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Fishery, Aquaculture, and Marine Mammal Legislation in the 107th Congress

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Fishery, Aquaculture, and Marine Mammal Legislation

SUMMARY

Fish and marine mammals are important resources in the open ocean and nearshore coastal areas. A diverse body of laws and regulations guides the management of these resources by a multitude of federal agencies.

Reauthorization of major legislation in this issue area — the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and the Marine Mammal Protection Act (MMPA) — is expected to be on the agenda of the 107th Congress, since the authorization of appropriations for both laws expired at the end of FY1999. In the 106th Congress, oversight hearings were held on implementation of various programs under these authorities, and three bills were introduced to reauthorize the MSFCMA; no further action was taken.

Commercial and sport fishing are jointly managed by the federal government and individual states. States manage fishery resources in inshore waters where 30% to 40% of the annual U.S. commercial harvest is taken. Beyond state jurisdiction and out to 200 miles, the federal government manages fisheries under the authority of the MSFCMA through the actions of eight regional fishery management councils. Beyond 200 miles, the United States participates in a multitude of international agreements relating to specific areas or species.

Legislation related to commercial and sport fisheries enacted by the 106th Congress addressed numerous concerns, including regulation of large fishing vessels, reauthorization of the Atlantic Striped Bass Conservation Act and the Atlantic Coastal Fisheries Cooperative Management Act, prohibition of shark

finning, coral reef conservation, authorization for new fishery survey vessels, new salmon restoration measures for the Army Corps of Engineers in the Columbia River basin, estuarine habitat restoration, a pilot program to insure wild salmon fishermen for harvest failure risks, and creation of a Commission on Ocean Policy.

Aquaculture — the farming of fish, shellfish, and other aquatic animals and plants in a controlled environment — is expanding rapidly, both in the United States and abroad. In the United States, important species cultured include catfish, salmon, crawfish, shellfish, and trout. No major legislation related to aquaculture was enacted by the 106th Congress.

Marine mammals are provided extensive protection under the MMPA. This Act authorizes restricted use (“take”) of marine mammals and addresses specific situations of concern, such as dolphin mortality primarily associated with the eastern tropical Pacific tuna fishery.

Legislation enacted by the 106th Congress related to marine mammals included federal funding for marine mammal stranding programs, revocation of an MMPA exemption allowing subsistence hunting of Cook Inlet beluga whales, completion of the withdrawal of federal civil administration of the Pribilof Islands, and authorization to study the eastern gray whale.

(Note that this issue brief references a number of useful Internet sites; these sites are hot-linked in the online version of this product.)



MOST RECENT DEVELOPMENTS

On March 14, 2002, three Subcommittees of the House Resources Committee held a joint hearing on H.R. 3558, the Species Protection and Conservation of the Environment Act. On March 7, 2002, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held an oversight hearing on the U.S. Fish and Wildlife Service and National Marine Fisheries Service FY2003 budget requests. (Members and staff may request e-mail notification of new CRS reports in the areas of marine and freshwater fisheries, aquaculture, and marine mammal issues by contacting gbuck@crs.loc.gov and requesting to be added to his notification list.)

BACKGROUND AND ANALYSIS

Commercial and Sport Fisheries: Background and Issues

Historically, coastal states managed marine sport and commercial fisheries in nearshore waters, where most seafood was caught. However, as fishing techniques improved, fishermen ventured farther offshore. Before the 1950s, the federal government assumed limited responsibility for marine fisheries, responding primarily to international fishery concerns and treaties (by enacting implementing legislation for treaties; *e.g.*, the Northern Pacific Halibut Act in 1937) as well as to interstate fishery conflicts (by consenting to interstate fishery compacts; *e.g.*, the Pacific Marine Fisheries Compact in 1947). In the late 1940s and early 1950s, several Latin American nations proclaimed marine jurisdictions extending 200 miles offshore. This action was denounced by those within the United States and other distant-water fishing nations who sought to preserve access for far-ranging fishing vessels. Beginning in the 1950s (Atlantic) and 1960s (Pacific), increasing numbers of foreign fishing vessels steamed into U.S. offshore waters to catch the predominantly unexploited seafood resources. Since the United States then claimed only a 3-mile jurisdiction (in 1964, P.L. 88-308 prohibited fishing by foreign-flag vessels within 3 miles of the coast; in 1966, P.L. 89-658 proclaimed an expanded 12-mile exclusive U.S. fishery jurisdiction), foreign vessels could fish many of the same stocks caught by U.S. fishermen. U.S. fishermen deplored this “foreign encroachment” and alleged that overfishing was causing stress on, or outright depletion of, fish stocks. The unsuccessful Law of the Sea Treaty negotiations in the 1970s provided impetus for unilateral U.S. action.

The enactment of the Fishery Conservation and Management Act (FCMA) in 1976 (later renamed the Magnuson Fishery Conservation and Management Act after the late Senator Warren G. Magnuson, and more recently the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) [<http://www.nmfs.noaa.gov/sfa/magact/>] after Senator Ted Stevens) ushered in a new era of federal marine fishery management. The FCMA was signed into law on April 13, 1976, after several years of debate. On March 1, 1977, marine fishery resources within 200 miles of all U.S. coasts, but outside state jurisdiction, came under federal jurisdiction, and an entirely new multifaceted regional management system began allocating fishing rights, with priority given to domestic enterprise. Primary federal management

authority was vested in NOAA Fisheries (formerly the National Marine Fisheries Service) [<http://www.nmfs.noaa.gov/>] within the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. The 200-mile fishery conservation zone was superseded by an Exclusive Economic Zone (EEZ), proclaimed by President Reagan on March 10, 1983 (Presidential Proclamation 5030).

