depleted overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished depleted overfished stock of fish within the marine ecosystem; and

(A) specify a time period for rebuilding the fishery that—

...

(ii) except where management measures under an international agreement with the United States participates dictate otherwise, shall not exceed—

(I) 10 years, except in cases where the biology of the stock of fish or other environmental conditions dictate otherwise; or

(II) the sum of the time in which the affected stock of fish is expected to rebuild to its maximum sustainable yield biomass level in the absence of any fishing mortality, and the mean generation of time of the affected stock of fish, if those time values are the best scientific information available;

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(ii) may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation, except in a case in which—

(I) the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(II) the Secretary determines that the cause of the stock being depleted is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities;

(III) the Secretary determines that one or more components of a mixed-stock fishery is depleted but cannot be rebuilt within that time frame without significant economic harm to the fishery, or cannot be rebuilt without causing another component of the mixed-stock fishery to approach a depleted status;

(IV) the Secretary determines that recruitment, distribution, or life history of, or fishing activities for, the stock are affected by informal transboundary agreements under which management activities outside the exclusive economic zone by another country may hinder conservation and management efforts by United States fishermen; and

(V) the Secretary determines that the stock has been affected by unusual events that make rebuilding within the specified time period improbable without significant economic harm to fishing communities;

(B) take into account environmental condition including predator/prey relationships;

(B) (C) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) (D) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States; and

(E) specify a schedule for reviewing the rebuilding targets, evaluating environmental impacts on rebuilding progress, and evaluating progress being made toward reaching rebuilding targets.

## **SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.**

(a) **FISHERIES DISASTER RELIEF.**—

(B) The Secretary shall publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after the Secretary makes the determination under subparagraph (A) with respect to such disaster.

(2) The Secretary shall make a decision regarding a request from a Governor under paragraph (1) within 90 days after receiving an estimate of the economic impact of the fishery resource disaster from the entity requesting the relief.

## **SEC. 401. REGISTRATION AND INFORMATION MANAGEMENT.**

(g) **RECREATIONAL FISHERIES.**—

(4) **FEDERAL-STATE PARTNERSHIPS.**—

(A) **ESTABLISHMENT.**—The Secretary shall establish partnerships with States to develop best practices for implementation of State programs established pursuant to paragraph (2).

(B) **GUIDANCE.**—The Secretary shall develop guidance, in cooperation with the States, that details best practices for administering State programs pursuant to paragraph (2), and provide such guidance to the States.

(C) **BIENNIAL REPORT.**—The Secretary shall submit to the Congress and publish biennial reports that include—

(i) the estimated accuracy of the registry program established under paragraph (1) and of State programs that are exempted under paragraph (2);

(ii) priorities for improving recreational fishing data collection; and

(iii) an explanation of any use of information collected by such State programs and by the Secretary, including a description of any consideration given to the information by the Secretary.

(D) **STATES GRANT PROGRAM.**—The Secretary shall make grants to States to improve implementation of State programs consistent with this subsection. The Secretary shall prioritize such grants based on the ability of the grant to improve the quality and accuracy of such programs.

•••

(6) **STUDY ON PROGRAM IMPLEMENTATION.**—

(A) **IN GENERAL.**—Not later than 60 days after the enactment of this paragraph, the Secretary shall enter into an agreement with the National Research Council of the National Academy of Sciences to study the implementation of the programs described in this section. The study shall—

(i) provide an updated assessment of recreational survey methods established or improved since the publication of the Council's report "Review of Recreational Fisheries Survey Methods (2006)";

(ii) evaluate the extent to which the recommendations made in that report were implemented pursuant to paragraph (3)(B); and

(iii) examine any limitations of the Marine Recreational Fishery Statistics Survey

and the Marine Recreational Information Program established under paragraph (1).

(B) **REPORT.**—Not later than 1 year after entering into an agreement under subparagraph (A), the Secretary shall submit a report to Congress on the results of the study under subparagraph (A).

#### **SEC. 402. INFORMATION COLLECTION.**

(e) **RESOURCE ASSESSMENTS.**—

(4) The Secretary shall require that in the hiring of individuals to collect information regarding marine recreational fishing under this subsection, preference shall be given to individuals who are students studying water resource issues at an institution of higher education.

#### **SEC. 404. FISHERIES RESEARCH.**

(e) **USE OF THE ASSET FORFEITURE FUND FOR FISHERY INDEPENDENT DATA COLLECTION.**—

(1) **IN GENERAL.**—

(A) The Secretary, subject to appropriations, may obligate for data collection purposes in accordance with prioritizations under paragraph (3) a portion of amounts received by the United States as fisheries enforcement penalties.

(B) Amounts may be obligated under this paragraph only in the fishery management region with respect to which they are collected.

(2) **INCLUDED PURPOSES.**—The purposes referred to in paragraph (1) include—

(A) the use of State personnel and resources, including fishery survey vessels owned and maintained by States to survey or assess data-poor fisheries for which fishery management plans are in effect under this Act; and

(B) cooperative research activities authorized under section 318 to improve or enhance the fishery independent data used in fishery stock assessments.

(3) **DATA-POOR FISHERIES PRIORITY LISTS.**—Each Council shall—

(A) identify those fisheries in its region considered to be data-poor fisheries;

(B) prioritize those fisheries based on the need of each fishery for up-to-date information; and

(C) provide those priorities to the Secretary.

(4) **DEFINITIONS.**—In this subsection:

(A) The term “data-poor fishery” means a fishery—

(i) that has not been surveyed in the preceding 5-year period;

(ii) for which a fishery stock assessment has not been performed within the preceding 5-year period; or

(iii) for which limited information on the status of the fishery is available for management purposes.

(B) The term “fisheries enforcement penalties” means any fine or penalty imposed, or proceeds of any property seized, for a violation of this Act or of any other marine resource law enforced by the Secretary.

(5) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary for each fiscal year to carry out this subsection up to 80 percent of the fisheries enforcement penalties collected during the preceding fiscal year.

(e) STOCK ASSESSMENT PLAN.—

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

(2) CONTENTS.—The plan shall—

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

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

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

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

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

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

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

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

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

(3) WAIVER OF STOCK ASSESSMENT REQUIREMENT.—Notwithstanding subparagraphs (A)(ii) and

(B)(ii) of paragraph (2), a stock assessment shall not be required for a stock of fish in the plan if the Secretary determines that such a stock assessment is not necessary and justifies the determination in

the Federal Register notice required by this subsection.

(b) DEADLINE.—Notwithstanding paragraph (1) of section 404(e) of the Magnuson-Stevens Fishery Conservation and Management Act, as added by this section, the Secretary of Commerce shall issue the first stock assessment plan under that section by not later than 1 year after the date of the enactment of this Act.

(f) IMPROVING DATA COLLECTION AND ANALYSIS.—

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

(2) CONTENT.—The report under paragraph

(1) shall—

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

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

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

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

(b) DEADLINE.—The Secretary of Commerce shall submit the report required under the amendment made by subsection (a) not later than 1 year after the date of the enactment of this Act.

#### **SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.**

(a) INDEPENDENT PEER REVIEW.—(1) Within 30 days of the date of enactment of the Sustainable Fisheries Act, the Secretary shall initiate an independent peer review to evaluate—

(A) the accuracy and adequacy of fishery statistics used by the Secretary for the red snapper fishery in the Gulf of Mexico to account for all commercial, recreational, and charter fishing harvests and fishing effort on the stock;

(B) the appropriateness of the scientific methods, information, and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock and as the basis for the fishery management plan for the Gulf of Mexico red snapper fishery;

(C) the appropriateness and adequacy of the management measures in the fishery management plan for red snapper in the Gulf of Mexico for conserving and managing the red snapper fishery under this Act; and

(D) the costs and benefits of all reasonable alternatives to a limited access privilege program for the red snapper fishery in the Gulf of Mexico.

(2) The Secretary shall ensure that commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—

(A) participate in the peer review under this subsection; and

(B) provide information to the Secretary concerning the review of fishery statistics under this subsection without being subject to penalty under this Act or other applicable law for any past violation of a requirement to report such information to the Secretary.

(3) The Secretary shall submit a detailed written report on the findings of the peer review conducted under this subsection to the Gulf Council no later than one year after the date of enactment of the Sustainable Fisheries Act.

(b) PROHIBITION.—In addition to the restrictions under section 303(d)(1)(A), the Gulf Council may not, prior to October 1, 2002, undertake or continue the preparation of any fishery management plan, plan amendment or regulation under this Act for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses,

permits, or endorsements that result in different trip limits for vessels in the same class.

(c) REFERENDUM.—

(1) On or after October 1, 2002, the Gulf Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates a limited access privilege program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class, only if the preparation of such plan, amendment, or regulation is approved in a referendum conducted under paragraph (2) and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum conducted under paragraph (2).

(2) The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996. Prior to each referendum, the Secretary, in consultation with the Council, shall—

(A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and

(B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.

Section 407 is amended by only striking subsection (d) below.

(d) CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—

(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and

(2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.

**SEC. 409. STOCK ASSESSMENTS USED FOR FISHERIES MANAGED UNDER GULF OF MEXICO COUNCIL’S REEF FISH MANAGEMENT PLAN.**

(a) **IN GENERAL.**—The Gulf States Marine Fisheries Commission shall conduct all fishery stock assessments used for management purposes by the Gulf of Mexico Fishery Management Council for the fisheries managed under the Council’s Reef Fish Management Plan.

(b) **USE OF OTHER INFORMATION AND ASSETS.**—

(1) **IN GENERAL.**—Such fishery assessments shall—

(A) incorporate fisheries survey information collected by university researchers; and

(B) to the extent practicable, use State, university, and private assets to conduct fisheries surveys.

(2) **SURVEYS AT ARTIFICIAL REEFS.**—Any such fishery stock assessment conducted after the date of the enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act shall incorporate fishery surveys conducted, and other relevant fisheries information collected, on and around natural and artificial reefs.

(c) **CONSTITUENT AND STAKEHOLDER PARTICIPATION.**—Each such fishery assessment shall—

(1) emphasize constituent and stakeholder participation in the development of the assessment;

(2) contain all of the raw data used in the assessment and a description of the methods used to collect that data; and

(3) employ an assessment process that is transparent and includes—

(A) includes a rigorous and independent scientific review of the completed fishery stock assessment; and

(B) a panel of independent experts to review the data and assessment and make recommendations on the most appropriate values of critical population and management quantities.

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

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

**SEC. 108. STUDY OF ALLOCATIONS IN MIXED-USE FISHERIES.**

(a) **STUDY REQUIREMENTS.**—Not later than 60 days after the date of the enactment of this Act, the Secretary of Commerce shall enter into an arrangement with the National Academy of Sciences to conduct a study—

(1) to provide guidance on criteria that could be used for allocating fishing privileges, including consideration of the conservation and socioeconomic benefits of the commercial, recreational, and charter components of a fishery, to a Regional Fishery Management Council established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852) in the preparation of a fishery management plan under that Act; and

(2) to identify sources of information that could reasonably support the use of such criteria in allocation decisions.

(b) REPORT.—Not later than 1 year after the date a contract is awarded under subsection (a), the National Academy of Sciences shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on the study conducted under subsection (a).

## Changes in existing Magnuson Stevens Act Made By House Bill 1335 and the Senate's Florida Fisheries Improvement Act. 2015.

Changes in existing law made by the House bill are shown as follows (existing law proposed to be omitted is **highlighted** and new language is printed in **red**).

Changes proposed by the Senate bill "Florida Fisheries Improvement Act" are as actual track changes where deletions are indicated by ~~blue strikethrough text~~ and additions by blue underlined text. The ellipses . . . indicate sections of MSA that were not proposed to be modified and thus were deleted to shorten this document

### MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Magnuson-Stevens Fishery Conservation and Management Act".

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...

#### **SEC. 2. FINDINGS, PURPOSES AND POLICY.**

(b) ...

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

...

#### **SEC. 3. DEFINITIONS.**

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.

(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.

(2a) The term "catch share" means any fishery management program that allocates a specific percentage of the total allowable catch for a fishery, or a specific fishing area, to an individual, cooperative, community, processor, representative of a commercial sector, or regional fishery association established in accordance with section 303A(c)(4), or other entity.

(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.

(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.

(4a) The term “confidential information” means—

(A) trade secrets;

(B) proprietary information;

(C) observer information; and

(D) commercial or financial information the disclosure of which is likely to result in harm to the competitive position of the person that submitted the information to the Secretary.

...

(8a) The term “depleted” means, with respect to a stock of fish or stock complex, that the stock or stock complex has a biomass that has declined below a level that jeopardizes the capacity of the stock or stock complex to produce maximum sustainable yield on a continuing basis.

...

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

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

(34) **The terms “overfishing” and “overfished” mean** *The term “overfishing” means* a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

...

(43a)(A) The term “subsistence fishing” means fishing in which the fish harvested are intended for customary and traditional uses, including for direct personal or family consumption as food or clothing; for the making or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and for customary trade.

(B) In this paragraph—

(i) the term “family” means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(ii) the term “barter” means the exchange of a fish or fish part—

(I) for another fish or fish part; or

(II) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

...

#### **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary to carry out the provisions of this Act—

(1) \$337,844,000 for fiscal year 2007; (2) \$347,684,000 for fiscal year 2008; (3) \$357,524,000 for fiscal year 2009; (4) \$367,364,000 for fiscal year 2010; (5) \$377,204,000 for fiscal year 2011;

(6) \$387,044,000 for fiscal year 2012; and

(7) *this Act* \$396,875,000 for fiscal year 2013 each of fiscal years 2015 through 2019.

#### **SEC. 5. ENSURING CONSISTENT FISHERIES MANAGEMENT UNDER CERTAIN OTHER FEDERAL LAWS.**

(a) NATIONAL MARINE SANCTUARIES ACT AND ANTIQUITIES ACT

OF 1906.—In any case of a conflict between this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or the Antiquities Act of 1906 (16 U.S.C. 431 et seq.), this Act shall control.

(b) **FISHERIES RESTRICTIONS UNDER ENDANGERED SPECIES ACT OF 1973.**—To ensure transparency and consistent management of fisheries throughout their range, any restriction on the management of fish in the exclusive economic zone that is necessary to implement a recovery plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be implemented—

- (1) using authority under this Act; and
- (2) in accordance with processes and time schedules required under this Act.

### **TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM**

#### **SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.**

...

(c) **INTER-SECTOR TRADING OF COMMERCIAL CATCH SHARE ALLOCATIONS IN THE GULF OF MEXICO.**—Notwithstanding any other provision of this Act, any commercial fishing catch share allocation in a fishery in the Gulf of Mexico may only be traded by sale or lease within the same commercial fishing sector.

#### **SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.**

...

(b) **VOTING MEMBERS.**—

...

(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial **or recreational, recreational, or subsistence fishing** harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

...

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

(I) at least 1 nominee each from the commercial, recreational, and charter fishing sectors; and (II) at least 1 other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

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

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

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

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

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

...

(g) **COMMITTEES AND ADVISORY PANELS.**—

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

(B) Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. **Each scientific and statistical committee shall develop such advice in a transparent manner and allow for public involvement in the process.** [Also in Senate Bill](#)

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

...  
[\(8\) have the authority to use alternative fishery management measures in a recreational fishery \(or the recreational component of a mixed-use fishery\), including extraction rates, fishing mortality, and harvest control rules, to the extent they are in accordance with the requirements of this Act; and](#)

...  
[The following is also in the Senate bill with two differences.](#)

(G) Each Council shall make available, [where practicable](#), on the Internet Web site of the Council—

(i) to the extent practicable, a Webcast, an audio recording, or a live broadcast of each meeting of the Council, and of the Council Coordination Committee established under subsection [and SSC](#) (l), that is not closed in accordance with paragraph (3); and

(ii) audio, video (if the meeting was in person or by video conference), or a searchable audio or written transcript of each meeting of the Council and of the meetings of committees referred to in section 302(g)(1)(B) of the Council by not later than 30 days after the conclusion of the meeting.

(H) The Secretary shall maintain and make available to the public an archive of Council and scientific and statistical committee under clauses (i) and (ii) of subparagraph (G).

