

CRS Report for Congress

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

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Eugene H. Buck
Specialist in Natural Resources Policy
Resources, Science, and Industry Division



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Summary

Fish and marine mammals are important resources in open ocean and nearshore coastal areas; many federal laws and regulations guide their management. Bills to reauthorize and amend major legislation — the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and the Marine Mammal Protection Act (MMPA) — were acted upon by the 109th Congress; the authorization of appropriations for both laws expired at the end of FY1999. P.L. 109-479 reauthorized and extensively amended the MSFCMA; a bill extensively amending the MMPA was passed by the House (H.R. 4075).

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 by the 109th Congress included measures to protect fishermen under bankruptcy law (§1007 of P.L. 109-8), revise visa requirements to allow seasonal seafood processing workers to enter the United States (§402 of P.L. 109-13 and §1074 of P.L. 109-364), reaffirm state authority to regulate fishing to distinguish between state and out-of-state residents (§6036 of P.L. 109-13), allow hydropower licensees to propose alternatives to fishways as long as the alternatives would not diminish fish passage (§241 of P.L. 109-58), provide \$112 million for Gulf Coast fishery recovery (P.L. 109-234), amend the Sport Fish Restoration Program to permanently appropriate boat safety funding and modify distribution of funds (Title X of P.L. 109-59), and implement the Great Lakes Fishery Resources Restoration Study (P.L. 109-326).

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 protects aquaculture under bankruptcy law (§1007 of P.L. 109-8) and clarifies aquaculture grants for 2005 hurricane disaster relief (§3032 of P.L. 109-234).

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 was 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.

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

Most Recent Developments

On January 12, 2007, President Bush signed P.L. 109-479 (H.R. 5946), reauthorizing and extensively amending the Magnuson-Stevens Fishery Conservation and Management Act and related fishery law. On December 22, 2006, President Bush signed P.L. 109-449 (S. 362), establishing NOAA and Coast Guard programs to manage marine debris — including lost fishing gear — and address its adverse impacts. On December 20, 2006, President Bush signed P.L. 109-432, including provisions suspending temporarily the duty on felt-bottom and lug-bottom boots for use in fishing waders and on canned, boiled (not smoked) oysters. On December 12, 2006, President Bush signed P.L. 109-388 (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 December 9, 2006, the House agreed to the Senate-amended H.R. 5946. On December 9, 2006, the Senate agreed to the House-amended S. 362. On December 7, 2006, the Senate passed H.R. 5946, amended to include much of the language formerly in S. 2012. (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.

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/>].

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.

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

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.

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 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. Prior to the 109th Congress, 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 the reauthorization debate in the 109th Congress was achieving a balance between conserving fish and maintaining a viable commercial fishing industry.

Congressional Action. At issue for the 109th Congress were the terms and conditions of provisions designed to reauthorize and amend the MSFCMA to address the concerns of various interest groups.¹⁴ In the final hours of the 109th Congress, P.L. 109-479 (H.R. 5946) was enacted to reauthorize and extensively amend the MSFCMA. Various provisions enacted by P.L. 109-479:

- modified 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;
- mandated new requirements to restrict overfishing and modifying how depleted fisheries are to be rebuilt;

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 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.

- required increased consideration of economic and social impacts of fishery management;
- modified research programs and improving data collection and management;
- provided increased protection for deep sea corals and bottom habitat;
- implemented ecosystem-based management;
- promoted new gear technologies to further reduce bycatch;
- established national guidelines for individual fishing quota (limited or dedicated access privilege) programs;
- modified the regional council fishery management plan process, including better coordination with environmental review under the National Environmental Policy Act (NEPA); and
- strengthened the role of science in fishery management decision-making.

The 109th Congress also 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). P.L. 109-479 also amended the MSFCMA to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements (Title IV), and implemented the Agreement between the United States and Canada on Pacific Hake/Whiting (Title VI). In addition, other bills introduced in the 109th Congress dealt with more restricted MSFCMA issues:

- H.R. 5681 would have amended 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). This bill was reported by the Committee on Transportation and Infrastructure (amended) on July 28, 2006, with (1) the American Fisheries Act amendment in §301; (2) the maritime lien language in §308; and (3) new language in §310 modifying the criteria for documenting fishing vessels (H.Rept. 109-614). The House passed H.R. 5681 (amended) on September 28, 2006.
- Section 1622 of S. 732, as reported on April 6, 2005 (S.Rept. 109-53), would have repealed 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 have prohibited all commercial fishing for Atlantic striped bass.