Eight Regional Fishery Management Councils were created by the FCMA [<http://www.nmfs.noaa.gov/councils/>]. Council members are appointed by the Secretary of Commerce from lists of candidates knowledgeable of fishery resources, provided by coastal state Governors. The Councils prepare fishery management plans (FMPs) for those fisheries that they determine require active federal management. After public hearings, revised FMPs are submitted to the Secretary of Commerce for approval. Approved plans are implemented through regulations published in the *Federal Register*. Together these Councils have implemented 39 FMPs for various fish and shellfish resources, with 7 additional plans in various stages of development. Some plans are created for an individual or a few closely related species (*e.g.*, FMPs for red drum by the South Atlantic Council, for northern anchovy by the Pacific Council, and for shrimp by the Gulf of Mexico Council). Others are developed for larger species assemblages inhabiting similar habitats (*e.g.*, FMPs for Gulf of Alaska groundfish by the North Pacific Council and for reef fish by the Gulf of Mexico Council). Many of the implemented plans have been amended (one more than 30 times), and three have been developed and implemented jointly by two or more Councils. The MSFCMA was last reauthorized in 1996 by P.L. 104-297, the Sustainable Fisheries Act [<http://www.nmfs.noaa.gov/sfa/sfaguide/>]. This authorization expired in FY1999.

Under initial FCMA authority, a substantial portion of the fish catch from federal offshore waters was allocated to foreign fishing fleets. However, the 1980 American Fisheries Promotion Act (Title II of P.L. 96-561) and other FCMA amendments orchestrated a decrease in foreign catch allocations as domestic fishing and processing industries expanded. Foreign catch from the U.S. EEZ declined from about 3.8 billion pounds in 1977, to zero in 1992 and subsequent years. Commensurate with the decline of foreign catch, domestic offshore catch increased dramatically, from about 1.6 billion pounds (1977) to more than 6.3 billion pounds (1993). Total (U.S. and foreign) offshore fishery landings from the U.S. EEZ increased about 24% between 1977 and 1986-1988 to a peak of 6.65 billion pounds, but declined slightly to stabilize over the next decade.

Today, individual states manage marine fisheries in inshore and coastal waters (generally within 3 miles of the coast). Interstate coordination occurs through three regional (Atlantic, Gulf, and Pacific) interstate marine fishery commissions, created by congressionally approved compacts. Beyond state waters, out to 200 miles, the federal government manages fish and shellfish resources for which FMPs have been developed under the MSFCMA. Individual states manage fishermen operating state-registered vessels under state regulations consistent with any existing federal FMP when fishing in inshore state waters and, in the absence of a federal FMP, wherever they fish.

In 2000, U.S. commercial fishermen landed about 6.9 billion pounds of edible fish and shellfish [<http://www.st.nmfs.gov/commercial/index.html>], worth almost \$3.4 billion at the dock. Imports supplied another 4.0 billion pounds, worth about \$10.1 billion. U.S. consumers spent an estimated \$54.4 billion on edible seafood in 2000, with about \$38 billion of that amount spent in restaurants and other food service establishments. Marine

recreational anglers caught an estimated 429.4 million fish in 2000 [<http://www.st.nmfs.gov/st1/recreational/queries/index.html>], of which the retained catch was about 254.2 million pounds. In 1996, a nationwide survey estimated [<http://www.census.gov/prod/www/abs/fishing.html>], that recreational anglers spent almost \$38 billion each year pursuing their sport.

Magnuson Act Reauthorization

Background. The MSFCMA was last reauthorized in 1996 by P.L. 104-297, the Sustainable Fisheries Act [<http://www.nmfs.noaa.gov/sfa/>]; authorization for appropriations expired on September 30, 1999. The 1996 amendments established fish conservation initiatives directing NOAA Fisheries and regional councils to protect essential fish habitat, minimize incidental fish bycatch, and restore overfished stocks. In addition, a host of modifications to regional council management procedures and federal management policy were enacted. NOAA Fisheries contends that implementation of the 1996 amendments has met many of the Act's objectives [<http://www.publicaffairs.noaa.gov/releases99/jan99/noaa99-4.html>]; fishing industry and environmental groups have criticized NOAA Fisheries and regional council implementation efforts. While environmental groups have expressed concerns that NOAA Fisheries and regional councils have not been as responsive as needed on conservation measures, fishing industry representatives are concerned that too stringent an application of conservation measures may cripple commercial fishing and bankrupt many fishermen. A key issue in any reauthorization debate in the 107th Congress may be seeking a balance between conserving fish and maintaining a viable commercial fishing industry.

Congressional Action. At issue for the 107th Congress will be the terms and conditions of provisions designed to reauthorize and amend the MSFCMA to address the concerns of various interest groups. For additional information on reauthorization issues in the 107th Congress, see CRS Report RL30215, *The Magnuson-Stevens Fishery Conservation and Management Act: Reauthorization Issues for the 107th Congress*. For a side-by-side comparison of the three bills introduced in the 106th Congress to reauthorize the MSFCMA, see CRS Report RS20788, *Legislation in the 106th Congress to Amend and Reauthorize the Magnuson-Stevens Fishery Conservation and Management Act*.

Hearings. On January 16, 2001, the Senate Committee on Commerce, Science, and Transportation held a field hearing in Newport, OR, on the decline of the west coast groundfish fishery. On April 4, 2001, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held an oversight hearing on implementation of the Sustainable Fisheries Act and the Reauthorization of the MSFCMA. On May 2, 2001, the Senate Commerce Subcommittee on Oceans and Fisheries held a hearing on S. 637 and individual fishing quota (IFQ) systems. On May 10, 2001, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held an oversight hearing on capacity reduction programs, federal investments in fisheries, and reauthorization of the MSFCMA. On June 14, 2001, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held an oversight hearing on ecosystem-based fishery management. On July 19, 2001, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held a hearing on the Western Alaska and Western Pacific Community Development Quota Programs and on H.R. 553. On August 2, 2001, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held a hearing on

H.R. 1367, authorizing actions to conserve and rebuild overfished stocks of Atlantic highly migratory species. The House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans oversight field hearing, scheduled for September 17, 2001, in Corpus Christi, TX, on conservation and management of Gulf of Mexico fishery resources and on issues related to reauthorization of the MSFCMA was postponed. On December 11, 2001, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held an oversight field hearing in Ocean City, MD, on cooperative research issues as they affect reauthorization of the MSFCMA. On February 13, 2002, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held an oversight hearing on individual fishing quotas.

