

Calendar No. 402

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
111-194 }

INTERNATIONAL FISHERIES AGREEMENT
CLARIFICATION ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2856



MAY 24, 2010.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

89-010

WASHINGTON : 2010

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

JOHN D. ROCKEFELLER IV, West Virginia, *Chairman*

DANIEL K. INOUE, Hawaii	KAY BAILEY HUTCHISON, Texas
JOHN F. KERRY, Massachusetts	OLYMPIA J. SNOWE, Maine
BYRON L. DORGAN, North Dakota	JOHN ENSIGN, Nevada
BARBARA BOXER, California	JIM DeMINT, South Carolina
BILL NELSON, Florida	JOHN THUNE, South Dakota
MARIA CANTWELL, Washington	ROGER F. WICKER, Mississippi
FRANK R. LAUTENBERG, New Jersey	GEORGE S. LeMIEUX, Florida
MARK PRYOR, Arkansas	JOHNNY ISAKSON, Georgia
CLAIRE McCASKILL, Missouri	DAVID VITTER, Louisiana
AMY KLOBUCHAR, Minnesota	SAM BROWNBACK, Kansas
TOM UDALL, New Mexico	MIKE JOHANNIS, Nebraska
MARK WARNER, Virginia	
MARK BEGICH, Alaska	

ELLEN DONESKI, *Staff Director*

JAMES REID, *Deputy Staff Director*

BRUCE ANDREWS, *General Counsel*

ANN BEGEMAN, *Republican Staff Director*

BRIAN HENDRICKS, *Republican General Counsel*

TODD BERTOSON, *Republican Senior Counsel*

Calendar No. 402

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-194

INTERNATIONAL FISHERIES AGREEMENT CLARIFICATION ACT OF 2009

MAY 24, 2010.—Ordered to be printed

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

REPORT

[To accompany S. 2856]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2856) to allow the United States-Canada Transboundary Resource Sharing Understanding to be considered an international agreement for the purposes of section 304(e)(4) of the Magnuson-Stevens Fishery Conservation and Management Act, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 2856, the International Fisheries Agreement Clarification Act, would clarify that the United States-Canada Transboundary Resource Sharing Understanding, a written agreement between U.S. and Canadian fisheries conservation and management officials establishing a framework for sharing specific transboundary fisheries resources on Georges Bank in the Gulf of Maine, is an international agreement for the purposes of section 304(e)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

BACKGROUND AND NEEDS

On October 14, 2008, the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a field hearing in Portland, Maine, on the sustainability of Maine's groundfish industry. Witness testimony at that hearing included a number of recommended actions that Congress could take to improve the outlook for the

New England groundfish fishery and the communities that rely upon it. Among these was a recommendation for Congress to clarify that, when stocks are jointly managed by the U.S. and Canada, such an arrangement should be treated as an international agreement under the MSA—an allusion to the U.S.-Canada Transboundary Resource Sharing Understanding.

In 1995, the U.S.-Canada Transboundary Steering Committee (Steering Committee) was established to promote a collaborative transboundary approach to fisheries resource management between Fisheries and Oceans Canada, Maritimes Region, and the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), Northeast Region. These collaborative efforts resulted in a mutual understanding on a process for sharing specific transboundary fisheries resources on Georges Bank in the Gulf of Maine. Commonly referred to as the U.S.-Canada Transboundary Resource Sharing Understanding (Understanding), this management regime is explained at length in a document entitled "Development of a Sharing Allocation Proposal for Transboundary Resources of Cod, Haddock, and Yellowtail Flounder on Georges Bank" (January 2002).

The Understanding establishes bilateral parameters for the management of three fish stocks—Georges Bank cod, Georges Bank haddock, and Georges Bank yellowtail flounder—within a specified area straddling the international boundary known as the Hague Line, which bisects Georges Bank in the Gulf of Maine. The Understanding further establishes a governance structure to carry out the joint conservation and management objectives of the U.S. and Canada with regard to these three stocks. The fundamental organizational components in this governance structure are the Transboundary Management Guidance Committee (TMGC), the Transboundary Resource Assessment Committee (TRAC), and the Steering Committee. The TMGC is a government-industry committee comprised of representatives from the U.S. and Canada that has a mandate to develop and propose guidance in the form of harvest strategies, resource sharing, and management processes for the stocks covered by the Understanding. The TRAC is a body comprised of U.S. and Canadian scientists and co-chaired by NMFS and Fisheries and Oceans Canada, which reviews stock assessments and projections related to the stocks managed under the Understanding. The TRAC provides scientific advice to the TMGC, primarily in the form of TRAC Status Reports, to inform the TMGC's decisions and recommendations. The Steering Committee, which is the government-industry committee that produced the Understanding, provides guidance for the TRAC and TMGC processes.

