An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue cap at the top. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The text is centered within the hourglass.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RL33813>

February 2, 2009

Congressional Research Service

Report RL33813

*Fishery, Aquaculture, and Marine Mammal Legislation in the
110th Congress*

Eugene H. Buck, Specialist in Natural Resources Policy

January 12, 2009

Abstract. On December 10, 2008, the House Committee on Appropriations reported H.R. 7322, containing FY2009 NMFS appropriations totaling almost \$810 million.

WikiLeaks



Fishery, Aquaculture, and Marine Mammal Legislation in the 110th Congress

Eugene H. Buck
Specialist in Natural Resources Policy

January 12, 2009

<http://wikileaks.org/wiki/CRS-RL33813>

Congressional Research Service

7-5700

www.crs.gov

RL33813

Summary

Fish and marine mammals are important resources in open ocean and nearshore coastal areas; many federal laws and regulations guide their management.

Commercial and sport fishing are jointly managed by the federal government and individual states. States generally have jurisdiction 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. Some of the fishery measures enacted by the 110th Congress included P.L. 110-28, providing \$60.4 million for Pacific salmon disaster assistance as well as \$110 million for hurricane recovery assistance to the Gulf of Mexico shrimp and fishing industries, P.L. 110-161 provided \$13.395 million for alleviating economic impacts on the Massachusetts groundfish fishery, and provisions in P.L. 110-246 transferred \$170 million to NMFS for distribution to commercial and recreational members of the fishing communities affected by the salmon fishery failure in California, Oregon, and Washington. Provisions in P.L. 110-114 increased the authorization for research on Columbia and Snake River salmon survival, including methods to reduce avian predation on juvenile salmon; coordinated management of two aquatic nuisance species dispersal barriers on the Chicago Sanitary and Ship Canal and authorized an Upper Mississippi River dispersal barrier project; authorized a feasibility study of a dispersal barrier on the Lake Champlain Canal; modified oyster restoration programs in Long Island Sound, Chesapeake Bay, and Delaware Bay; and modified Great Lakes fisheries restoration, allowing nonfederal participants to provide as much as 100% of their nonfederal share through in-kind contributions. P.L. 110-181 directed the Secretary of Transportation to review ship disposal practices, including use of disposed vessels as artificial reefs. P.L. 110-243 directed the United States to initiate international discussions to negotiate an agreement for managing fish stocks in the Arctic Ocean.

Aquaculture—the farming of fish, shellfish, and other aquatic animals and plants in a controlled environment—is expanding rapidly abroad, with more modest advances in the United States. In the United States, important species cultured include catfish, salmon, shellfish, and trout. The 110th Congress enacted P.L. 110-85, authorizing the Food and Drug Administration (FDA) to enhance inspection of aquaculture and seafood products and requiring FDA to report on environmental risks associated with genetically engineered seafood products, and P.L. 110-246, reauthorizing the National Aquaculture Act and enhancing various programs within the Department of Agriculture that support aquaculture.

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.

Contents

Most Recent Developments.....	1
Introduction	1
Commercial and Sport Fisheries: Background and Issues	1
Magnuson-Stevens Act.....	4
Implementation of P.L. 109-479	5
Congressional Action.....	5
Pacific Salmon	7
Background.....	7
Congressional Action.....	7
Miscellaneous Issues.....	9
Assistance	9
Seafood Safety and Nutrition.....	9
Invasive Species.....	9
Habitat Protection and Restoration	11
Hypoxia and Algal Blooms.....	12
Oysters	12
Energy and Water Projects	12
Great Lakes	13
Recreational Fishing	13
International Fisheries.....	14
National Fish and Wildlife Foundation.....	14
Fishing Vessels.....	14
Tax Provisions.....	14
Climate Change.....	15
Coral.....	16
National Marine Sanctuaries.....	17
Tuna	17
Marketing.....	17
Health Care	18
Trade	18
Sharks.....	18
Sea Turtles.....	18
Maritime Liens.....	18
Aquaculture: Background and Issues	19
Congressional Action	20
Food Safety	20
Genetic Modification	20
Algal Biomass.....	20
Assistance	20
Research.....	21
National Aquaculture Act Reauthorization	21
Animal Health.....	21
Marketing.....	21
Crop Insurance.....	21
National Marine Sanctuaries.....	21
Turtles	22

<http://wikileaks.org/wiki/CRS-RL33813>

Open Ocean Aquaculture	22
Trade	22
Asian Carp	22
National Fish Hatcheries.....	22
Tax Provisions.....	23
Marine Mammals: Background and Issues	23
Marine Mammal Protection Act Reauthorization	24
Background.....	24
Congressional Action.....	24
Miscellaneous Issues.....	25
Canadian Seal Hunt.....	25
Polar Bear	25
Climate Change.....	26
Whales	26
Military Sonar	27
Fur Seals	27
Southern Sea Otter	27
NMFS Appropriations	27

Figures

Figure 1. U.S. Commercial Fish and Shellfish Harvest, 1976-2007	4
---	---

Tables

Table 1. NMFS Appropriations	28
------------------------------------	----

Contacts

Author Contact Information	29
----------------------------------	----

Most Recent Developments

On December 10, 2008, the House Committee on Appropriations reported H.R. 7322, containing FY2009 NMFS appropriations totaling almost \$810 million. (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.)

Introduction

Increasing use of coastal and marine resources is driving proposals to alter relationships between environmental protection and sustainable resource management. Recent reports note declines in marine resources and shortcomings in the fragmented and limited approaches to resource protection and management in federal and state waters. A further concern is the increasing pressures and conflicts that arise from economic activity associated with continued human population growth in coastal areas. A common concern is habitat loss or alteration, due to both natural processes, such as climate variation, as well as development, changes in land management practices, competition from invasive species, and other factors, nearly all related to economic, political, or social interests. Congress faces the issue of how to balance these diverse interests (which may fall on various sides of any given controversy) while promoting the sustainable management of fishery and other marine resources.

In the final hours of the 109th Congress, the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) was reauthorized and extensively amended in P.L. 109-479.¹ Reauthorization of the Marine Mammal Protection Act (MMPA) was not finalized. The 110th Congress considered measures to reauthorize the MMPA, address aquatic habitat concerns, modify or extend fishery disaster assistance, and address fishery-specific concerns, as well as conducting oversight of MSFCMA implementation.

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 or further offshore. This action was denounced by those within the United States and other distant-water fishing nations who sought

¹ For a comprehensive summary of legislation in the 109th Congress on fisheries, aquaculture, and marine mammals, see CRS Report RL33459, *Fishery, Aquaculture, and Marine Mammal Legislation in the 109th Congress*, by Eugene H. Buck.

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 Treaty² 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.) 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.³ 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.⁴ Council members are appointed by the Secretary of Commerce from lists of candidates knowledgeable of fishery resources, provided by coastal state governors.⁵ 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 reauthorized in the final hours of the 109th Congress by P.L. 109-479, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.⁶ The authorization of appropriations in § 7 of this act expires at the end of FY2013.

² The United Nations Convention on the Law of the Sea was reported in the 110th Congress by the Senate Committee on Foreign Relations (S.Exec.Rept.110-9) on December 19, 2007.

³ NMFS programs are described in detail at <http://www.nmfs.noaa.gov/>.

⁴ Links to individual Council websites are available at <http://www.nmfs.noaa.gov/councils/>.