Bills. H.R. 108 proposes a moratorium on bottom trawling and the use of other mobile fishing gear on the seabed in certain areas off the coasts of the United States. H.R. 470 would prohibit commercial harvesting of striped bass. H.R. 553 would modify the western Alaska community development quota program. On July 19, 2001, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held a hearing on H.R. 553. H.R. 644 would approve a governing international fishery agreement with Estonia. H.R. 1367 would authorize actions to conserve and rebuild overfished stocks of Atlantic highly migratory species; the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held a hearing on H.R. 1367 on August 2, 2001. S. 637 would authorize the establishment of individual fishery quota (IFQ) systems. S. 973 and H.R. 2376 would expedite assistance to address the commercial fishery failure in the Pacific Coast groundfish fishery. H.R. 4003 would prohibit certain types of bottom trawling gear. No action has been taken on any of these measures. H.R. 2570 was the first bill introduced in the 107th Congress proposing reauthorization and extensive amendment of the MSFCMA; no action has been taken on H.R. 2570. H.R. 2673 would amend the MSFCMA to prohibit offering for sale, selling, or purchasing shark fins. On February 13, 2002, the Senate passed H.R. 2646 after amending this measure to include the language of the Senate's amended S. 1731, containing §1076 appropriating \$10 million in emergency disaster assistance for the New England multispecies commercial fishery. This measure is currently in conference.

Section 2202 of P.L. 107-20 (H.R. 2216, FY2001 Supplemental Appropriations Act) amended the American Fisheries Act to alter provisions relating to the applicability of U.S. ownership standards to banks holding commercial fishing vessel mortgages. P.L. 107-77 extends state authority to manage the West Coast Dungeness crab fishery through FY2006 (§624(a)) and amends the American Fisheries Act (AFA) to delete a sunset provision and make permanent a prohibition on direct pollock fishing by non-AFA catcher/processors (§211). In addition, §205 of P.L. 107-117 amends the AFA, making the entire \$100 million for the fishing capacity reduction program available as a loan under Title XI of the Merchant Marine Act, 1936.

Pacific Salmon

Background. Five species of salmon spawn in Pacific coastal rivers and lakes, after which juveniles migrate to North Pacific ocean waters where they mature. Since these fish may cross several state and national boundaries during their life spans, management is complicated [<http://www.nmfs.noaa.gov/salmon/salmon.html>]. Threats to salmon include hydropower dams blocking rivers and creating reservoirs, sport and commercial harvest, habitat modification by competing resource industries and human development, and hatcheries seeking to supplement natural production but sometimes unintentionally causing genetic or

developmental concerns. In response to declining salmon populations in Washington, Oregon, Idaho, and California, discrete population units have been listed as endangered or threatened species under the Endangered Species Act. For background on this issue, see CRS Report 91-267 ENR, *Pacific Salmon and Steelhead: Potential Impacts of Endangered Species Act Listings*, CRS Report 98-666 ENR, *Pacific Salmon and Anadromous Trout: Management Under the Endangered Species Act*, and CRS Issue Brief IB10072, *Endangered Species: Difficult Choices*.

To address some of these concerns, the United States and Canada negotiated a bilateral agreement on Pacific salmon in 1985. However, by the mid-1990s, controversy stalled renegotiations to adjust cooperative management of these fish, and U.S.-Canada relations [<http://radio.cbc.ca/news/fish/>] became more antagonistic, including the blockade of an Alaska state ferry by British Columbia fishermen in Prince Rupert, BC, in July 1997. This deadlock was resolved in June 1999 when a new accord was concluded. For additional information on the Pacific Salmon Treaty and new agreement, see CRS Report RL30234, *The Pacific Salmon Treaty: The 1999 Agreement in Historical Perspective*.

Congressional action. H.R. 1157 and S. 1825 would authorize the Secretary of Commerce to provide financial assistance to Alaska, Washington, Oregon, California, and Idaho for salmon habitat restoration projects. H.R. 1157 was reported on June 12, 2001 (H.Rept. 107-95), and was passed, amended, by the House on June 13, 2001, by a vote of 418-6. H.R. 2409 would amend the Endangered Species Act to transfer responsibility for anadromous (e.g., salmon and steelhead trout) and catadromous fish to the Secretary of the Interior; no action has been taken on this measure. On March 21, 2001, the Senate Energy and Natural Resources Subcommittee on Water and Power held an oversight hearing on the Klamath Project in Oregon. H.R. 2573 proposes to direct NOAA Fisheries to seek peer review and conduct studies on the impacts of Columbia River basin federal dams on salmon and steelhead trout; no action has been taken on this measure. On March 15, 2002, the House Committee on The Budget reported H.Con.Res. 353, wherein §406(b) expresses the sense of Congress that Pacific Northwest salmon recovery is a high-priority item for funding in the FY2003 federal budget (H.Rept. 107-376); this measure was passed by the House on March 20, 2002.

Other Miscellaneous Issues

Hydropower and Fish. Section 6403 of H.R. 4 and §404 of H.R. 2436 propose to study and implement increased operational efficiencies at hydroelectric power projects. H.R. 2436 was reported by the House Committee on Resources on July 25, 2001 (H.Rept. 107-160, Part 1). Section 701(b) of S. 597, §401 in both H.R. 4 and H.R. 2587, and §16 of H.R. 3800 would allow federal hydropower licensees to propose alternative fishways to any required by the Federal Energy Regulatory Commission as long as the alternative is based on sound science and will result in equal or greater fish passage. Section §4(a)(2)(D) of H.R. 2460, §1403(a)(8) of S. 597, §1221(b)(8) of S. 1766, §2004(a)(2)(D) of H.R. 4, §101(a)(6) of H.R. 2478, and §102(a)(6) of H.R. 2324 would establish a federal hydropower technology goal of developing, with industry, a new generation of turbine technologies that are less damaging to fish and aquatic ecosystems. H.R. 2587 was reported on July 25, 2001 (H.Rept. 107-162, Part 1), with a supplemental report on August 1, 2001 (H.Rept. 107-162, Part II). H.R. 2460 was reported (amended) on July 31, 2001 (H.Rept. 107-177). H.R. 4 was passed by the House, amended, on August 2, 2001; the Senate Committee on Energy and Natural

Resources has held an extensive series of hearings on S. 597. Section 2(a) of H.R. 1832, §4(a) of S. 71, and §724(a) in both S. 388 and S. 389 propose to modify the federal licensing process to increase hydroelectric power generation by altering how factors are to be considered before requiring fishways under the Federal Power Act. Hearings were held on S. 71 by the Committee on Energy and Natural Resources on July 19, 2001, while an extensive series of hearings has been held by the same Committee on S. 388.

