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Fishery, Aquaculture, and Marine Mammal Legislation in the 109th Congress

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Summary

Fish and marine mammals are important resources in open ocean and nearshore coastal areas. Many laws and regulations guide the management of these resources by federal agencies. Bills to reauthorize and amend major legislation — the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and the Marine Mammal Protection Act (MMPA) — have been introduced in the 109th Congress; the authorization of appropriations for both laws expired at the end of FY1999. Bills offering extensive amendments to the MSFCMA have been passed by the Senate (S. 2012) and ordered reported in the House (H.R. 5018). Recommendations by the U.S. Commission on Ocean Policy will likely play a role in legislation considered during the 109th Congress.

Commercial and sport fishing are jointly managed by the federal government and individual states. States have jurisdiction generally within 3 miles of the coast. Beyond state jurisdiction and out to 200 miles, the federal government manages fisheries under the MSFCMA through eight regional fishery management councils. Beyond 200 miles, the United States participates in international agreements relating to specific areas or species.

Legislation related to commercial and sport fisheries enacted thus far by the 109th Congress extends protection to family fishermen under Chapter 12 of bankruptcy law (§1007 of P.L. 109-8), revises visa requirements to allow certain seasonal immigrant seafood processing workers to enter the United States (§402 of P.L. 109-13), reaffirms state authority to regulate certain fishing activities to distinguish between state and out-of-state residents (§6036 of P.L. 109-13), allows hydropower licensees to propose alternatives to fishways as long as the alternatives would not diminish fish passage (§241 of P.L. 109-58), and comprehensively amends and reauthorizes the Sport Fish Restoration Program to permanently appropriate boat safety funding and modify distribution of funds (Title X of P.L. 109-59).

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, shellfish, and trout. Legislation related to aquaculture enacted by the 109th Congress extends protection to family fishermen (including aquaculture operations) under Chapter 12 of bankruptcy law (§1007 of P.L. 109-8).

Marine mammals are protected under the MMPA. With few exemptions, the MMPA prohibits harm or harassment (“take”) of marine mammals, unless restrictive permits are obtained. It addresses specific situations of concern, such as dolphin mortality, primarily associated with the eastern tropical Pacific tuna fishery. No marine mammal legislation has yet been enacted by the 109th Congress.

This report replaces CRS Issue Brief IB10139, *Fishery, Aquaculture, and Marine Mammal Legislation in the 109th Congress*, by Eugene H. Buck, and will be updated periodically to reflect legislative action.

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Most Recent Developments

On July 13, 2006, the Senate Committee on Appropriations reported H.R. 5672 (amended), proposing NMFS FY2007 funding at \$903.7 million. On July 13, 2006, the House Committee on Resources reported S. 260, proposing to expand the authority of the Secretary of the Interior to assist private landowners in restoring, enhancing, and managing fish and marine mammal habitat on private land through the Partners for Fish and Wildlife Program. On July 11, 2006, President Bush signed P.L. 109-241 (H.R. 889), including provisions that (1) defined western Alaska community development quota plans in the context of the MSFCMA; (2) modified vessel shares for crab fisheries in the Bering Sea and Aleutian Islands; (3) required the Coast Guard to integrate vessel monitoring system data into existing databases to improve monitoring and enforcement of fishery law; (4) required a Coast Guard report on detection and interdiction of foreign fishing incursions; (5) allowed U.S. tuna vessels operating out of American Samoa to use non-United States licensed and documented personnel to meet manning requirements for four years; (6) required the Coast Guard to continue to provide marine vessel safety training and cold water immersion education and outreach programs for fishermen; and (7) waived the Jones Act for certain foreign vessels that have transported fish or shellfish in Maine waters. On July 11, 2006, the Senate passed (amended) S. 2430, implementing recommendations of the Great Lakes Fishery Resources Restoration Study. On July 10, 2006, the House passed H.R. 5061, directing the Secretary of the Interior to convey the Paint Bank National Fish Hatchery and Wytheville National Fish Hatchery to the State of Virginia. On June 29, 2006, the House passed H.R. 4761 (amended), proposing to direct the Secretary of the Interior to issue regulations permitting the use of decommissioned offshore oil and gas platforms as artificial reefs. The bill would also require a study of how the removal of offshore oil and gas platforms and other OCS facilities might affect existing fish stocks and coral populations. On June 29, 2006, the Senate passed H.R. 27 (amended) after substituting the language of S. 1021 (amended) and deleting the provision that would have amended the Workforce Investment Act of 1998 (P.L. 105-220) to specifically require state plans to discuss how states would address the employment and training needs of dislocated fishermen. On June 29, 2006, the House passed (amended) H.R. 5672, proposing NMFS FY2007 funding. On June 28, 2006, a House floor amendment to H.R. 5672 was adopted that would provide an additional \$2 million (by transfer) for the West Coast commercial salmon industry. On June 28, 2006, the House Committee on Resources reported H.R. 5061. On June 28, 2006, the House Committee on Transportation and Infrastructure ordered S. 362 reported (amended), establishing NOAA and Coast Guard programs to manage marine debris — including lost fishing gear — and to address its adverse impacts. On June 27, 2006, the Senate Committee on Environment and Public Works reported S. 2430 (amended),

implementing recommendations of the Great Lakes Fishery Resources Restoration Study. On June 26, 2006, the House Committee on Resources reported H.R. 4761 (amended). On June 22, 2006, the Senate, after passing S. 2766 (amended), including provisions requiring the Secretary of Defense to provide information to NOAA to better identify hazards posed by military munitions disposed in the ocean, incorporated these provisions into H.R. 5122 and passed H.R. 5122 (amended), omitting the House-passed provisions of H.R. 5122 that would have directed the Secretary of Defense to open Defense Department lands to fishing by certain individuals. On June 22, 2006, the House Committee on Appropriations reported H.R. 5672. On June 21, 2006, the House Committee on Resources ordered H.R. 5622 reported (amended), proposing to amend and reauthorize the Coral Reef Conservation Act. On June 19, 2006, the Senate passed S. 2012 (amended), reauthorizing and amending the Magnuson-Stevens Fishery Conservation and Management Act. (Members and staff may request e-mail notification of new CRS reports on marine and freshwater fisheries, aquaculture, and marine mammal issues by contacting Gene Buck at [gbuck@crs.loc.gov] and requesting to be added to his notification list.)

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 substantially 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. Protracted Law of the Sea Treaty negotiations in the early and mid-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 and more recently the Magnuson-Stevens Fishery Conservation and Management Act

(MSFCMA; 16 U.S.C. §§1801 et seq.)¹ 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 the National Marine Fisheries Service (NMFS, also popularly referred to as “NOAA Fisheries”) within the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce.² 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.³ Council members are appointed by the Secretary of Commerce from lists of candidates knowledgeable of fishery resources, provided by coastal state governors.⁴ 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 and NMFS have developed and implemented 40 FMPs for various fish and shellfish resources, with 9 additional plans in various stages of development. Some plans are created for an individual species or a few related ones (e.g., FMPs for red drum by the South Atlantic 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 over 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.⁵ This authorization of appropriations expired in FY 1999.

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-

¹ The full text of the MSFCMA, as amended by the Sustainable Fisheries Act of 1996 (P.L. 104-297), can be found at [<http://www.nmfs.noaa.gov/sfa/magact/>].

² NMFS programs are described in detail at [<http://www.nmfs.noaa.gov/>].

³ Links to individual Council websites are available at [<http://www.nmfs.noaa.gov/councils/>].

⁴ For the 2005 Report to Congress on Council membership, see [http://www.nmfs.noaa.gov/sfa/reg_svcs/Council_Reporttocongress/05ReporttoCongress.pdf].

⁵ A detailed summary of the Sustainable Fisheries Act, including an explanation of issues and legislative history, can be found at [<http://www.nmfs.noaa.gov/sfa/sfaguide/>].

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.