The NMFS has determined that Georges Bank cod and Georges Bank yellowtail flounder are overfished. Georges Bank haddock was removed from the overfished list in 2008. Section 304(e)(4) of the MSA requires that, in an overfished fishery, the fishery management plan must specify a time period for rebuilding the fishery which: (1) is as short as possible, taking into account, among other things, recommendations of international organizations in which the United States participates; and (2) does not exceed 10 years, except in cases where, among other things, management measures under an international agreement in which the United States participates dictate otherwise. Latitude is afforded by this rebuilding

provision in instances involving international organizations or international agreements in recognition of the fact that, in cases where fishing mortality is not exclusively under U.S. control, recognizing that some level of adaptability is reasonably necessary in order to harmonize fishery management under the MSA with management decisions under bilateral and multilateral management regimes.

Although the Understanding appears to be an “international agreement” as that term is used in section 304(e)(4) of the MSA, NOAA and its NMFS Northeast Regional Office have looked to State Department implementing regulations for the Case-Zablocki Act (1 U.S.C. §§ 112a and 112b) for interpretive guidance and have reached the opposite conclusion. The Case-Zablocki Act requires transmittal to Congress of certain “international agreements” within the meaning of that Act. The implementing regulations, which are codified at 22 C.F.R. § 181.2, set forth criteria to assist agencies in determining what agreements must be submitted to Congress under the Act. NOAA and NMFS read these criteria to define an “international agreement” as an agreement of significance and specificity between two or more states, state agencies, or intergovernmental organizations that is intended to be legally binding and governed by international law. They have concluded that, because the Understanding expressly states that any recommendations made under it are subject to U.S. and Canadian domestic laws rather than international law, it is not an “international agreement” under the Case-Zablocki Act and, in turn, not an “international agreement” for purposes of section 304(e) of the MSA.

In testimony before the Commerce Committee during the field hearing in Portland, Maine in October 2008, Jim Odlin, a fisherman and vessel owner, asserted that section 304(e)(4) should be applied in managing those portions of Georges Bank cod, haddock, and yellowtail flounder stocks addressed in the Understanding, because the terms “international organizations” and “international agreement” are not defined in the MSA. Generally accepted canons of statutory construction suggest that in the absence of statutory definitions, these terms should be given their plain meaning in the context of the provision and statute in which they appear. A plain meaning approach suggests that “international organizations” means an organized structure, entity, or framework that is formed among nations. The governance structure described in the Understanding, including the TRAC and the TMGC, appears to fall in this category. It is established by U.S. and Canadian government agencies, and its various components such as the TRAC and TMGC meet on a regular, ongoing basis to fulfill their prescribed mandates. Similarly, reading section 304(e)(4) for its plain meaning, it appears to strongly suggest that “international agreement” means any treaty, agreement, pact, or other arrangement which is agreed upon among nations. The Understanding is just such an arrangement. It is an agreed-upon plan, memorialized in writing, between U.S. and Canadian government agencies with regulatory authority for the conservation and management of fisheries for the sharing of specific transboundary fisheries resources on Georges Bank.

The interpretation that NOAA and NMFS have used for “international agreement” has significant implications for U.S. management of fish stocks shared under the Understanding. Fish move

freely through international boundaries, and neighboring countries rarely impose identical or even complementary management structures on their domestic fisheries. For example, Canada does not require a 10-year rebuilding timeline for overfished fisheries, but rather requires overfishing to be ended immediately and progress to be made towards eventual rebuilding of the stock. Furthermore, the U.S. and Canada base their catch limits on different scientific data and analyses, which can result in widely variant stock status estimates. U.S. managers must deduct the amount of fish Canadians will catch from the domestic total allowable catch to remain in compliance with the MSA's mandated rebuilding timeline. Without the latitude afforded under section 304(e) of the MSA for the management of stocks which are subject to international agreements, the result could be a Canadian catch that accounts for the entirety of the U.S. total allowable catch, leaving no fish at all for U.S. fishermen.