Agriculture and Fish. Section 5 in both H.R. 2202 and S. 1148 would require fish protection devices for the Lower Yellowstone Irrigation Project; no action has been taken on this measure. H.R. 1985, H.R. 3208, and S. 976 would authorize an “environmental water account” for the CALFED project to provide water for protection and recovery of fish; H.R. 3208 was reported (amended) by the House Committee on Resources on February 14, 2002 (H.Rept. 107-360, Part I). Section 302 of H.R. 2404 would establish performance objectives for fish population management under the California Bay-Delta Project, and require an annual report to Congress. On July 26, 2001, the House Resources Subcommittee on Water and Power held a hearing on H.R. 2404. H.R. 2585 and S. 1826 would authorize the Secretary of the Interior to study the feasibility of providing for fish passage at Chiloquin Dam, Oregon; H.R. 2585 was reported by the Committee on Resources on October 30, 2001 (H.Rept. 107-255), and passed by the House on the same date.

Vessel Safety. S. 162 and H.R. 2419 propose to amend the Internal Revenue Code to provide a business credit against income for the purchase of fishing vessel safety equipment; no action has been taken on either bill. Section 301 of H.R. 1099, §401 of S. 951, and §331 of H.R. 3507 would extend the authorization of the U.S. Coast Guard’s Commercial Fishing Industry Vessel Safety Advisory Committee through FY2005. Section 308 of S. 951 and §430 of H.R. 3507 would authorize Coast Guard support for fishing vessel safety training. H.R. 1099 was passed by the House on March 22, 2001, by a vote of 415-0; S. 951 was reported by the Senate Committee on Commerce, Science, and Transportation on October 31, 2001 (S.Rept. 107-89). H.R. 3507 was called up and passed by the House on December 20, 2001.

International Fishery Commissions. H.R. 1646 and S. 1401 would extend authorizations for international fishery commissions through FY2003, clarify that authority under the Fishermen’s Protective Act resides with the Secretary of State, and modify travel provided for Great Lakes Fishery Commission advisory committee members. H.R. 1646 was reported by the Committee on International Relations on May 4, 2001 (H.Rept. 107-57) and passed by the House on May 16, 2001. S. 1401 was reported by the Senate Committee on Foreign Relations on September 4, 2001 (S.Rept. 107-60).

Bankruptcy. On March 15, 2001, S. 420 was amended in §1007 to include similar provisions for family fishermen as currently apply to family farmers under Chapter 12 of the bankruptcy laws. This measure, as amended, passed the Senate on March 15, 2001, by a vote of 83-15. On July 17, 2001, the Senate amended H.R. 333 to include the language of S. 420 relating to protection of family fishermen, and passed H.R. 333, as amended, by a vote of 82-16. On July 31, 2001, the House and Senate agreed to a conference on H.R. 333.

Chesapeake Bay. H.R. 642 and S. 1045 would reauthorize the Chesapeake Bay Office of NOAA and associated fishery programs. H.R. 642 was reported (amended) April 3, 2001 (H.Rept. 107-33) and passed by the House (amended) on April 4, 2001.

Coral. H.R. 2272 would amend the Foreign Assistance Act of 1961 to provide debt relief to developing countries that take action to protect coral reef habitat; this measure was passed (amended) by the House on October 16, 2001.

Miscellaneous Reauthorizations. H.R. 1989 proposes to reauthorize 1) the Interjurisdictional Fisheries Act, 2) the Anadromous Fish Conservation Act, 3) the Atlantic Striped Bass Conservation Act, 4) the Atlantic Coastal Fisheries Cooperative Management Act, 5) the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act, 6) the Atlantic Tunas Convention Act of 1975, and 7) the Northwest Atlantic Fisheries Convention Act of 1995. All authorizations would be extended through FY2006. The House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held a hearing on this measure on June 7, 2001. This measure was reported, amended, on October 3, 2001 (H.Rept. 107-227); H.R. 1989 passed the House (amended) on December 11, 2001.

Atlantic Salmon. S. 703 and H.R. 2062 would extend, for an additional 20 years, the consent of Congress to the interstate compact relating to restoration of Atlantic salmon in the Connecticut River Basin and creating the Connecticut River Atlantic Salmon Commission. S. 703 was reported on September 6, 2001, with a written report filed on October 1, 2001 (S.Rept. 107-78); this measure passed the Senate (amended) on December 8, 2001. H.R. 2062 was reported, amended, by the Committee on Resources on November 8, 2001 (H.Rept. 107-274, Part I).

Tax Provisions. Section 105 of H.R. 546/H.R. 2111/H.R. 2761, §8 in both S. 312 and H.R. 2347, §506 of H.R. 1018, and §7 of S. 1676 would allow income averaging by commercial fishermen. S. 313, H.R. 662, §2 in both S. 312 and H.R. 2347, and §509 of H.R. 1018 would amend the Internal Revenue Code to allow commercial fishermen to establish tax-deferred Farm, Fishing, and Ranch Risk Management Accounts to shelter a portion of fishery income. No action has been taken on any of these measures.