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 since 1992. Commensurate with the decline of foreign catch, domestic offshore catch in federal waters increased dramatically, from about 1.6 billion pounds (1977) to more than 6.3 billion pounds. Total (U.S. and foreign) offshore fishery landings from the U.S. EEZ (i.e., federal waters) increased about 24% between 1977 and 1986-1988 to a peak of 6.65 billion pounds. Since this peak, annual landings have declined slightly and stabilized at around 6 billion pounds.

In 2004, U.S. commercial fishermen landed almost 7.8 billion pounds of edible, unprocessed fish and shellfish from combined state, federal, and international waters, worth almost \$3.4 billion at the dock.⁶ Imports of mostly processed products supplied almost 5 billion pounds, worth more than \$11.3 billion. U.S. consumers spent an estimated \$61.9 billion on edible seafood in 2004, with almost \$43 billion of that amount spent in restaurants and other food service establishments. In addition, marine recreational anglers caught an estimated 441 million fish in 2004, of which the retained catch was about 254 million pounds.⁷ In 2001, a nationwide survey estimated that recreational anglers spent almost \$36 billion each year pursuing their sport.⁸

NMFS reports annually on the status of fish stocks managed under the MSFCMA.⁹ For 2005, NMFS made overfishing¹⁰ determinations for 237 fish stocks and complexes,¹¹ finding that 192 (81%) of them were not subject to overfishing and 45 (19%) were subject to overfishing. In addition, NMFS made overfished¹²

⁶ For additional domestic commercial fishery harvest statistics, see [<http://www.st.nmfs.noaa.gov/st1/commercial/index.html>].

⁷ Recreational fishing programs at NMFS are discussed at [<http://www.st.nmfs.gov/st1/recreational/index.html>].

⁸ Details of the 2001 survey can be found at [<http://www.census.gov/prod/www/abs/fishing.html>].

⁹ See [http://www.nmfs.noaa.gov/sfa/domes_fish/ReportsToCongress/finalSOS/Report_text_FINAL3.pdf].

¹⁰ A stock that is subject to overfishing has a fishing mortality (harvest) rate above the level that provides for the maximum sustainable yield.

¹¹ NMFS reviewed 530 individual stocks and stock complexes but had insufficient information to make determinations on all of them.

¹² A stock that is overfished has a biomass level below a biological threshold specified in (continued...)

determinations for 206 stocks and complexes, finding that 152 (74%) of them were not overfished and 54 (26%) were overfished. These numbers reflect no change in the overfishing percentages compared to 2004 (when 19% were subject to overfishing) and a slight improvement in the overfished numbers compared to that year (when 28% were overfished).

Magnuson-Stevens Act Reauthorization

Background. The MSFCMA was last reauthorized in 1996 by P.L. 104-297, the Sustainable Fisheries Act; authorization for appropriations expired on September 30, 1999. The 1996 amendments established fish conservation initiatives directing NMFS 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. While NMFS sought to implement the 1996 amendments,¹³ fishing industry and environmental groups criticized NMFS and regional council implementation efforts. While environmental groups have expressed concerns that NMFS 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 109th Congress may be seeking a balance between conserving fish and maintaining a viable commercial fishing industry.

Congressional Action. At issue for the 109th Congress are the terms and conditions of provisions designed to reauthorize and amend the MSFCMA to address the concerns of various interest groups.¹⁴ Bills introduced in the 109th Congress and offering extensive amendments to the MSFCMA include H.R. 1431, H.R. 4940, H.R. 5018, H.R. 5051, S. 1224, and S. 2012. The issues addressed by many of these bills include:

- modifying requirements for the appointment and training of members of regional councils and how certain regional council committees and panels conduct business to enhance transparency of the regional council process;
- mandating new requirements to restrict overfishing and modifying how depleted fisheries are to be rebuilt;
- requiring increased consideration of economic and social impacts of fishery management;

¹² (...continued)
its fishery management plan.

¹³ For background on initial implementation progress, see [<http://www.publicaffairs.noaa.gov/releases99/jan99/noaa99-4.html>].

¹⁴ For additional information on MSFCMA reauthorization issues, see CRS Report RL30215, *The Magnuson-Stevens Fishery Conservation and Management Act: Reauthorization Issues*, by Eugene H. Buck and Daniel A. Waldeck.

- modifying research programs and improving data collection and management;
- providing increased protection for deep sea corals and bottom habitat;
- implementing ecosystem-based management;
- promoting new gear technologies to further reduce bycatch;
- establishing national guidelines for individual fishing quota (limited access privilege) programs;
- modifying the regional council fishery management plan process, including better coordination with environmental review under the National Environmental Policy Act (NEPA); and
- strengthening the role of science in fishery management decision-making.

On April 14, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the relationship between the MSFCMA and NEPA. The House Resources Subcommittee on Fisheries and Oceans held field hearings in Alaska on MSFCMA reauthorization on July 6, 2005 (Ketchikan) and July 8, 2005 (Kodiak). On April 25, 2006, the House Committee on Resources held a field hearing in New Bedford, MA, on H.R. 4940 and H.R. 5018; the committee also held a hearing on H.R. 1431 and H.R. 5018 on May 3, 2006. On April 4, 2006, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 2012 (S.Rept. 109-229); the Senate passed S. 2012 (amended) on June 19, 2006. On May 17, 2006, the House Committee on Resources ordered H.R. 5018 reported (amended).

The 109th Congress enacted §10206 of P.L. 109-59 (the Transportation Equity Act) clarifying the eligibility for communities to participate in the western Alaska community development quota (CDQ) program. Provisions of P.L. 109-241 (the Coast Guard and Maritime Transportation Act of 2006) defined western Alaska community development quota plans in the context of the MSFCMA (§416); modified vessel shares for crab fisheries in the Bering Sea and Aleutian Islands (§417); required the Coast Guard to integrate vessel monitoring system data into existing databases to improve monitoring and enforcement of fishery law (§803); and required a Coast Guard report on detection and interdiction of foreign fishing incursions (§804). In addition, other bills introduced in the 109th Congress deal with more restricted MSFCMA issues:

- Section 1622 of S. 732, as reported on April 6, 2005 (S.Rept. 109-53), would repeal the P.L. 108-199 prohibition on FY2004 New England fisheries expenditures (this provision appears to have already been repealed by §304 of P.L. 108-219).
- H.R. 2059 would prohibit all commercial fishing for Atlantic striped bass.
- H.R. 2112 would designate the exclusive economic zone of the United States as the “Ronald Wilson Reagan Exclusive Economic Zone of the United States.”
- H.R. 2673 would place use restrictions on certain bottom trawling gear, assist fishermen in switching to alternative gear, and require federal studies to identify and map diverse bottom habitats.

- H.R. 3278 would establish national guidelines for individual fishing quota programs.
- S. 1549 would rationalize the Pacific whiting (hake) fishery.
- S. 1635 would restrict trawling to designated areas to protect deep sea corals and sponges.
- S. 1837 would add Rhode Island to the Mid-Atlantic Regional Council.
- H.R. 5447 would authorize the Secretary of Commerce to provide immediate assistance to fishermen and owners of related fishery infrastructure affected by a disaster.
- H.R. 5681 would amend the American Fisheries Act (Title II, Division C, P.L. 105-277) to modify provisions for fishing vessel rebuilding and replacement and for how pollock allocations are calculated when vessels leave fishing cooperatives (§301) and would amend 46 U.S.C. Chapter 313 to prohibit maritime liens on fishing permits (§309).

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. Management is complicated because these fish may cross several state and national boundaries during their life spans. Threats to salmon include hydropower dams blocking rivers and creating reservoirs, sport and commercial harvests, 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.¹⁵

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 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.¹⁶

Congressional Action. In the 109th Congress, §1119(m) of P.L. 109-59 (the Transportation Equity Act) limited the expenditures to no more than \$10 million annually from the Highway Trust Fund for federal forest highways to repair,

¹⁵ For additional background on this issue, see CRS Report 98-666 ENR, *Pacific Salmon and Anadromous Trout: Management Under the Endangered Species Act*; and archived CRS Report RL31546, *The Endangered Species Act and Science: The Case of Pacific Salmon*, available from the author at [gbuck@crs.loc.gov].