...  
(m) CONSIDERATIONS FOR MODIFICATIONS TO ANNUAL CATCH LIMIT REQUIREMENTS.—

(1) CONSIDERATION OF ECOSYSTEM AND ECONOMIC IMPACTS.— In establishing annual catch limits a Council may, consistent with section 302(h)(6), consider changes in an ecosystem and the economic needs of the fishing communities.

(2) LIMITATIONS TO ANNUAL CATCH LIMIT REQUIREMENT FOR SPECIAL FISHERIES.—Notwithstanding subsection (h)(6), a Council is not required to develop an annual catch limit for—

(A) an ecosystem component species;

(B) a fishery for a species that has a life cycle of approximately 1 year, unless the Secretary has determined the fishery is subject to overfishing; or

(C) a stock for which—

(i) more than half of a single-year class will complete their life cycle in less than 18 months; and

(ii) fishing mortality will have little impact on the stock.

(3) RELATIONSHIP TO INTERNATIONAL FISHERY EFFORTS.— Each annual catch limit may, consistent with section 302(h)(6), take into account—

(A) management measures under international agreements in which the United States participates;

(B) informal transboundary agreements under which fishery management activities by another country outside the exclusive economic zone may hinder conservation efforts by United States fishermen for a fish species for which any of the recruitment, distribution, life history, or fishing activities are transboundary; and

(C) in instances in which no transboundary agreement exists, activities by another country outside the exclusive economic zone that may hinder conservation efforts by United States fisherman for a fish species for which any of the recruitment, distribution, life history, or fishing activities are transboundary.

(4) **AUTHORIZATION FOR MULTISPECIES COMPLEXES AND MULTIYEAR ANNUAL CATCH LIMITS.**—For purposes of subsection (h)(6), a Council may establish—

(A) an annual catch limit for a stock complex; or

(B) annual catch limits for each year in any continuous period that is not more than three years in duration.

(5) **ECOSYSTEM COMPONENT SPECIES DEFINED.**—In this subsection the term “ecosystem component species” means a stock of fish that is a nontarget, incidentally harvested stock of fish in a fishery, or a nontarget, incidentally harvested stock of fish that a Council or the Secretary has determined—

(A) is not subject to overfishing, approaching a depleted condition or depleted; and

(B) is not likely to become subject to overfishing or depleted in the absence of conservation and management measures.

### **SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.**

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

...

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

...

(d) **FISHERY IMPACT STATEMENT.**—

(1) Any fishery management plan (or fishery management plan amendment) prepared by any Council or by the Secretary pursuant to subsection (a) or (b), or proposed regulations deemed necessary pursuant to subsection (c), shall include a fishery impact statement which shall assess, specify and analyze the likely effects and impact of the proposed action on the quality of the human environment.

(2) The fishery impact statement shall describe—

(A) a purpose of the proposed action;

(B) the environmental impact of the proposed action;

(C) any adverse environmental effects which cannot be avoided should the proposed action be implemented;

(D) a reasonable range of alternatives to the proposed action;

(E) the relationship between short-term use of fishery resources and the enhancement of long-term productivity;

(F) the cumulative conservation and management effects; and

(G) economic, and social impacts of the proposed action on—

(i) participants in the fisheries and fishing communities affected by the proposed action;

(ii) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(iii) the safety of human life at sea, including whether and to what extent such

measures may affect the safety of participants in the fishery.

(3) A substantially complete fishery impact statement, which may be in draft form, shall be available not less than 14 days before the beginning of the meeting at which a Council makes its final decision on the proposal (for plans, plan amendments, or proposed regulations prepared by a Council pursuant to subsection (a) or (c)). Availability of this fishery impact statement will be announced by the methods used by the council to disseminate public information and the public and relevant government agencies will be invited to comment on the fishery impact statement.

(4) The completed fishery impact statement shall accompany the transmittal of a fishery management plan or plan amendment as specified in section 304(a), as well as the transmittal of proposed regulations as specified in section 304(b).

(5) The Councils shall, subject to approval by the Secretary, establish criteria to determine actions or classes of action of minor significance regarding subparagraphs (A), (B), (D), (E), and (F) of paragraph (2), for which preparation of a fishery impact statement is unnecessary and categorically excluded from the requirements of this section, and the documentation required to establish the exclusion.

(6) The Councils shall, subject to approval by the Secretary, prepare procedures for compliance with this section that provide for timely, clear, and concise analysis that is useful to decisionmakers and the public, reduce extraneous paperwork and effectively involve the public, including—

(A) using Council meetings to determine the scope of issues to be addressed and identifying significant issues related to the proposed action;

(B) integration of the fishery impact statement development process with preliminary and final Council decisionmaking in a manner that provides opportunity for comment from the public and relevant government agencies prior to these decision points; and

(C) providing scientific, technical, and legal advice at an early stage of the development of the fishery impact statement to ensure timely transmittal and Secretarial review of the proposed fishery management plan, plan amendment, or regulations to the Secretary.

(7) Actions taken in accordance with this section are deemed to fulfill the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all related implementing regulations.

#### SENATE BILL Paragraph (d)

##### (d) LIMITATIONS.—

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

(A) apply to a species in a fishery that has a mean life cycle of 18 months or less, or to a species in a fishery with respect to which all spawning and recruitment occurs beyond State waters and the exclusive economic zone, unless the Secretary has determined the fishery is subject to overfishing of that species; and

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

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

### **SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.**

...

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

...

(6) PROGRAM INITIATION.—

...

**(D) NEW ENGLAND AND GULF REFERENDUM.—**

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than  $\frac{2}{3}$  of those voting in a referendum among eligible permit holders, or other persons described in clause (v),

with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term “individual fishing quota” does not include a sector allocation.

#### (D) CATCH SHARE REFERENDUM PILOT PROGRAM.—

(i) The New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils may not submit a fishery management plan or amendment that creates a catch share program for a fishery, and the Secretary may not approve or implement such a plan or amendment submitted by such a Council or a secretarial plan or amendment under section 304(c) that creates such a program, unless the final program has been approved, in a referendum in accordance with this subparagraph, by a majority of the permit holders eligible to participate in the fishery. For multispecies permits in the Gulf of Mexico, any permit holder with landings from within the sector of the fishery being considered for the catch share program within the 5-year period preceding the date of the referendum and still active in fishing in the fishery shall be eligible to participate in such a referendum. If a catch share program is not approved by the requisite number of permit holders, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary may, at the request of the New England Fishery Management Council, allow participation in such a referendum for a fishery under the Council’s authority, by fishing vessel crewmembers who derive a significant portion of their livelihood from such fishing.

(iii) The Secretary shall conduct a referendum under this subparagraph, including notifying all permit holders eligible to participate in the referendum and making available to them—

- (I) a copy of the proposed program;
- (II) an estimate of the costs of the program, including costs to participants;
- (III) an estimate of the amount of fish or percentage of quota each permit holder would be allocated; and
- (IV) information concerning the schedule, procedures, and eligibility requirements for the referendum process.

(iv) For the purposes of this subparagraph, the term “permit holder eligible to participate” only includes the holder of a permit for a fishery under which fishing has occurred in 3 of the 5 years preceding a referendum for the fishery, unless sickness, injury, or

other unavoidable hardship prevented the permit holder from engaging in such fishing.

(v) The Secretary may not implement any catch share program for any fishery managed exclusively by the Secretary unless first petitioned by a majority of those permit holders eligible to participate in the fishery.

...

#### SEC. 304. ACTION BY THE SECRETARY.

##### (a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6); and

(D) evaluate the adequacy of the accompanying fishery impact statement as basis for fully considering the environmental impacts of implementing the fishery management plan or plan amendment.

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

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

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection. (5) For purposes of this subsection and subsection (b), the

“term immediately” means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

##### (b) REVIEW OF REGULATIONS.—

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and— Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. The Secretary shall also immediately initiate an evaluation of the accompanying fishery impact statement as a basis for fully considering the environmental impacts of implementing the proposed regulations. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

...

(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.—

...  
(d) ESTABLISHMENT OF FEES---

...  
(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any—

(i) limited access privilege program; and  
(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

(D) The Secretary shall report annually on the amount collected under this paragraph from each fishery and detail how the funds were spent in the prior year on a fishery-by-fishery basis, to—

(i) Congress; and  
(ii) each Council from whose fisheries the fee under this paragraph were collected.

(e) REBUILDING OVERFISHED DEPLETED FISHERIES.—

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished depleted or are approaching a condition of being overfished depleted. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished depleted if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished depleted within two years. The report shall distinguish between fisheries that are depleted (or approaching that condition) as a result of fishing and fisheries that are depleted (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as depleted or approaching that condition, whether the fishery is the target of directed fishing.

...  
(4) For a fishery that is overfished depleted, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

(A) specify a time period for rebuilding the fishery that shall—

(i) be as short as possible practicable, taking into account the status and biology of any overfished depleted stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished depleted stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(ii) may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation, except in a case in which—

(I) the biology of the stock of fish, other environmental conditions, or management

measures under an international agreement in which the United States participates dictate otherwise;

(II) the Secretary determines that the cause of the stock being depleted is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities;

(III) the Secretary determines that one or more components of a mixed-stock fishery is depleted but cannot be rebuilt within that time frame without significant economic harm to the fishery, or cannot be rebuilt without causing another component of the mixed-stock fishery to approach a depleted status;

(IV) the Secretary determines that recruitment, distribution, or life history of, or fishing activities for, the stock are affected by informal transboundary agreements under which management activities outside the exclusive economic zone by another country may hinder conservation and management efforts by United States fishermen; and

(V) the Secretary determines that the stock has been affected by unusual events that make rebuilding within the specified time period improbable without significant economic harm to fishing communities;

(B) take into account environmental condition including predator/prey relationships;

#### SENATE AMENDMENT TO 304(e)(4)(A)

(A) specify a time period for rebuilding the fishery that—

(i) shall be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) except where management measures under an international agreement with the United States participates dictate otherwise, shall not exceed—

(I) 10 years, except in cases where the biology of the stock of fish or other environmental conditions dictate otherwise; or

(II) the sum of the time in which the affected stock of fish is expected to rebuild to its maximum sustainable yield biomass level in the absence of any fishing mortality, and the mean generation of time of the affected stock of fish, if those time values are the best scientific information available;

**(B) (C) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and**

**(C) (D) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States; and**

(E) specify a schedule for reviewing the rebuilding targets, evaluating environmental impacts on rebuilding progress, and evaluating progress being made toward reaching rebuilding targets.

...

(8) A fishery management plan, plan amendment, or proposed regulations may use alternative rebuilding strategies, including harvest control rules and fishing mortality-rate targets to the extent they are in compliance with the requirements of this Act.

(9) A Council may terminate the application of paragraph (3) to a fishery if the Council's scientific and statistical committee determines and the Secretary concurs that the original determination that the fishery was depleted was erroneous, either—

(A) within the 2-year period beginning on the effective date a fishery management plan, plan amendment, or proposed regulation for a fishery under this subsection takes effect; or

(B) within 90 days after the completion of the next stock assessment after such determination.

...

#### **SEC. 305. OTHER REQUIREMENTS AND AUTHORITY.**

...

(c) EMERGENCY ACTIONS AND INTERIM MEASURES.—

...

(3) Any emergency regulation or interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation or interim measure promulgated under this subsection—

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

(B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 186 days, provided 1 year after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 1 year, if the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;

...

### **SEC. 306. STATE JURISDICTION.**

(a) IN GENERAL.—

...

(b) EXCEPTION.—

...

(4) Notwithstanding section 3(11), for the purposes of managing the recreational sector of the Gulf of Mexico red snapper fishery, the seaward boundary of a coastal State in the Gulf of Mexico is a line 9 miles seaward from the baseline from which the territorial sea of the United States is measured.

...

### **SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES.**

(a) FISHERIES DISASTER RELIEF.—(1) (A) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

(A) (i) natural causes;

(B) (ii) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or

(C) (iii) undetermined causes.

(B) The Secretary shall publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after the Secretary makes the determination under subparagraph (A) with respect to such disaster.

(2) The Secretary shall make a decision regarding a request from a Governor under paragraph (1) within 90 days after receiving an estimate of the economic impact of the fishery resource disaster from the entity requesting the relief.

...

### **SEC. 318. COOPERATIVE RESEARCH AND MANAGEMENT PROGRAM.**

(a) IN GENERAL.—(1) The Secretary of Commerce, in consultation with the Councils, shall establish a cooperative research and management program to address needs identified under this Act and under any other marine resource laws enforced by the Secretary. The program shall be implemented on a regional basis and shall be developed and conducted through partnerships among Federal, State, and Tribal managers and scientists (including interstate fishery commissions), fishing industry participants (including use of commercial charter or recreational vessels for gathering data), and educational institutions.

(2) Within one year after the date of enactment of the Strengthening Fishing

Communities and Increasing Flexibility in Fisheries Management Act, and after consultation with the Councils, the Secretary shall publish a plan for implementing and conducting the program established in paragraph (1). Such plan shall identify and describe critical regional fishery management and research needs, possible projects that may address those needs, and estimated costs for such projects. The plan shall be revised and updated every 5 years, and updated plans shall include a brief description of projects that were funded in the prior 5-year period and the research and management needs that were addressed by those projects.

(b) **ELIGIBLE PROJECTS.**—The Secretary shall make funds available under the program for the support of projects to address critical needs identified by the Councils in consultation with the Secretary. The program shall promote and encourage efforts to utilize sources of data maintained by other Federal agencies, State agencies, or academia for use in such projects.

(c) **FUNDING PRIORITIES.**—In making funds available the Secretary shall award funding on a competitive basis and based on regional fishery management needs, select programs that form part of a coherent program of research focused on solving priority issues identified by the Councils, and shall give priority to the following projects:

(1) Projects to collect data to improve, supplement, or enhance stock assessments, including the use of fishing vessels or acoustic or other marine technology. —

(A) the use of fishing vessels or acoustic or other marine technology;

(B) expanding the use of electronic catch reporting programs and technology; and

(C) improving monitoring and observer coverage through the expanded use of electronic monitoring devices.

...

## **TITLE IV—FISHERY MONITORING AND RESEARCH**

### **SEC. 401. REGISTRATION AND INFORMATION MANAGEMENT.**

...

(g) **RECREATIONAL FISHERIES.**—

...

(4) **FEDERAL-STATE PARTNERSHIPS.**—

(A) **ESTABLISHMENT.**—The Secretary shall establish partnerships with States to develop best practices for implementation of State programs established pursuant to paragraph (2).

(B) **GUIDANCE.**—The Secretary shall develop guidance, in cooperation with the States, that details best practices for administering State programs pursuant to paragraph (2), and provide such guidance to the States.

(C) **BIENNIAL REPORT.**—The Secretary shall submit to the Congress and publish biennial reports that include—

(i) the estimated accuracy of the registry program established under paragraph (1) and of State programs that are exempted under paragraph (2);

(ii) priorities for improving recreational fishing data collection; and

(iii) an explanation of any use of information collected by such State programs and by the Secretary, including a description of any consideration given to the information by the Secretary.

(D) **STATES GRANT PROGRAM.**—The Secretary shall make grants to States to improve implementation of State programs consistent with this subsection. The Secretary shall prioritize such grants based on the ability of the grant to improve the quality and accuracy of such programs.

(4)(5) **REPORT.**—Within 24 months after establishment of the program, the Secretary shall submit a report to Congress that describes the progress made toward achieving the goals and objectives of the program.

(6) **STUDY ON PROGRAM IMPLEMENTATION.**—

(A) **IN GENERAL.**—Not later than 60 days after the enactment of this paragraph, the Secretary shall enter into an agreement with the National Research Council of the

National Academy of Sciences to study the implementation of the programs described in this section. The study shall—

(i) provide an updated assessment of recreational survey methods established or improved since the publication of the Council’s report “Review of Recreational Fisheries Survey Methods (2006)”;

(ii) evaluate the extent to which the recommendations made in that report were implemented pursuant to paragraph (3)(B); and

(iii) examine any limitations of the Marine Recreational Fishery Statistics Survey and the Marine Recreational Information Program established under paragraph (1).