⁵ For the 2005 Report to Congress on Council membership, see http://www.nmfs.noaa.gov/sfa/reg_svcs/Council_Reporttocongress/05ReporttoCongress.pdf.

⁶ A detailed summary of the Sustainable Fisheries Act, including an explanation of issues and legislative history, can be (continued...)

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 EEZ waters increased dramatically, from about 1.6 billion pounds (1977) to more than 6.3 billion pounds in 1986-1988.⁷ Since this peak, annual landings have hovered around 6 billion pounds (**Figure 1**).

In 2007, U.S. commercial fishermen landed almost 7.5 billion pounds of edible, unprocessed fish and shellfish from combined state, federal, and international waters, worth almost \$3.9 billion at the dock.⁸ Imports of mostly processed products supplied 5.3 billion pounds, worth \$13.7 billion. U.S. consumers spent an estimated \$68.4 billion on edible seafood in 2007, with almost \$45.8 billion of that amount spent in restaurants and other food service establishments. In addition, marine recreational anglers caught an estimated 468 million fish in 2007, of which the retained catch was about 255 million pounds.⁹ In 2006, a nationwide survey estimated that recreational anglers spent more than \$40 billion each year pursuing their sport.¹⁰

NMFS reports annually on the status of fish stocks managed under the MSFCMA.¹¹ For 2007, NMFS made determinations for 244 fish stocks and complexes,¹² finding that 41 (17%) of them were subject to overfishing¹³ and 203 (83%) were not. In addition, NMFS made determinations for 190 stocks and complexes, finding that 45 (24%) were overfished¹⁴ and 145 (76%) were not. These numbers reflect an improvement in the overfishing percentages compared to 2006 (when

(...continued)

found at <http://www.nmfs.noaa.gov/sfa/sfaguide/>.

⁷ This total includes both landings for human food and landings for industrial purposes, e.g., bait and animal food, reduction to meal and oil, etc.

⁸ For additional domestic commercial fishery harvest statistics, see <http://www.st.nmfs.noaa.gov/st1/commercial/index.html>. Statistics for 2007 are available at <http://www.st.nmfs.gov/st1/fus/fus07/>.

⁹ Recreational fishing programs at NMFS are discussed at <http://www.st.nmfs.gov/st1/recreational/index.html>.

¹⁰ Results of the 2006 survey can be found at http://library.fws.gov/nat_survey2006_final.pdf.

¹¹ See http://www.nmfs.noaa.gov/sfa/domes_fish/StatusofFisheries/2007/2007StatusofUSFisheries_Report_to_Congress.pdf.

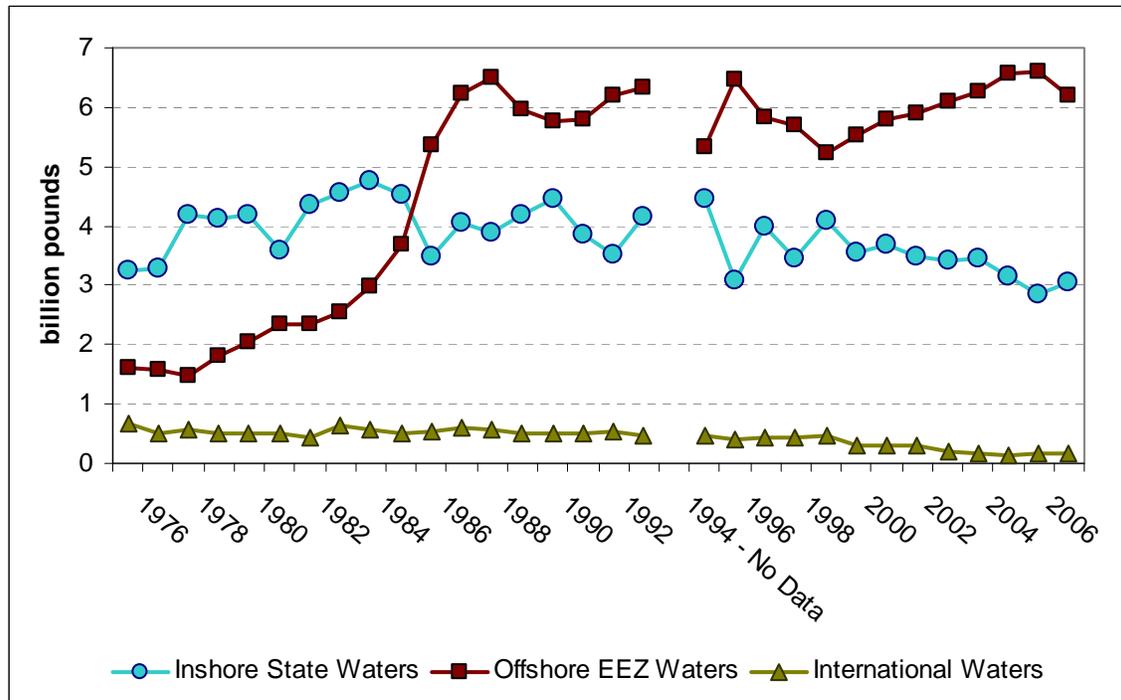
¹² NMFS reviewed 528 individual stocks and stock complexes but had insufficient information to make determinations on all of them.

¹³ A stock that is subject to overfishing has a fishing mortality (harvest) rate above the level that provides for the maximum sustainable yield.

¹⁴ A stock that is overfished has a biomass level below a biological threshold specified in its fishery management plan.

20% were subject to overfishing) as well as a slight improvement in the overfished numbers compared to that year (when 25% were overfished).

Figure I. U.S. Commercial Fish and Shellfish Harvest, 1976-2007



In addition, NMFS developed a Fish Stock Sustainability Index (FSSI) in 2005 to evaluate progress nationwide in addressing overfishing.¹⁵ Out of a possible maximum FSSI of 920, this index has increased from 481.5 (third quarter of calendar year 2005) to 535 (third quarter of calendar year 2008).

Magnuson-Stevens Act

The MSFCMA was reauthorized in the final hours of the 109th Congress in 2006 by P.L. 109-479, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.¹⁶ Some of the major issues addressed by this comprehensive measure included:

- modifying requirements for the appointment and training of members of regional councils as well as the conduct of business by regional council committees and panels to enhance transparency of the regional council process;

¹⁵ FSSI is a performance measure for the sustainability of 230 fish stocks selected for their importance to commercial and recreational fisheries. The FSSI will increase as overfishing ends and stocks rebuild to the level that provides maximum sustainable yield. FSSI is calculated by assigning a score for each fish stock based on rules available at http://www.nmfs.noaa.gov/sfa/domes_fish/StatusofFisheries/2008/3rdQuarter/Q32008FSSISummaryChanges.pdf.

¹⁶ For the White House press release, see <http://www.whitehouse.gov/news/releases/2007/01/print/20070112-3.html>; also see the White House fact sheet at <http://www.whitehouse.gov/news/releases/2007/01/20070112-1.html>.