Aquatic Nuisance Species. H.R. 2732 proposes to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to direct the Secretary of the Interior to prevent westward spread of aquatic nuisance species across the 100th meridian, monitor water bodies, and provide rapid response capacity in Western States. Section 6 of H.R. 3389 would authorize \$5 million annually to the National Sea Grant College Program for FY2004-2008 for competitive grants in each of the following areas: 1) zebra mussel biology and control; 2) oyster diseases, oyster restoration, and oyster-related human health risks; and 3) the biology, prevention, and forecasting of harmful algal blooms, including *Pfiesteria piscicida*. H.R. 3558 would authorize a state native species protection assessment grant program, a native heritage grant program, refuge system demonstration projects, and a rapid response capability address harmful nonnative species concerns: three House Resources Committee Subcommittees held a joint hearing on H.R. 3558 on March 14, 2002. H.R. 3389 was reported (amended) by the House Resources Committee on March 7, 2002 (H.Rept. 107-369, Part I), and ordered reported (amended) by the House Science Committee on March 20, 2002; No action has been taken on any of the other measures.

State Funding. Section 102(c) in both H.R. 701 and S. 1328 would authorize funding to states for fishery stock surveys, fishery observers in state or federal waters, coordination and preparation of cooperative fishery conservation and management plans, and preparation

and implementation of state fishery management plans; no action has been taken on either measure.

Seafood Safety. S. 555 would require the U.S. Food and Drug Administration to establish a tolerance for methylmercury in seafood. S. 1501 would create an independent Food Safety Administration to consolidate all food safety and inspection services. No action has been taken on either measure.

Habitat. H.R. 325 and S. 678 (Fishable Waters Act of 2001) would amend the Federal Water Pollution Control Act to establish a program for fishery habitat protection, restoration, and enhancement; no action has been taken on these bills.

Federal Government Structure. H.R. 375 proposes to eliminate the Department of Commerce and establish an independent National Oceanic and Atmospheric Administration; no action has been taken on this measure.

Recreational Fishing. S. 1314, H.R. 3104, and H.R. 3547 propose measures to protect and enhance the public's ability to enjoy recreational fishing; no action has been taken on either of these measures.

Quinault Claims. H.R. 2524 and S. 1308 would establish the Quinault Permanent Fisheries Fund to manage funds received from the settlement of claims; no action has been taken on either measure.

Atlantic Tuna and Billfish. S.Res. 180 would express the sense of the Senate regarding U.S. policy at the 17th Regular Meeting of the International Convention for the Conservation of Atlantic Tunas; the Senate approved this measure on November 13, 2001.

Sport Fish Restoration and FACA. Section 106(b) of S. 990 would exempt the Dingell-Johnson Sport Fish Restoration Program from the Federal Advisory Committee Act; this measure was reported (amended) on December 13, 2001 (S.Rept. 107-123) and passed by the Senate on December 20, 2001.

Fishery Trade. S. 1813 would require the U.S. Trade Representative to inform key House and Senate Committees with respect to negotiations and agreements on fish and shellfish; no action has been taken on this measure. Title V of S. 1209/H.R. 3670 would authorize a program for trade adjustment assistance to fishermen; S. 1209 was reported (amended) on February 4, 2002, by the Senate Committee on Finance (S.Rept. 107-134). Section 102(b)(3)(D) of H.R. 3009 would establish a special rule for transition period tariffs for tuna imported from Bolivia, Colombia, Ecuador, and Peru; this language was added when this measure was reported in the Senate on December 14, 2001 (S.Rept. 107-126). Section 3(b)(1)(C) of S. 525 would declare exempt canned tuna from duty-free treatment when imported from the same Andean nations; no action has been taken on S. 525.

Military Waiver from State Fishing Regulations. Section §2811(a)(2) of P.L. 107-107 authorizes waiver of state fishing regulations, including the authority to extend but not reduce seasons, at military installations.

Country of Origin. On December 4, 2001, the Senate Finance Committee amended S. 1209, adding §1001 that would require all fish and shellfish sold in the United States to be labeled with their country of origin; this measure was reported (amended) on February 4, 2002 (S.Rept. 107-134). On February 13, 2002, the Senate passed H.R. 2646 after amending this measure to include the language of the Senate's amended S. 1731, containing §1001 requiring the labeling of both farm-raised and wild fish as to country of origin. This measure is currently in conference. For additional information on this subject, see CRS Report 97-508, *Country-of-Origin Labeling for Foods: Current Law and Proposed Changes*.

Missouri River. Section 2(h)(3) of H.R. 3570 would authorize investigations of endangered fish in the Missouri River drainage, including pallid sturgeon response to main stem reservoir operations; no action has been taken on this measure.

Capital Construction Fund. S. 1962 and H.R. 3898 would provide for qualified withdrawals from Capital Construction Fund accounts for fishermen leaving the industry for rollover into individual retirement plans; no action has been taken on either measure.

Organic Labeling. On February 13, 2002, the Senate passed H.R. 2646 after amending this measure to include the language of the Senate's amended S. 1731, containing §1055 authoring the labeling of wild fish as organic. This measure is currently in conference.

Cormorants. H.R. 3727 would direct the Secretary of the Interior to issue regulations under the Migratory Bird Treaty Act that authorize States to establish hunting seasons for double-crested cormorants; no action has been taken on this measure.

Aquaculture: Background and Issues

Aquaculture is broadly defined as the farming or husbandry of fish, shellfish, and other aquatic animals and plants, usually in a controlled or selected environment. The diversity of aquaculture is typified by such activities as: fish farming, usually applied to freshwater commercial aquaculture operations (catfish and trout farms are examples [<http://www.usda.gov/nass/pubs/stathigh/1998/lv-aq.htm>]); shellfish and seaweed culture; net-pen culture, used by the salmon industry wherein fish remain captive throughout their lives in marine pens built from nets; and ocean ranching, used by the Pacific Coast salmon industry which cultures juveniles, releases them to mature in the open ocean, and catches them when they return as adults to spawn. Fish hatcheries are government and commercial aquaculture facilities that raise fish from recreational and commercial stocking as well as for mitigation of aquatic resource and habitat damage [<http://aquanic.org/>].