(B) REPORT.—Not later than 1 year after entering into an agreement under subparagraph (A), the Secretary shall submit a report to Congress on the results of the study under subparagraph (A).

## SEC. 402. INFORMATION COLLECTION.

...

(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department’s mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(B) to State or Marine Fisheries Commission employees as necessary for achievement of the purposes of this Act, subject to a confidentiality agreement between the State or Commission, respectively, and the Secretary that prohibits public disclosure of the identity of any person and of confidential information;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access catch share program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access catch share program; or

(H) in support of homeland and national security activities, including the Coast Guard’s homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information, and information obtained through a vessel monitoring system or other technology used onboard a fishing vessel for enforcement or data collection purposes, shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the

information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(C) as authorized by any regulations issued under paragraph (6) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected; or

(D) to other persons if the Secretary has obtained written authorization from the person who submitted such information or from the person on whose vessel the information was collected, to release such information for reasons not otherwise provided for in this subsection.

(3) Any information submitted to the Secretary, a State fisheries management agency, or a Marine Fisheries Commission by any person in compliance with the requirements of this Act, including confidential information, may only be used for purposes of fisheries management and monitoring and enforcement under this Act.

(4) The Secretary may enter into a memorandum of understanding with the heads of other Federal agencies for the sharing of confidential information to ensure safety of life at sea or for fisheries enforcement purposes, including information obtained through a vessel monitoring system or other electronic enforcement and monitoring systems, if—

(A) the Secretary determines there is a compelling need to do so; and

(B) the heads of the other Federal agencies agree—

(i) to maintain the confidentiality of the information in accordance with the requirements that apply to the Secretary under this section; and

(ii) to use the information only for the purposes for which it was shared with the agencies.

(5) The Secretary may not provide any vessel-specific or aggregate vessel information from a fishery that is collected for monitoring and enforcement purposes to any person for the purposes of coastal and marine spatial planning under Executive Order 13547, unless the Secretary determines that providing such information is important for maintaining or enhancing national security or for ensuring fishermen continued access to fishing grounds.

...

(e) **RESOURCE ASSESSMENTS.—**

...

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

(4) The Secretary shall require that in the hiring of individuals to collect information regarding marine recreational fishing under this subsection, preference shall be given to individuals who are students studying water resource issues at an institution of higher education.

## **SEC. 404. FISHERIES RESEARCH.**

...

(e) **USE OF THE ASSET FORFEITURE FUND FOR FISHERY INDEPENDENT DATA COLLECTION.—**

(1) **IN GENERAL.—**

(A) The Secretary, subject to appropriations, may obligate for data collection purposes in accordance with prioritizations under paragraph (3) a portion of amounts received by the United States as fisheries enforcement penalties.

(B) Amounts may be obligated under this paragraph only in the fishery management region with respect to which they are collected.

(2) INCLUDED PURPOSES.—The purposes referred to in paragraph (1) include—  
(A) the use of State personnel and resources, including fishery survey vessels owned and maintained by States to survey or assess data-poor fisheries for which fishery management plans are in effect under this Act; and

(B) cooperative research activities authorized under section 318 to improve or enhance the fishery independent data used in fishery stock assessments.

(3) DATA-POOR FISHERIES PRIORITY LISTS.—Each Council shall—

(A) identify those fisheries in its region considered to be data-poor fisheries;

(B) prioritize those fisheries based on the need of each fishery for up-to-date information; and

(C) provide those priorities to the Secretary.

(4) DEFINITIONS.—In this subsection:

(A) The term “data-poor fishery” means a fishery—

(i) that has not been surveyed in the preceding 5-year period;

(ii) for which a fishery stock assessment has not been performed within the preceding 5-year period; or

(iii) for which limited information on the status of the fishery is available for management purposes.

(B) The term “fisheries enforcement penalties” means any fine or penalty imposed, or proceeds of any property seized, for a violation of this Act or of any other marine resource law enforced by the Secretary.

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for each fiscal year to carry out this subsection up to 80 percent of the fisheries enforcement penalties collected during the preceding fiscal year.

The Following is from the Senate bill.

(e) STOCK ASSESSMENT PLAN.—

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

(2) CONTENTS.—The plan shall—

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

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

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

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

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

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

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

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

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

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

(b) DEADLINE.—Notwithstanding paragraph (1) of section 404(e) of the Magnuson-Stevens Fishery Conservation and Management Act, as added by this section, the Secretary of Commerce

shall issue the first stock assessment plan under that section by not later than 1 year after the date of the enactment of this Act.

(f) IMPROVING DATA COLLECTION AND ANALYSIS.—

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

(2) CONTENT.—The report under paragraph

(1) shall—

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

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

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

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

(b) DEADLINE.—The Secretary of Commerce shall submit the report required under the amendment made by subsection (a) not later than 1 year after the date of the enactment of this Act.

...

Senate:

Section 407 (16 U.S.C. 1883) is amended by striking subsection (d).

House:

**SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.**

**(a) INDEPENDENT PEER REVIEW.—(1) Within 30 days of the date of enactment of the Sustainable Fisheries Act, the Secretary shall initiate an independent peer review to evaluate—**

**(A) the accuracy and adequacy of fishery statistics used by the Secretary for the red snapper fishery in the Gulf of Mexico to account for all commercial, recreational, and charter fishing harvests and fishing effort on the stock;**

**(B) the appropriateness of the scientific methods, information, and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock and as the basis for the fishery management plan for the Gulf of Mexico red snapper fishery;**

**(C) the appropriateness and adequacy of the management measures in the fishery management plan for red snapper in the Gulf of Mexico for conserving and managing the red snapper fishery under this Act; and**

**(D) the costs and benefits of all reasonable alternatives to a limited access privilege program for the red snapper fishery in the Gulf of Mexico.**

**(2) The Secretary shall ensure that commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—**

**(A) participate in the peer review under this subsection; and**

**(B) provide information to the Secretary concerning the review of fishery statistics under this subsection without being subject to penalty under this Act or other applicable law for any past violation of a requirement to report such information to the Secretary.**

**(3) The Secretary shall submit a detailed written report on the findings of the peer review conducted under this subsection to the Gulf Council no later than one year after the date of enactment of the Sustainable Fisheries Act.**

**(b) PROHIBITION.—In addition to the restrictions under section 303(d)(1)(A), the Gulf Council may not, prior to October 1, 2002, undertake or continue the preparation of any fishery management plan, plan amendment or regulation under this Act for the Gulf of**

Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class.

(c) REFERENDUM.—

(1) On or after October 1, 2002, the Gulf Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates a limited access privilege program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class, only if the preparation of such plan, amendment, or regulation is approved in a referendum conducted under paragraph (2) and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum conducted under paragraph (2).

(2) The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996. Prior to each referendum, the Secretary, in consultation with the Council, shall—

(A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and

(B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.

(d) CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—

(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and

(2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.

## **SEC. 409. STOCK ASSESSMENTS USED FOR FISHERIES MANAGED UNDER GULF OF MEXICO COUNCIL'S REEF FISH MANAGEMENT PLAN.**

(a) IN GENERAL.—The Gulf States Marine Fisheries Commission shall conduct all fishery stock assessments used for management purposes by the Gulf of Mexico Fishery Management Council for the fisheries managed under the Council's Reef Fish Management Plan.

(b) USE OF OTHER INFORMATION AND ASSETS.—

(1) IN GENERAL.—Such fishery assessments shall—

(A) incorporate fisheries survey information collected by university researchers; and

(B) to the extent practicable, use State, university, and private assets to conduct fisheries surveys.

(2) SURVEYS AT ARTIFICIAL REEFS.—Any such fishery stock assessment conducted after the date of the enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act shall incorporate fishery surveys conducted, and other relevant fisheries information collected, on and around natural and artificial reefs.

(c) CONSTITUENT AND STAKEHOLDER PARTICIPATION.—Each such

fishery assessment shall—

- (1) emphasize constituent and stakeholder participation in the development of the assessment;
- (2) contain all of the raw data used in the assessment and a description of the methods used to collect that data; and
- (3) employ an assessment process that is transparent and includes—
  - (A) includes a rigorous and independent scientific review of the completed fishery stock assessment; and
  - (B) a panel of independent experts to review the data and assessment and make recommendations on the most appropriate values of critical population and management quantities.

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

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

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

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

**SEC. 108. STUDY OF ALLOCATIONS IN MIXED-USE FISHERIES.**

(a) STUDY REQUIREMENTS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Commerce shall enter into an arrangement with the National Academy of Sciences to conduct a study—

(1) to provide guidance on criteria that could be used for allocating fishing privileges, including consideration of the conservation and socioeconomic benefits of the commercial, recreational, and charter components of a fishery, to a Regional Fishery Management Council established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852) in the preparation of a fishery management plan under that Act; and

(2) to identify sources of information that could reasonably support the use of such criteria in allocation decisions.

(b) REPORT.—Not later than 1 year after the date a contract is awarded under subsection (a), the National Academy of Sciences shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on the study conducted under subsection (a).

114TH CONGRESS } <i>1st Session</i>	HOUSE OF REPRESENTATIVES	{ REPORT 114-116
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STRENGTHENING FISHING COMMUNITIES AND INCREAS-  
ING FLEXIBILITY IN FISHERIES MANAGEMENT ACT

MAY 15, 2015.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1335]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1335) to amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery managers and stability for fishermen, and for other purposes, having considered the same, report favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act”.

**SEC. 2. DEFINITIONS.**

In this Act, any term used that is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) shall have the same meaning such term has under that section.

**SEC. 3. REFERENCES.**

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

**SEC. 4. FLEXIBILITY IN REBUILDING FISH STOCKS.**

- (a) GENERAL REQUIREMENTS.—Section 304(e) (16 U.S.C. 1854(e)) is amended—  
(1) in paragraph (4)—

(A) in subparagraph (A)(i), by striking “possible” and inserting “practicable”;

(B) by amending subparagraph (A)(ii) to read as follows:

“(ii) may not exceed the time the stock would be rebuilt without fishing occurring plus one mean generation, except in a case in which—

“(I) the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

“(II) the Secretary determines that the cause of the stock being depleted is outside the jurisdiction of the Council or the rebuilding program cannot be effective only by limiting fishing activities;

“(III) the Secretary determines that one or more components of a mixed-stock fishery is depleted but cannot be rebuilt within that time-frame without significant economic harm to the fishery, or cannot be rebuilt without causing another component of the mixed-stock fishery to approach a depleted status;

“(IV) the Secretary determines that recruitment, distribution, or life history of, or fishing activities for, the stock are affected by informal transboundary agreements under which management activities outside the exclusive economic zone by another country may hinder conservation and management efforts by United States fishermen; and

“(V) the Secretary determines that the stock has been affected by unusual events that make rebuilding within the specified time period improbable without significant economic harm to fishing communities.”;

(C) by striking “and” after the semicolon at the end of subparagraph (B), by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), and by inserting after subparagraph (A) the following:

“(B) take into account environmental condition including predator/prey relationships.”; and

(D) by striking the period at the end of subparagraph (D) (as so redesignated) and inserting “; and”, and by adding at the end the following:

“(E) specify a schedule for reviewing the rebuilding targets, evaluating environmental impacts on rebuilding progress, and evaluating progress being made toward reaching rebuilding targets.”; and

(2) by adding at the end the following:

“(8) A fishery management plan, plan amendment, or proposed regulations may use alternative rebuilding strategies, including harvest control rules and fishing mortality-rate targets to the extent they are in compliance with the requirements of this Act.

“(9) A Council may terminate the application of paragraph (3) to a fishery if the Council’s scientific and statistical committee determines and the Secretary concurs that the original determination that the fishery was depleted was erroneous, either—

“(A) within the 2-year period beginning on the effective date a fishery management plan, plan amendment, or proposed regulation for a fishery under this subsection takes effect; or

“(B) within 90 days after the completion of the next stock assessment after such determination.”.

(b) EMERGENCY REGULATIONS AND INTERIM MEASURES.—Section 305(c)(3)(B) (16 U.S.C. 1855(c)(3)(B)) is amended by striking “180 days after” and all that follows through “provided” and inserting “1 year after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 1 year, if”.

#### SEC. 5. MODIFICATIONS TO THE ANNUAL CATCH LIMIT REQUIREMENT.

Section 302 (16 U.S.C. 1852) is amended by adding at the end the following:

“(m) CONSIDERATIONS FOR MODIFICATIONS TO ANNUAL CATCH LIMIT REQUIREMENTS.—

“(1) CONSIDERATION OF ECOSYSTEM AND ECONOMIC IMPACTS.—In establishing annual catch limits a Council may, consistent with section 302(h)(6), consider changes in an ecosystem and the economic needs of the fishing communities.

“(2) LIMITATIONS TO ANNUAL CATCH LIMIT REQUIREMENT FOR SPECIAL FISHERIES.—Notwithstanding subsection (h)(6), a Council is not required to develop an annual catch limit for—

“(A) an ecosystem component species;

“(B) a fishery for a species that has a life cycle of approximately 1 year, unless the Secretary has determined the fishery is subject to overfishing; or

“(C) a stock for which—

“(i) more than half of a single-year class will complete their life cycle in less than 18 months; and

“(ii) fishing mortality will have little impact on the stock.

“(3) RELATIONSHIP TO INTERNATIONAL FISHERY EFFORTS.—Each annual catch limit may, consistent with section 302(h)(6), take into account—

“(A) management measures under international agreements in which the United States participates;

“(B) informal transboundary agreements under which fishery management activities by another country outside the exclusive economic zone may hinder conservation efforts by United States fishermen for a fish species for which any of the recruitment, distribution, life history, or fishing activities are transboundary; and

“(C) in instances in which no transboundary agreement exists, activities by another country outside the exclusive economic zone that may hinder conservation efforts by United States fisherman for a fish species for which any of the recruitment, distribution, life history, or fishing activities are transboundary.

“(4) AUTHORIZATION FOR MULTISPECIES COMPLEXES AND MULTIYEAR ANNUAL CATCH LIMITS.—For purposes of subsection (h)(6), a Council may establish—

“(A) an annual catch limit for a stock complex; or

“(B) annual catch limits for each year in any continuous period that is not more than three years in duration.

“(5) ECOSYSTEM COMPONENT SPECIES DEFINED.—In this subsection the term ‘ecosystem component species’ means a stock of fish that is a nontarget, incidentally harvested stock of fish in a fishery, or a nontarget, incidentally harvested stock of fish that a Council or the Secretary has determined—

“(A) is not subject to overfishing, approaching a depleted condition or depleted; and

“(B) is not likely to become subject to overfishing or depleted in the absence of conservation and management measures.”.

#### SEC. 6. DISTINGUISHING BETWEEN OVERFISHED AND DEPLETED.

(a) DEFINITIONS.—Section 3 (16 U.S.C. 1802) is amended—

(1) in paragraph (34), by striking “The terms ‘overfishing’ and ‘overfished’ mean” and inserting “The term ‘overfishing’ means”; and

(2) by inserting after paragraph (8) the following:

“(8a) The term ‘depleted’ means, with respect to a stock of fish or stock complex, that the stock or stock complex has a biomass that has declined below a level that jeopardizes the capacity of the stock or stock complex to produce maximum sustainable yield on a continuing basis.”.

(b) SUBSTITUTION OF TERM.—The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended—

(1) in the heading of section 304(e), by striking “OVERFISHED” and inserting “DEPLETED”; and

(2) by striking “overfished” each place it appears and inserting “depleted”.

(c) CLARITY IN ANNUAL REPORT.—Section 304(e)(1) (16 U.S.C. 1854(e)(1)) is amended by adding at the end the following: “The report shall distinguish between fisheries that are depleted (or approaching that condition) as a result of fishing and fisheries that are depleted (or approaching that condition) as a result of factors other than fishing. The report shall state, for each fishery identified as depleted or approaching that condition, whether the fishery is the target of directed fishing.”.