- setting a firm deadline to end overfishing by 2011 and modifying how depleted fisheries are to be rebuilt;
- increasing the consideration of economic and social impacts in fishery management;
- modifying research programs and improving data collection and management;
- increasing protection for deep sea corals and bottom habitat;
- implementing a pilot program of ecosystem-based management;
- promoting new gear technologies to further reduce bycatch;
- establishing national guidelines for individual fishing quota (limited access privilege) programs;
- modifying regional council fishery management plan procedures, including better coordinating environmental review under the National Environmental Policy Act (NEPA; 42 U.S.C. §§ 4321, et seq.); and
- strengthening the role of science in fishery management decision-making.¹⁷

Implementation of P.L. 109-479

NMFS has prepared a summary of tasks associated with implementing P.L. 109-479.¹⁸ Additional information on NMFS's implementation of P.L. 109-479 can be found at <http://www.nmfs.noaa.gov/msa2007/>.

Congressional Action

On December 4, 2007, the Senate agreed to S.Res. 376, expressing the sense of the Senate that the Secretary of Commerce should declare a commercial fishery failure for the groundfish fishery for Massachusetts, Maine, New Hampshire, and Rhode Island and immediately propose regulations to implement Section 312(a) of the MSFCMA. Title IV, Chapter 2, of P.L. 110-28 provided \$110 million for recovery assistance to the Gulf of Mexico shrimp and fishing industries. Division B, Title I, of P.L. 110-161 provided \$13.395 million for alleviation of economic impacts on the Massachusetts groundfish fishery. Title I, Chapter 2, of P.L. 110-329 provided \$75 million for fishery disaster assistance in FY2009. In the 110th Congress, several bills proposed to either amend the MSFCMA or modify how it would be implemented:

- H.R. 21 would have reoriented U.S. ocean policy (including fisheries), emphasizing ecosystem management, creating a Council of Advisors on Ocean Policy to advise the President, organizing Regional Ocean Partnerships, and developing Ocean Ecosystem Resource Information Systems; on April 26, 2007, the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on this bill.

¹⁷ For additional highlights and commentary on this enactment, see <http://cbbulletin.com/Free/199763.aspx>; a detailed summary of enacted provisions is available at <http://www.olemiss.edu/orgs/SGLC/National/Magnuson.pdf>.

¹⁸ Available at http://www.nmfs.noaa.gov/msa2007/Reauthorization_tasks.pdf.

- H.R. 27 would have designated the U.S. EEZ as the “Ronald Wilson Reagan Exclusive Economic Zone of the United States.”
- Several bills would have amended either the MSFCMA (S. 741 and H.R. 2565) or the Coastal Zone Management Act (H.R. 3223) to establish a grant program to ensure waterfront access for commercial fishermen and aquaculture operators. On February 28, 2008, the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on H.R. 3223.
- H.R. 2625 would have prohibited the commercial harvesting of Atlantic striped bass in coastal waters and the EEZ; H.R. 2939 would have prohibited the commercial harvesting of Atlantic blackfish (tautog) in coastal waters and the EEZ; H.R. 3840 and H.R. 3841 would have prohibited the commercial harvesting of Atlantic menhaden in coastal waters and the EEZ; the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on these bills on May 8, 2008.
- Section 301(b) of H.R. 2830 would have amended the American Fisheries Act to modify fishing vessel rebuilding and replacement provisions in Section 208(g); modify vessel exemption provisions in Section 203(g); and modify the fishery cooperative exit provisions in Section 210(b); on September 20, 2007, the House Committee on Transportation and Infrastructure reported, amended, this bill (H.Rept. 110-338, Part I). On October 1, 2007, the House Committee on Homeland Security reported, amended, H.R. 2830 (H.Rept. 110-338, Part II). On October 30, 2007, the House Committee on the Judiciary reported (amended) H.R. 2830 (H.Rept. 110-338, Part III). On April 24, 2008, the House passed this measure (amended)
- On June 29, 2007, the Senate Committee on Appropriations reported S. 1745 (S.Rept. 110-124), containing language that would have authorized the Secretary of Commerce to conduct a voluntary capacity reduction program to remove all commercial fishing in the Papahānaumokuākea Marine National Monument prior to June 15, 2011.
- As amended on the Senate floor on October 16, 2007, H.R. 3093 would have amended the MSFCMA to authorize the Secretary of Commerce to maintain a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing.
- H.R. 4087 and H.R. 5425 would have amended the MSFCMA to extend the authorized time period for rebuilding certain overfished fisheries. On December 5, 2007, the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held an oversight hearing on rebuilding overfished fisheries under the MSFCMA.
- H.R. 5741 would have amended the MSFCMA to modify language related to the prohibition of shark finning. The House Committee on Natural Resources reported this bill (amended) on July 8, 2008 (H.Rept. 110-740), and the House passed this measure (amended) on this date.
- H.R. 6683 would have clarified provisions of the Western Alaska Community Development Quota Program.

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 before returning to freshwater to spawn. Management is complicated because these fish may cross several state and national boundaries during their life spans. In addition to natural environmental fluctuations, 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.¹⁹ On September 13, 2006, a San Joaquin Restoration Settlement Agreement was announced, ending an 18-year legal dispute over the operation of Friant Dam, CA. This Agreement provides for river channel improvements and water flow to sustain Chinook salmon upstream from the confluence of the Merced River tributary while providing water supply certainty to Friant Division water contractors.

To address some of their concerns about Pacific salmon management, 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. This deadlock was resolved in June 1999 when a new accord was concluded. Annex IV of this bilateral agreement outlines, in detail, the fishery regimes to be followed by Canada and the United States in cooperatively managing the six species of anadromous Pacific salmon and trout. Annex IV expires at the end of 2008 and is to be renegotiated.²⁰

Congressional Action

Title V, Chapter 2, of P.L. 110-28 provided \$60.4 million for Pacific salmon emergency disaster assistance. Provisions in P.L. 110-114 required a feasibility study of fish passage improvements in Oregon (Section 4073), increased the authorization for appropriations for research on Columbia and Snake River salmon survival, including methods to reduce avian predation on juvenile salmon (Section 5025), and retained Army Corps of Engineers authority over avian predator management at McNary Dam, while transferring administrative jurisdiction to the Secretary of the Interior (Section 3164). Section 113, Division F, Title I, of P.L. 110-161 (the Consolidated Appropriations Act, 2008) required FWS to implement a system of mass marking of salmonid stocks that are released from federally operated or federally financed hatcheries.²¹ Section 12034 of P.L. 110-246 transferred \$170 million from the Commodity Credit Corporation to NMFS for distribution to commercial and recreational members of the fishing communities affected by the

¹⁹ For additional background on this issue, see CRS Report 98-666, *Pacific Salmon and Steelhead Trout: Managing Under the Endangered Species Act*, by Eugene H. Buck; and out-of-print CRS Report RL31546, *The Endangered Species Act and Science: The Case of Pacific Salmon*, by Eugene H. Buck, M. Lynne Corn, and Pamela Baldwin, available from the author at [gbuck@crs.loc.gov].

²⁰ For additional information on the Pacific Salmon Treaty and renegotiation of its Annex IV, see CRS Report RL30234, *The Pacific Salmon Treaty: The 1999 Agreement and Renegotiation of Annex IV*, by Eugene H. Buck.