¹⁶ 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*.

maintain, or remove culverts and bridges to facilitate fish passage. In addition, multiple bills have been introduced to address other Pacific salmon issues:

- H.R. 1615 would require a National Academy of Sciences analysis of federal salmon recovery efforts and a Government Accountability Office study of the effects of partially removing four lower Snake River dams, and would authorize partial removal of these four dams under certain conditions.
- S. 232 would authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in implementing fish passage and screening facilities at nonfederal water projects. On March 10, 2005, the Committee on Energy and Natural Resources reported S. 232 (S.Rept. 109-31), and the Senate passed this measure on July 26, 2005.
- Section 3099(c)(2)(F) of S. 728, as reported (amended) by the Senate Committee on Environment and Public Works on April 26, 2005 (S.Rept. 109-61), would authorize the FWS to manage bird colonies in the proposed McNary National Wildlife Refuge, to reduce the loss of juvenile salmonids.
- On May 24, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the federal fish hatchery system.
- Section 4078 of H.R. 2864 would require a feasibility study of fish passage improvements in Oregon; this bill was reported by the House Committee on Transportation and Infrastructure (amended, with the Oregon fish passage language at §4083) on June 24, 2005 (H.Rept. 109-154); the House passed this bill (amended) on July 14, 2005 (with the fish passage language at §4085).
- S. 2012 would reauthorize the Yukon River Salmon Act through FY2010 (§302(b)), and amend and reauthorize the Pacific Salmon Treaty Act through FY2010 (§302(d)). On April 4, 2006, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 2012 (S.Rept. 109-229); the Senate passed S. 2012 (amended) on June 19, 2006.
- Section 3 of H.R. 4686 would reauthorize the Anadromous Fish Conservation Act through FY2012; the House Committee on Resources reported this bill (amended) on April 27, 2006 (H.Rept. 109-444).
- Section 103 of S. 2432/H.R. 5006 would designate salmon restoration areas in California.
- S. 2649/S. 2662/H.R. 5213 would provide emergency disaster assistance to mitigate the economic losses caused by salmon fishing restrictions along the California and Oregon coasts.
- S. 3522 would reauthorize and amend the Fisheries Restoration and Irrigation Mitigation Act of 2000.

Miscellaneous Issues

Bankruptcy. Section 1007 of P.L. 109-8 extended bankruptcy protection to family fishermen similar to what applies to family farmers under Chapter 12 of bankruptcy laws.

Seafood Processing. Division B, Title IV, §402 of P.L. 109-13 revised requirements for H-2B visas allowing certain seasonal immigrant seafood processing workers to enter the United States through October 1, 2006.¹⁷ S. 2284/H.R. 4740 would extend the revised visa requirements of P.L. 109-13 through October 1, 2009; §7 of H.R. 5058 would provide for market-based adjustment of annual non-immigrant visa numerical limitations. Section 203(a)(1) of H.R. 2870 would require the Labor Secretary to prohibit seafood processing operations from employing minors.

State Management. Section 6036 of P.L. 109-13 reaffirmed and clarified the authority of states to regulate certain hunting and fishing activities to distinguish between state residents and non-residents.

Recreational Fishing. Funding of Aquatic Resources Trust Fund (ARTF) programs¹⁸ was extended several times before P.L. 109-59, The Transportation Equity Act, comprehensively amended and reauthorized the Sport Fish Restoration Program to (1) permanently appropriate boat safety funding and modify distribution of funds whereby all accounts will annually receive a fixed percentage of the total fund revenue (2) eliminate the ARTF to create a Sport Fish Restoration and Boating Trust Fund; and (3) modify the excise tax on certain sport fishing equipment. P.L. 109-74 funded sportfishing and boating safety programs from the Highway Trust Fund through the end of FY2005. Other bills have been introduced:

- H.R. 1351 and S. 548 would establish a grant program to encourage private landowners to provide public access for fishing and other outdoor recreation.
- H.R. 2864 would require a feasibility review of the Kings River (CA) Fisheries Management Program Framework Agreement; this bill was reported by the House Committee on Transportation and Infrastructure (amended) on June 24, 2005 (H.Rept. 109-154). The House passed H.R. 2864 (amended) on July 14, 2005, with the Kings River language at §5051(a).
- S.Con.Res. 66 would affirm congressional intent that fishing (and hunting) is to be permitted on public lands in the National Wildlife Refuge System.
- As reported by the House Committee on Armed Services (H.Rept. 109-452) on May 5, 2006, §1036 of H.R. 5122 would direct the Secretary of Defense to open Defense Department lands to fishing

¹⁷ For additional background on immigration issues, see CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*.

¹⁸ For additional background on the ARTF and its programs, see CRS Report RS22060, *The Aquatic Resources Trust Fund*, by Eugene H. Buck.

by certain individuals; this measure passed the House (amended) on May 11, 2006. On June 22, 2006, the Senate, after passing S. 2766 (amended) incorporated these provisions into H.R. 5122 and passed H.R. 5122 (amended), without the fishing provisions.

- S. 3234 would suspend temporarily the duty on lug bottom boots for use in fishing waders; S. 3235 would suspend temporarily the duty on felt bottom boots for use in fishing waders.
- H.R. 5732 would direct the Secretary of the Interior to continue stocking fish in certain lakes in the North Cascades National Park, Ross Lake National Recreation Area, and Lake Chelan National Recreation Area.

Hydropower and Water Projects. Section 241 of P.L. 109-58 (Energy Policy Act of 2005) allowed federal hydropower licensees to propose alternatives to fishways required by the Federal Energy Regulatory Commission as long as the alternatives would not diminish fish passage. Additional measures have been introduced:

- S. 232 would authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in implementing fish passage and screening facilities at nonfederal water projects. This bill was reported on March 10, 2005 (S.Rept. 109-31), and passed the Senate on July 26, 2005.
- Section 101(a)(7) of H.R. 737 would set a goal for Department of Energy hydropower programs to decrease damage to fish and aquatic ecosystems.
- Section 201 of S. 753, §2027 of H.R. 2864, and §6 of S. 2288 would amend the Water Resources Development Act of 1986 (P.L. 99-662; 33 U.S.C. §§2201 et seq.) to modify requirements for mitigating aquatic resource losses at Corps of Engineers projects. H.R. 2864 was reported by the House Committee on Transportation and Infrastructure (amended) on June 24, 2005 (H.Rept. 109-154), and passed by the House (amended) on July 14, 2005.
- On February 27, 2006, the House Committee on Resources held an oversight field hearing on declining fish populations in the San Francisco Bay-San Joaquin Delta.
- S. 3522 would reauthorize and amend the Fisheries Restoration and Irrigation Mitigation Act of 2000.

Habitat Restoration. Section 121 (Title I, Corps of Engineers) of P.L. 109-103 authorized certain activities related to the Middle Rio Grande Endangered Species Act Collaborative Program beneficial to the silvery minnow. P.L. 109-183 reauthorized Upper Colorado and San Juan River Basin endangered fish recovery programs. Other measures have been introduced:

- S. 218 would amend the Food Security Act of 1985 (P.L. 99-198) to authorize the Natural Resources Conservation Service to establish a stream habitat improvement program, funded at \$60 million annually for FY2006-FY2008.