#### SEC. 7. TRANSPARENCY AND PUBLIC PROCESS.

(a) ADVICE.—Section 302(g)(1)(B) (16 U.S.C. 1852(g)(1)(B)) is amended by adding at the end the following: “Each scientific and statistical committee shall develop such advice in a transparent manner and allow for public involvement in the process.”.

(b) MEETINGS.—Section 302(i)(2) (16 U.S.C. 1852(i)(2)) is amended by adding at the end the following:

“(G) Each Council shall make available on the Internet Web site of the Council—

“(i) to the extent practicable, a Webcast, an audio recording, or a live broadcast of each meeting of the Council, and of the Council Coordination Committee established under subsection (l), that is not closed in accordance with paragraph (3); and

“(ii) audio, video (if the meeting was in person or by video conference), or a searchable audio or written transcript of each meeting of the Council and of the meetings of committees referred to in section 302(g)(1)(B) of the Council by not later than 30 days after the conclusion of the meeting.

“(H) The Secretary shall maintain and make available to the public an archive of Council and scientific and statistical committee meeting audios, videos, and transcripts made available under clauses (i) and (ii) of subparagraph (G).”.

(c) FISHERY IMPACT STATEMENTS.—

(1) REQUIREMENT.—Section 303 (16 U.S.C. 1853) is amended—

(A) in subsection (a), by striking paragraph (9) and redesignating paragraphs (10) through (15) as paragraphs (9) through (14), respectively; and  
(B) by adding at the end the following:

“(d) FISHERY IMPACT STATEMENT.—

“(1) Any fishery management plan (or fishery management plan amendment) prepared by any Council or by the Secretary pursuant to subsection (a) or (b), or proposed regulations deemed necessary pursuant to subsection (c), shall include a fishery impact statement which shall assess, specify and analyze the likely effects and impact of the proposed action on the quality of the human environment.

“(2) The fishery impact statement shall describe—

“(A) a purpose of the proposed action;  
“(B) the environmental impact of the proposed action;  
“(C) any adverse environmental effects which cannot be avoided should the proposed action be implemented;

“(D) a reasonable range of alternatives to the proposed action;  
“(E) the relationship between short-term use of fishery resources and the enhancement of long-term productivity;

“(F) the cumulative conservation and management effects; and

“(G) economic, and social impacts of the proposed action on—

“(i) participants in the fisheries and fishing communities affected by the proposed action;

“(ii) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

“(iii) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery.

“(3) A substantially complete fishery impact statement, which may be in draft form, shall be available not less than 14 days before the beginning of the meeting at which a Council makes its final decision on the proposal (for plans, plan amendments, or proposed regulations prepared by a Council pursuant to subsection (a) or (c)). Availability of this fishery impact statement will be announced by the methods used by the council to disseminate public information and the public and relevant government agencies will be invited to comment on the fishery impact statement.

“(4) The completed fishery impact statement shall accompany the transmittal of a fishery management plan or plan amendment as specified in section 304(a), as well as the transmittal of proposed regulations as specified in section 304(b).

“(5) The Councils shall, subject to approval by the Secretary, establish criteria to determine actions or classes of action of minor significance regarding subparagraphs (A), (B), (D), (E), and (F) of paragraph (2), for which preparation of a fishery impact statement is unnecessary and categorically excluded from the requirements of this section, and the documentation required to establish the exclusion.

“(6) The Councils shall, subject to approval by the Secretary, prepare procedures for compliance with this section that provide for timely, clear, and concise analysis that is useful to decisionmakers and the public, reduce extraneous paperwork and effectively involve the public, including—

“(A) using Council meetings to determine the scope of issues to be addressed and identifying significant issues related to the proposed action;

“(B) integration of the fishery impact statement development process with preliminary and final Council decisionmaking in a manner that provides opportunity for comment from the public and relevant government agencies prior to these decision points; and

“(C) providing scientific, technical, and legal advice at an early stage of the development of the fishery impact statement to ensure timely transmittal and Secretarial review of the proposed fishery management plan, plan amendment, or regulations to the Secretary.

“(7) Actions taken in accordance with this section are deemed to fulfill the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all related implementing regulations.”.

(2) EVALUATION OF ADEQUACY.—Section 304(a)(2) (16 U.S.C. 1854(a)(2)) is amended by striking “and” after the semicolon at the end of subparagraph (B), striking the period at the end of subparagraph (C) and inserting “; and”, and by adding at the end the following:

“(D) evaluate the adequacy of the accompanying fishery impact statement as basis for fully considering the environmental impacts of implementing the fishery management plan or plan amendment.”.

(3) REVIEW OF REGULATIONS.—Section 304(b) (16 U.S.C. 1854(b)) is amended by striking so much as precedes subparagraph (A) of paragraph (1) and inserting the following:

“(b) REVIEW OF REGULATIONS.—

“(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. The Secretary shall also immediately initiate an evaluation of the accompanying fishery impact statement as a basis for fully considering the environmental impacts of implementing the proposed regulations. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

(4) EFFECT ON TIME REQUIREMENTS.—Section 305(e) (16 U.S.C. 1855(e)) is amended by inserting “the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),” after “the Regulatory Flexibility Act (5 U.S.C. 601 et seq.),”.

#### SEC. 8. LIMITATION ON FUTURE CATCH SHARE PROGRAMS.

(a) CATCH SHARE DEFINED.—Section 3 (16 U.S.C. 1802) is amended by inserting after paragraph (2) the following:

“(2a) The term ‘catch share’ means any fishery management program that allocates a specific percentage of the total allowable catch for a fishery, or a specific fishing area, to an individual, cooperative, community, processor, representative of a commercial sector, or regional fishery association established in accordance with section 303A(c)(4), or other entity.”.

(b) CATCH SHARE REFERENDUM PILOT PROGRAM.—

(1) IN GENERAL.—Section 303A(c)(6)(D) (16 U.S.C. 1853a(c)(6)(D)) is amended to read as follows:

“(D) CATCH SHARE REFERENDUM PILOT PROGRAM.—

“(i) The New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils may not submit a fishery management plan or amendment that creates a catch share program for a fishery, and the Secretary may not approve or implement such a plan or amendment submitted by such a Council or a secretarial plan or amendment under section 304(c) that creates such a program, unless the final program has been approved, in a referendum in accordance with this subparagraph, by a majority of the permit holders eligible to participate in the fishery. For multispecies permits in the Gulf of Mexico, any permit holder with landings from within the sector of the fishery being considered for the catch share program within the 5-year period preceding the date of the referendum and still active in fishing in the fishery shall be eligible to participate in such a referendum. If a catch share program is not approved by the requisite number of permit holders, it may be revised and submitted for approval in a subsequent referendum.

“(ii) The Secretary may, at the request of the New England Fishery Management Council, allow participation in such a referendum for a fishery under the Council’s authority, by fishing vessel crewmembers who derive a significant portion of their livelihood from such fishing.

“(iii) The Secretary shall conduct a referendum under this subparagraph, including notifying all permit holders eligible to participate in the referendum and making available to them—

“(I) a copy of the proposed program;

“(II) an estimate of the costs of the program, including costs to participants;

“(III) an estimate of the amount of fish or percentage of quota each permit holder would be allocated; and

“(IV) information concerning the schedule, procedures, and eligibility requirements for the referendum process.

“(iv) For the purposes of this subparagraph, the term ‘permit holder eligible to participate’ only includes the holder of a permit for a fishery under which fishing has occurred in 3 of the 5 years preceding a referendum for the fishery, unless sickness, injury, or other unavoidable hardship prevented the permit holder from engaging in such fishing.

“(v) The Secretary may not implement any catch share program for any fishery managed exclusively by the Secretary unless first petitioned by a majority of those permit holders eligible to participate in the fishery.”

(2) **LIMITATION ON APPLICATION.**—The amendment made by paragraph (1) shall not apply to a catch share program that is submitted to, or proposed by, the Secretary of Commerce before the date of enactment of this Act.

(3) **REGULATIONS.**—Before conducting a referendum under the amendment made by paragraph (1), the Secretary of Commerce shall issue regulations implementing such amendment after providing an opportunity for submission by the public of comments on the regulations.

**SEC. 9. REPORT ON FEE.**

Section 304(d)(2) (16 U.S.C. 1854(d)(2)) is amended by adding at the end the following:

“(D) The Secretary shall report annually on the amount collected under this paragraph from each fishery and detail how the funds were spent in the prior year on a fishery-by-fishery basis, to—

- “(i) Congress; and
- “(ii) each Council from whose fisheries the fee under this paragraph were collected.”

**SEC. 10. DATA COLLECTION AND DATA CONFIDENTIALITY.**

(a) **ELECTRONIC MONITORING.**—

(1) **ISSUANCE OF REGULATIONS.**—

(A) **REQUIREMENT.**—The Secretary shall issue regulations governing the use of electronic monitoring for the purposes of monitoring fisheries that are subject to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(B) **CONTENT.**—The regulations shall—

- (i) distinguish between monitoring for data collection and research purposes and monitoring for compliance and enforcement purposes; and
- (ii) include minimum criteria, objectives, or performance standards for electronic monitoring.

(C) **PROCESS.**—In issuing the regulations the Secretary shall—

- (i) consult with the Councils and fishery management commissions;
- (ii) publish the proposed regulations; and
- (iii) provide an opportunity for the submission by the public of comments on the proposed regulations.

(2) **IMPLEMENTATION OF MONITORING.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), and after the issuance of the final regulations, a Council, or the Secretary for fisheries referred to in section 302(a)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(3)), may, in accordance with the regulations, on a fishery-by-fishery basis and consistent with the existing objectives and management goals of a fishery management plan and the Act for a fishery issued by the Council or the Secretary, respectively, amend such plan—

- (i) to incorporate electronic monitoring as an alternative tool for data collection and monitoring purposes or for compliance and enforcement purposes (or both); and
- (ii) to allow for the replacement of a percentage of on-board observers with electronic monitoring.

(B) **COMPARABILITY.**—Subparagraph (A) shall apply to a fishery only if the Council or Secretary, respectively, determines that such monitoring will yield comparable data collection and compliance results.

(3) **PILOT PROJECTS.**—Before the issuance of final regulations, a Council, or the Secretary for fisheries referred to in section 302(a)(3), may, subject to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, on a fishery-by-fishery basis, and consistent with the existing objectives and management goals of a fishery management plan for a fishery issued by the Council or the Secretary, respectively, conduct a pilot project for the use of electronic monitoring for the fishery.

(4) **DEADLINE.**—The Secretary shall issue final regulations under this subsection by not later than 12 months after the date of enactment of this Act.

(b) VIDEO AND ACOUSTIC SURVEY TECHNOLOGIES.—The Secretary shall work with the Regional Fishery Management Councils and nongovernmental entities to develop and implement the use pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) of video survey technologies and expanded use of acoustic survey technologies.

(c) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Section 402(b) (16 U.S.C. 1881a(b)) is amended—

(A) in paragraph (1)—

(i) by amending subparagraph (B) to read as follows:

“(B) to State or Marine Fisheries Commission employees as necessary for achievement of the purposes of this Act, subject to a confidentiality agreement between the State or Commission, respectively, and the Secretary that prohibits public disclosure of the identity of any person and of confidential information;”;

(ii) in subparagraph (E), by striking “limited access” and inserting “catch share”; and

(iii) in subparagraph (G), by striking “limited access” and inserting “catch share”;

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by inserting “, and information obtained through a vessel monitoring system or other technology used onboard a fishing vessel for enforcement or data collection purposes,” after “information”;

(ii) by striking “or” after the semicolon at the end of subparagraph (B); and

(iii) by striking subparagraph (C) and inserting the following:

“(C) as authorized by any regulations issued under paragraph (6) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

“(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

“(ii) to validate the accuracy of the observer information collected; or

“(D) to other persons if the Secretary has obtained written authorization from the person who submitted such information or from the person on whose vessel the information was collected, to release such information for reasons not otherwise provided for in this subsection.”;

(C) by redesignating paragraph (3) as paragraph (6); and

(D) by inserting after paragraph (2) the following:

“(3) Any information submitted to the Secretary, a State fisheries management agency, or a Marine Fisheries Commission by any person in compliance with the requirements of this Act, including confidential information, may only be used for purposes of fisheries management and monitoring and enforcement under this Act.

“(4) The Secretary may enter into a memorandum of understanding with the heads of other Federal agencies for the sharing of confidential information to ensure safety of life at sea or for fisheries enforcement purposes, including information obtained through a vessel monitoring system or other electronic enforcement and monitoring systems, if—

“(A) the Secretary determines there is a compelling need to do so; and

“(B) the heads of the other Federal agencies agree—

“(i) to maintain the confidentiality of the information in accordance with the requirements that apply to the Secretary under this section; and

“(ii) to use the information only for the purposes for which it was shared with the agencies.

“(5) The Secretary may not provide any vessel-specific or aggregate vessel information from a fishery that is collected for monitoring and enforcement purposes to any person for the purposes of coastal and marine spatial planning under Executive Order 13547, unless the Secretary determines that providing such information is important for maintaining or enhancing national security or for ensuring fishermen continued access to fishing grounds.”.

(2) CONFIDENTIAL INFORMATION DEFINED.—Section 3 (16 U.S.C. 1802) is further amended by inserting after paragraph (4) the following:

“(4a) The term ‘confidential information’ means—

“(A) trade secrets;

“(B) proprietary information;

- “(C) observer information; and  
“(D) commercial or financial information the disclosure of which is likely to result in harm to the competitive position of the person that submitted the information to the Secretary.”.
- (d) INCREASED DATA COLLECTION AND ACTIONS TO ADDRESS DATA-POOR FISHERIES.—Section 404 (16 U.S.C. 1881c) is amended by adding at the end the following:
- “(e) USE OF THE ASSET FORFEITURE FUND FOR FISHERY INDEPENDENT DATA COLLECTION.—
- “(1) IN GENERAL.—
- “(A) The Secretary, subject to appropriations, may obligate for data collection purposes in accordance with prioritizations under paragraph (3) a portion of amounts received by the United States as fisheries enforcement penalties.
- “(B) Amounts may be obligated under this paragraph only in the fishery management region with respect to which they are collected.
- “(2) INCLUDED PURPOSES.—The purposes referred to in paragraph (1) include—
- “(A) the use of State personnel and resources, including fishery survey vessels owned and maintained by States to survey or assess data-poor fisheries for which fishery management plans are in effect under this Act; and  
“(B) cooperative research activities authorized under section 318 to improve or enhance the fishery independent data used in fishery stock assessments.
- “(3) DATA-POOR FISHERIES PRIORITY LISTS.—Each Council shall—
- “(A) identify those fisheries in its region considered to be data-poor fisheries;  
“(B) prioritize those fisheries based on the need of each fishery for up-to-date information; and  
“(C) provide those priorities to the Secretary.
- “(4) DEFINITIONS.—In this subsection:
- “(A) The term ‘data-poor fishery’ means a fishery—
- “(i) that has not been surveyed in the preceding 5-year period;  
“(ii) for which a fishery stock assessment has not been performed within the preceding 5-year period; or  
“(iii) for which limited information on the status of the fishery is available for management purposes.
- “(B) The term ‘fisheries enforcement penalties’ means any fine or penalty imposed, or proceeds of any property seized, for a violation of this Act or of any other marine resource law enforced by the Secretary.
- “(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for each fiscal year to carry out this subsection up to 80 percent of the fisheries enforcement penalties collected during the preceding fiscal year.”.

**SEC. 11. COOPERATIVE RESEARCH AND MANAGEMENT PROGRAM.**

Section 318 (16 U.S.C. 1867) is amended—

- (1) in subsection (a), by inserting “(1)” before the first sentence, and by adding at the end the following:
- “(2) Within one year after the date of enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act, and after consultation with the Councils, the Secretary shall publish a plan for implementing and conducting the program established in paragraph (1). Such plan shall identify and describe critical regional fishery management and research needs, possible projects that may address those needs, and estimated costs for such projects. The plan shall be revised and updated every 5 years, and updated plans shall include a brief description of projects that were funded in the prior 5-year period and the research and management needs that were addressed by those projects.”; and
- (2) in subsection (c)—
- (A) in the heading, by striking “FUNDING” and inserting “PRIORITIES”; and  
(B) in paragraph (1), by striking all after “including” and inserting an em dash, followed on the next line by the following:
- “(A) the use of fishing vessels or acoustic or other marine technology;  
“(B) expanding the use of electronic catch reporting programs and technology; and  
“(C) improving monitoring and observer coverage through the expanded use of electronic monitoring devices.”.