²¹ Controversy related to mass-marking programs is discussed in CRS Report RL30234, *The Pacific Salmon Treaty: The 1999 Agreement and Renegotiation of Annex IV*, by Eugene H. Buck.

salmon fishery failure in California, Oregon, and Washington. H.Res. 217 expressed the sense of the House of Representatives concerning the 50th anniversary of the flooding of Celilo Falls on the Columbia River and the changes this action imposed on Native Americans. In the 110th Congress, numerous other bills were introduced to address salmon issues:

- H.R. 24, H.R. 4074, S. 27 and Title X of S. 3213 would have authorized the implementation of the San Joaquin River Restoration Settlement providing for the reintroduction of Chinook salmon; the House Natural Resources Subcommittee on Water and Power held a hearing on H.R. 24 on March 1, 2007, and the Senate Energy and Natural Resources Subcommittee on Water and Power held a hearing on S. 27 on May 3, 2007. On May 13, 2008, the House Committee on Natural Resources reported H.R. 4074 (H.Rept. 110-633). On June 25, 2008, the Senate Committee on Energy and Natural Resources reported (amended) S. 27 (S.Rept. 110-400).
- S. 264 would have authorized federal participation in funding fish passage improvements at Wallowa Lake Dam, OR; this bill was reported (amended) on February 16, 2007, by the Senate Committee on Energy and Natural Resources (S.Rept. 110-23), deleting language related to fish passage improvements.
- Section 103 of H.R. 860 and S. 493 would have designated salmon restoration areas in California.
- H.R. 1507 would have directed the Secretary of Commerce to seek scientific analysis of federal efforts to restore salmon and steelhead populations listed under the Endangered Species Act.
- H.R. 1769 would have amended the Marine Mammal Protection Act to authorize taking of California sea lions to reduce their predation on endangered Columbia River salmon.
- S. 1522 and H.R. 3830 would have reauthorized (through FY2014) 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. 1522 on July 26, 2007. On April 10, 2008, the Senate Committee on Energy and Natural Resources reported (amended) S. 1522 (S.Rept. 110-297).
- H.R. 2733 would have established a Trinity River Restoration Fund; the House Natural Resources Subcommittee on Water and Power held a hearing on this bill on September 18, 2007.
- H.Con.Res. 184 would have expressed the sense of the Congress opposing the removal of dams on the Columbia and Snake Rivers for fishery restoration purposes.
- S. 1766 would have provided funds from a Climate Change Wildlife Conservation sub-account in the Treasury for the Secretary of the Interior to improve fish passage and dam removal and for the National Fish Habitat Plan (§ 402(e)(3)(C)).
- On July 31, 2007, the House Committee on Natural Resources held an oversight hearing on allegations of political intervention influencing scientific and policy decisions at the Department of the Interior, with respect to Klamath River salmon.

- Section 912 of S. 1892 and Section 10 of S. 2997, as reported by the Senate Committee on Commerce, Science, and Transportation on September 11, 2008 (S.Rept. 110-457), would have amended Title 46, U.S. Code, to exclude small Alaska salmon fishing vessels from the definition of *fish processing vessel*; the Senate Committee on Commerce, Science, and Transportation reported S. 1892 (amended) on February 5, 2008 (S.Rept. 110-261).
- S. 3608 would have established a Salmon Stronghold Partnership program to protect wild Pacific salmon.

Miscellaneous Issues

Assistance

Title IV, Chapter 2 of P.L. 110-28 provided \$110 million for recovery assistance to the Gulf of Mexico shrimp and fishing industries. Division B, Title I, of P.L. 110-161 provided \$13.395 million for alleviation of economic impacts on the Massachusetts groundfish fishery. Title I, Chapter 2, of P.L. 110-329 provided \$75 million for fishery disaster assistance in FY2009. S.Res. 376 expressed the sense of the Senate that the Secretary of Commerce should declare a commercial fishery failure for the groundfish fishery for Massachusetts, Maine, New Hampshire, and Rhode Island and immediately propose regulations to implement Section 312(a) of the MSFCMA. Section 734 of S. 3289 would have amended the Consolidated Farm and Rural Development Act to expand the availability of Farm Credit Programs to commercial fishing.

Seafood Safety and Nutrition

Section 1006 of P.L. 110-85 (H.R. 3580) authorized the Food and Drug Administration (FDA) to enhance inspection of seafood products. Section 102 of H.R. 1148, S. 654, and H.R. 7143 would have consolidated food safety and inspection programs, including seafood inspection. Section 3 of H.R. 1533 and Section 4 of S. 843 would have established an interagency national mercury monitoring program, with provisions in subsection (d) focusing on aquatic plants and animals. H.Con.Res. 125 would have expressed the sense of Congress in recognizing the health benefits of eating seafood as part of a balanced diet, and supporting the goals and ideals of National Seafood Month. H.R. 3077 would have amended the Federal Food, Drug, and Cosmetic Act to address safety concerns with imported seafood and seafood products by requiring seafood importing countries to be certified as having equivalent safety systems to the United States; S. 1776 would have imposed this certification requirement on all imported food products. H.R. 4525 would have modified the definition of “in airtight containers” to promote public health and safety. H.R. 5219 would have authorized appropriations for FDA’s seafood inspection regime. S. 2688, H.R. 5738, and H.R. 5956 would have directed the Secretary of Commerce to establish a program to better ensure that seafood in interstate commerce is fit for human consumption; on July 15, 2008, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 2688 (S.Rept. 110-420). S. 2914 would have directed the Secretary of Health and Human Service to refuse entry of certain seafood imports and specify actions to be taken on rejected shipments.

Invasive Species

Provisions in P.L. 110-114 coordinated management of two dispersal barriers on the Chicago Sanitary and Ship Canal (Section 3061), authorized an Upper Mississippi River dispersal barrier

project (Section 5016), and authorized a feasibility study for a Lake Champlain Canal dispersal barrier project (Section 5146). Several bills introduced in the 110th Congress focused primarily on invasive species concerns related to ballast water management but were not enacted:²²

- H.R. 801 would have amended the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to require all vessels to exchange ballast water or use alternative ballast water management methods before entering any Great Lakes port.
- Title I of H.R. 889 and S. 1578 would have amended the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to establish vessel ballast water management requirements; the remainder of the bill focuses on improving coordination among various national and international efforts at invasive species control. On March 3, 2008, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 1578 (S.Rept. 110-269).
- While Section 101 of H.R. 1350, Title I of S. 725, and Section 111 of S. 791 focused primarily on ballast water management, other sections of each bill would have authorized various research, development, and demonstration programs to address invasive species concerns, with H.R. 1350 and S. 791 focusing on the Great Lakes region.
- H.R. 2423 and Title V of H.R. 2830 would have established a national ballast water management program and national ballast water discharge standards. On September 20, 2007, the House Committee on Transportation and Infrastructure reported, amended, H.R. 2830 (H.Rept. 110-338, Part I). On October 1, 2007, the House Committee on Homeland Security reported, amended, H.R. 2830 (H.Rept. 110-338, Part II). On October 30, 2007, the House Committee on the Judiciary reported (amended) H.R. 2830 (H.Rept. 110-338, Part III). On April 24, 2008, the House passed H.R. 2830 (amended).
- S. 2645 would have directed the Coast Guard to establish enforceable uniform national vessel discharge standards, and restrict state regulation of vessel discharges.
- Section 12 of S. 2881/H.R. 6434 would have expressed the sense of Congress that strong, mandatory standards for ballast water management should be enacted.
- On June 24, 2008, the House Natural Resources Subcommittee on Water and Power held an oversight hearing on minimizing the impacts of quagga mussels.

Additional bills would have addressed other invasive species concerns:

- H.R. 83, S. 726, and Section 171 of S. 791 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. H.R. 6031 would have directed the U. S. Fish and Wildlife Service to study various approaches to eradicating Asian carp from the Great Lakes and their tributaries.