- H.R. 2112 would have designated the exclusive economic zone of the United States as the “Ronald Wilson Reagan Exclusive Economic Zone of the United States.”
- H.R. 2673 would have placed use restrictions on certain bottom trawling gear, assisted fishermen in switching to alternative gear, and required federal studies to identify and map diverse bottom habitats.
- H.R. 3278 would have established national guidelines for individual fishing quota programs.
- S. 1635 would have restricted trawling to designated areas to protect deep sea corals and sponges.
- S. 1837 would have added Rhode Island to the Mid-Atlantic Regional Council.
- H.R. 5447 would have authorized the Secretary of Commerce to provide immediate assistance to fishermen and owners of related fishery infrastructure affected by a disaster.

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 roads to repair, maintain,

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*.

or remove culverts and bridges to facilitate aquatic species passage. P.L. 109-479 required the Secretary of Commerce to complete a recovery plan for Klamath River coho salmon and declared Oregon and California chinook salmon fishermen eligible for direct assistance (§§113(b) and 113(c)), reauthorized the Yukon River Salmon Act through FY2010 (§302(b)), amended and reauthorized the Pacific Salmon Treaty Act through FY2010 (§302(d)), and reauthorized the Anadromous Fish Conservation Act through FY2012 (§302(h)). On May 24, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the federal fish hatchery system. In addition, multiple bills were introduced to address other Pacific salmon issues:

- S. 232 would have authorized 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.
- S. 728, as reported (amended) by the Senate Committee on Environment and Public Works on April 26, 2005 (S.Rept. 109-61), would have authorized the FWS to manage bird colonies in the proposed McNary National Wildlife Refuge to reduce the loss of juvenile salmonids (§3099(c)(2)(F)) and would have amended the Lower Snake River Compensation Plan to authorize aquatic and riparian ecosystem restoration (§3100). H.R. 2864 would have required 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 the bill (amended) on July 14, 2005 (with the fish passage language at §4085). The Senate passed H.R. 2864 on July 19, 2006 (amended to incorporate amended language of S. 728, excluding the fish passage and bird colony provisions, but including language in §3115 amending the Lower Snake River Compensation Plan).
- S. 3522 and H.R. 6278 would have reauthorized and amended the Fisheries Restoration and Irrigation Mitigation Act of 2000. The Senate Energy and Natural Resources Subcommittee on Water and Power held a hearing on S. 3522 on September 21, 2006.
- H.R. 1615 would have required 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 have authorized partial removal of these four dams under certain conditions.
- Section 103 of S. 2432/H.R. 5006 would have designated salmon restoration areas in California.
- S. 2649/S. 2662/H.R. 5213 proposed emergency disaster assistance to mitigate the economic losses caused by salmon fishing restrictions along the California and Oregon coasts.
- Section 405 of H.R. 3854 would have authorized \$1 million for culvert removal on wild and scenic rivers in Clackamas County, OR, to improve fish passage.

- H.R. 6241 would have amended the Marine Mammal Protection Act to authorize taking of California sea lions to reduce their predation on endangered Columbia River salmon.
- H.R. 6377 and S. 4084 would have authorized implementing the San Joaquin River Restoration Settlement, providing for the reintroduction of spring-run chinook salmon below Friant Dam.

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 Section 1074 of P.L. 109-364 directed that aliens who have already been counted toward the numerical limitation for H-2B visas during FY2004, FY2005, or FY2006 not be counted again toward the limitation during FY2007. Section 7 of H.R. 5058 would have provided for market-based adjustment of annual non-immigrant visa numerical limitations. Section 203(a)(1) of H.R. 2870 would have required 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. Section 1077 of P.L. 109-364 (H.R. 5122) directed the Secretary of Defense to open Defense Department lands to fishing by certain individuals. Sections 1290-1291 (Division D) of P.L. 109-432 suspended temporarily the duty on felt-bottom and lug-bottom boots, respectively, for use in fishing waders. Other bills were introduced:

- H.R. 2864 would have required a feasibility review of the Kings River (CA) Fisheries Management Program Framework Agreement; this bill was reported by the House Committee on Transportation

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.