**SEC. 12. COUNCIL JURISDICTION FOR OVERLAPPING FISHERIES.**

Section 302(a)(1) (16 U.S.C. 1852(a)) is amended—

- (1) in subparagraph (A), in the second sentence—
  - (A) by striking “18” and inserting “19”; and
  - (B) by inserting before the period at the end “and a liaison who is a member of the Mid-Atlantic Fishery Management Council to represent the interests of fisheries under the jurisdiction of such Council”; and
- (2) in subparagraph (B), in the second sentence—
  - (A) by striking “21” and inserting “22”; and
  - (B) by inserting before the period at the end “and a liaison who is a member of the New England Fishery Management Council to represent the interests of fisheries under the jurisdiction of such Council”.

**SEC. 13. GULF OF MEXICO FISHERIES COOPERATIVE RESEARCH AND RED SNAPPER MANAGEMENT.**

(a) REPEAL.—Section 407 (16 U.S.C. 1883), and the item relating to such section in the table of contents in the first section, are repealed.

(b) REPORTING AND DATA COLLECTION PROGRAM.—The Secretary of Commerce shall—

(1) in conjunction with the States, the Gulf of Mexico Fishery Management Council, and the recreational fishing sectors, develop and implement a real-time reporting and data collection program for the Gulf of Mexico red snapper fishery using available technology; and

(2) make implementation of this subsection a priority for funds received by the Secretary and allocated to this region under section 2 of the Act of August 11, 1939 (commonly known as the “Saltonstall-Kennedy Act”) (15 U.S.C. 713c-3).

(c) FISHERIES COOPERATIVE RESEARCH PROGRAM.—The Secretary of Commerce—

(1) shall, in conjunction with the States, the Gulf States Marine Fisheries Commission and the Atlantic States Marine Fisheries Commission, the Gulf of Mexico and South Atlantic Fishery Management Councils, and the commercial, charter, and recreational fishing sectors, develop and implement a cooperative research program authorized under section 318 for the fisheries of the Gulf of Mexico and South Atlantic regions, giving priority to those fisheries that are considered data-poor; and

(2) may, subject to the availability of appropriations, use funds received by the Secretary under section 2 of the Act of August 11, 1939 (commonly known as the “Saltonstall-Kennedy Act”) (15 U.S.C. 713c-3) to implement this subsection.

(d) STOCK SURVEYS AND STOCK ASSESSMENTS.—The Secretary of Commerce, acting through the National Marine Fisheries Service Regional Administrator of the Southeast Regional Office, shall for purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)—

(1) develop a schedule of stock surveys and stock assessments for the Gulf of Mexico Region and the South Atlantic Region for the 5-year period beginning on the date of the enactment of this Act and for every 5-year period thereafter;

(2) direct the Southeast Science Center Director to implement such schedule; and

(3) in such development and implementation—

(A) give priority to those stocks that are commercially or recreationally important; and

(B) ensure that each such important stock is surveyed at least every 5 years.

(e) USE OF FISHERIES INFORMATION IN STOCK ASSESSMENTS.—The Southeast Science Center Director shall ensure that fisheries information made available through fisheries programs funded under Public Law 112-141 is incorporated as soon as possible into any fisheries stock assessments conducted after the date of the enactment of this Act.

(f) STATE FISHERIES MANAGEMENT IN THE GULF OF MEXICO WITH RESPECT TO RED SNAPPER.—Section 306(b) (16 U.S.C. 1856(b)) is amended by adding at the end the following:

“(4) Notwithstanding section 3(11), for the purposes of managing the recreational sector of the Gulf of Mexico red snapper fishery, the seaward boundary of a coastal State in the Gulf of Mexico is a line 9 miles seaward from the baseline from which the territorial sea of the United States is measured.”

(g) FUNDING OF STOCK ASSESSMENTS.—The Secretary of Commerce and the Secretary of the Interior, acting through the Bureau of Ocean Energy Management, shall enter into a cooperative agreement for the funding of stock assessments that are necessitated by any action by the Bureau with respect to offshore oil rigs in the Gulf of Mexico that adversely impacts red snapper.

**SEC. 14. NORTH PACIFIC FISHERY MANAGEMENT CLARIFICATION.**

Section 306(a)(3)(C) (16 U.S.C. 1856(a)(3)(C)) is amended—

- (1) by striking “was no” and inserting “is no”; and
- (2) by striking “on August 1, 1996”.

**SEC. 15. ENSURING CONSISTENT MANAGEMENT FOR FISHERIES THROUGHOUT THEIR RANGE.**

(a) **IN GENERAL.**—The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended by inserting after section 4 the following:

**“SEC. 5. ENSURING CONSISTENT FISHERIES MANAGEMENT UNDER CERTAIN OTHER FEDERAL LAWS.**

“(a) **NATIONAL MARINE SANCTUARIES ACT AND ANTIQUITIES ACT OF 1906.**—In any case of a conflict between this Act and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or the Antiquities Act of 1906 (16 U.S.C. 431 et seq.), this Act shall control.

“(b) **FISHERIES RESTRICTIONS UNDER ENDANGERED SPECIES ACT OF 1973.**—To ensure transparency and consistent management of fisheries throughout their range, any restriction on the management of fish in the exclusive economic zone that is necessary to implement a recovery plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be implemented—

- “(1) using authority under this Act; and
- “(2) in accordance with processes and time schedules required under this Act.”.

(b) **CLERICAL AMENDMENT.**—The table of contents in the first section is amended by inserting after the item relating to section 3 the following:

“Sec. 4. Authorization of appropriations.

“Sec. 5. Ensuring consistent fisheries management under certain other Federal laws.”.

**SEC. 16. LIMITATION ON HARVEST IN NORTH PACIFIC DIRECTED POLLOCK FISHERY.**

Section 210(e)(1) of the American Fisheries Act (title II of division C of Public Law 105–277; 16 U.S.C. 1851 note) is amended to read as follows:

“(1) **HARVESTING.**—

“(A) **LIMITATION.**—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a percentage of the pollock available to be harvested in the directed pollock fishery that exceeds the percentage established for purposes of this paragraph by the North Pacific Council.

“(B) **MAXIMUM PERCENTAGE.**—The percentage established by the North Pacific Council shall not exceed 24 percent of the pollock available to be harvested in the directed pollock fishery.”.

**SEC. 17. RECREATIONAL FISHING DATA.**

(a) **RECREATIONAL DATA COLLECTION.**—Section 401(g) (16 U.S.C. 1881(g)) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following:

“(4) **FEDERAL-STATE PARTNERSHIPS.**—

“(A) **ESTABLISHMENT.**—The Secretary shall establish partnerships with States to develop best practices for implementation of State programs established pursuant to paragraph (2).

“(B) **GUIDANCE.**—The Secretary shall develop guidance, in cooperation with the States, that details best practices for administering State programs pursuant to paragraph (2), and provide such guidance to the States.

“(C) **BIENNIAL REPORT.**—The Secretary shall submit to the Congress and publish biennial reports that include—

“(i) the estimated accuracy of the registry program established under paragraph (1) and of State programs that are exempted under paragraph (2);

“(ii) priorities for improving recreational fishing data collection; and

“(iii) an explanation of any use of information collected by such State programs and by the Secretary, including a description of any consideration given to the information by the Secretary.

“(D) **STATES GRANT PROGRAM.**—The Secretary shall make grants to States to improve implementation of State programs consistent with this subsection. The Secretary shall prioritize such grants based on the ability of the grant to improve the quality and accuracy of such programs.”.

(b) **STUDY ON RECREATIONAL FISHERIES DATA.**—Section 401(g) (16 U.S.C. 1881(g)) is further amended by adding at the end the following:

“(6) **STUDY ON PROGRAM IMPLEMENTATION.**—

“(A) **IN GENERAL.**—Not later than 60 days after the enactment of this paragraph, the Secretary shall enter into an agreement with the National

Research Council of the National Academy of Sciences to study the implementation of the programs described in this section. The study shall—

“(i) provide an updated assessment of recreational survey methods established or improved since the publication of the Council’s report ‘Review of Recreational Fisheries Survey Methods (2006)’;

“(ii) evaluate the extent to which the recommendations made in that report were implemented pursuant to paragraph (3)(B); and

“(iii) examine any limitations of the Marine Recreational Fishery Statistics Survey and the Marine Recreational Information Program established under paragraph (1).

“(B) REPORT.—Not later than 1 year after entering into an agreement under subparagraph (A), the Secretary shall submit a report to Congress on the results of the study under subparagraph (A).”.

**SEC. 18. STOCK ASSESSMENTS USED FOR FISHERIES MANAGED UNDER GULF OF MEXICO COUNCIL’S REEF FISH MANAGEMENT PLAN.**

(a) IN GENERAL.—Title IV (16 U.S.C. 1881 et seq.) is amended by adding at the end the following:

**“SEC. 409. STOCK ASSESSMENTS USED FOR FISHERIES MANAGED UNDER GULF OF MEXICO COUNCIL’S REEF FISH MANAGEMENT PLAN.**

“(a) IN GENERAL.—The Gulf States Marine Fisheries Commission shall conduct all fishery stock assessments used for management purposes by the Gulf of Mexico Fishery Management Council for the fisheries managed under the Council’s Reef Fish Management Plan.

“(b) USE OF OTHER INFORMATION AND ASSETS.—

“(1) IN GENERAL.—Such fishery assessments shall—

“(A) incorporate fisheries survey information collected by university researchers; and

“(B) to the extent practicable, use State, university, and private assets to conduct fisheries surveys.

“(2) SURVEYS AT ARTIFICIAL REEFS.—Any such fishery stock assessment conducted after the date of the enactment of the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act shall incorporate fishery surveys conducted, and other relevant fisheries information collected, on and around natural and artificial reefs.

“(c) CONSTITUENT AND STAKEHOLDER PARTICIPATION.—Each such fishery assessment shall—

“(1) emphasize constituent and stakeholder participation in the development of the assessment;

“(2) contain all of the raw data used in the assessment and a description of the methods used to collect that data; and

“(3) employ an assessment process that is transparent and includes—

“(A) includes a rigorous and independent scientific review of the completed fishery stock assessment; and

“(B) a panel of independent experts to review the data and assessment and make recommendations on the most appropriate values of critical population and management quantities.”.

(b) CLERICAL AMENDMENT.—The table of contents in the first section is amended by adding at the end of the items relating to title IV the following:

“Sec. 408. Deep sea coral research and technology program.

“Sec. 409. Stock assessments used for fisheries managed under Gulf of Mexico Council’s Reef Fish Management Plan.”.

**SEC. 19. ESTIMATION OF COST OF RECOVERY FROM FISHERY RESOURCE DISASTER.**

Section 312(a)(1) (16 U.S.C. 1861a(1)) is amended—

(1) by inserting “(A)” after “(1)”;

(2) by redesignating existing subparagraphs (A) through (C) as clauses (i) through (iii), respectively, of subparagraph (A) (as designated by the amendment made by paragraph (1)); and

(3) by adding at the end the following:

“(B) The Secretary shall publish the estimated cost of recovery from a fishery resource disaster no later than 30 days after the Secretary makes the determination under subparagraph (A) with respect to such disaster.”.

**SEC. 20. DEADLINE FOR ACTION ON REQUEST BY GOVERNOR FOR DETERMINATION REGARDING FISHERY RESOURCE DISASTER.**

Section 312(a) (16 U.S.C. 1861a(a)) is amended by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), and by inserting after paragraph (1) the following:

“(2) The Secretary shall make a decision regarding a request from a Governor under paragraph (1) within 90 days after receiving an estimate of the economic impact of the fishery resource disaster from the entity requesting the relief.”.

**SEC. 21. PROHIBITION ON CONSIDERING RED SNAPPER KILLED DURING REMOVAL OF OIL RIGS.**

Any red snapper that are killed during the removal of any offshore oil rig in the Gulf of Mexico shall not be considered in determining under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) whether the total allowable catch for red snapper has been reached.

**SEC. 22. PROHIBITION ON CONSIDERING FISH SEIZED FROM FOREIGN FISHING.**

Any fish that are seized from a foreign vessel engaged in illegal fishing activities in the Exclusive Economic Zone shall not be considered in determining under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) the total allowable catch for that fishery.

**SEC. 23. SUBSISTENCE FISHING.**

(a) DEFINITION.—Section 3 (16 U.S.C. 1802) is amended by inserting after paragraph (43) the following:

“(43a)(A) The term ‘subsistence fishing’ means fishing in which the fish harvested are intended for customary and traditional uses, including for direct personal or family consumption as food or clothing; for the making or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and for customary trade.

“(B) In this paragraph—

“(i) the term ‘family’ means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

“(ii) the term ‘barter’ means the exchange of a fish or fish part—

“(I) for another fish or fish part; or

“(II) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.”.

(b) COUNCIL SEAT.—Section 302(b)(2) (16 U.S.C. 1852(b)(2)) is amended—

(1) in subparagraph (A), by striking “or recreational” and inserting “, recreational, or subsistence fishing”; and

(2) in subparagraph (C), in the second sentence, by inserting “, and in the case of the Governor of Alaska with the subsistence fishing interests of the State,” after “interests of the State”.

(c) PURPOSE.—Section 2(b)(3) (16 U.S.C. 1801(b)(3)) is amended by striking “and recreational” and inserting “, recreational, and subsistence”.

**SEC. 24. INTER-SECTOR TRADING OF COMMERCIAL CATCH SHARE ALLOCATIONS IN THE GULF OF MEXICO.**

Section 301 (16 U.S.C. 1851) is amended by adding at the end the following:

“(c) INTER-SECTOR TRADING OF COMMERCIAL CATCH SHARE ALLOCATIONS IN THE GULF OF MEXICO.—Notwithstanding any other provision of this Act, any commercial fishing catch share allocation in a fishery in the Gulf of Mexico may only be traded by sale or lease within the same commercial fishing sector.”.

**SEC. 25. ARCTIC COMMUNITY DEVELOPMENT QUOTA.**

Section 313 (16 U.S.C. 1862) is amended by adding at the end the following:

“(k) ARCTIC COMMUNITY DEVELOPMENT QUOTA.—If the North Pacific Fishery Management Council issues a fishery management plan for the exclusive economic zone in the Arctic Ocean, or an amendment to the Fishery Management Plan for Fish Resources of the Arctic Management Area issued by such Council, that makes available to commercial fishing, and establishes a sustainable harvest level, for any part of such zone, the Council shall set aside not less than 10 percent of the total allowable catch therein as a community development quota for coastal villages located north and east of the Bering Strait.”.

**SEC. 26. PREFERENCE FOR STUDENTS STUDYING WATER RESOURCE ISSUES.**

Section 402(e) (16 U.S.C. 1881a(e)) is amended by adding at the end the following:

“(4) The Secretary shall require that in the hiring of individuals to collect information regarding marine recreational fishing under this subsection, preference shall be given to individuals who are students studying water resource issues at an institution of higher education.”.

**SEC. 27. PROCESS FOR ALLOCATION REVIEW FOR SOUTH ATLANTIC AND GULF OF MEXICO MIXED-USE FISHERIES.**

(a) **STUDY OF ALLOCATIONS IN MIXED-USE FISHERIES.**—Not later than 60 days after the date of the enactment of this Act, the Secretary of Commerce shall enter into an arrangement with the National Academy of Sciences to conduct a study of the South Atlantic and Gulf of Mexico mixed-use fisheries—

(1) to provide guidance to Regional Fishery Management Councils established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852) on criteria that could be used for allocating fishing privileges, including consideration of the conservation and socioeconomic benefits of the commercial, recreational, and charter components of a fishery, in the preparation of a fishery management plan under that Act;

(2) to identify sources of information that could reasonably support the use of such criteria in allocation decisions; and

(3) to develop procedures for allocation reviews and potential adjustments in allocations based on the guidelines and requirements established by this section.