Indeed, at the most recent meeting of the TRAC, the U.S. and Canada reached an impasse over the total allowable catch of Georges Bank yellowtail flounder. As a result, the Canadians will harvest the level of fish their regulators permit without regard for the U.S. mandates. Therefore, the U.S. harvest will have to be reduced by the amount domestic managers anticipate Canada will catch in the transboundary management area, leaving the U.S. industry just a fraction of what it would otherwise be able to land. This breakdown in negotiations, caused directly by the NMFS Northeast Region's determination that the Understanding is not an international agreement for purposes of the MSA, will drastically impact both the northeast multispecies fishery (which includes yellowtail flounder, cod, haddock, and others) and the Atlantic scallop fishery, because yellowtail flounder is caught as bycatch in the scallop fishery. These fisheries combined to total nearly \$400 million in landings value in 2008.

The Committee heard concerns that this provision would impact the rebuilding timelines for Georges Bank cod as well as yellowtail flounder. Cod is an overfished species, and a commercial backbone of the multispecies fishery. This bill was specifically structured to only impact the portion of the fish stock occurring in the U.S./Canada shared area as defined in the Understanding. Because the range of the cod stock is significantly larger than the shared area, cod will still be subject to the MSA's more stringent rebuilding timelines. Virtually the entire yellowtail flounder stock is contained within the shared area, so this bill would allow an extension of the Georges Bank yellowtail flounder's rebuilding timeline.

SUMMARY OF PROVISIONS

S. 2856 would amend the MSA to clarify that portions of fish stocks covered by the U.S.-Canada Transboundary Resource Sharing Understanding would be exempt from the 10-year rebuilding timeline requirement. Overfishing would still have to be ended immediately, and any agreed-upon catch limit would have to allow for rebuilding to continue. S. 2856 would further state that the provisions contained in the bill would apply for the fishing year beginning May 1, 2010.

LEGISLATIVE HISTORY

On October 14, 2008, the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a field hearing in Portland, Maine, on the sustainability of Maine's groundfish industry. S. 2856 was introduced in the Senate by Senator Snowe on December 9, 2009, with Senator Kirk as an original cosponsor. The bill was referred to the Senate Committee on Commerce, Science, and Transportation. On December 17, 2009, the Committee considered a manager's amendment to this bill in an open executive session. The Committee, without objection, ordered S. 2856 be reported favorably as amended.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

JANUARY 21, 2010.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2856, the International Fisheries Agreement Clarification Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2856—International Fisheries Agreement Clarification Act

S. 2856 would amend the Magnuson-Stevens Fishery Conservation and Management Act to recognize, as an international agreement under that act, an existing agreement between the United States and Canada to jointly manage a portion of the Georges Bank fishery (a 10,000-square-mile fishing area off the Atlantic coast of the United States stretching from Massachusetts to New Jersey). The bill also would amend that act to give the National Oceanic and Atmospheric Administration (NOAA) greater flexibility in establishing limits on the number of fish that could be caught within the fishery each year. Based on information from NOAA, CBO estimates that implementing the bill would have no significant impact on the federal budget.

Under current law, if NOAA identifies a certain fish population as unsustainable, the agency must limit the number of those fish caught within the fishery in order to achieve a sustainable population within a 10-year period. The agency identifies a fish population as sustainable when the number of fish removed from the stock does not exceed the number supplied by growth and reproduction. Under the bill, NOAA would be required to establish catch limits that work towards sustainable populations within the Georges Bank fishery, but the agency would not be required to achieve those populations within a fixed time period. Based on in-

formation from NOAA, CBO estimates that any costs associated with implementing the legislation would be negligible.

S. 2856 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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

NUMBER OF PERSONS COVERED

The reported bill would clarify an ambiguity regarding the proper treatment of an existing international understanding under current law. It would not authorize any new regulations and therefore would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

S. 2856 would not authorize any funding. To the extent that it may increase U.S. fishermen's access to certain fish populations, it would have a net positive impact on the Nation's economy.