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). The Senate passed H.R. 2864 on July 19, 2006 (amended to incorporate amended language of S. 728, with modified Kings River provisions in §3017(a-b)).

- H.R. 1351 and S. 548 would have established a grant program to encourage private landowners to provide public access for fishing and other outdoor recreation.
- S.Con.Res. 66 would have affirmed congressional intent that fishing (and hunting) is to be permitted on public lands in the National Wildlife Refuge System.
- H.R. 5732 would have directed 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. 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. Additional measures were introduced:

- S. 232 would have authorized 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 201 of S. 753, §2027 of H.R. 2864, §2008 of S. 728, and §6 of S. 2288 would have amended 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. The Senate passed H.R. 2864 on July 19, 2006 (amended to incorporate amended language of S. 728, with mitigation provisions in §2008).
- S. 3522 and H.R. 6278 would have reauthorized and amended the Fisheries Restoration and Irrigation Mitigation Act of 2000. The Senate Energy and Natural Resources Subcommittee on Water and Power held a hearing on this bill on September 21, 2006.
- Section 101(a)(7) of H.R. 737 would have set a goal for Department of Energy hydropower programs to decrease damage to fish and aquatic ecosystems.

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. P.L. 109-294 (S. 260) expanded the authority 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. Other measures were introduced:

- S. 218 would have amended 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.
- Title V (Subtitle C) of S. 1224 would have established a program to restore fishery habitat with annual authorized funding of \$50 million through FY2010.
- S. 1540 would have authorized 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 have authorized the Environmental Protection Agency to award state grants for fishery habitat protection, restoration, and enhancement.
- Section 109 of S. 2440 would have required an outreach program for commercial and recreational fishermen and boaters to reduce the risk of oil spills or releases.
- S. 2422 would have created a Coastal Conservation and Habitat Restoration Fund to finance fishery habitat restoration.
- Section 14 of H.R. 5649 and §144 of S. 3926 would have authorized a natural resources enhancement fund related to energy and mineral development.
- H.R. 5872 would have promoted the restoration, protection, and preservation of the natural, chemical, physical, and biological integrity of the New York/New Jersey Bight.
- Section 106(c) of H.R. 6064 would have authorized the Secretary of Agriculture to share costs for development of fish habitat under the Wildlife Habitat Incentive Program.

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. Provisions of P.L. 109-479 declared Oregon and California chinook salmon fishermen eligible for direct assistance (§113(c)), required a report by the Secretary of Commerce on the impact of 2005 hurricanes on commercial and recreational fisheries and on fish habitat (§213), and reauthorized the Interjurisdictional Fisheries Act through FY2012 (§302(g)). 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. Additional measures were introduced to provide assistance:

- Section 104(b) of H.R. 27 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. 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 have provided financial assistance to Louisiana fishermen and fishing vessel owners as well as targeted assistance for menhaden and oyster fisheries; other funds would have benefited fishery infrastructure reconstruction, seafood marketing, and fishery habitat rehabilitation as well as funding Coast Guard contracting of commercial fishing vessels to remove debris.
- Section 601 of H.R. 4330/S. 2009 would have provided 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 have provided assistance to New England fisheries harmed by red tide.
- S. 1723 would have authorized a \$50 million grant program to maintain waterfront access for commercial fishing and aquaculture.
- S. 2649/S. 2662/H.R. 5213 proposed 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. 5447 would have authorized 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); §21 of H.R. 4761/H.R. 5649; and §151 of S. 3926 would have (1) amended 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) required 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. Section 7(19)(b) of H.R. 5872 specifically excluded material approved for construction or maintenance of permitted artificial reefs from the definition of *pollutant*.