The United Nations' Food and Agriculture Organization has characterized aquaculture as one of the world's fastest growing food production activities. World aquaculture production [<http://www.fao.org/docrep/003/w7499e/w7499e00.htm>] more than doubled in 10 years, from about 10 million metric tons in 1984 to a record 25.5 million metric tons in 1994, with a value of approximately \$40 billion. U.S. aquaculture, until recently and with a few exceptions, has been considered a minor industry. Despite considerable growth, the domestic aquaculture industry is expected to face strong competition into 2002 from imports of foreign aquacultural products as well as competition from the domestic poultry and

livestock industries [<http://usda.mannlib.cornell.edu/reports/erssor/livestock/ldp-aqs/2001/aqs14.pdf>]. With growth however, aquaculture operations are facing increasing scrutiny for habitat destruction, pollution, and other concerns. For more information, see CRS Report 97-436, *Aquaculture and the Federal Role*.

Miscellaneous Issues

Aquacultural Research. Section 716 in both H.R. 2646 and S. 1673, §717 of S. 1571, and §721 in both S. 1628 and S. 1731 would extend the authorization of appropriations for aquaculture research facilities of the U.S. Department of Agriculture (H.R. 2646 and S. 1673 until FY2011; S. 1571/S. 1628/S. 1731 until FY2006). H.R. 2646 was reported (amended) by the Committee on Agriculture on August 2, 2001 (H.Rept. 107-191, Part I), with a supplemental report filed August 31, 2001 (H.Rept. 107-191, Part II); and was reported (amended) by the Committee on International Relations on September 10, 2001 (H.Rept. 107-191, Part III). The House passed H.R. 2646, amended, on October 5, 2001. No action has been taken on S. 1571. On December 7, 2001, S. 1731 was reported by the Committee on Agriculture, Nutrition, and Forestry (S.Rept. 107-117) in lieu of S. 1628. On February 13, 2002, the Senate passed H.R. 2646 after incorporating S. 1731 in H.R. 2646 as an amendment, with aquacultural research in §721. FY2002 appropriations for U.S. Department of Agriculture research in aquaculture were provided in P.L. 107-76 (H.R. 2330).

Catfish. S. 1494 would amend the Federal Food, Drug, and Cosmetic Act to limit the use of the common name ‘catfish’ in the marketing of fish. H.R. 2964 would clarify the market name for the fish *Pangasius bocourti* relative to compliance with §403 of the Federal Food, Drug, and Cosmetic Act. Similar language to H.R. 2964 was added as §934 of H.R. 2646 on the House floor, and this measure was passed on October 5, 2001. Section 755 of P.L. 107-76 prohibits Food and Drug Administration FY2002 funds to be used to allow admission of fish or fish products labeled wholly or in part as ‘catfish’ unless the products are taxonomically from the family *Ictaluridae*.

Bankruptcy. On March 15, 2001, S. 420 was amended in §1007 to include similar provisions for family fishermen (including aquaculture operations) as currently apply to family farmers under Chapter 12 of the bankruptcy laws. This measure, as amended, passed the Senate on March 15, 2001, by a vote of 83-15. On July 17, 2001, the Senate amended H.R. 333 to include the language of S. 420 relating to protection of family fishermen, and passed H.R. 333, as amended, by a vote of 82-16. On July 31, 2001, the House and Senate agreed to a conference on H.R. 333.

National Aquaculture Act Reauthorization. Section 786 of S. 1571/S. 1628/S. 1731 would extend the authorization of appropriations for the National Aquaculture Act through FY2006; no action has been taken on S. 1571. On December 7, 2001, S. 1731 was reported by the Committee on Agriculture, Nutrition, and Forestry (S.Rept. 107-117) in lieu of S. 1628. On February 13, 2002, the Senate passed H.R. 2646 after incorporating S. 1731 in H.R. 2646 as an amendment, with this reauthorization in §786.

Permitting. Section 103 of H.R. 897 would authorize Coastal Zone Enhancement Grants for development of a coordinated process among state agencies to regulate and issue permits for aquaculture facilities in the coastal zone; no action has been taken on this measure.

Taxation. Section 2(e)(2) of S. 455 and §101(e)(2) of S. 1507 would amend the Internal Revenue Code to exclude aquaculture businesses from qualified small business (QSB) stock provisions (§1202); no action has been taken on either measure.

Country of Origin. H.R. 2439, Title X, Subtitle A of S. 1731, and §1021 of S. 1628 would amend the Agricultural Marketing Act of 1946 to require retailers of farm-raised fish and shellfish to inform consumers of the country of origin of the commodities. On December 7, 2001, S. 1731 was reported by the Committee on Agriculture, Nutrition, and Forestry (S.Rept. 107-117) in lieu of S. 1628; no action has been taken on H.R. 2439. On February 13, 2002, the Senate passed H.R. 2646 after incorporating S. 1731 in H.R. 2646 as an amendment, with the Country of Origin language in §1001. For additional information on this subject, see CRS Report 97-508, *Country-of-Origin Labeling for Foods: Current Law and Proposed Changes*.

Cormorants. H.R. 3727 would direct the Secretary of the Interior to issue regulations under the Migratory Bird Treaty Act that authorize States to establish hunting seasons for double-crested cormorants; no action has been taken on this measure.

Marine Mammals: Background and Issues

Due in part to the high level of dolphin mortality (estimated at more than 400,000 animals per year) in the eastern tropical Pacific tuna purse-seine fishery, Congress enacted the Marine Mammal Protection Act (MMPA) in 1972. While some critics may claim the MMPA is scientifically irrational by selecting one group of organisms for special protection unrelated to their abundance or ecological role, this Act has accomplished much by way of promoting research and increased understanding of marine life as well as encouraging attention to incidental bycatch mortalities of marine life by the commercial fishing and other maritime industries.

The Act established a moratorium on the “taking” of marine mammals in U.S. waters and by U.S. nationals on the high seas. The Act also established a moratorium on importing marine mammals and marine mammal products into the United States. This Act protected marine mammals from “clubbing, mutilation, poisoning, capture in nets, and other human actions that lead to extinction.” It also expressly authorized the Secretary of Commerce and the Secretary of the Interior to issue permits for the “taking” of marine mammals for certain purposes, such as scientific research and public display.