- S. 260/H.R. 2018 would expand the authorization of the Secretary of the Interior to assist private landowners in restoring, enhancing, and managing fish habitat on private land through the Partners for Fish and Wildlife Program. The Senate Committee on Environment and Public Works reported S. 260 (amended) on June 22, 2005 (S.Rept. 109-86), and the Senate passed S. 260 (amended) on June 27, 2005. On September 23, 2005, the House Resources Subcommittee on Fisheries and Oceans held a hearing on S. 260 and H.R. 2018; the House Committee on Resources reported S. 260 on July 13, 2006 (H.Rept. 109-562).
- Title V (Subtitle C) of S. 1224 would establish a program to restore fishery habitat with annual authorized funding of \$50 million through FY2010.
- S. 1540 would authorize the Secretary of the Army and the Secretary of the Interior to establish a program to improve water management and contribute to the recovery of the endangered silvery minnow in the Middle Rio Grande, NM.
- Section 501 of H.R. 4650 would authorize the Environmental Protection Agency to award state grants for fishery habitat protection, restoration, and enhancement.
- Section 109 of S. 2440 would require an outreach program for commercial and recreational fishermen and boaters to reduce the risk of oil spills or releases.
- S. 2422 would create a Coastal Conservation and Habitat Restoration Fund to finance fishery habitat restoration.
- Section 14 of H.R. 5649 would authorize a natural resources enhancement fund related to energy and mineral development.

Assistance. Section 101(b) (Title I, Chapter I) of P.L. 109-148 directed the Secretary of Agriculture to pay as much as 90% of the costs of rehabilitating public and private oyster reefs damaged by hurricanes. Title II, Chapter 1, §2105 of P.L. 109-234 deleted the oyster recovery authority enacted by P.L. 109-148; Title II, Chapter 8, provided \$112 million for Gulf Coast fishery recovery (in addition to \$38 million transferred to NMFS by Title II, Chapter 1, §2104, from the Department of Agriculture for oysters) and \$5 million for the New England shellfish industry harmed by red tide. Additional measures have been introduced to provide assistance:

- Section 104(b) of H.R. 27 would amend the Workforce Investment Act of 1998 (P.L. 105-220) to specifically require state plans to discuss how states would address the employment and training needs of dislocated fishermen. This bill was reported (amended) by the House Committee on Education and the Workforce on February 25, 2005 (H.Rept. 109-9), with supplement report filed March 1, 2005 (H.Rept. 109-9, Part II). On March 2, 2005, the House passed H.R. 27, amended. On June 29, 2006, the Senate passed H.R. 27, amended, after substituting the language of S. 1021 (amended) and deleting the provision on dislocated fishermen.
- Provisions in S. 1765/S. 1766/H.R. 3958 would provide financial assistance to Louisiana fishermen and fishing vessel owners as well as targeted assistance for menhaden and oyster fisheries; other funds

- would benefit fishery infrastructure reconstruction, seafood marketing, and fishery habitat rehabilitation as well as fund Coast Guard contracting of commercial fishing vessels to remove debris.
- Section 601 of H.R. 4330/S. 2009 would provide Louisiana, Mississippi, Alabama, and Florida with \$10 million for oyster reef rehabilitation and \$60 million for fishery disaster assistance.
 - Section 105 of H.R. 3754/S. 1692 would provide assistance to New England fisheries harmed by red tide.
 - S. 1723 would authorize a \$50 million grant program to maintain waterfront access for commercial fishing and aquaculture.
 - On December 15, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the impact of Hurricanes Katrina, Rita and Wilma on the Gulf Coast fishing industry, coastal communities, and the marine environment, and on March 21, 2006, the House Resources Subcommittee on Fisheries and Oceans held an oversight field hearing in Gretna, LA, on how the 2005 hurricanes affected fishery resources and associated communities.
 - Section 2 of H.R. 4686 would reauthorize the Interjurisdictional Fisheries Act through FY2012. The House Committee on Resources reported this bill (amended) on April 27, 2006 (H.Rept. 109-444).
 - S. 2649/S. 2662/H.R. 5213 would provide emergency disaster assistance to mitigate the economic losses caused by salmon fishery restrictions along the California and Oregon coast. On June 28, 2006, a House floor amendment to H.R. 5672 was adopted that would provide an additional \$2 million (by transfer) for the West Coast commercial salmon industry.
 - H.R. 5446 would direct the NOAA Administrator to report on the effect of 2005 hurricanes on fisheries and fish habitat.
 - H.R. 5447 would authorize the Secretary of Commerce to provide immediate assistance to fishermen and owners of related fishery infrastructure affected by a disaster.

Artificial Reefs. Section 3505 of P.L. 109-163 required a strategy and implementation plan to dispose of obsolete Maritime Administration vessels, including their use as artificial reefs, and modified terms for transferring obsolete government vessels for use as artificial reefs. Section 6521(d) of H.R. 4241, as reported by the Committee on the Budget on November 7, 2005 (H.Rept. 109-276) and §21 of H.R. 4761/H.R. 5649 would (1) amend the OCS Lands Act to direct the Secretary of the Interior to issue regulations permitting the use of decommissioned offshore oil and gas platforms as artificial reefs, and (2) require a study of how the removal of offshore oil and gas platforms and other OCS facilities might affect existing fish stocks and coral populations. On November 18, 2005, the House passed H.R. 4241, amended, with the artificial reef and coral language removed. On June 14, 2006, the House Committee on Resources held a hearing on H.R. 4761; the Committee reported this bill (amended) on June 26, 2006 (H.Rept. 109-531). On June 29, 2006, the House passed H.R. 4761 (amended), with the artificial reef and coral study provisions in §19.

Oysters. Section 101(b) (Title I, Chapter I) of P.L. 109-148 directed the Secretary of Agriculture to pay as much as 90% of the costs of rehabilitating public and private oyster reefs damaged by hurricanes. Other measures have been introduced:

- S. 728, as reported (amended) by the Senate Committee on Environment and Public Works on April 26, 2005 (S.Rept. 109-61), would specifically authorize projects to restore and rehabilitate oyster beds, bars, reefs, and shellfish habitat in Chesapeake Bay (§3095) and in Long Island Sound (§3064).
- H.R. 2864 would authorize a study of oyster habitat restoration in Delaware Bay (§1005(5)) and increase the Corps of Engineers authorization for constructing oyster habitat in Chesapeake Bay (§5017). H.R. 2864 was reported by the House Committee on Transportation and Infrastructure (amended) on June 24, 2005 (H.Rept. 109-154), and passed by the House (amended) on July 14, 2005.
- H.R. 3110 would amend the Endangered Species Act to treat distinct population segments of the Eastern oyster as separate species. On July 19, 2005, the House Committee on Resources held an oversight hearing on the potential listing of the eastern oyster under the Endangered Species Act.
- H.R. 3636 would suspend temporarily the duty on prepared or preserved, not smoked, oysters.
- Section 2(f) of S. 1494 would establish a stock enhancement and habitat restoration program for Chesapeake Bay oysters.

Tuna. In the 109th Congress, §421 of P.L. 109-241 (the Coast Guard and Maritime Transportation Act of 2006) allowed U.S. tuna vessels operating out of American Samoa to use non-United States licensed and documented personnel to meet manning requirements for four years. Additional measures have been introduced:

- H.R. 629 would extend certain tax credits, beneficial to American Samoa tuna canneries, through January 1, 2016.
- S. 599/H.R. 2816 would modify the duty treatment of tuna to specifically identify tuna packed in pouches, and would eliminate duties on certain tuna products imported from cited ASEAN nations.
- Section 405 of S. 2012 and §6 of H.R. 4686 would reauthorize the Atlantic Tunas Convention Act of 1975 (P.L. 94-70; 16 U.S.C. §§971 et seq.) through FY2012; the House Committee on Resources reported H.R. 4686 (amended) on April 27, 2006 (H.Rept. 109-444).
- Title V of S. 2012 would implement the Western and Central Pacific Fisheries Convention. On April 4, 2006, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 2012 (S.Rept. 109-229); the Senate passed S. 2012 (amended) on June 19, 2006.