(b) **PROCESS FOR ALLOCATION REVIEW AND ESTABLISHMENT.**—The South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council shall—

(1) within 2 years after the date of the enactment of this Act, review the allocations of all mixed-use fisheries in the Councils' respective jurisdictions; and

(2) every 3 years thereafter, perform subsequent reviews of such allocations; and

(3) consider the conservation and socioeconomic benefits of each sector in any allocation decisions for such fisheries.

**SEC. 28. AUTHORIZATION OF APPROPRIATIONS.**

Section 4 (16 U.S.C. 1803) is amended—

(1) by striking “this Act” and all that follows through “(7)” and inserting “this Act”; and

(2) by striking “fiscal year 2013” and inserting “each of fiscal years 2015 through 2019”.

**PURPOSE OF THE BILL**

The purpose of H.R. 1335 is to amend the Magnuson-Stevens Fishery Conservation and Management Act to provide flexibility for fishery management and stability for fishermen.

**BACKGROUND AND NEED FOR LEGISLATION**

According to a Department of Commerce report, in 2012 the U.S. seafood industry had a sales impact of \$141 billion, \$59 billion in value-added impacts and supported approximately 1.3 million jobs earning \$39 billion in income. U.S. commercial fishermen directly contributed to these impacts with 9.6 billion pounds of fish and shellfish harvested, earning \$5.1 billion in revenue. Commercial fishermen support U.S. seafood processors, dealers, wholesalers, distributors, importers and retailers. Recreational saltwater anglers also contributed greatly to the economy in 2012, totaling 11 million anglers. These recreational anglers spent a total of \$24.6 billion on trips and gear in 2012, generating \$58 billion in sales impacts and supported 381,000 U.S. jobs.

The Magnuson-Stevens Fishery and Conservation Management Act (MSA) was enacted in 1976 and since then, has been the primary law governing fisheries resources and fishing activities in federal waters. The Secretary of Commerce, working through the National Oceanic and Atmospheric Administration (NOAA), enforces the MSA.

The original MSA created eight Regional Fisheries Management Councils charged with implementing the goals of MSA, in coordination with NOAA. This process of managing fisheries is accom-

plished through Council-based Fisheries Management Plans (FMPs) for each fishery. FMPs require scientific stock assessments of the fishery. Following the Council's development of an FMP, the Council forwards the plan to the Commerce Secretary for approval. If the plan is approved, the National Marine Fisheries Service (NMFS) within NOAA must then issue regulations to implement a plan.<sup>1</sup>

Congress reauthorized MSA in 1996 and 2006. In implementing the 2006 amendments, NOAA added layers of precaution when dealing with both scientific and management uncertainty, according to some.<sup>2</sup> H.R. 1335 aims to improve the management process by affording regional fisheries managers the flexibility to manage stocks effectively and to better tailor management plans to the needs of their regions.

Section 4 of H.R. 1335 aims to further improve fisheries science by basing fish stock rebuilding timeframes on that stock's biology rather than on an arbitrary, one-size-fits-all deadline. It does so specifically by: 1) removing the language requiring a 10-year time frame for rebuilding overfished/depleted fisheries and replacing it with a requirement that the rebuilding timeframe be the time it would take for the fishery to rebuild without any fishing occurring plus one mean generation time; 2) allowing Councils to phase in rebuilding plans for highly dynamic fisheries over a three-year period to lessen the economic harm to fishing communities; 3) replacing the term "possible" with "practicable" in the requirement that rebuilding period "be as short as possible"; and 4) allowing Councils to take into account environmental conditions and predator/prey relationships when developing rebuilding plans.

Section 5 of the bill builds on this support for Councils by allowing them to consider changes in the ecosystem and the economic needs of the fishing communities when setting Annual Catch Limits (ACLs). This will allow flexibility but will not allow Councils to set ACLs at a level that allows overfishing. This section also adds a new exception to the requirement that Councils set an ACL for "ecosystem component species"—those species of fish that are not targeted and are caught incidentally—as long as that stock of fish is not subject to overfishing and is not likely to become subject to overfishing. It also provides an exemption for those short-lived stocks of fish for which a single year class will complete its lifecycle in less than 18 months as long as fishing mortality will have little impact on the stock.

Transparency and public oversight are key to ensuring that NMFS manages our nation's fisheries to the benefit of the stocks and our fishermen. Section 7 of the bill works to improve transparency in NMFS' science and management by requiring Scientific and Statistical Committees (SSCs) develop the scientific advice provided to the Councils in a transparent manner and to allow for public involvement in the process. This section also requires that each Council, to the extent practicable, provide a webcast, audio recording, or live broadcast of each Council meeting. This section also requires audio, video, searchable audio or a written transcript for

<sup>1</sup><http://www.fisherycouncils.org/>

<sup>2</sup>*Testimony of Mr. Richard Robins, Jr. before the House Committee on Natural Resources, September 11, 2013*

each Council and SSC meeting on the Council's website not later than 30 days after the conclusion of the meeting.

Section 8 of H.R. 1335 brings stakeholders into the fisheries management process by creating a pilot project prohibiting the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Councils from implementing any new catch share program unless it has been approved by an industry referendum vote. Any federal permit holder who has fished in at least three of the five years preceding the referendum—unless sickness, injury or other unavoidable hardship prevented the permit holder from fishing—would be eligible to vote in the referendum. Prior to any such referendum vote, the Secretary would be required to provide all eligible permit holders with a copy of the proposed program, an estimate of the costs of the program (including the costs to participants), and an estimate of the amount of fish or percentage of the quota each permit holder would be allocated. Outside of the four Councils referenced above, this section prevents the Secretary from implementing a catch share program for any federally managed fishery unless first petitioned by a majority of those eligible to participate in the fishery.

An issue that is plaguing numerous fisheries around the nation is the lack of up-to-date data. Poor data results in regulatory decisions that can devastate fishing communities and further diminish NMFS' credibility. Section 10 of the bill works to improve data collection by requiring each Council to identify those fisheries that are considered data-poor in its region and prioritize those fisheries based on the need for up-to-date information. Each Council is required to submit those priorities to the Secretary. The section also allows the Secretary to obligate up to 80 percent of the fishery fines and penalties collected under any marine resource law enforced by the Secretary to be used by states to survey or assess data-poor fisheries for which a fishery management plan is in place, or for cooperative research activities to improve or enhance fishery independent data used in stock assessments. The funds obligated may only be used in the region where the fines and penalties were collected.

With new, innovative technologies to monitor vessels and catch, new concerns have been raised surrounding data confidentiality, and this section takes several steps to address these new technologies while also protecting the privacy of fishermen. Section 10 specifically: 1) requires the Secretary to issue regulations governing the use of newly developed electronic monitoring technology, distinguishing between monitoring for data collection and for enforcement, and instructs the Secretary to provide an opportunity for public comment; 2) updates existing data confidentiality provisions by clarifying that that information submitted to the Secretary, a state fisheries management agency, or a Marine Fisheries Commission may only be used for the purposes of fisheries management, monitoring and enforcement, and that that observer information, information collected by a Vessel Monitoring System or other vessel tracking technology, or other on-board data collection or enforcement programs shall be considered confidential.

With continued concerns about the Administration's implementation of its National Ocean Policy and marine spatial planning, the section also prohibits the Secretary from providing any vessel-spe-

cific or aggregate vessel information from a fishery for the use by any person for coastal and marine spatial planning under Executive Order 13547, unless the Secretary determines that providing such information is important for maintaining or enhancing national security or for ensuring fishermen continued access to fishing grounds.

Cooperative research and management together have the benefits of building trust between fishermen and the government and lowering data collection costs. Section 11 of the bill expedites the implementation of cooperative research and management program by requiring the Secretary to publish a plan for implementing and conducting the program. The plan should identify and describe critical regional fishery management and research needs, possible projects to address the identified needs, and the estimated costs for such projects.

The Gulf of Mexico Red Snapper is a stock that has become the poster child for poor data and management by NMFS. H.R. 1335 makes several revisions, in sections 13, 18, and 21 of the bill, to the research and management of this species in the Gulf. Section 13 specifically requires the Secretary—in conjunction with the Gulf States, the Gulf of Mexico Council, and the charter and recreational fishing sectors—to develop and implement a real-time reporting and data collection program for the Gulf of Mexico Red Snapper fishery using available technology and a cooperative research program for fisheries in the Gulf of Mexico and the South Atlantic regions giving priority to those fisheries that are considered data poor.

The section further improves the data collection of stocks in the Gulf of Mexico by requiring the Secretary to develop a schedule of stock surveys and stock assessments for the five-year period beginning on the date of enactment and for every five-year period thereafter, giving priority to those stocks that are commercially or recreationally important and ensuring that each important stock is surveyed at least once every five years. The section also corrects a discrepancy between management of Red Snapper by the Gulf States by extending state management out to nine nautical miles for the recreational sector of the Gulf of Mexico Red Snapper fishery.

Section 18 requires the Gulf States, acting through the Gulf States Marine Fisheries Commission, to act as the entity responsible for providing the stock assessment information for the Gulf of Mexico Fishery Management Council for fisheries managed under the Reef Fish Plan. This section requires that the stock assessments incorporate fisheries survey information collected by university researchers and, to the extent practicable, use state, university, and private assets to conduct fisheries surveys.

Section 21 works to ensure that fishermen are not adversely impacted by Red Snapper mortality outside of their control. This section prohibits the Secretary from counting Red Snapper mortality that is a result of the removal of offshore oil rigs against the total allowable catch of that fish and from counting those fish toward the quota for U.S. fishermen for the purposes of closing the fishery when the quota has been reached.

Many of the provisions in H.R. 1335 result in greater flexibility for Councils to manage to the needs of their region. Section 16 al-

lows the North Pacific Council to change the harvest limitation under the American Fisheries Act for entities engaged in the directed Pollock fishery as long as that percentage does not exceed 24 percent.

According to a recent NOAA report, roughly 12 million recreational anglers took saltwater fishing trips in the U.S. annually from 2003–2012. An industry that supported 381,000 American jobs in 2012, the recreational saltwater fishing industry is a significant economic player. To address the growth of this industry, H.R. 1335 takes several steps to improve the collection of recreational fishing data to improve management and ensure maximum access to our marine resources by the recreational industry.

Section 17 improves recreational fishing data collection by NMFS by: 1) requiring the Secretary to establish partnerships with states to develop best practices for implementing state recreational fisheries programs and to develop guidance that detail best practices for administering state programs; 2) requiring a grant program to states to improve implementation of state recreational data collection programs and requiring the Secretary to prioritize the grants based on the ability of the grant to improve the quality and accuracy of the data collection programs; and 3) requiring the Secretary to enter into an agreement with the National Research Council (NRC) to study the implementation of the existing recreational data collection programs. The study must provide an updated assessment of recreational survey methods, an evaluation of the extent to which the 2006 NRC's recommendations have been implemented, and an examination of any limitations to the previous and current NOAA recreational data collection programs.

Illegal, unreported, and unregulated fishing is an international problem with significant domestic impacts. Section 22 prohibits the Secretary from counting any fish seized from a foreign vessel engaging in illegal fishing in the U.S. Exclusive Economic Zone against the total allowable catch for U.S. fishermen.

Section 23 of the bill defines “subsistence fishing” and requires the Governor of Alaska, when submitting nominations for the North Pacific Council, to consult with subsistence fishing interests of the State. In addition, this section adds the knowledge of subsistence fishing as a qualification that could be required of Council appointees.

#### COMMITTEE ACTION

H.R. 1335 was introduced on March 4, 2015, by Congressman Don Young (R-AK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On April 29, 2015, the Natural Resources Committee met to consider the bill. The Subcommittee on Water, Power and Oceans was discharged by unanimous consent. On April 30, 2015, the Natural Resources Committee resumed consideration of the bill. Congressman Thomas MacArthur (R-NJ) offered an amendment designated 014; it was adopted by voice vote. Congressman Robert J. Wittman (R-VA) offered and withdrew an amendment designated 013. Congressman Jeff Duncan (R-SC) offered an amendment designated 018; it was adopted by voice vote. Congressman Don Young (R-AK) offered an en bloc amendment designated 053; it was adopted by voice vote. Congresswoman Lois

114TH CONGRESS  
1ST SESSION

# S. 1403

To amend the Magnuson-Stevens Fishery Conservation and Management Act to promote sustainable conservation and management for the Gulf of Mexico and South Atlantic fisheries and the communities that rely on them, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 20, 2015

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to promote sustainable conservation and management for the Gulf of Mexico and South Atlantic fisheries and the communities that rely on them, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Florida Fisheries Improvement Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. References to the Magnuson-Stevens Fishery Conservation and Management Act.

#### TITLE I—CONSERVATION AND MANAGEMENT

- Sec. 101. Regional fishery management councils.  
 Sec. 102. Contents of fishery management plans.  
 Sec. 103. Rebuilding overfished and depleted fisheries.  
 Sec. 104. Funding for stock assessments, surveys, and data collection.  
 Sec. 105. Capital construction.  
 Sec. 106. Fisheries disaster relief.  
 Sec. 107. Regional fishery conservation and management authorities.  
 Sec. 108. Study of allocations in mixed-use fisheries.

#### TITLE II—FISHERY INFORMATION, RESEARCH, AND DEVELOPMENT

- Sec. 201. Fisheries research.  
 Sec. 202. Improving science.  
 Sec. 203. Focusing assets for improved fisheries outcomes.  
 Sec. 204. Gulf of Mexico red snapper catch limits; repeal.

1 **SEC. 2. REFERENCES TO THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT.**  
 2

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

10 **TITLE I—CONSERVATION AND**  
 11 **MANAGEMENT**

12 **SEC. 101. REGIONAL FISHERY MANAGEMENT COUNCILS.**

13 (a) VOTING MEMBERS.—Section 302(b)(2)(D) (16  
 14 U.S.C. 1852(b)(2)(D)) is amended—

15 (1) in clause (i)—

1 (A) by striking “Fisheries” and inserting  
2 “Fishery”; and

3 (B) by inserting “or the South Atlantic  
4 Fishery Management Council” after “Manage-  
5 ment Council”; and

6 (2) by striking clause (iv).

7 (b) COMMITTEES AND ADVISORY PANELS.—Section  
8 302(g)(1)(B) (16 U.S.C. 1852(g)(1)(B)) is amended to  
9 read as follows:

10 “(B) Each scientific and statistical committee  
11 shall—

12 “(i) provide its Council ongoing scientific  
13 advice for fishery management decisions, in-  
14 cluding recommendations for acceptable biologi-  
15 cal catch, preventing overfishing, maximum sus-  
16 tainable yield, achieving rebuilding targets, and  
17 reports on stock status and health, bycatch,  
18 habitat status, social and economic impacts of  
19 management measures, and sustainability of  
20 fishing practices; and

21 “(ii) carry out the requirements of this  
22 subparagraph in a transparent manner, allow-  
23 ing for public involvement in the process.”.

24 (c) FUNCTIONS.—Section 302(h) (16 U.S.C.  
25 1852(h)) is amended—

1 (1) in paragraph (7)(C), by striking “and” at  
2 the end;

3 (2) by redesignating paragraph (8) as para-  
4 graph (9); and

5 (3) by inserting after paragraph (7) the fol-  
6 lowing:

7 “(8) have the authority to use alternative fish-  
8 ery management measures in a recreational fishery  
9 (or the recreational component of a mixed-use fish-  
10 ery), including extraction rates, fishing mortality,  
11 and harvest control rules, to the extent they are in  
12 accordance with the requirements of this Act; and”.

13 (d) WEBCASTS OF COUNCIL MEETINGS.—Section  
14 302(i)(2) (16 U.S.C. 1852(i)(2)) is amended by adding  
15 at the end the following:

16 “(G) Unless closed in accordance with para-  
17 graph (3), each Council shall, where practicable,  
18 make available on the Internet website of the Coun-  
19 cil a video or audio webcast of each meeting of the  
20 Council and each meeting of the scientific and sta-  
21 tistical committee of the Council not later than 30  
22 days after the date of the conclusion of such meet-  
23 ing.”.