Under the Act, the Secretary of Commerce, acting through NOAA Fisheries, is responsible for the conservation and management of whales, dolphins, porpoises, seals, and sea lions]. The Secretary of the Interior, acting through the Fish and Wildlife Service (FWS), is responsible for walrus [http://species.fws.gov/bio_walr.html], sea and marine otters, polar bears [http://species.fws.gov/bio_pola.html], manatees [http://species.fws.gov/bio_mana.html], and dugongs. This division of authority derives from agency responsibilities as they existed when the MMPA was enacted. Title II of the Act established an independent Marine Mammal Commission (MMC) and its Committee of Scientific Advisors on Marine Mammals to oversee and recommend actions necessary to meet the requirements of the Act.

Prior to passage of the MMPA, states were responsible for marine mammal management on lands and in waters under their jurisdiction. The MMPA shifted marine mammal management authority to the federal government. It provides, however, that management authority, on a species-by-species basis, could be returned to states that adopt conservation and management programs consistent with the purposes and policies of the Act. It also provides that the moratorium on taking can be waived for specific purposes, if the taking will not disadvantage the affected species or population. It provides that permits may be issued to take or import any marine mammal species, including depleted species, for scientific research or to enhance the survival or recovery of the species or stock. It allows U.S. citizens to apply for and obtain authorization for the take of small numbers of mammals incidental to activities other than commercial fishing (*e.g.*, offshore oil and gas exploration and development) if the taking would have no more than a negligible impact on any marine mammal species or stock, provided that monitoring requirements and other conditions are met.

The Act's moratorium on taking does not apply to any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific or Arctic Ocean, if such taking is for subsistence purposes or for creating and selling authentic Native articles of handicrafts and clothing, and is not done wastefully.

The Act also authorizes the taking of marine mammals incidental to commercial fishing operations. In 1988, most U.S. commercial fish harvesters were exempted from otherwise applicable rulemaking and permit requirements for a 5-year period, pending development of an improved system to govern the incidental taking of marine mammals in the course of commercial fishing operations. This exemption expired at the end of FY1993, and was extended several times until new provisions were enacted by P.L. 103-238, which reauthorized the MMPA through FY1999. The eastern tropical Pacific tuna fishery was excluded from the incidental take regimes enacted in 1988 and 1994. Instead, the taking of marine mammals incidental to that fishery is governed by separate provisions of the MMPA, and was substantially amended by P.L. 105-42, the International Dolphin Conservation Program Act.

Marine Mammal Protection Act Reauthorization

Background. The MMPA was reauthorized in 1994 by P.L. 103-238, the Marine Mammal Protection Act Amendments of 1994; the authorization for appropriations expired on September 30, 1999. The 1994 amendments indefinitely authorized the taking of marine mammals incidental to commercial fishing operations and provided for assessment of marine mammal stocks in U.S. waters, for the development and implementation of take reduction plans for stocks that may be reduced or are being maintained below their optimum sustainable population levels due to interactions with commercial fisheries, and for studies of pinniped-fishery interactions [<http://www.nwfsc.noaa.gov/pubs/tm/tm28/areas.htm>]. For more information on the 1994 amendments, see CRS Report 94-751 ENR, *Marine Mammal Protection Act Amendments of 1994*.

Congressional Action. At issue for the 107th Congress will be the terms and conditions of any provisions designed to reauthorize and amend the MMPA to address the concerns of various interest groups. On October 11, 2001, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held an oversight hearing on

reauthorizing the Marine Mammal Protection Act. For additional information on potential reauthorization issues in the 107th Congress, see CRS Report RL30120, *Marine Mammal Protection Act: Reauthorization Issues for the 107th Congress*.

Other Miscellaneous Issues

Glacier Bay. Section 130 of P.L. 107-63 (FY2002 Department of the Interior appropriations) requires the National Park Service to prepared an environmental impact statement (EIS) on vessel entries to Glacier Bay National Park to assess possible impacts on whale populations, while maintaining the current number of vessel entries until the required EIS is completed.

Whaling. H.Con.Res. 180 and S.Res 121 would reaffirm U.S. opposition to commercial and lethal scientific whaling and suggest policy for U.S. participation in the annual meetings of the International Whaling Commission; no action has been taken on these measures. H.Con.Res. 193 would direct U.S. delegates to the International Whaling Commission to remain diligent in efforts to protect the ability of Native people of the United States to continue to legally harvest whales; no action has been taken on this measure.

State Funding. Section 102(c) in both H.R. 701 and S. 1328 would authorize funding to states for marine mammal stock surveys as well as preparation and implementation of state mammal management plans; no action has been taken on either measure.

Taxation. S. 713 would amend the Internal Revenue Code to provide a charitable deduction for certain expenses incurred in support a Native Alaskan subsistence whaling; no action has been taken on this measure.

North Atlantic Right Whales. S. 1380 and H.R. 3095 propose to coordinate and expand U.S and international programs to conserve and protect North Atlantic right whales; no action has been taken on either measure.

DOD Compliance. Section 3(a) of H.R. 2154 would require the Department of Defense to fully comply with the MMPA; no action has been taken on this measure.

NOAA Fisheries Appropriations

The Bush administration's proposed FY2003 budget for NOAA Fisheries is about \$7 million larger than its proposed FY2002 budget, and about \$34 million less than the enacted FY2002 funding. Major reductions between the FY2002 enacted appropriations and the FY2003 request include about \$20 million less for construction, \$20 million less for Pacific coastal salmon recovery, and about \$27.5 million less for Pacific Salmon Treaty matters. In addition, the FY2003 request proposes to terminate \$83.3 million for projects funded in FY2002. These reductions are partially offset by increases including a new fishery research vessel (\$45.5 million), Columbia River Biological Opinions implementation (\$12 million), modernization of annual fish stock assessments (\$10 million), Environmental Improvement and Restoration Fund (\$5.6 million), modernization and expansion of vessel management system program (\$5.4 million), and National Observer Program (\$3.2 million). On March 7,

2002, the House Resources Subcommittee on Fisheries Conservation, Wildlife, and Oceans held an oversight hearing on the National Marine Fisheries Service FY2003 budget request.