Vessel Safety. In the 109th Congress, §405 of P.L. 109-241 (the Coast Guard and Maritime Transportation Act of 2006) required the Coast Guard to continue to

provide marine vessel safety training and cold water immersion education and outreach programs for fishermen. Additional measures have been introduced:

- S. 1473 would amend the Internal Revenue Code to provide a business credit against income for the purchase of fishing safety equipment.
- Section 333(b) of S. 2766/S. 2767 and §312(b) of H.R. 5122 (as reported by the House Committee on Armed Services on May 5, 2006) would require the Secretary of Defense to provide information to NOAA to better identify hazards posed by military munitions disposed in the ocean; S. 2766 (S.Rept. 109-254) and S. 2767 were reported by the Senate Committee on Armed Services on May 9, 2006. The House passed H.R. 5122 (amended) on May 11, 2006. On June 22, 2006, the Senate passed S. 2766 (amended), subsequently incorporating these provisions in H.R. 5122 and passing H.R. 5122 (amended).

Jones Act. Section 418 of P.L. 109-241 (the Coast Guard and Maritime Transportation Act of 2006) waived the Jones Act for certain foreign vessels that have transported fish or shellfish in Maine waters.

Invasive Species. Numerous bills have been introduced to enhance ballast water management¹⁹ as one means to control aquatic invasive species:

- S. 363 and Title VII of S. 1224 would amend the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA) of 1990 to promote the development and adoption of new ballast water treatment technologies and standards. On November 16, 2005, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 363 (S.Rept. 109-181).
- Section 12 of S. 793/H.R. 1636 would express the sense of Congress that strong mandatory standards for ballast water be enacted.
- H.R. 1591, S. 770, H.R. 5030, and Title I of H.R. 5100/S. 2545 would reauthorize and amend NANPCA to address ballast water management and other concerns.
- On June 15, 2005, the Senate Committee on Commerce, Science, and Transportation's National Ocean Policy Study held a hearing on ballast water management and threats to coral reefs.
- On September 9, 2005, the House Committee on Government Reform's Subcommittee on Regulatory Affairs held a field hearing in Fair Haven, MI, on ballast water management.
- H.R. 4771 would amend NANPCA to require all vessels equipped with ballast water tanks to conduct ballast water exchange or alternative management before entering any Great Lakes port.

Other measures address additional aquatic invasive species issues:

¹⁹ For background on ballast water management, see CRS Report RL32344, *Ballast Water Management to Combat Invasive Species*, by Eugene H. Buck.

- Section 7(d)(4) of H.R. 792 would allocate funds to the State of Illinois for a project to establish a permanent invasive species barrier between the Mississippi River and Lake Michigan.
- S.Con.Res. 12 would require that any agreement signed by the United States not preclude measures to combat invasive species.
- S. 507 and H.R. 1593 would authorize and establish the National Invasive Species Council.
- Section 4(b)(1)(C) of S. 508 would authorize Great Lakes Environmental Restoration Grants for invasive species prevention and control.
- H.R. 1592 would authorize various marine and freshwater research, development, and demonstration programs to address invasive species concerns.
- On November 3, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on invasive Asian carp in the Great Lakes and Mississippi River System.
- H.R. 3049 and S. 1402 would amend the Lacey Act to add four species of carp to the list of injurious species that are prohibited from being imported or shipped. The House Committee on Resources ordered H.R. 3049 reported on March 29, 2006.
- S. 1541 would establish a cooperative cost-shared grant program to control and mitigate the spread of invasive species on public lands. On November 2, 2005, the Senate Energy and Natural Resources Subcommittee on Public Lands and Forests held a hearing on this bill.
- H.R. 3468 would establish specific procedures to address invasive species concerns in Hawaii.

Corals and Coral Reefs. On March 1, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the Coral Reef Conservation Act of 2000 (P.L. 106-562; 16 U.S.C. §§6401 et seq.) Various bills have been introduced in the 109th Congress:

- H.R. 1996 would amend the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. §§2151 et seq.) to provide for debt relief to developing countries that take action to protect critical coral reef habitats.
- H.R. 2376 would establish the Northwestern Hawaiian Islands National Marine Refuge; §7(c) of this bill would compensate fishermen displaced by the refuge.
- Title II (Subtitle A and §222 of Subtitle B) of S. 1224, §211 of S. 2012, and §208 of H.R. 5051 would provide for increased efforts to study and protect deep sea corals. On April 4, 2006, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 2012 (S.Rept. 109-229); the Senate passed S. 2012 (amended) on June 19, 2006.
- H.R. 2673 would place use restrictions on certain bottom trawling gear and require federal studies to identify and map diverse bottom habitats.

- S. 1390, H.R. 4788, and H.R. 5622 would amend and reauthorize the Coral Reef Conservation Act. On June 15, 2005, the Senate Committee on Commerce, Science, and Transportation's National Ocean Policy Study held a hearing on threats to coral reefs. The Senate Committee on Commerce, Science, and Transportation reported S. 1390 (amended) on November 17, 2005 (S.Rept. 109-182), and the Senate passed this measure (amended) on December 15, 2005. On June 21, 2006, the House Committee on Resources ordered H.R. 5622 reported (amended).
- H.R. 3469 would prohibit the import, export, and take of certain coral reef species.
- S. 1635/H.R. 3778 would designate areas where trawling is permitted to protect deep sea corals and sponges.
- H.R. 318 would authorize a study on the feasibility of designating land including fringing coral reef in the U.S. Virgin Islands as a unit of the National Park System; the House passed this bill on November 15, 2005. On April 20, 2006, the Senate Committee on Energy and Natural Resources reported H.R. 318 (S.Rept. 109-241).

International Fisheries. Section 103(4) of S. 600 would authorize \$25,123,000 for "International Fisheries Commissions" for FY2006, and such sums as may be necessary for FY2007; S. 600 was reported by the Senate Committee on Foreign Relations on March 10, 2005 (S.Rept. 109-35). Section 103(4) of H.R. 2601 would authorize \$25,123,000 for "International Fisheries Commissions" for both FY2006 and FY2007. H.R. 2601 was reported (amended) on July 13, 2005 (H.Rept. 109-168), and passed by the House (amended) on July 20, 2005. Section 6054 of H.R. 1268, as passed by the Senate (amended) on April 21, 2005, would have encouraged the government of Ecuador to enforce laws, prohibit destructive fishing, and discourage illegal fishing in the Galapagos Islands; however, this language was deleted in conference (H.Rept. 109-72) and was not included in P.L. 109-13. H.Con.Res. 168 would condemn the Democratic People's Republic of Korea for abducting and holding captive certain Korean and Japanese citizens, including fishermen; the House passed the measure (amended) on July 11, 2005. Section 7 of H.R. 4686 would reauthorize the Northwest Atlantic Fisheries Convention Act of 1995 (P.L. 104-43, title II; 16 U.S.C. §§5601 et seq.) through FY2012; the House Committee on Resources reported this bill (amended) on April 27, 2006 (H.Rept. 109-444).

Seafood Safety. S. 131 would amend the Clean Air Act to promote research to clarify the contribution of U.S. electricity generation to mercury contamination in fish and seafood. Section 12 of S. 730 would amend the Clean Air Act to require the EPA Administrator to evaluate and improve fish consumption advisories concerning mercury contamination of fish. Section 102 of H.R. 1507/S. 729 would consolidate food safety and inspection programs, including seafood inspection. Section 2 of H.R. 2235 would require labels to specify that certain fish and shellfish products are raw or partially cooked; §3 of this bill would require labels to specify that certain fish or shellfish products have been frozen. On March 8, 2006, the House passed H.R. 4167 after amending it to prevent the National Uniformity for Food Act from affecting any state action that establishes a notification requirement regarding mercury in fish and shellfish.