²² For additional information on ballast water management, see CRS Report RL32344, *Ballast Water Management to Combat Invasive Species*, by Eugene H. Buck.

- H.R. 260 would have authorized various marine and freshwater research, development, and demonstration programs to address invasive species concerns.
- H.R. 553, S. 336, and Section 172 of S. 791 would have directed the Army Corps of Engineers to operate and maintain a system of dispersal barriers in the Chicago Sanitary and Ship Canal. In addition, Section 172 of S. 791 would have authorized a National Dispersal Barrier Program.
- H.R. 767 and S. 3366 would have authorized grants to control harmful nonnative species at national wildlife refuges to protect and restore native fish and their habitat. The House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on H.R. 767 on June 21, 2007. The Committee on Natural Resources reported H.R. 767 (amended) on October 22, 2007 (H.Rept. 110-397); and the House subsequently passed this measure (amended).
- S. 1949 would have established a 100th Meridian Invasive Species State Revolving Fund to fund projects to prevent and control invasive species moving west of the 100th Meridian.
- H.R. 6311 would have directed the Secretary of the Interior to promulgate regulations that establish a process for assessing the risk of nonnative species proposed for importation into the United States.

Habitat Protection and Restoration

Section 1006 of P.L. 110-114 identified 43 small aquatic ecosystem restoration projects to be studied by the Army Corps of Engineers. Section 601 of P.L. 110-343 amended the Secure Rural Schools and Community Self-Determination Act of 2000 to reauthorize federal funding for projects to protect, restore, and enhance fish habitat. H.Res. 853 expressed the sense of the House honoring crabbers and fishermen who volunteered to assist in cleanup of an oil spill in San Francisco Bay, CA. In the 110th Congress, numerous other bills were introduced to address various habitat restoration concerns, but were not enacted:

- S. 424 would have directed the U.S. Army Corps of Engineers to implement the Penobscot River Restoration Project, benefitting endangered Atlantic salmon and shortnose sturgeon.
- Section 106(d) of H.R. 1551 and S. 919, and Section 506(d) of H.R. 2401 would have amended the Wildlife Habitat Incentive Program to direct more attention to fish habitat.
- S. 1029 would have amended the Food Security Act of 1985 to create a Stream Habitat Improvement Program to provide incentives to landowners to protect and improve stream habitat.
- Title III of H.R. 2262 would have modified environmental standards for mining and reclamation to address concerns for fish and wildlife.
- S. 1766 would have provided funds from a Climate Adaptation Fund for the Sport Fish Restoration Act (Section 402(a)(2)(D)(ii)) and from a Climate Change Wildlife Conservation sub-account in the Treasury for the Secretary of the Interior to improve fish passage and dam removal and for the National Fish Habitat Plan as well as for the Secretary of Commerce to sustain fisheries, protect marine species, and conserve marine habitat (Section 402(e)(3)(C)).

- Section 501 of S. 2231 would have authorized the U.S. Fish and Wildlife Service to implement a Coastal Program to assess, conserve, and restore important coastal habitats.
- H.R. 5594 and S. 2645 would have required the U.S. Coast Guard to evaluate and review vessel discharges, other than ballast water, and initiate a program for establishing enforceable uniform national discharge standards.
- S. 3189 and H.R. 7169 would have amended P.L. 106-392 to require the Administrator of the Western Area Power Administration and the Commissioner of Reclamation to maintain sufficient revenues in the Upper Colorado and San Juan River Basin Fund for endangered fish restoration; S. 3189 was reported (amended) by the Senate Committee on Energy and Natural Resources on September 16, 2008.
- H.R. 7051, S. 3576, and Section 106 of H.R. 6899 would have prohibited federal oil or natural gas leases in any marine national monument or national marine sanctuary or Georges Bank.
- S. 3552 and H.R. 7150 would have established a National Fish Habitat Board and seek to conserve U.S. fish and aquatic communities through partnerships that foster habitat conservation.

Hypoxia and Algal Blooms

Section 5022 of P.L. 110-114 authorized the Army Corps of Engineers to participate in assessing hypoxia in the Gulf of Mexico. Section 528, Division B, Title V, of P.L. 110-161 (the Consolidated Appropriations Act, 2008) reauthorized the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998 through FY2010. H.R. 6017 would have reduced phosphorus inputs in the Great Lakes to ameliorate the effects of harmful algal blooms. S. 3191 would have authorized a comprehensive plan for a national strategy to address harmful algal blooms and hypoxia.

Oysters

Provisions in P.L. 110-114 authorized restoring Long Island Sound oyster habitat at \$25 million (Section 3120), modified the authorization for oyster restoration in Chesapeake Bay and increased authorized funding for this restoration to \$50 million (Section 5021), and authorized a study of how to improve the environmental quality of Delaware Bay for oyster restoration (Section 1005(6)). H.R. 5014 would have extended the temporary suspension of duty on oysters (other than smoked), prepared or preserved.

Energy and Water Projects

Section 2036 of P.L. 110-114 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 Army Corps of Engineers projects. Sections 633 and 634 of P.L. 110-140 require a research program and report on the effects of marine and hydrokinetic renewable energy development on fisheries and other marine resources. S. 1522, H.R. 3830, and Section 1202 of S. 3213 would have reauthorized (through FY2015) 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. 1522 on July 26, 2007. On April 10, 2008, the Senate Committee on Energy and Natural Resources reported (amended) S. 1522 (S.Rept. 110-297).

Great Lakes

Section 5011 of P.L. 110-114 modified Great Lakes fisheries restoration, including allowing nonfederal participants to provide as much as 100% of their nonfederal share through in-kind contributions. H.R. 469 would have authorized the Great Lakes Fishery Commission to investigate the effects of migratory birds on fish stock productivity. H.R. 6017 would have reduced phosphorus inputs in the Great Lakes to ameliorate the effects of harmful algal blooms.

Recreational Fishing

Section 3503 of P.L. 110-181 directed the Secretary of Transportation to convene an interagency study group to review ship disposal practices, including use of disposed vessels as artificial reefs. Section 2606 of P.L. 110-246 established a grant program to encourage private landowners to provide public access for fishing and other outdoor recreation. H.Res. 634 expressed the sense of the House encouraging participation in fishing and supporting the goals of National Hunting and Fishing Day. In the 110th Congress, numerous other bills were introduced to address sport fishing concerns, but were not enacted:

- Section 1(c) of S. 307 would have amended Section 9 of the Flood Control Act of 1944 to include maintenance of a healthy fishery on the Bighorn River, MT, downstream from the Yellowtail Dam as one of the authorized purposes of the Yellowtail Unit of the Pick-Sloan Missouri River Basin Program.
- H.R. 611 would have amended the Social Security Act to eliminate the requirement that states collect Social Security numbers from applicants for recreational licenses.
- H.Res. 458 would have expressed the sense of the House supporting the goals and ideals of National Fishing and Boating Week.
- Section 402(a)(2)(D)(ii) of S. 1766 would have provided funds from a Climate Adaptation Fund for the Sport Fish Restoration Act.
- H.R. 3227 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; the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands held a hearing on this measure on April 24, 2008. On July 14, 2008, the House Committee on Natural Resources reported (H.Rept. 110-756) and the House passed (amended) H.R. 3227.
- S. 2803 and H.R. 5850 would have authorized charter boat or recreational fishermen to form associations to catch and market aquatic products, implement vessel capacity reduction programs, and undertake research.
- Section 158 of H.R. 6001, Section 21 of H.R. 6108, Section 347 of H.R. 6165, Section 121 of H.R. 6384, Section 217 of H.R. 6421, Section 22 of H.R. 6428, Section 224 of H.R. 6779, and Section 220 of S. 3280 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 as artificial reefs, and 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.