Table 1. NOAA Fisheries Appropriations
(x \$1000)

	FY2000 Enacted	FY2001 Request	FY2001 Enacted	FY2002 Request	FY2002 Enacted	FY2003 Request
Fisheries	390,701	429,426	376,921	598,036	342,671	348,826
Protected Resources			143,600		150,660	157,220
Habitat Conservation			48,193		44,545	46,415
Enforcement Surveillance			38,500		41,320	50,994
Acquisition of Data	25,844	25,944	26,841	0	0	0
SUBTOTAL	416,545	455,370	634,055	598,036	579,196	603,455
Construction	61,824	21,900	54,180	14,700	37,184	17,000
Fleet Replacement	—	—	8,282	0	0	0
Pacific Coastal Salmon Recovery	58,000	100,000	89,803	90,000	110,000	90,000
Pacific Salmon Treaty	0	60,000	19,956	20,000	47,419	20,000
Other Accounts	2,175	19,691	9,362	11,475	1,430	10,781
TOTAL	538,544	656,961	815,638	734,211	775,229	741,236

Sources: Annual NOAA Fisheries (formerly National Marine Fisheries Service) Budget Justifications, House and Senate Committee Reports, and floor debates.

On March 15, 2002, the House Committee on The Budget reported H.Con.Res. 353, wherein §406(b) expresses the sense of Congress that Pacific Northwest salmon recovery is a high-priority item for funding in the FY2003 federal budget (H.Rept. 107-376); this measure was passed by the House on March 20, 2002.

LEGISLATION

Related public laws and bills are discussed in the text of this document under “Background and Analysis.”

Fisheries

P.L. 107-20 (H.R. 2216); P.L. 107-77 (H.R. 2500); P.L. 107-107 (S. 1438); and P.L. 107-117 (H.R. 3338).

H.Con.Res. 353 (Nussle); H.R. 4 (Tauzin); H.R. 108 (Hefley); H.R. 325 (Tanner); H.R. 333 (Gekas); H.R. 375 (Royce); H.R. 470 (Pallone); H.R. 546 (Quinn); H.R. 553 (Young of Alaska); H.R. 642 (Gilchrest); H.R. 644 (Gilchrest); H.R. 662 (Hulshof); H.R. 701 (Young of Alaska); H.R. 1018 (Toomey); H.R. 1099 (Young of Alaska); H.R. 1157 (Thompson of California); H.R. 1367 (Saxton); H.R. 1646 (Hyde); H.R. 1661 (George Miller); H.R. 1832 (Townes); H.R. 1985 (Calvert); H.R. 1989 (Gilchrest); H.R. 2062 (Olver); H.R. 2111 (Quinn); H.R. 2202 (Rehberg); H.R. 2272 (Kirk); H.R. 2324 (Woolsey); H.R. 2347 (Nussle); H.R. 2376 (Capps); H.R. 2404 (George Miller); H.R. 2409 (Otter); H.R. 2419 (Simmons); H.R. 2436 (Hansen); H.R. 2439 (Ross); H.R. 2460 (Boehlert); H.R. 2478 (Woolsey); H.R. 2524 (Dicks); H.R. 2570 (Farr); H.R. 2573 (McDermott); H.R. 2585 (Walden); H.R. 2587 (Tauzin); H.R. 2646 (Combest); H.R. 2673 (Faleomavaega); H.R. 2732 (Baird); H.R. 2761 (Hooley); H.R. 3009 (Crane); H.R. 3104 (Peterson of Minnesota); H.R. 3208 (Calvert); H.R. 3389 (Gilchrest); H.R. 3507 (Young of Alaska); H.R. 3547 (Peterson of Minnesota); H.R. 3558 (Rahall); H.R. 3570 (Bereuter); H.R. 3670 (Bentsen); H.R. 3727 (Peterson of Minnesota); H.R. 3800 (Dingell); H.R. 3898 (Capps); H.R. 4003 (Hefley); S.Res. 180 (Kerry); S. 71 (Craig); S. 162 (Collins); S. 312 (Grassley); S. 313 (Grassley); S. 388 (Murkowski); S. 389 (Murkowski); S. 420 (Grassley); S. 525 (Graham); S. 555 (Leahy); S. 597 (Bingaman); S. 637 (Snowe); S. 678 (Bond); S. 703 (Smith of New Hampshire); S. 755 (Murray); S. 951 (Snowe); S. 973 (Wyden); S. 976 (Feinstein); S. 990 (Smith of New Hampshire); S. 1045 (Sarbanes); S. 1077 (Byrd); S. 1148 (Burns); S. 1209 (Bingaman); S. 1215 (Hollings); S. 1308 (Murray); S. 1314 (Breaux); S. 1328 (Landrieu); S. 1401 (Biden); S. 1501 (Durbin); S. 1676 (Kerry); S. 1731 (Harkin); S. 1766 (Daschle); S. 1813 (Snowe); S. 1825 (Boxer); S. 1826 (Wyden); and S. 1962 (Wyden).

Aquaculture

P.L. 107-76 (H.R. 2330).

H.R. 333 (Gekas); H.R. 897 (Saxton); H.R. 2439 (Ross); H.R. 2646 (Combest); H.R. 2964 (Pickering); H.R. 3727 (Peterson of Minnesota); S. 420 (Grassley); S. 455 (Collins); S. 1191 (Kohl); S. 1494 (Lincoln); S. 1507 (Collins); S. 1571 (Lugar); S. 1628 (Harkin); S. 1673 (Lincoln); and S. 1731 (Harkin).

Marine Mammals

P.L. 107-63 (H.R. 2217)

H.Con.Res. 180 (Delahunt); H.Con.Res. 193 (Young of Alaska); H.R. 701 (Young of Alaska); H.R. 2154 (Filner); H.R. 3095 (Delahunt); S.Res. 121 (Kerry); S. 713 (Murkowski); S. 1328 (Landrieu); and S. 1380 (Kerry).