Trade. Section 343(b) of S. 14 would authorize a program for trade adjustment assistance to commercial fishermen, fish processors, and fishing communities. S. 270 would establish a framework for legislative and executive consideration of unilateral economic sanctions against foreign nations. H.R. 3363 would amend the Tariff Act of 1930 (19 U.S.C. §§1202 et seq.) to repeal certain duty requirements relating to imported salt for curing fish. H.R. 3635 would suspend temporarily the duty on certain sardines in oil in airtight containers. H.R. 3636 would suspend temporarily the duty on prepared or preserved oysters, not smoked. Section 301(b) of S. 1963 would clarify that commercial fishermen are eligible for trade adjustment assistance. S. 3118 would liquidate or reliquidate certain entries of frozen fish fillets at Los Angeles/Long Beach at Miami without antidumping duties or interest. S. 3182 would suspend temporarily the duty on canned, boiled (not smoked) oysters.

Great Lakes. Section 4(b)(1)(D) of S. 508 would authorize state and local grants for fish habitat improvement in the Great Lakes region. Title I of H.R. 2129 would reauthorize various programs to restore fisheries and aquatic habitat in the Great Lakes. Section 5012 of H.R. 2864 would allow nonfederal participants in Great Lakes fisheries restoration to provide as much as 100% of their nonfederal share through in-kind contributions. H.R. 2864 was reported by the House Committee on Transportation and Infrastructure (amended) on June 24, 2005 (H.Rept. 109-154), and passed by the House (amended) on July 14, 2005. S. 2430/H.R. 4953 would implement recommendations of the Great Lakes Fishery Resources Restoration Study; on June 27, 2006, the Senate Committee on Environment and Public Works reported (amended) S. 2430 (S.Rept. 109-270). The Senate passed S. 2430 (amended) on July 11, 2006. H.R. 5089/S. 3605 would authorize the Great Lakes Fishery Commission to investigate the effects of migratory birds on fish stock productivity.

Tax Provisions. Section 308 of S. 6 would amend the Internal Revenue Code to provide tax incentives for participation in the Fish and Wildlife Services' "Partners for Fish and Wildlife Program." H.R. 629 would extend certain tax credits, beneficial to American Samoa tuna canneries, through January 1, 2016. H.R. 3944 and §2 of H.R. 5058 would amend the Internal Revenue Code to allow fishermen a temporary credit against income tax to offset high fuel costs. Section 203 of H.R. 3908 would amend the Internal Revenue Code to exempt payments from gross revenue for certain landowner incentive programs that restore or protect habitat.

Marine Debris. S. 362 and H.R. 3692 would establish NOAA and Coast Guard programs to manage marine debris — including lost fishing gear — and address its adverse impacts. The Senate Committee on Commerce, Science, and Transportation reported S. 362 (with amendment) on April 13, 2005 (S.Rept. 109-56), and the Senate passed this bill (amended) on July 1, 2005. The House Committee on Resources reported this measure (amended) on December 8, 2005 (H.Rept. 109-332, Part I). On June 28, 2006, the House Committee on Transportation and Infrastructure ordered S. 362 reported (amended).

Hypoxia. Section 5018 of H.R. 2864 authorizes the Corps of Engineers to participate in Gulf of Mexico hypoxia assessment efforts. This bill was reported by the House Committee on Transportation and Infrastructure (amended) on June 24, 2005 (H.Rept. 109-154), and passed by the House (amended) on July 14, 2005.

Section 105 of H.R. 4560 identifies the improvement of water quality in the Gulf of Mexico impaired by hypoxia as eligible for funds from a Clean Water Trust Fund.

National Fish and Wildlife Foundation. H.R. 1428 would reauthorize the National Fish and Wildlife Foundation. The House Committee on Resources reported this measure (amended) on June 8, 2005 (H.Rept. 109-112); the House passed this bill (amended) on June 27, 2005. On August 31, 2005, the Senate Committee on Environment and Public Works reported this bill (S.Rept. 109-127).

Marketing and Labeling. H.R. 710 would provide assistance for the construction, improvement, and rehabilitation of farmers markets, including those selling local aquaculture and commercial fishing products. S. 1300 would replace mandatory country-of-origin labeling for seafood with a voluntary program. Section 2 of H.R. 3562/S. 1556 would make the Specialty Crops Competitiveness Act of 2004 (P.L. 108-465) applicable to wild harvested fish and shellfish.

Health Care. Section 2 of H.R. 525/S. 406 and §402 of H.R. 2203 would amend the Employee Retirement Income Security Act of 1974 (ERISA; P.L. 93-406; 29 U.S.C. §§1001 et seq.) to authorize fishing industry associations to provide health care plans for association members. On April 13, 2005, the House Committee on Education and the Workforce reported H.R. 525 (H.Rept. 109-41); the House passed this bill on July 26, 2005.

Fishing Vessels. H.R. 1442 would complete codification of Title 46, U.S. Code, including fishery endorsements for vessels and financial assistance; this bill was reported (amended) July 14, 2005, by the House Committee on Judiciary (H.Rept. 109-170), and passed by the House (amended) on November 16, 2005.

Dungeness Crab. Section 302(f) of S. 2012 and §5 of H.R. 4686 would reauthorize and amend the Dungeness Crab Fishery Management Act through FY2012; the House Committee on Resources reported H.R. 4686 (amended) on April 27, 2006 (H.Rept. 109-444). On April 4, 2006, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 2012 (S.Rept. 109-229); the Senate passed S. 2012 (amended) on June 19, 2006.

Saltonstall-Kennedy Act. Section 7 of H.R. 1431 and §356 of S. 1224 would amend and modify fishery funding under the Saltonstall-Kennedy Act.²⁰

Capital Construction Fund. S. 343/H.R. 2174 would permit qualified withdrawals from the Capital Construction Fund for fishermen leaving the industry and for the rollover of Capital Construction Funds to individual retirement plans.

Climate Change. H.R. 759 and §609 of H.R. 2828 would require the Secretary of Commerce to prepare a report on the observed and projected effects of climate change on marine life, habitat, and commercial and recreational fisheries.

²⁰ For background on this program, see CRS Report RS21799, *Saltonstall-Kennedy Fishery Funding*, by Eugene H. Buck.

Harmful Algal Blooms. H.Res. 824 would express the sense of Congress on the importance of research on harmful algal blooms.

National Marine Sanctuaries. H.Res. 856 would recognize the national marine sanctuaries program as critical to managing the ocean and Great Lakes resources of the United States.

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.²¹ The diversity of aquaculture is typified by such activities as: fish farming, usually applied to freshwater commercial aquaculture operations (e.g., catfish and trout farms);²² 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 for recreational and commercial stocking as well as to mitigate aquatic resource and habitat damage.

The United Nations' Food and Agriculture Organization (FAO) has characterized aquaculture as one of the world's fastest growing food production activities. World aquaculture production more than doubled in 10 years, from about 10 million metric tons in 1984 to a record 25.5 million metric tons in 1994; by 2002, global aquaculture production had reached almost 40 million metric tons. The FAO predicts that world aquaculture production could exceed 130 million metric tons by 2030.²³ U.S. aquaculture, until recently and with a few exceptions, has been considered a minor industry. Despite considerable growth, the domestic aquaculture industry faces strong competition from imports of foreign aquacultural products, from the domestic poultry and livestock industries, and from wild harvests.²⁴ With growth, however, aquaculture operations are facing increasing scrutiny for habitat destruction, pollution, and other concerns. The major statute affecting U.S. aquaculture is the National Aquaculture Act of 1980, as amended (16 U.S.C. §§2801 et seq.).

²¹ For more background information, see archived CRS Report 97-436, *Aquaculture and the Federal Role*, available from the author at [gbuck@crs.loc.gov]; and CRS Report RL32694, *Open Ocean Aquaculture*.

²² For statistics on freshwater production, see [<http://www.usda.gov/nass/pubs/stathigh/2002/livestock02.pdf>].

²³ For more discussion of FAO projections for 2030, see Part 3 of [<http://www.fao.org/docrep/007/y5600e/y5600e00.htm>].