1 **SEC. 102. CONTENTS OF FISHERY MANAGEMENT PLANS.**

2 Section 303 (16 U.S.C. 1853) is amended by adding  
3 at the end the following:

4 “(d) LIMITATIONS.—

5 “(1) IN GENERAL.—The requirements under  
6 subsection (a)(15) shall not—

7 “(A) apply to a species in a fishery that  
8 has a mean life cycle of 18 months or less, or  
9 to a species in a fishery with respect to which  
10 all spawning and recruitment occurs beyond  
11 State waters and the exclusive economic zone,  
12 unless the Secretary has determined the fishery  
13 is subject to overfishing of that species; and

14 “(B) limit or otherwise affect the require-  
15 ments of section 301(a)(1) or 304(e) of this  
16 Act.

17 “(2) CONSTRUCTION.—Nothing in this sub-  
18 section shall be construed to affect any effective date  
19 regarding the requirements under subsection (a)(15)  
20 otherwise provided for under an international agree-  
21 ment in which the United States participates.”.

22 **SEC. 103. REBUILDING OVERFISHED AND DEPLETED FISH-**  
23 **ERIES.**

24 Section 304(e)(4)(A) (16 U.S.C. 1854(e)(4)(A)) is  
25 amended to read as follows:

1 “(A) specify a time period for rebuilding  
2 the fishery that—

3 “(i) shall be as short as possible, tak-  
4 ing into account the status and biology of  
5 any overfished stocks of fish, the needs of  
6 fishing communities, recommendations by  
7 international organizations in which the  
8 United States participates, and the inter-  
9 action of the overfished stock of fish within  
10 the marine ecosystem; and

11 “(ii) except where management meas-  
12 ures under an international agreement  
13 with the United States participates dictate  
14 otherwise, shall not exceed—

15 “(I) 10 years, except in cases  
16 where the biology of the stock of fish  
17 or other environmental conditions dic-  
18 tate otherwise; or

19 “(II) the sum of the time in  
20 which the affected stock of fish is ex-  
21 pected to rebuild to its maximum sus-  
22 tainable yield biomass level in the ab-  
23 sence of any fishing mortality, and the  
24 mean generation of time of the af-  
25 fected stock of fish, if those time val-

1                   ues are the best scientific information  
2                   available;”.

3 **SEC. 104. FUNDING FOR STOCK ASSESSMENTS, SURVEYS,**  
4                   **AND DATA COLLECTION.**

5           Section 311(e)(1) (16 U.S.C. 1861(e)(1)) is amend-  
6 ed—

7           (1) in subparagraph (E), by striking “; and”  
8           and inserting a semicolon;

9           (2) in subparagraph (F), by striking the period  
10           at the end and inserting “; and”; and

11           (3) by inserting after subparagraph (F) the fol-  
12           lowing:

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

16 **SEC. 105. CAPITAL CONSTRUCTION.**

17           (a) **DEFINITIONS; ELIGIBLE AND QUALIFIED FISH-**  
18 **ERY FACILITIES.**—Section 53501 of title 46, United  
19 States Code, is amended—

20           (1) by striking “(7) UNITED STATES FOREIGN  
21           TRADE.—” and inserting “(11) UNITED STATES  
22           FOREIGN TRADE.—”;

23           (2) by striking “(8) VESSEL.—” and inserting  
24           “(12) VESSEL.—”;

1 (3) by redesignating paragraphs (5), (6), and  
2 (7) as paragraphs (8), (9), and (10), respectively;

3 (4) by redesignating paragraphs (2), (3), and  
4 (4) as paragraphs (4), (5), and (6), respectively;

5 (5) by redesignating paragraph (1) as para-  
6 graph (2);

7 (6) by inserting before paragraph (2), as redes-  
8 ignated, the following:

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

13 (7) by inserting after paragraph (2), as redesig-  
14 nated, the following:

15 “(3) ELIGIBLE FISHERY FACILITY.—

16 “(A) IN GENERAL.—Subject to subpara-  
17 graph (B), the term “eligible fishery facility”  
18 means—

19 “(i) for operations on land—

20 “(I) a structure or an appur-  
21 tenance thereto designed for unload-  
22 ing and receiving from a vessel, proc-  
23 essing, holding pending processing,  
24 distribution after processing, or hold-

1 ing pending distribution, of fish from  
2 a fishery;

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

6 “(III) equipment that is for use  
7 with the structure or appurtenance  
8 that is necessary to perform a func-  
9 tion described in subclause (I);

10 “(ii) for operations not on land, a ves-  
11 sel built in the United States and used for,  
12 equipped to be used for, or of a type nor-  
13 mally used for, processing fish; or

14 “(iii) for aquaculture, including oper-  
15 ations on land or elsewhere—

16 “(I) a structure or an appur-  
17 tenance thereto designed for aqua-  
18 culture;

19 “(II) the land necessary for the  
20 structure or appurtenance;

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

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

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

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

10 “(ii) an entity that is—

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

14 “(II) at least 75 percent owned  
 15 by citizens of the United States, as  
 16 determined under section 50501 of  
 17 this title.”; and

18 (8) by inserting after paragraph (6), as redesignated,  
 19 the following:

20 “(7) QUALIFIED FISHERY FACILITY.—

21 “(A) IN GENERAL.—Subject to subparagraph  
 22 (B), the term ‘qualified fishery facility’  
 23 means—

24 “(i) for operations on land—

1           “(I) a structure or an appur-  
2           tenance thereto designed for unload-  
3           ing and receiving from a vessel, proc-  
4           essing, holding pending processing,  
5           distribution after processing, or hold-  
6           ing pending distribution, of fish from  
7           a fishery;

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

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

14          “(ii) for operations not on land, a ves-  
15          sel built in the United States and used for,  
16          equipped to be used for, or of a type nor-  
17          mally used for, processing fish; or

18          “(iii) for aquaculture, including oper-  
19          ations on land or elsewhere—

20                 “(I) a structure or an appur-  
21                 tenance thereto designed for aqua-  
22                 culture;

23                 “(II) the land necessary for the  
24                 structure or appurtenance;

1 “(III) equipment that is for use  
2 with the structure or appurtenance  
3 and necessary for performing a func-  
4 tion described in subclause (I); and

5 “(IV) a vessel built in the United  
6 States.

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

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

12 “(ii) an entity that is—

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

16 “(II) at least 75 percent owned  
17 by citizens of the United States, as  
18 determined under section 50501 of  
19 this title.”.

20 (b) ELIGIBLE FISHERY FACILITIES.—

21 (1) DEFINITION OF SECRETARY.—Paragraph  
22 (9)(A) of section 53501 of title 46, United States  
23 Code, as redesignated by subsection (a) of this sec-  
24 tion, is amended to read as follows:

1 “(A) the Secretary of Commerce with re-  
2 spect to—

3 “(i) an eligible vessel or a qualified  
4 vessel operated or to be operated in the  
5 fisheries of the United States; or

6 “(ii) an eligible fishery facility or a  
7 qualified fishery facility; and”.

8 (2) ESTABLISHING A CAPITAL CONSTRUCTION  
9 FUND.—Section 53503 of title 46, United States  
10 Code, is amended—

11 (A) in subsection (a)—

12 (i) by inserting “or eligible fishery fa-  
13 cility” after “eligible vessel”; and

14 (ii) by striking the period at the end  
15 and inserting “or fishery facility.”; and

16 (B) by amending subsection (b) to read as  
17 follows:

18 “(b) ALLOWABLE PURPOSE.—The purpose of the  
19 agreement shall be—

20 “(1) to provide replacement vessels, additional  
21 vessels, or reconstructed vessels, built in the United  
22 States and documented under the laws of the United  
23 States, for operation in the United States foreign,  
24 Great Lakes, noncontiguous domestic, or short sea

1 transportation trade or in the fisheries of the United  
 2 States; or

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

5 “(A) an individual who is a citizen of the  
 6 United States; or

7 “(B) an entity that is—

8 “(i) a citizen of the United States  
 9 under section 50501; and

10 “(ii) at least 75 percent owned by citi-  
 11 zens of the United States, as determined  
 12 under section 50501.”.

13 (c) AGREEMENT FISHERY FACILITIES.—

14 (1) DEPOSITS AND WITHDRAWALS.—Section  
 15 53504(b) of title 46, United States Code, is amend-  
 16 ed by striking the period at the end and inserting  
 17 “or an agreement fishery facility.”.

18 (2) CEILING ON DEPOSITS.—Section 53505 of  
 19 title 46, United States Code, is amended—

20 (A) in subsection (a)—

21 (i) paragraphs (1), by inserting “or  
 22 agreement fishery facilities” after “agree-  
 23 ment vessels”;

1 (ii) in paragraph (2), by striking the  
2 semicolon at the end and inserting “or  
3 agreement fishery facilities;” and

4 (iii) in paragraph (3) by inserting “or  
5 agreement fishery facility” after “agree-  
6 ment vessel” both places that term ap-  
7 pears; and

8 (B) in subsection (b)—

9 (i) by inserting “or agreement fishery  
10 facility” after “an agreement vessel”; and

11 (ii) by inserting “or fishery facility”  
12 after “the vessel”.

13 (d) QUALIFIED FISHERY FACILITIES.—

14 (1) QUALIFIED WITHDRAWALS.—Section  
15 53509(a) of title 46, United States Code, is amend-  
16 ed—

17 (A) in paragraph (1), by striking “quali-  
18 fied vessel; or” and inserting “qualified vessel,  
19 or the acquisition, construction, or reconstruc-  
20 tion of a qualified fishery facility; or”; and

21 (B) in paragraph (2), by striking “quali-  
22 fied vessel.” and inserting “qualified vessel, or  
23 the acquisition, construction, or reconstruction,  
24 of a qualified fishery facility.”.

1 (2) TAX TREATMENT OF QUALIFIED WITH-  
2 DRAWALS AND BASIS OF PROPERTY.—Section 53510  
3 of title 46, United States Code, is amended—

4 (A) in subsections (b) and (c), by striking  
5 “or container” each place that term appears  
6 and inserting “container, or fishery facility”;  
7 and

8 (B) in subsection (d), by striking “and  
9 containers” and inserting “containers, and fish-  
10 ery facilities”.

11 (3) TAX TREATMENT OF NONQUALIFIED WITH-  
12 DRAWALS.—Section 53511(e)(4) of title 46, United  
13 States Code, is amended by inserting “or fishery fa-  
14 cility” after “vessel”.

15 (e) TECHNICAL AMENDMENT.—Paragraph (8)(A)(iii)  
16 of section 53501 of title 46, United States Code, as reded-  
17 igned by subsection (a) of this section, is amended by  
18 striking “trade trade” and inserting “trade”.

19 **SEC. 106. FISHERIES DISASTER RELIEF.**

20 Section 312(a) (16 U.S.C. 1861a(a)) is amended—

21 (1) by redesignating paragraphs (2) through  
22 (4) as paragraphs (3) through (5), respectively; and  
23 (2) by inserting after paragraph (1) the fol-  
24 lowing:

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

6 **SEC. 107. REGIONAL FISHERY CONSERVATION AND MAN-**  
 7 **AGEMENT AUTHORITIES.**

8 (a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.)  
 9 is amended by inserting after section 313, the following:

10 **“SEC. 313A. GULF OF MEXICO FISHERIES CONSERVATION**  
 11 **AND MANAGEMENT.**

12 “At least once every 5 years, the Gulf of Mexico Fish-  
 13 ery Management Council shall review, in accordance with  
 14 the provisions of this Act, any allocation of fishing privi-  
 15 leges among the commercial, recreational, and charter  
 16 components of a fishery managed under a fishery manage-  
 17 ment plan prepared by the Council, except that the Coun-  
 18 cil may delay action for not more than 3 additional 1 year  
 19 periods if necessary.

20 **“SEC. 313B. SOUTH ATLANTIC FISHERIES CONSERVATION**  
 21 **AND MANAGEMENT.**

22 “At least once every 5 years, the South Atlantic Fish-  
 23 ery Management Council shall review, in accordance with  
 24 the provisions of this Act, any allocation of fishing privi-  
 25 leges among the commercial, recreational, and charter

1 components of a fishery managed under a fishery manage-  
 2 ment plan prepared by the Council, except that the Coun-  
 3 cil may delay action for not more than 3 additional 1 year  
 4 periods if necessary.”.

5 (b) TABLE OF CONTENTS.—The table of contents in  
 6 the first section is amended by inserting after the item  
 7 relating to section 313, the following:

“313A. Gulf of Mexico fisheries conservation and management.

“313B. South Atlantic fisheries conservation and management.”.

8 **SEC. 108. STUDY OF ALLOCATIONS IN MIXED-USE FISH-**  
 9 **ERIES.**

10 (a) STUDY REQUIREMENTS.—Not later than 60 days  
 11 after the date of the enactment of this Act, the Secretary  
 12 of Commerce shall enter into an arrangement with the Na-  
 13 tional Academy of Sciences to conduct a study—

14 (1) to provide guidance on criteria that could be  
 15 used for allocating fishing privileges, including con-  
 16 sideration of the conservation and socioeconomic  
 17 benefits of the commercial, recreational, and charter  
 18 components of a fishery, to a Regional Fishery Man-  
 19 agement Council established under section 302 of  
 20 the Magnuson-Stevens Fishery Conservation and  
 21 Management Act (16 U.S.C. 1852) in the prepara-  
 22 tion of a fishery management plan under that Act;  
 23 and

1           (2) to identify sources of information that could  
2 reasonably support the use of such criteria in alloca-  
3 tion decisions.

4           (b) REPORT.—Not later than 1 year after the date  
5 a contract is awarded under subsection (a), the National  
6 Academy of Sciences shall submit to the Committee on  
7 Commerce, Science, and Transportation of the Senate and  
8 the Committee on Natural Resources of the House of Rep-  
9 resentatives a report on the study conducted under sub-  
10 section (a).

## 11 **TITLE II—FISHERY INFORMA-** 12 **TION, RESEARCH, AND DE-** 13 **VELOPMENT**

### 14 **SEC. 201. FISHERIES RESEARCH.**

15           (a) STOCK ASSESSMENT PLAN.—Section 404 (16  
16 U.S.C. 1881e) is amended by adding at the end the fol-  
17 lowing:

18           “(e) STOCK ASSESSMENT PLAN.—

19                   “(1) IN GENERAL.—The Secretary, in consulta-  
20 tion with the Councils, shall develop and publish in  
21 the Federal Register, on the same schedule as re-  
22 quired for the strategic plan required under sub-  
23 section (b), a plan to conduct stock assessments for  
24 all stocks of fish for which a fishery management  
25 plan is in effect under this Act.

1           “(2) CONTENTS.—The plan shall—

2                   “(A) for each stock of fish for which a  
3 stock assessment has previously been con-  
4 ducted—

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

9                           “(ii) subject to the availability of ap-  
10 propriations, require completion of a new  
11 stock assessment, or an update of the most  
12 recent stock assessment—

13                           “(I) at least once every 5 years,  
14 except a Council may delay action for  
15 not more than 3 additional 1-year pe-  
16 riods; or

17                           “(II) within such other time pe-  
18 riod specified and justified by the Sec-  
19 retary in the plan;

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

23                           “(i) establish a schedule for con-  
24 ducting an initial stock assessment that is

1 reasonable given the biology and character-  
2 istics of the stock; and

3 “(ii) subject to the availability of ap-  
4 propriations, require completion of the ini-  
5 tial stock assessment not later than 3  
6 years after the date that the plan is pub-  
7 lished in the Federal Register unless an-  
8 other time period is specified and justified  
9 by the Secretary in the plan; and

10 “(C) identify data and analysis, especially  
11 concerning recreational fishing, that, if avail-  
12 able, would reduce uncertainty in and improve  
13 the accuracy of future stock assessments, in-  
14 cluding whether that data and analysis could be  
15 provided by nongovernmental sources, including  
16 fishermen, fishing communities, universities,  
17 and research institutions.