- S. 3377 would have amended Title 46, United States Code, to waive the biometric transportation security card requirement for certain small business merchant mariners, including fishing guides.
- H.R. 6310 would have amended the Internal Revenue Code to require that the manufacturers' excise tax on sport fishing equipment be paid quarterly.

International Fisheries

P.L. 110-243 directed the United States to initiate international discussions and take steps to negotiate an agreement for managing migratory and transboundary fish stocks in the Arctic Ocean. S.Res. 208 expressed the sense of the Senate encouraging the elimination of subsidies that contribute to commercial fishing fleet overcapacity worldwide and lead to the overfishing. S. 2907 would have established uniform administrative procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and directed the Secretary to establish an International Fisheries Enforcement Program in NMFS; the Senate Committee on Commerce, Science, and Transportation reported this bill, amended, on September 17, 2008 (S.Rept. 110-469). Section 5(b)(3) of H.R. 7014 would have required that the President consult with Congress before initiating any trade negotiations under the North American Free Trade Agreement relating directly to fish or shellfish.

National Fish and Wildlife Foundation

P.L. 110-281 (H.R. 3891) amended the National Fish and Wildlife Foundation Establishment Act to increase the number of directors on the foundation's board of directors.

Fishing Vessels

P.L. 110-299 clarified circumstances during which the Environmental Protection Agency and states could require discharge permits for fishing vessels. S. 687 would have amended the Internal Revenue Code of 1986 to provide a business credit against income for purchasing fishing safety equipment. Section 307 of H.R. 2830 would have modified certain safety standards for commercial fishing vessels and establish a fishing safety research grant program; on September 20, 2007, the House Committee on Transportation and Infrastructure reported, amended, this bill (H.Rept. 110-338, Part I). On October 1, 2007, the House Committee on Homeland Security reported, amended, H.R. 2830 (H.Rept. 110-338- Part II). On October 30, 2007, the House Committee on the Judiciary reported (amended) H.R. 2830 (H.Rept. 110-338, Part III). On April 24, 2009, the House passed H.R. 2830 (amended). S. 2865 would have permitted qualified withdrawals from a Capital Construction Fund account for gear or equipment required for fishery conservation or safety of life at sea without regard to the minimum cost requirement established by regulation.

Tax Provisions

Section 504 of P.L. 110-343 provided income averaging of funds received from the *Exxon Valdez* oil spill litigation. H.R. 2133, S. 3234, and Section 3 of H.R. 6804 would have amended the

Internal Revenue Code to provide commercial fishermen a temporary income tax credit to offset high fuel costs. H.R. 2110 would have amended the Internal Revenue Code to provide for tax-exempt qualified small issue bonds to finance fish processing property.

Climate Change

A number of bills were introduced dealing with aquatic and marine aspects of climate change, but none were enacted:

- Section 202(b)(5) of H.R. 620, S. 280, H.R. 2338, and H.R. 4226; Section 7456 of H.R. 3220/H.R. 3221; Subtitle B, Part 2, of H.R. 6316; Section 114 of S. 2204; Subtitle G of S. 2191, S. 3036, and H.R. 6186; and Title IV, Subtitle D, of H.R. 2337 would have authorized funding of efforts to strengthen and restore habitat to improve the ability of fish and wildlife to adapt successfully to climate change. The House passed H.R. 3221 (amended) on August 4, 2007; the Senate passed this measure (amended) on April 10, 2008, without the House-passed provisions related to habitat and climate change. On May 20, 2008, the Senate Committee on Environment and Public Works reported (amended) S. 2191 (S.Rept. 110-337).
- Section 301 of H.R. 620 and H.R. 4226, and Section 465 of H.R. 2337 would have amended the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451, et seq.) to 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; on August 3, 2007, the House Committee on Natural Resources reported (amended) H.R. 2337 (H.Rept. 110-296, Part I).
- S. 317, S. 1177, and S. 1554 would have amended the Clean Air Act (42 U.S.C. §§ 7401, et seq.) to fund (among many programs) efforts to identify coastal and marine resources (such as coral reefs, submerged aquatic vegetation, shellfish beds, and other coastal or marine ecosystems) at greatest risk of damage by climate change; to monitor for impacts; and to restore damaged resources.
- S. 1766 would have provided funds from a Climate Adaptation Fund for the Sport Fish Restoration Act (Section 402(a)(2)(D)(ii)) and from a Climate Change Wildlife Conservation sub-account in the Treasury for the Secretary of the Interior to improve fish passage and dam removal and for the National Fish Habitat Plan as well as for the Secretary of Commerce to sustain fisheries, protect marine species, and conserve marine habitat (Section 402(e)(3)(C)).

Several measures would have addressed ocean acidification:

- Section 7471 of H.R. 3220/H.R. 3221, Section 10 of S. 2355, and Section 201 of S. 2211 would have directed the Secretary of Commerce to develop a national strategy to predict, plan for, and mitigate climate change effects, including ocean acidification, on ocean and coastal ecosystems to ensure the recovery, resiliency, and health these ecosystems. The House passed H.R. 3221 (amended) on August 4, 2007; the Senate passed this measure (amended) on April 10, 2008, without the House-passed provision related to ocean acidification. On June 5, 2008, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 2355 (S.Rept. 110-347).

- S. 485 would have amended the Clean Air Act to direct the Administrator of the Environmental Protection Agency to study ocean acidification and the ways that process affects ocean ecosystems and U.S. fisheries.
- On May 10, 2007, the Senate Commerce, Science, and Transportation Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a hearing on the effects of climate change and ocean acidification on living marine resources.
- S. 1581, H.R. 4174, and Part VI of S. 3297 would have established an interagency committee to develop an ocean acidification research and monitoring plan as well as an ocean acidification program within NOAA; on May 22, 2008, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 1581 (S.Rept. 110-339). On June 5, 2008, the House Science and Technology Subcommittee on Energy and Environment held a hearing on H.R. 4174; the House Committee on Science and Technology reported this bill (amended) on July 9, 2008 (H.Rept. 110-749), and the House passed this bill, amended, on this date.
- Section 7001 of S. 2191 and S. 3036 would have required the National Academy of Sciences to analyze predicted changes in ocean acidity; on May 20, 2008, the Senate Committee on Environment and Public Works reported (amended) S. 2191 (S.Rept. 110-337).