²⁴ For the latest information on domestic production and statistics, see [<http://usda.mannlib.cornell.edu/reports/erssor/livestock/ldp-aqs/2006/ldpaqs23.pdf>].

Miscellaneous Issues

Bankruptcy. Section 1007 of P.L. 109-8 extended bankruptcy protection to family fishermen (including aquaculture operations) similar to what applies to family farmers under Chapter 12 of bankruptcy laws.

Fish Hatcheries. In the 109th Congress, §6007 of P.L. 109-13 increased the authorization to \$25 million for the design and construction of a multispecies fish hatchery at Fort Peck Lake, MT. On May 24, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the federal fish hatchery system. Several additional bills related to fish hatcheries were introduced:

- H.R. 537 would authorize specific activities wherein National Fish Hatchery production would compensate for the impacts of federal water development projects on aquatic resources.
- H.R. 4957/S. 3551 would direct the Secretary of the Interior to convey the Tylersville division of the Lamar National Fish Hatchery and Fish Technology Center to the State of Pennsylvania; the House Resources Subcommittee on Fisheries and Oceans held a hearing on H.R. 4957 on June 15, 2006.
- H.R. 5061 would direct the Secretary of the Interior to convey the Paint Bank National Fish Hatchery and Wytheville National Fish Hatchery to the State of Virginia; the House Resources Subcommittee on Fisheries and Oceans held a hearing on this bill on June 15, 2006, and the House Committee on Resources reported this bill on June 28, 2006 (H.Rept. 109-533). The House passed H.R. 5061 on July 10, 2006.
- H.R. 5381 would authorize a volunteer program and community partnerships benefitting national fish hatcheries; the House Resources Subcommittee on Fisheries and Oceans held a hearing on this bill on June 15, 2006.

Assistance. Title III, Subtitle C, §3032 of P.L. 109-234 clarified terms and conditions of aquaculture producer grants for 2005 hurricane disaster relief. Other legislation has been introduced in the 109th Congress:

- S. 1316 would authorize the Small Business Administration to provide emergency relief to shellfish growers affected by toxic red tide losses; the Senate passed this bill on June 27, 2005.
- Section 2(g) of S. 1494 would authorize the Director of NOAA's Chesapeake Bay Office to make grants and enter into contracts that would promote aquaculture development.
- S. 1636/H.R. 3702 would provide agricultural disaster assistance to aquaculture producers that incurred losses for their 2005 crop due to damaging weather or related conditions.
- Section 203 of H.R. 3809 and §101 of H.R. 4330/S. 2009 would authorize payments of Commodity Credit Corporation funds for loss of aquaculture crops due to a 2005 hurricane; §4 of S. 1804 would authorize payments of Commodity Credit Corporation funds for any crop loss (including fisheries) due to a disaster.

- S. 1723 would authorize a \$50 million grant program to maintain waterfront access for commercial fishing and aquaculture.
- Various Louisiana aquaculture operators harmed by Hurricane Katrina would receive assistance in S. 1765/S. 1766/H.R. 3958 — §525 would provide a distribution of antidumping duties collected on imported Chinese crawfish to benefit Louisiana crawfish growers, a provision in Subtitle L would provide funds for alligator farmers, and provisions in Subtitle D would fund oyster hatcheries and restoration of oyster beds and reefs. On December 15, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the impact of Hurricanes Katrina, Rita, and Wilma on the Gulf Coast fishing industry, coastal communities, and the marine environment.
- Section 501(c)(1)(A) of S. 2747 would authorize energy disaster emergency loans for small business aquaculture operators suffering from increased energy costs.

Open Ocean Facilities.²⁵ S. 796 and §162(b)(3) of S. 1224 would prohibit the issuance of permits for marine aquaculture facilities in federal waters until requirements for such permits are enacted. S. 1224 also would establish a coordinated agency program for offshore permitting (§161), designate NOAA as the lead federal agency for marine aquaculture (§162(b)(1)), and require regulations that prohibit marine aquaculture where it would damage or alter seafloor habitat or alter water quality (§222). S. 1195 would authorize the Secretary of Commerce to establish and implement a regulatory system for offshore aquaculture in the U.S. EEZ. Section 6521 of H.R. 4241, as reported by the Committee on the Budget on November 7, 2005 (H.Rept. 109-276), and §21(b) of H.R. 4761/H.R. 5649 would amend the OCS Lands Act to direct the Secretary of the Interior to issue regulations permitting the use of decommissioned offshore oil and gas platforms for aquaculture. On November 18, 2005, the House passed H.R. 4241 (amended), with the aquaculture provision removed. On June 14, 2006, the House Committee on Resources held a hearing on H.R. 4761; the Committee reported this bill (amended) on June 26, 2006 (H.Rept. 109-531), with the specific authorization for the “culture of marine organisms” deleted. On June 29, 2006, the House passed H.R. 4761, with the amended provisions in §19. On April 6, 2006, the Senate Commerce Committee’s National Ocean Policy Study held a hearing on offshore aquaculture; a second hearing on this subject was held on June 8, 2006.

Marketing and Trade. H.R. 710 would provide financial assistance for the construction, improvement, and rehabilitation of farmers markets, including those selling products from local aquaculture and commercial fishing. The House Appropriations Committee report (H.Rept. 109-102) on H.R. 2744 (FY2006 agriculture appropriations) expresses concern about antibiotic contamination in imported farm-raised shrimp and requests a report from the Food and Drug Administration on sampling of shrimp imports. The House passed H.R. 2744 (amended) on June 8, 2005. S. 1300 would replace mandatory country-of-origin

²⁵ For additional information on offshore aquaculture development, see CRS Report RL32694, *Open Ocean Aquaculture*, by Rachel Borgatti and Eugene H. Buck.

labeling for fish and seafood with a voluntary program. Section 2 of H.R. 3562/S. 1556 would make the Specialty Crops Competitiveness Act of 2004 (P.L. 108-465) applicable to farm-raised fish and shellfish. H.R. 4879/S. 2411 would liquidate or reliquidate certain salmon entries at Miami without antidumping duties or interest.

Genetic Modification. H.Amdt. 241, offered on H.R. 2744 (FY2006 agriculture appropriations) and subsequently withdrawn, would have prohibited the use of FY2006 funds for the approval or process of approval of an application for an animal drug for creating transgenic salmon or any other transgenic fish.²⁶

Oyster Hatcheries. Section 3095 of S. 728, as reported by the Senate Committee on Environment and Public Works (amended) on April 26, 2005 (S.Rept. 109-61), would specifically authorize projects to construct and upgrade oyster hatcheries in Chesapeake Bay.

Disease. S. 572 and S. 573 seek to improve the federal response to agricultural diseases, including diseases at aquaculture operations. The Senate Committee on Homeland Security and Governmental Affairs reported S. 572 (amended) on September 27, 2005.

National Marine Sanctuaries. Section 6(b) of S. 880/H.R. 1712 would prohibit most aquaculture in the Gulf of the Farallones National Marine Sanctuary, the Cordell Bank National Marine Sanctuary, and the Monterey Bay National Marine Sanctuary.

Invasive Species. Section 305 of H.R. 1591/S. 770 would require efforts to promote voluntary cooperative compliance by aquaculture operators in screening, monitoring, and control of aquatic invasive species.

Coral. Under certain conditions, H.R. 3469 would exempt aquaculture operations from restrictions on coral handling and encourage cooperative aquaculture ventures to propagate coral reef species.

Tax Provisions. H.R. 3874 would amend the Internal Revenue Code to provide for tax-exempt qualified small issue bonds to finance aquacultural processing property.

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 assert that the MMPA is scientifically irrational because it identifies one group of organisms for special protection unrelated to their abundance or ecological role, supporters note that this act has accomplished much by way of promoting

²⁶ For additional information on genetically engineered fish, see CRS Report RL32974, *Genetically Engineered Fish and Seafood*, by Rachel Borgatti and Eugene H. Buck.