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. Section 1214 (Division D) of P.L. 109-432 suspended temporarily the duty on canned, boiled (not smoked) oysters. Other measures were introduced:

- S. 728, as reported (amended) by the Senate Committee on Environment and Public Works on April 26, 2005 (S.Rept. 109-61), would have specifically authorized 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 have authorized a study of oyster habitat restoration in Delaware Bay (§1005(5)) and increased 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. The Senate passed H.R. 2864 on July 19, 2006, amended to incorporate the language of amended S. 728, authorizing Long Island Sound oyster restoration in §3076 and providing for Chesapeake Bay oyster habitat restoration in §3110, but deleting Delaware Bay oyster restoration.
- H.R. 3110 would have amended 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.
- Section 2(f) of S. 1494 would have established 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. Provisions of P.L. 109-479 reauthorized the Atlantic Tunas Convention Act of 1975 (P.L. 94-70; 16 U.S.C. §§971 et seq.) through FY2012 (§405), and implemented the Western and Central Pacific Fisheries Convention (Title V). Additional measures were introduced:

- H.R. 629 would have extended certain tax credits, beneficial to American Samoa tuna canneries, through January 1, 2016.

- S. 599/H.R. 2816 would have modified 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.

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. Section 314 of P.L. 109-364 (H.R. 5122) required the Secretary of Defense to provide information to NOAA to better identify hazards posed by military munitions disposed in the ocean. S. 1473 would have amended the Internal Revenue Code to provide a business credit against income for the purchase of fishing safety equipment.

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.

Tax Provisions. Section 214 of P.L. 109-280 (H.R. 4) exempts certain multi-employer pension plans from excise taxes where employers participated in a federal fishery capacity reduction program or the Northeast Fisheries Assistance Program. Section 308 of S. 6 would have amended 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 have extended certain tax credits, beneficial to American Samoa tuna canneries, through January 1, 2016. H.R. 3944 and §2 of H.R. 5058 would have amended 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 have amended the Internal Revenue Code to exempt payments from gross revenue for certain landowner incentive programs that restore or protect habitat.

Fishing Vessels. P.L. 109-304 (H.R. 1442) completed codification of Title 46, U.S. Code, including fishery endorsements for vessels and financial assistance.

Corals and Coral Reefs. In the 109th Congress, P.L. 109-317 (H.R. 318) authorized a feasibility study on designating land including fringing coral reef in the U.S. Virgin Islands as a unit of the National Park System. Section 211 of P.L. 109-479 provided for increased efforts to study and protect deep sea corals. 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 were introduced in the 109th Congress:

- S. 1390, H.R. 4788, and H.R. 5622 would have amended and reauthorized 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 September 19, 2006, the House Committee on Resources reported (amended) H.R. 5622 (H.Rept. 109-665).

- Section 6521(d) of H.R. 4241, as reported by the Committee on the Budget on November 7, 2005 (H.Rept. 109-276); §21 of H.R. 4761/H.R. 5649; and §151 of S. 3926 would have required a study of how the removal of offshore oil and gas platforms and other OCS facilities might affect coral populations. On November 18, 2005, the House passed H.R. 4241, amended, with the 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 coral study provisions in §19.
- H.R. 1996 would have amended 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 have established the Northwestern Hawaiian Islands National Marine Refuge; §7(c) of this bill would have compensated fishermen displaced by the refuge.
- H.R. 2673 would have placed use restrictions on certain bottom trawling gear and required federal studies to identify and map diverse bottom habitats.
- H.R. 3469 would have prohibited the import, export, and take of certain coral reef species.
- S. 1635/H.R. 3778 would have designated areas where trawling is permitted to protect deep sea corals and sponges.
- Section 101 of S. 4039 would have amended the Clean Air Act to direct the National Academy of Sciences to assess the probability of a loss of more than 40% of coral reefs because of increased ocean temperature or acidity.

Great Lakes. In the 109th Congress, P.L. 109-326 (S. 2430) required FWS to implement recommendations of the Great Lakes Fishery Resources Restoration Study if funding is available. Additional bills in the 109th Congress addressed other Great Lakes fishery issues:

- Section 5012 of H.R. 2864 would have allowed 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. The Senate passed H.R. 2864 on July 19, 2006 (amended to incorporate amended language of S. 728, with modified Great Lakes fisheries restoration provisions in §3127).
- Section 4(b)(1)(D) of S. 508 would have authorized state and local grants for fish habitat improvement in the Great Lakes region.
- Title I of H.R. 2129 would have reauthorized various programs to restore fisheries and aquatic habitat in the Great Lakes.

- H.R. 5089/S. 3605 would have authorized the Great Lakes Fishery Commission to investigate the effects of migratory birds on fish stock productivity.