Coral

H.Res. 1112 expressed the sense of the House, recognizing 2008 as the International Year of the Reef. In the 110th Congress, numerous other measures were introduced to address concerns related to coral and coral reefs, but none were enacted:

- S. 485 and H.R. 1590 would have directed the National Academy of Sciences to assess the probability of a loss of more than 40% of world coral reefs because of increased ocean temperature or acidity.
- H.R. 1205, S. 1580, and S. 1583 would have reauthorized and amended the Coral Reef Conservation Act of 2000. On March 6, 2007, the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on H.R. 1205; on June 28, 2007, the House Committee on Natural Resources reported this bill (amended) on October 22, 2007 (H.Rept. 110-394, Part I), and the House subsequently passed this measure (amended). On March 13, 2008, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 1580 (S.Rept. 110-276).
- H.R. 1679 sought to protect Florida coral reefs and other coastal marine resources from Cuban petroleum exploration and development.
- H.R. 2185, S. 2020, and Title IV, Subtitle D, of S. 3297 would have amended the Tropical Forest Conservation Act of 1998 to provide debt relief to developing countries that protect coral reefs and associated coastal marine ecosystems; on October, 15, 2007, the Senate Committee on Foreign Relations reported S. 2020 (S.Rept. 110-196). The House passed H.R. 2185 (amended) on October 9, 2007.

- H.Con.Res. 300 would have expressed the sense of Congress that the United States maintains its leadership role in improving the health and promoting the resiliency of coral reef ecosystems; the House agreed to this measure on May 21, 2008.
- Section 158 of H.R. 6001, Section 21 of H.R. 6108, Section 347 of H.R. 6165, Section 121 of H.R. 6384, Section 217 of H.R. 6421, Section 22 of H.R. 6428, Section 224 of H.R. 6779, and Section 220 of S. 3280 would have required a study of how the removal of offshore oil and gas platforms and other OCS facilities might affect existing coral populations.

National Marine Sanctuaries

Section 7(d)(8) of H.R. 1187 and S. 2635 would have promoted cooperative research and education efforts with commercial fishermen operating within the Gulf of the Farallones National Marine Sanctuary, the Cordell Bank National Marine Sanctuary, and the Monterey Bay National Marine Sanctuary. The House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on H.R. 1187 on October 24, 2007. On March 31, 2008, the House Committee on Natural Resources reported (amended) H.R. 1187 (H.Rept. 110-557), and the House subsequently passed this bill, amended. On May 6, 2008, the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a hearing on H.R. 1187; the full committee reported this bill (amended) on October 1, 2008 (S.Rept. 110-516). H.R. 6537 would have clarified the authority for fishery management in National Marine Sanctuaries; on July 24, 2008, the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on this measure.

Tuna

S.Res. 368 expressed the sense of the Senate that the United States should seek a review of compliance with the International Commission for the Conservation of Atlantic Tunas (ICCAT) conservation and management recommendations for Atlantic bluefin tuna and other species, and that the United States should pursue a moratorium on the eastern Atlantic and Mediterranean bluefin tuna fishery in ICCAT. S.Res. 709 expressed the sense of the Senate that the United States should pursue the adoption of bluefin tuna conservation and management measures at the 16th Special Meeting of ICCAT; the Senate agreed to this measure on November 20, 2008. H.R. 3669 and Section 421 of H.R. 2830, as passed by the House on April 24, 2008, would have amended 46 U.S.C. relating to fishery endorsements to promote the U.S. distant water tuna fleet. H.R. 3165 would have amended the Harmonized Tariff Schedule of the United States to specifically provide for duty-free treatment of certain tuna imported directly from U.S. insular possessions. H.R. 4525 would have modified the definition of "in airtight containers" to promote public health and safety.

Marketing

H.R. 167 and H.R. 293 would have provided assistance for the construction, improvement, and rehabilitation of farmers markets, including those selling local aquaculture and commercial fishing products. Section 518 of S. 1082, as passed by the Senate (amended) on May 9, 2007, would have required the Food and Drug Administration to prepare a report on the taxonomic and consumer perception differences between lobster and langostino. H.R. 3115 and Section 14 of H.R. 3610 would have amended the Federal Food, Drug, and Cosmetic Act to restrict the use of

carbon monoxide in meat, poultry, and seafood; the House Energy and Commerce Subcommittee on Health held a hearing on H.R. 3610 on September 26, 2007. H.Res. 582 would have expressed the sense of the House supportive of local fishermen and fishing communities, education of seafood consumers, and consumption of healthy seafood, especially locally caught products.

Health Care

Section 2 of H.R. 241, Section 202 of H.R. 324, Section 101 of H.R. 1012, Section 402 of H.R. 5923, Section 201 of H.R. 5955 and S. 3072, and Section 112 of H.R. 6110 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. S. 2630 and H.R. 5404 would have amended the Public Health Service Act to establish a grant program to increase health care coverage and access for workers and families in the commercial fishing industry.

Trade

Section 321(b) of S. 122, Section 501(b) of H.R. 910, and Section 202 of H.R. 3801/S. 1848 would have amended the Trade Act of 1974 (19 U.S.C. §§ 2271, et seq.) to clarify that commercial fishermen are eligible for trade adjustment assistance. On July 18, 2007, the Senate Committee on Commerce, Science, and Transportation held a listening session on the safety of Chinese seafood imports, including oversight and analysis of the federal response. H.R. 5014 would have extended the temporary suspension of duty on oysters (other than smoked), prepared or preserved.

Sharks

H.R. 5741 and S. 3231 would have amended the High Seas Driftnet Fishing Moratorium Protection Act to increase sanctions on nations that permit shark finning; the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on this bill on April 16, 2008. The House Committee on Natural Resources reported this bill (amended) on July 8, 2008 (H.Rept. 110-740); the House passed this measure (amended) on this date.

Sea Turtles

Section 901 of S. 1892 would have required a Coast Guard report on efforts taken from FY2000 through FY2007 to protect sea turtles; the Senate Committee on Commerce, Science, and Transportation reported this bill (amended) on February 5, 2008 (S.Rept. 110-261). H.R. 6862 would have reauthorized the Marine Turtle Conservation Act of 2004 through FY2014.

Maritime Liens

Section 505 of S. 1892 would have prohibits the attachment of maritime liens to fishing permits; the Senate Committee on Commerce, Science, and Transportation reported this bill (amended) on February 5, 2008 (S.Rept. 110-261).

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.²³ 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);²⁴ 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, whereby juvenile salmon are cultured, released to mature in the open ocean, and caught when they return as adults to spawn. Fish hatcheries can be either publicly or privately operated to raise fish for recreational and commercial stocking as well as to mitigate aquatic resource and habitat damage.

The U.N. 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 25.5 million metric tons in 1994; by 2002, global aquaculture production had reached almost 40 million metric tons. By mid-2006, FAO estimated that 43% of all fish consumed by humans came from aquaculture.²⁵ FAO has projected that aquaculture will surpass wild-harvested seafood as the source of more than 50% of global seafood consumption in 2008. In addition, FAO predicts that world aquaculture production could exceed 130 million metric tons by 2030.²⁶

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 that U.S. sales of aquaculture products had reached nearly \$1.1 billion, with more than half this value produced in Alabama, Arkansas, Louisiana, and Mississippi.²⁷ 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.²⁸ With growth, however, aquaculture operations face 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.).

In October 2007, NOAA released a 10-year plan for its marine aquaculture program.²⁹ The 110th Congress did not consider legislation the Administration drafted to modify the regulatory environment and promote the development of U.S. offshore, open-ocean aquaculture.

²³ For more background information, see CRS Report RL32694, *Open Ocean Aquaculture*, by Harold F. Upton and Eugene H. Buck, and out-of-print CRS Report 97-436, *Aquaculture and the Federal Role*, by Geoffrey S. Becker and Eugene H. Buck, available from the author at [gbuck@crs.loc.gov].