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 NMFS, 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, sea and marine otters, polar bears, manatees, 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. 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. The MMPA allows U.S. citizens to apply for and obtain authorization for taking 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 only 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 Native American (Indian, Aleut, or Eskimo) who resides in Alaska and who dwells near 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 five-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 in 1994 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 in 1997 by P.L. 105-42, the International Dolphin Conservation Program Act.

Marine Mammal Protection Act Reauthorization

Background. The MMPA was reauthorized 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 assessing marine mammal stocks in U.S. waters, for developing and implementing 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 studying pinniped-fishery interactions.²⁷

Congressional Action. At issue for the 109th 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.²⁸ Legislation has been introduced:

- H.R. 2130 and H.R. 4075 would extensively amend the MMPA and authorize appropriations for several programs; the House Committee on Resources reported H.R. 2130 (amended) on July 21, 2005 (H.Rept. 109-180).
- Title IV of S. 1224 would amend the MMPA to encourage development of fishing gear less likely to take marine mammals, expand fisheries required to participate in the MMPA incidental take program to include recreational fisheries, and authorize appropriations for stock assessments and observer programs; in addition, Title III (Subtitle C) would direct negotiation of international agreements to better protect cetaceans from commercial fishing gear and authorize a grant program to develop less harmful fishing gear.
- Section 206 of H.R. 2939 would transfer management of all marine mammals to NOAA.
- H.R. 3839 would amend the MMPA to repeal the long-term goal for reducing to zero the incidental mortality and serious injury of marine mammals in commercial fishing operations, and to modify the goal of take reduction plans for reducing such takings.

²⁷ For more background and information on the 1994 amendments, see archived CRS Report 94-751 ENR, *Marine Mammal Protection Act Amendments of 1994*, available from the author at [gbuck@crs.loc.gov].

²⁸ For additional background on potential reauthorization issues, see CRS Report RL30120, *The Marine Mammal Protection Act: Reauthorization Issues*, by Eugene H. Buck.

- Section 25 of H.R. 3824, as passed by the House (amended) on September 29, 2005, would declare that §7 consultation under the Endangered Species Act is equivalent to a §101 incidental take authorization required under the MMPA for dock building permits.

Miscellaneous Issues

Habitat. S. 260/H.R. 2018 would expand the authority of the Secretary of the Interior to assist private landowners in restoring, enhancing, and managing marine mammal habitat on private land through the Partners for Fish and Wildlife Program; the Senate Committee on Environment and Public Works reported S. 260 (amended) on June 22, 2005 (S.Rept. 109-86), and the Senate passed it (amended) on June 27, 2005. On September 23, 2005, the House Resources Subcommittee on Fisheries and Oceans held a hearing on S. 260 and H.R. 2018; the House Committee on Resources reported S. 260 on July 13, 2006 (H.Rept. 109-562).

Marine Debris. S. 362 and H.R. 3692 would establish NOAA and Coast Guard programs to manage marine debris and address its adverse impacts. The Senate Committee on Commerce, Science, and Transportation reported S. 362 (with amendment) on April 13, 2005 (S.Rept. 109-56), and the Senate passed this bill (amended) on July 1, 2005. The House Committee on Resources reported S. 362 (amended) on December 8, 2005 (H.Rept. 109-332, Part I). On June 28, 2006, the House Committee on Transportation and Infrastructure ordered S. 362 reported (amended).

Whaling. S.Con.Res. 33/H.Con.Res. 164 would express the sense of the Congress regarding the policy of the United States at the 57th Annual Meeting of the International Whaling Commission. H.Con.Res. 267 would express the sense of Congress relating to Makah treaty rights and whaling; the House Committee on Resources reported this measure (amended) on November 10, 2005 (H.Rept. 109-283). S.Con.Res. 99 would express the sense of the Congress regarding the policy of the United States at the 58th Annual Meeting of the International Whaling Commission. H.Con.Res. 441 would express the sense of Congress regarding votes cast by certain Caribbean countries for a resumption of commercial whaling at the 58th annual International Whaling Commission meeting in June 2006.

Ocean Noise. Section 402 of S. 1224 would amend the National Fish and Wildlife Foundation Establishment Act (P.L. 98-244; 16 U.S.C. §§3701 et seq.) to create a national ocean noise pollution research endowment fund.²⁹

Polar Bear. S. 2013 would implement the Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population; the Senate Committee on Commerce, Science, and Transportation reported this measure on February 27, 2006 (S.Rept. 109-217). The Senate passed this measure (amended) on June 6, 2006.

²⁹ For additional information on ocean noise, see CRS Report RL33133, *Active Military Sonar and Marine Mammals: Events and References*, by Eugene H. Buck and Kori Calvert.

Small Cetacean Kills. S.Res. 99 would express the sense of the Senate condemning the commercial slaughter of small cetaceans by certain nations and supporting certain policies at the 57th Annual Meeting of the International Whaling Commission.

Climate Change. H.R. 759 and §609 of H.R. 2828 would require a report on the observed and projected effects of climate change on marine life and habitat.

Tuna-Dolphin. S. 270 would establish a framework for legislative and executive consideration of unilateral economic sanctions against foreign nations.

Sea Otters. H.R. 2323 would promote southern sea otter recovery and research.

Canadian Sealing. S.Res. 33 urges Canada to end commercial seal hunting.

NMFS Appropriations

P.L. 109-108 provided FY2006 funding for NMFS. On February 6, 2006, the Bush Administration requested FY2007 funds for federal agencies and programs, including \$736.9 million for NMFS (**Table 1**). On March 9, 2006, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on NMFS's FY2007 budget request.

H.R. 5672, proposing NMFS FY2007 funding at \$559.4 million, was reported by the House Committee on Appropriations on June 22, 2006 (H.Rept. 109-520), and passed (amended) by the House on June 29, 2006. According to NOAA calculations, FY2007 funding for NMFS would decline by approximately 28%, or \$156 million below the current funding level, if the House-passed approach were enacted. Such a reduction would “force NOAA to close critical fisheries, terminate protected species programs and terminate the Seafood Quality and Safety Program, costing billions in economic losses and increasing the cost of seafood to US consumers,” according to NOAA’s impact statement. Large reductions in funding for NOAA are inconsistent with the recommendations of the U.S. Commission on Ocean Policy and the Pew Oceans Commission. The chairs of these commissions, Admiral James D. Watkins and Leon E. Panetta, issued a joint letter expressing their concern that the proposed funding cuts are being imposed at a time when there is clear recognition of the growing number and severity of problems compromising the health and associated economic benefits generated by our oceans, coasts, and Great Lakes. On July 13, 2006, the Senate Committee on Appropriations reported H.R. 5672 (amended), proposing NMFS FY2007 funding at \$903.7 million (S.Rept. 109-280).

Table 1. NMFS Appropriations
(in thousands of dollars)

	FY2006 Request	FY2006 Enacted	FY2007 Request	FY2007 Hse Pas'd	FY2007 Sen Rptd
Fisheries	351,932	352,585	347,023	317,600	436,261
Protected Resources	159,273	145,039	144,924	108,000	180,991
Habitat Conservation	34,096	46,629	39,896	40,000	56,927
Enforcement Surveillance	80,163	72,675	80,697	73,500	84,500
SUBTOTAL	625,464	667,226*	648,988*	539,100	813,679*
Procurement, Acquisition, and Construction	2,000	30,444	0	0	0
Pacific Coastal Salmon Recovery	90,000	66,571	66,825	20,000	90,000
Other Accounts	10,419	39,579	21,088	287	0
TOTAL	727,883	803,820	736,901	559,387	903,679

Sources: Budget Justifications, House and Senate Committee Reports, and floor debate.

* Includes funds for "Alaska Composite Research and Development Program" — \$50.3 million for FY2006; the Administration's FY2007 request is \$36.45 million; the FY2007 Senate-reported amount was \$55 million