Commercial Surf Fishing. Section 10 of P.L. 109-362 (H.R. 233) authorized continuation of traditional commercial surf fishing in Redwood National and State Parks, CA.

National Fish and Wildlife Foundation. Title II of P.L. 109-363 (H.R. 4957) reauthorized the National Fish and Wildlife Foundation through FY2010.

Trade. Section 1214 (Division D) of P.L. 109-432 suspended temporarily the duty on canned, boiled (not smoked) oysters. Section 343(b) of S. 14 would have authorized a program for trade adjustment assistance to commercial fishermen, fish processors, and fishing communities. S. 270 would have established a framework for legislative and executive consideration of unilateral economic sanctions against foreign nations. H.R. 3363 would have amended 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 have suspended temporarily the duty on certain sardines in oil in airtight containers. Section 301(b) of S. 1963 and §501(b) of H.R. 6208 would have clarified that commercial fishermen are eligible for trade adjustment assistance. S. 3118 and S. 3752 would have liquidated or reliquidated certain entries of frozen fish fillets at Los Angeles/Long Beach without antidumping duties or interest.

Marine Debris. P.L. 109-449 (S. 362) established NOAA and Coast Guard programs to manage marine debris — including lost fishing gear — and address its adverse impacts.

Dungeness Crab. Section 302(e) of P.L. 109-479 reauthorized and amended the Dungeness Crab Fishery Management Act through FY2012.

Native American Fishing. Section 703 of P.L. 109-479 provided for the settlement of claims of Puget Sound, WA, Indian tribes regarding treaty rights to take shellfish.

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

- S. 363 and Title VII of S. 1224 would have amended the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA) of 1990 to promote the development and adoption of

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

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 have expressed 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 have reauthorized and amended NANPCA to address ballast water management and other concerns.
- H.R. 4771 would have amended NANPCA to require all vessels equipped with ballast water tanks to conduct ballast water exchange or alternative management before entering any Great Lakes port.

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. Other measures addressed additional aquatic invasive species issues:

- H.R. 3049 and S. 1402 would have amended 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 the Judiciary reported H.R. 3049 on July 20, 2006 (H.Rept. 109-585).
- S. 1541 would have established 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.
- Section 7(d)(4) of H.R. 792 would have allocated funds to the State of Illinois for a project to establish a permanent invasive species barrier between the Mississippi River and Lake Michigan. S. 4096 would have required the Corps of Engineers to operate and maintain the Chicago sanitary and ship canal dispersal barriers and determine the feasibility of a dispersal barrier in the Lake Champlain Canal.
- S.Con.Res. 12 would have required that any agreement signed by the United States not preclude measures to combat invasive species.
- S. 507 and H.R. 1593 would have authorized and established the National Invasive Species Council.
- Section 4(b)(1)(C) of S. 508 would have authorized Great Lakes Environmental Restoration Grants for invasive species prevention and control.
- H.R. 1592 would have authorized various marine and freshwater research, development, and demonstration programs to address invasive species concerns.
- H.R. 3468 would have established specific procedures to address invasive species concerns in Hawaii.
- H.R. 5900 would have protected, conserved, and restored native fish and their habitat at national wildlife refuges through grants to control, mitigate, and eradicate harmful nonnative species.

International Fisheries. On December 6, 2006, the Senate agreed to S.Res. 610, expressing the sense of the Senate that the United States should promote the United Nations' adoption of a resolution to protect the living resources of the high seas from destructive, illegal, unreported, and unregulated fishing practices. Several bills were introduced to address international fishery concerns:

- Section 103(4) of S. 600 would have authorized \$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 have authorized \$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 have condemned 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 have reauthorized 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 and Nutrition. On March 8, 2006, the House passed H.R. 4167 after amending it to prohibit the National Uniformity for Food Act from affecting any state action that establishes a notification requirement regarding mercury in fish and shellfish. S. 131 would have amended 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 have amended 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 have consolidated food safety and inspection programs, including seafood inspection. Section 2 of H.R. 2235 would have required labels to specify that certain fish and shellfish products are raw or partially cooked; §3 of this bill would have required labels to specify that certain fish or shellfish products have been frozen. H.Con.Res. 479 recognized the health benefits of eating seafood as part of a balanced diet, and supported the goals and ideals of National Seafood Month.