18 “(3) WAIVER OF STOCK ASSESSMENT REQUIRE-  
19 MENT.—Notwithstanding subparagraphs (A)(ii) and  
20 (B)(ii) of paragraph (2), a stock assessment shall  
21 not be required for a stock of fish in the plan if the  
22 Secretary determines that such a stock assessment  
23 is not necessary and justifies the determination in  
24 the Federal Register notice required by this sub-  
25 section.”.

1 (b) DEADLINE.—Notwithstanding paragraph (1) of  
2 section 404(e) of the Magnuson-Stevens Fishery Con-  
3 servation and Management Act, as added by this section,  
4 the Secretary of Commerce shall issue the first stock as-  
5 sessment plan under that section by not later than 1 year  
6 after the date of the enactment of this Act.

7 **SEC. 202. IMPROVING SCIENCE.**

8 (a) IMPROVING DATA COLLECTION AND ANALYSIS.—

9 (1) IN GENERAL.—Section 404 (16 U.S.C.  
10 1881c), as amended by section 201 of this Act, is  
11 further amended by adding at the end the following:

12 “(f) IMPROVING DATA COLLECTION AND ANAL-  
13 YSIS.—

14 “(1) IN GENERAL.—The Secretary, in consulta-  
15 tion with the scientific and statistical committees of  
16 the Councils established under section 302(g), shall  
17 develop and submit to the Committee on Commerce,  
18 Science, and Transportation of the Senate and the  
19 Committee on Natural Resources of the House of  
20 Representatives a report on facilitating greater in-  
21 corporation of data, analysis, stock assessments, and  
22 surveys from nongovernmental sources, including  
23 fishermen, fishing communities, universities, and re-  
24 search institutions, into fisheries management deci-  
25 sions.

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

3                   “(A) identify types of data and analysis,  
4                   especially concerning recreational fishing, that  
5                   can be reliably used for purposes of this Act  
6                   and the basis for establishing conservation and  
7                   management measures as required by section  
8                   303(a)(1), including setting standards for the  
9                   collection and use of that data and analysis in  
10                  stock assessments and surveys and for other  
11                  purposes;

12                  “(B) provide specific recommendations for  
13                  collecting data and performing analyses identi-  
14                  fied as necessary to reduce the uncertainty re-  
15                  ferred to in section 404(e)(2)(C);

16                  “(C) consider the extent to which it is pos-  
17                  sible to establish a registry of persons providing  
18                  such information; and

19                  “(D) consider the extent to which the ac-  
20                  ceptance and use of data and analysis identified  
21                  in the report in fishery management decisions is  
22                  practicable.”.

23           (b) DEADLINE.—The Secretary of Commerce shall  
24           submit the report required under the amendment made

1 by subsection (a) not later than 1 year after the date of  
2 the enactment of this Act.

3 **SEC. 203. FOCUSING ASSETS FOR IMPROVED FISHERIES**  
4 **OUTCOMES.**

5 (a) IN GENERAL.—Section 2(b) of the Act of August  
6 11, 1939 (15 U.S.C. 713c–3(b)), is amended—

7 (1) in paragraph (1)—

8 (A) by striking “beginning with the fiscal  
9 year commencing July 1, 1954, and ending on  
10 June 30, 1957,”;

11 (B) by striking “moneys” the first place  
12 that term appears and inserting “monies”; and

13 (C) by striking “shall be maintained in a  
14 separate fund only for” and all that follows  
15 through the end and inserting “shall only be  
16 used for the purposes described under sub-  
17 section (c).”; and

18 (2) by striking paragraph (2).

19 (b) LIMITATIONS ON BILLS TRANSFERRING  
20 FUNDS.—Section 2(b) of the Act of August 11, 1939 (15  
21 U.S.C. 713c–3(b)), as amended by subsection (a) of this  
22 section, is further amended by adding at the end the fol-  
23 lowing:

24 “(2) LIMITATIONS ON BILLS TRANSFERRING  
25 FUNDS.—

1 “(A) IN GENERAL.—It shall not be in  
2 order in the Senate or the House of Represent-  
3 atives to consider any bill, resolution, amend-  
4 ment, or conference report that reduces any  
5 amount in the fund referred to in paragraph  
6 (1) in a manner that is inconsistent with such  
7 paragraph.

8 “(B) LIMITATION ON CHANGES TO THIS  
9 PARAGRAPH.—It shall not be in order in the  
10 Senate or the House of Representatives to con-  
11 sider any bill, resolution, amendment, or con-  
12 ference report that would repeal or otherwise  
13 amend this paragraph.

14 “(C) WAIVER.—A provision of this para-  
15 graph may be waived or suspended in the Sen-  
16 ate only by the affirmative vote of three-fifths  
17 of the Members, duly chosen and sworn.

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

23 “(E) RULES OF THE SENATE AND THE  
24 HOUSE OF REPRESENTATIVES.—This para-  
25 graph is enacted by Congress—

1 “(i) as an exercise of the rulemaking  
 2 power of the Senate and the House of Rep-  
 3 resentatives, respectively, and is deemed to  
 4 be part of the rules of each house, respec-  
 5 tively, but applicable only with respect to  
 6 the procedure to be followed in the House  
 7 in the case of a bill, resolution, amend-  
 8 ment, or conference report under this  
 9 paragraph, and it supersedes other rules  
 10 only to the extent that it is inconsistent  
 11 with such rules; and  
 12 “(ii) with full recognition of the con-  
 13 stitutional right of either House to change  
 14 the rules (so far as they relate to the pro-  
 15 cedure of that House) at any time, in the  
 16 same manner, and to the same extent as in  
 17 the case of any other rule of that House.”.

18 **SEC. 204. GULF OF MEXICO RED SNAPPER CATCH LIMITS;**

19 **REPEAL.**

20 Section 407 (16 U.S.C. 1883) is amended by striking  
 21 subsection (d).

○

**SOUTHEAST REGION HABITAT CONSERVATION DIVISION  
GULF OF MEXICO FISHERY MANAGEMENT COUNCIL  
STATEMENT OF WORK AND DELIVERABLES  
ESSENTIAL FISH HABITAT 5-YEAR REVIEW SUPPORT**

One of the key provisions of the Magnuson-Stevens Fishery Conservation and Management Act for facilitating the long-term protection of essential fish habitats (EFH) for fishery resources calls for the review and updating of EFH identifications based on new scientific data and other relevant information. The objectives and goals for reviewing EFH, and the roles of the Fishery Management Councils (Councils) and NOAA's National Marine Fisheries Service (NMFS), are defined in the EFH implementing regulation (50 CFR 600.815(a)(10)). The implementing regulations state the "Councils and NMFS should periodically review the EFH provisions of Fishery Management Plans and revise or amend EFH provisions as warranted based on available information. . . . A complete review of all EFH information should be conducted as recommended by the Secretary, but at least once every 5 years." This scope of work will support the Gulf of Mexico's 5-year review of EFH and is anticipated to result in numerous updates and recommendations that should be put forth in the appropriate Council document and referenced in ongoing Council actions.

**Work to be Performed**

In support of a comprehensive 5-year review, the results of this work will improve knowledge of species habitat associations, life history information, and ultimately EFH designations. Specifically, this project will (1) improve habitat association tables, by species and life stage for federally managed fish and invertebrate species; (2) refine the current spatial depictions of EFH; and (3) allow development of a web-based database and mapping application to improve access and ease of use of EFH information at various life stages for better informed stock assessments and fishery management. Ultimately, this web-based tool would be easily accessible to the public and utilized as the framework for identifying and describing EFH.

**Task 1. Update and Improve Habitat Association Tables**

This funding will support a short-term (i.e., up to 17 months) technical staff position at the Gulf of Mexico Fishery Management Council. The incumbent will review and synthesize scientific literature based on the EFH designation criteria and update and add pertinent information to existing life-history habitat association tables. The incumbent will have a working knowledge of the marine environment and/or biological science that will aid them in synthesizing data from original manuscripts into the contemporary data structures relevant for the identification and mapping of EFH. An extensive literature search will be conducted for species managed under the eight Gulf FMPs. This review will encompass aspects related to age, feeding, growth, habitat, maturity schedules, and distribution by life stage when available. This will ensure that fishery managers are equipped with the best scientific information available and will encompass recent advances and in research. This aspect is critically important based on events such as the 2010 Deepwater Horizon Oil Spill that likely affected many federally managed species and their requisite habitat. The Deep Horizon Oil Spill event has also led to new scientific research that should be incorporated into our identification and description of EFH. As part of this process, the literature will be archived into a searchable EFH bibliography (e.g. Reference Manager database). The intent is to make the literature electronically available (subject to copyright agreements) or provide links to the publisher where the literature can be accessed. Where necessary, hard copy documents will be scanned and uploaded in PDF format.

### **Task 2. Review and Revision of EFH Maps by Fishery Management Plan**

This task would include a thorough review of the existing mapped representations of EFH for each FMP. The current mapped representations may warrant improvements or refinements based on new information. For example, the shrimp FMP does not include an area of the west Florida shelf that is known to support shrimping activity and thus is likely EFH for shrimp. Similarly, the shoreward boundary may not be well defined for some FMPs and may be inconsistently defined throughout the Gulf. We will work with the respective Gulf States to determine consistent, practicable boundaries that are biologically based yet reasonable for management use. This would aid determination of when EFH consultation is necessary, provide a means to determine or predict effects from environmental impacts, and better quantify abundance and productivity of fish and invertebrate stocks.

### **Task 3. Web-based Application**

We anticipate this task will largely be conducted by current Gulf Council staff. The primary goal is to make the most current EFH descriptions by species, life stage, and geographic footprint available via the internet (i.e., from Tasks 1 and 2). In practical terms, Task 3 will merge the products of Task 1 and Task 2 into an easy-to-use web application. From a data perspective, the objective is to create a web-enabled, searchable, and interactive database. The Gulf Council data portal (<http://portal.gulfcouncil.org>) will be used to host and serve the content. Specifically, data will be housed in a spatially referenced relational database such that information can be searched and displayed in interactive web-maps and tables. The search criteria would include, but not be limited to species, life stage, habitat type, depth, or geographical area and could be queried via a web-browser. References supporting the result (i.e., bibliography) would also be available. To implement this application, we plan to harness modern software and technology for this process using our existing Amazon Web Services cloud based server that is expandable (i.e., allows more content), scalable (i.e., computing power automatically increases with user demand), and cost effective. In addition, this approach is intuitive to the user and builds on applications we are currently developing. This system provides a substantial technical foundation for future initiatives and makes this valuable information available to a broad audience.

#### **Deliverables:**

- Updated and revised habitat association tables by species and life stage
- Improved EFH identification by species and life stage (to the extent practicable) for federally managed species in the Gulf of Mexico.
- Annotated bibliography supporting EFH descriptions
- Spatially referenced maps of EFH by species and life stage based on best scientific information available
- Interactive web application to search, and display EFH information for federally managed species in the Gulf of Mexico.

#### **Budget Narrative**

Total EFH position salary and benefits for 17 month period ending December 31, 2016 will be \$129,891. The Council will provide \$29,891 in additional funds that will be derived from its end-of-year 2015 performance budget. Policy allows up to 2% of an employee's salary as an additional performance incentive.

Total Position Costs			
	2015 (5 mos)	2016 (12 mos)	Total Mos. 17
Annual Salary	53,302	54,102	
Monthly # of Mos	4,442 5	4,509 12	
	22,209	54,102	76,311
Health ES 2015	1,210	5	6,050
Health ES 2016	1,428	12	17,136
H SA 2015			5,000
H SA 2016			5,000
			33,186
Life	50 53	5 12	250 636
			886
Dental	78 82	5 12	390 984
			1,374
Retirement - 14%			10,684
FICA - 7.65%			5,838
Supplies			1,612
			129,891

Position Costs Charged to Council			
	2015	2016 (4 mos)	Total Mos. 4
Annual Salary	53,302	54,102	
Monthly # of Mos	4,442 0	4,509 4	
	0	18,034	18,034
Health ES 2015	1,210	0	0
Health ES 2016	1,428	4	5,712
H SA 2015			1,700
H SA 2016			1,700
			7,412
Life	50 53	0 4	0 212
			212
Dental	78 82	0 4	0 328
			328
Retirement - 14%			2,525
FICA - 7.65%			1,380
Supplies			0
			29,891

Position Costs Charged to EFH			
	2015 (5 mos)	2016 (8 mos)	Total Mos. 13
Annual Salary	53,302	54,102	
Monthly # of Mos	4,442 5	4,509 8	
	22,209	36,068	58,277
Health ES 2015	1,210	5	6,050
Health ES 2016	1,428	8	11,424
H SA 2015			5,000
H SA 2016			3,300
			25,774
Life	50 53	5 8	250 424
			674
Dental	78 82	5 8	390 656
			1,046
Retirement - 14%			8,159
FICA - 7.65%			4,458
Supplies			1,612
			100,000

# **GULF OF MEXICO FISHERY MANAGEMENT COUNCIL**

**2203 North Lois Avenue, Suite 1100**

**Tampa, Florida 33607**

## **POSITION DESCRIPTION**

**Title of Position: EFH Specialist**

**Name of Employee:**

This position will support the Gulf of Mexico's 5-year review of Essential Fish Habitat (EFH). The incumbent will integrate habitat and fisheries science to improve understanding of the role of EFH in fisheries management in the Gulf of Mexico. The incumbent will compile, analyze, and synthesize information suitable for presentation and display in a usable and understandable format to local, state, federal, and university scientists, the Gulf Council, and the public. The incumbent is directly supervised by the Fishery Biologist-Statistician. He or she also prepares materials and accomplishes these tasks per the direction of the Executive and Deputy Directors in collaboration with other technical staff.

### **Primary Responsibilities**

1. Responsible for conducting comprehensive literature searches and synthesizing relevant literature for federally managed fish and invertebrate species that will be used for updating and improving habitat association tables.
2. Responsible for reviewing current spatial depictions of EFH and revising as necessary in collaboration with Council and National Marine Fisheries Service staff.
3. Work with Council staff to develop a web-based database and mapping application (based on primary responsibilities 1 and 2 above) to improve access and ease of use of EFH information at various life stages for better informed stock assessments and fishery management.
4. Provides assistance to Council staff on EFH Fishery Management Plans, amendments and Committees, and other related work being conducted by the Council. Attends SSC and AP meetings and presents materials to the public and the Council as needed.
5. Contributes to a productive, harmonious, and cooperative work environment and is not disruptive, insubordinate, or behavioral in a manner that adversely affects the operations of the office or other activities that the incumbent attends.

### **General Duties**

Assists and advises the Executive and Deputy Directors and other technical staff on materials relating to EFH; prepares technical documents and EFH materials; and gathers materials for placement on the Council's web page and databases as appropriate. Keeps abreast of habitat and fishery science literature relevant to the incumbent's work responsibilities.

### **Skills and Qualifications**

The individual will have a Bachelor's (BA or BS) degree with 2 years of technical writing experience or a Master's degree (MA or MS) from an accredited university with a course of study and emphasis on Fishery Science, Fishery Management, Fisheries Ecology, or Marine Ecology. The individual must have strong organizational, technical writing, and communication skills in order to best interact with the staff, general public, and Council members.

**Supervisory Responsibility**

None.

**Supervision Received**

Is under the direct supervision of the Fishery Biologist/Statistician.

**Salary**

Salary is commensurate with the prevailing federal pay scale for General Schedule employees as appearing in current salary tables for equivalent Grade 10.

**Professional Contacts**

Professional contacts are with Council staff members, officials of federal and state agencies, Council members, universities, scientists, contractors, and the public.

**Physical Demands**

The work is sedentary. Travel is expected as the incumbent will be required to attend selected Council and other Council-related meetings.

**Work Environment**

The work is generally performed in an office setting. The work area is adequately lighted, heated, ventilated and air conditioned.

This is a complete and accurate description of the duties and responsibilities of my position.

\_\_\_\_\_

\_\_\_\_\_

Date

This is a complete and accurate description of the duties and responsibilities of this position.

\_\_\_\_\_

\_\_\_\_\_

John Froeschke/Fishery Biologist-Statistician

Date