PRIVACY

The reported bill would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

S. 2856 would not impose any new paperwork requirements on private citizens, businesses, or other entities that do not choose to participate in a regional coastal and ocean observation association; representatives of entities choosing to participate in these associations may be subject to some additional paperwork requirements.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title and Table of Contents.

Section 1 would provide that the legislation may be cited as the International Fisheries Agreement Clarification Act.

Section 2. International Fisheries Agreements.

Section 2 would amend section 304(e)(1) of the MSA to require the Secretary of Commerce to take into account the Understanding and other related understandings, and decisions made under those understandings, for purposes of section 304(e)(4)(A)(i) of that Act. It would provide that section 304(e)(4)(A)(ii) of the Act shall not

apply to those portions of fish stocks covered by such understandings. It would further stipulate that fishing level recommendations from the New England Fishery Management Council Scientific and Statistical Committee may be exceeded as long as overfishing is ended immediately and the fishing mortality level allows for progress toward rebuilding affected fish stocks.

Section 3. Effective date.

Section 3 would provide that the amendments made by this bill would apply with respect to fishing years beginning after April 30, 2010.

CHANGES IN EXISTING LAW

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

SEC. 304. ACTION BY SECRETARY.

[16 U.S.C. 1854]

(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).

(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 par-

tial 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—

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.—

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

(2) In preparing any plan or amendment under this subsection, the Secretary shall—

(A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and

(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any limited access privilege program, unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately—

(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

(B) 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.

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with

the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.

(d) ESTABLISHMENT OF FEES.—

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(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.

(e) REBUILDING OVERFISHED FISHERIES.—

(1)(A) 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 or are approaching a condition of being overfished. 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 if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(B) *The United States–Canada Transboundary Resource Sharing Understanding and other related Understandings, and decisions made under those Understandings, shall be taken into account for purposes of paragraph (4)(A)(i). Paragraph (4)(A)(ii) shall not apply to those portions of stocks covered by such Un-*

derstandings. Notwithstanding section 302(h)(6) of this title, fishing level recommendations regarding rebuilding in any given year for such stocks may be exceeded as long as the fishing mortality level allows for progress toward rebuilding affected fish stocks, and overfishing is ended immediately according to the procedures set forth in this subsection.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within 2 years after an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

(A) to end overfishing immediately in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, 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, 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) 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;

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

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

(5) If, within the 2-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—

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

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—

(1) Preparation and implementation of plan or plan amendment. The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall—

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection—

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

(2) Certain fish excluded from “bycatch” definition. Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d), or highly migratory species harvested in a commercial fishery managed by a Council under this Act or the Western and Central Pacific Fisheries Convention Implementation Act, that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.

(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

(i) ENVIRONMENTAL REVIEW PROCESS.—

(1) PROCEDURES.—The Secretary shall, in consultation with the Councils and the Council on Environmental Quality, revise and update agency procedures for compliance with the National Environmental Policy Act (42 U.S.C. 4231 et seq.). The procedures shall—

(A) conform to the time lines for review and approval of fishery management plans and plan amendments under this section; and

(B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.

(2) USAGE.—The updated agency procedures promulgated in accordance with this section used by the Councils or the Secretary shall be the sole environmental impact assessment procedure for fishery management plans, amendments, regulations, or other actions taken or approved pursuant to this Act.

(3) SCHEDULE FOR PROMULGATION OF FINAL PROCEDURES.—The Secretary shall—

(A) propose revised procedures within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006;

(B) provide 90 days for public review and comments; and

(C) promulgate final procedures no later than 12 months after the date of enactment of that Act.

(4) Public participation. The Secretary is authorized and directed, in cooperation with the Council on Environmental Quality and the Councils, to involve the affected public in the development of revised procedures, including workshops or other appropriate means of public involvement.

[(j)](i) INTERNATIONAL OVERFISHING.—The provisions of this subsection shall apply in lieu of subsection (e) to a fishery that the Secretary determines is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. For such fisheries—

(1) the Secretary, in cooperation with the Secretary of State, immediately take appropriate action at the international level to end the overfishing; and

(2) within 1 year after the Secretary's determination, the appropriate Council, or Secretary, for fisheries under section 302(a)(3) shall—

(A) develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States on the stock and, if developed by a Council, the Council shall submit such recommendations to the Secretary; and

(B) develop and submit recommendations to the Secretary of State, and to the Congress, for international ac-

tions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock.