Hypoxia. Section 5018 of H.R. 2864 would have authorized 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. The Senate passed H.R. 2864 on July 19, 2006 (amended to incorporate

amended language of S. 728, with the hypoxia provision deleted). Section 105 of H.R. 4560 identified the improvement of water quality in the Gulf of Mexico impaired by hypoxia as eligible for funds from a Clean Water Trust Fund. Section 5(c)(5) of H.R. 792 identified “eliminating dead zones” as one of the possible goals to be considered in a Great Lakes comprehensive management plan.

Marketing and Labeling. H.R. 710 would have provided assistance for the construction, improvement, and rehabilitation of farmers markets, including those selling local aquaculture and commercial fishing products. S. 1300 would have replaced mandatory country-of-origin labeling for seafood with a voluntary program. Section 2 of H.R. 3562/S. 1556 would have made 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 have amended 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.

Sharks. Section 302(c) of S. 2012 and §301(c) of H.R. 5051 would have reauthorized the Shark Finning Prohibition Act through FY2010. 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.

Capital Construction Fund. S. 343/H.R. 2174 would have permitted 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 have required 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.

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

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

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

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

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. In mid-2006, FAO estimated that 43% of all fish consumed by humans came from aquaculture.²³ The FAO predicts that world aquaculture production could exceed 130 million metric tons by 2030.²⁴ U.S. aquaculture, until recently and with a few exceptions, has been considered a minor industry. The U.S. Department of Agriculture's *2005 Census of Aquaculture* reported U.S. sales of aquaculture products had reached nearly \$1.1 billion, with more than half this value from Alabama, Arkansas, Louisiana, and Mississippi.²⁵ 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.²⁶ 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.). On November 14, 2006, NOAA released a draft 10-year plan for its marine aquaculture program.²⁷

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 details, see [<http://www.fao.org/newsroom/en/news/2006/1000383/index.html>].

²⁴ For more discussion of FAO projections for 2030, see Part 3 of [<http://www.fao.org/docrep/007/y5600e/y5600e00.htm>].

²⁵ See [<http://www.nass.usda.gov/aquaculture/index.asp>].

²⁶ For the latest information on domestic production and statistics, see [<http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1375>].

²⁷ Copy available at [<http://www.nmfs.noaa.gov/mediacenter/aquaculture/plan.htm>].

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. P.L. 109-360 (H.R. 5381) authorized a volunteer program and community partnerships benefitting national fish hatcheries. P.L. 109-363 (H.R. 4957) directed 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. P.L. 109-388 (H.R. 5061) directed the Secretary of the Interior to convey the Paint Bank National Fish Hatchery and Wytheville National Fish Hatchery to the State of Virginia. On May 24, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the federal fish hatchery system. H.R. 537 would have authorized specific activities wherein National Fish Hatchery production would compensate for the impacts of federal water development projects on aquatic resources.

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

- S. 1316 would have authorized 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 have authorized 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 have provided 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 have authorized payments of Commodity Credit Corporation funds for loss of aquaculture crops due to a 2005 hurricane; §4 of S. 1804 would have authorized payments of Commodity Credit Corporation funds for any crop loss (including fisheries) due to a disaster.
- S. 1723 would have authorized a \$50 million grant program to maintain waterfront access for commercial fishing and aquaculture.
- Various Louisiana aquaculture operators harmed by Hurricane Katrina would have received assistance in S. 1765/S. 1766/H.R. 3958 — §525 would have provided a distribution of antidumping duties collected on imported Chinese crawfish to benefit Louisiana crawfish growers, a provision in Subtitle L would have provided funds for alligator farmers, and provisions in Subtitle D would have funded oyster hatcheries and restoration of oyster beds and reefs.

- Section 501(c)(1)(A) of S. 2747 would have authorized energy disaster emergency loans for small business aquaculture operators suffering from increased energy costs.

Open Ocean Facilities.²⁸ 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 have amended 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. S. 796 and §162(b)(3) of S. 1224 would have prohibited the issuance of permits for marine aquaculture facilities in federal waters until requirements for such permits are enacted. S. 1224 also would have established a coordinated agency program for offshore permitting (§161), designated NOAA as the lead federal agency for marine aquaculture (§162(b)(1)), and required regulations that prohibit marine aquaculture where it would damage or alter seafloor habitat or alter water quality (§222). S. 1195 would have authorized the Secretary of Commerce to establish and implement a regulatory system for offshore aquaculture in the U.S. EEZ. 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. The House Appropriations Committee report (H.Rept. 109-102) on H.R. 2744 (FY2006 agriculture appropriations) expressed concern about antibiotic contamination in imported farm-raised shrimp and requested a report from the Food and Drug Administration on sampling of shrimp imports. The House passed H.R. 2744 (amended) on June 8, 2005. H.R. 710 would have provided financial assistance for the construction, improvement, and rehabilitation of farmers markets, including those selling products from local aquaculture and commercial fishing. S. 1300 would have replaced mandatory country-of-origin labeling for fish and seafood with a voluntary program. Section 2 of H.R. 3562/S. 1556 would have made the Specialty Crops Competitiveness Act of 2004 (P.L. 108-465) applicable to farm-raised fish and shellfish. H.R. 4879/S. 2411 would have liquidated or reliquidated certain salmon entries at Miami without antidumping duties or interest.

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 have specifically authorized projects to construct and upgrade oyster hatcheries in Chesapeake Bay. On July 19, 2006, the Senate passed H.R. 2864, after amending it to incorporate the language of S. 728, providing for Chesapeake Bay oyster hatcheries in §3110.

²⁸ For additional information on offshore aquaculture development, see CRS Report RL32694, *Open Ocean Aquaculture*, by Rachel Borgatti and Eugene H. Buck.

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.²⁹

Disease. S. 572 and S. 573 sought 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/S. 4058 would have prohibited 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 have required 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 have exempted aquaculture operations from restrictions on coral handling and encourage cooperative aquaculture ventures to propagate coral reef species.

Tax Provisions. H.R. 3874 would have amended 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 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

²⁹ For additional information on genetically engineered fish, see CRS Report RL32974, *Genetically Engineered Fish and Seafood*, by Rachel Borgatti and Eugene H. Buck.

“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 walruses, 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 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.³⁰

Congressional Action. At issue for the 109th Congress were the terms and conditions of provisions designed to reauthorize and amend the MMPA to address the concerns of various interest groups.³¹ Legislation was introduced:

- H.R. 2130 and H.R. 4075 would have extensively amended the MMPA and authorized appropriations for several programs; the House Committee on Resources reported H.R. 2130 (amended) on July 21, 2005 (H.Rept. 109-180). The House passed H.R. 4075 (amended) on July 17, 2006.
- Section 25 of H.R. 3824, as passed by the House (amended) on September 29, 2005, declared that §7 consultation under the Endangered Species Act was equivalent to a §101 incidental take authorization required under the MMPA for dock building permits.
- Title IV of S. 1224 would have amended 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) directed negotiation of international agreements to better protect cetaceans from commercial fishing gear and authorized a grant program to develop less harmful fishing gear.
- Section 206 of H.R. 2939 would have transferred management of all marine mammals to NOAA.
- H.R. 3839 would have amended 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.
- H.R. 6241 would have amended the MMPA to authorize taking of California sea lions to reduce their predation on endangered Columbia River salmon.

³⁰ 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].

³¹ For additional background on potential reauthorization issues, see CRS Report RL30120, *The Marine Mammal Protection Act: Reauthorization Issues*, by Eugene H. Buck.

Miscellaneous Issues

Habitat. P.L. 109-294 (S. 260) expanded 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.

Marine Debris. P.L. 109-449 (S. 362) established NOAA and Coast Guard programs to manage marine debris and address its adverse impacts.

Polar Bear. Title IX of P.L. 109-479 implemented the Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population.

Whaling. H.Con.Res. 267 would have expressed 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. 33/H.Con.Res. 164 would have expressed the sense of the Congress regarding the policy of the United States at the 57th Annual Meeting of the International Whaling Commission. S.Con.Res. 99 would have expressed 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 have expressed 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.

Small Cetacean Kills. S.Res. 99 would have expressed 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.

Ocean Noise. Section 402 of S. 1224 would have amended 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.³²

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

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

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

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

³² 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.

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.