²⁴ For statistics on freshwater production, see <http://www.agcensus.usda.gov/Publications/2002/Aquaculture/index.asp>.

²⁵ For more details, see <http://www.fao.org/newsroom/en/news/2006/1000383/index.html>.

²⁶ For more discussion of FAO projections for 2030, see Part 3 of <http://www.fao.org/docrep/007/y5600e/y5600e00.htm>.

²⁷ See <http://www.nass.usda.gov/aquaculture/index.asp>.

²⁸ For the latest information on domestic production and statistics, see <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1375>.

²⁹ Available at <http://aquaculture.noaa.gov/about/tenyear.html>.

Congressional Action

Food Safety

Section 1006 of P.L. 110-85 (H.R. 3580) authorized the Food and Drug Administration (FDA) to enhance inspection of aquaculture products. H.R. 1148, S. 654, and H.R. 7143 would have established a Food Safety Administration, with food production facilities defined as including aquaculture facilities in Section 3(14). H.R. 3077 would have amended the Federal Food, Drug, and Cosmetic Act to address safety concerns with imported seafood and seafood products by requiring seafood importing countries to be certified as having equivalent safety systems to the United States; S. 1776 would have imposed this certification requirement on all imported food products. H.R. 5219 would have authorized appropriations for FDA's seafood inspection regime. S. 2688, H.R. 5738, and H.R. 5956 would have directed the Secretary of Commerce to establish a program to better ensure that seafood in interstate commerce is fit for human consumption; on July 15, 2008, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 2688 (S.Rept. 110-420).

Genetic Modification

Section 1007 of P.L. 110-85 (H.R. 3580) required the Food and Drug Administration to prepare a report on environmental risks associated with genetically engineered seafood products, including their impact on wild fish stocks.

Algal Biomass

Section 228 of P.L. 110-140 required a report by the Secretary of Energy on the progress of research and development on the use of algae as a feedstock for the production of biofuels. H.R. 6943 would have amended the Internal Revenue Code of 1986 to provide for a credit for algae-derived fuels.

Assistance

P.L. 110-246, the Food, Conservation, and Energy Act of 2008, included several provisions (1) providing drought coverage for aquaculture under the non-insured crop assistance program (Section 12027); (2) authorizing a pilot program under the Conservation Reserve Program for enrolling wetland areas, with eligible acreage including shallow water areas that were devoted to a commercial pond-raised aquaculture operation any year from 2002 through 2007 (Section 2106); and (3) creating a new emergency disaster assistance program for farm-raised fish (Section 15101). Several bills proposed to amend either the MSFCMA (S. 741 and H.R. 2565) or the Coastal Zone Management Act (H.R. 3223) to establish a grant program to ensure waterfront access for aquaculture operators and commercial fishermen; on February 28, 2008, the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on H.R. 3223. Section 3109 of H.R. 1591 would have appropriated \$5 million for the Department of Agriculture to compensate aquaculture operators for losses due to limitations on fish transport in the Great Lakes region to combat outbreaks of viral hemorrhagic septicemia; this bill was reported by the House Committee on Appropriations on March 20, 2007 (H.Rept. 110-60). The House passed H.R. 1591 on March 23, 2007. On March 29, 2007, the Senate passed H.R. 1591 (amended), without the aquaculture operator compensation provision. On April 24, 2007, a conference report

was filed on H.R. 1591, without the aquaculture operator compensation provision (H.Rept. 110-107); this conference report was agreed to by the House (April 25, 2007) and Senate (April 26, 2007). President Bush vetoed H.R. 1591 on May 1, 2007. Section 3 of H.R. 7196/S. 3644 and Section 1102 of S. 3689 would have directed the Secretary of Agriculture to provide \$50 million in grants to states for assistance to aquaculture operators to offset feed costs or economic losses caused by natural disasters.

Research

The Food, Conservation, and Energy Act of 2008, P.L. 110-246, included provisions that (1) reauthorized various regional aquaculture research centers through FY2012 (Section 7140) and (2) identified marine shrimp farming and viral hemorrhagic septicemia as high priorities for research and extension grants (Section 7204).

National Aquaculture Act Reauthorization

Section 7414 of P.L. 110-246, the Food, Conservation, and Energy Act of 2008, reauthorized the National Aquaculture Act through FY2012.

Animal Health

Section 11013 of P.L. 110-246 directed the Secretary of Agriculture to establish an advisory committee to develop recommendations regarding the National Aquatic Animal Health Plan developed by the National Aquatic Animal Health Task Force.

Marketing

Section 11016 of P.L. 110-246 authorized a voluntary grading program for farm-raised domestic catfish and other aquaculture species administered through the Agricultural Marketing Service, and mandated safety inspection of such products by the Food Safety and Inspection Service. H.R. 167 and H.R. 293 would have provided assistance for the construction, improvement, and rehabilitation of farmers markets, including those selling local aquaculture and commercial fishing products. H.R. 3115 would have amended the Federal Food, Drug, and Cosmetic Act to restrict the use of carbon monoxide in meat, poultry, and seafood. Section 3001 of S. 2228 would have included aquacultural products in a grant program to enhance the competitiveness of specialty crops.

Crop Insurance

Section 12023 of P.L. 110-246 amended the Federal Crop Insurance Act to expand aquaculture and research coverage. Section 9016 of S. 1424 and Section 702 of H.R. 2144 would have expanded the Adjusted Gross Revenue Insurance Pilot Program to include coverage for shellfish.

National Marine Sanctuaries

Section 6(b) of H.R. 1187 and S. 2635 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. The House Natural Resources Subcommittee on

Fisheries, Wildlife, and Oceans held a hearing on H.R. 1187 on October 24, 2007. On March 31, 2008, the House Committee on Natural Resources reported (amended) H.R. 1187 (H.Rept. 110-557), and the House subsequently passed this bill, amended. On May 6, 2008, the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a hearing on H.R. 1187; the full committee reported this bill (amended) on October 1, 2008 (S.Rept. 110-516).

Turtles

H.R. 924 and S. 540 would have required the Food and Drug Administration to permit the sale of baby turtles as pets so long as the seller uses proven methods to effectively treat *Salmonella*. On May 1, 2007, this provision was also proposed as an amendment (Title VII) to S. 1082; this amendment (as revised) was agreed to on May 8, 2007, and S. 1082 (amended) was passed by the Senate on May 9, 2007. Subtitle C, Title XI, of H.R. 2419, as passed by the Senate (amended) on December 14, 2007, would have required a study to determine the prevalence of *Salmonella* in reptiles and amphibians sold as pets. On May 13, 2008, a conference report was filed on H.R. 2419, with the turtle provisions deleted (H.Rept. 110-627).

Open Ocean Aquaculture

S. 533 would have amended the National Aquaculture Act of 1980 to prohibit issuing marine aquaculture facility permits until permit requirements are enacted. H.R. 2010 and S. 1609 would have authorized the Secretary of Commerce to establish and implement a regulatory system for offshore aquaculture; on July 12, 2007, the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on H.R. 2010. H.R. 7109 would have prohibited the Secretary of the Interior from authorizing commercial finfish aquaculture operations in the U.S. EEZ.

Trade

Section 402 of S. 1848 would have amended the Trade Act of 1974 (19 U.S.C. §§ 2271, et seq.) to clarify that aquaculture producers are eligible for trade adjustment assistance. On July 18, 2007, the Senate Committee on Commerce, Science, and Transportation held a listening session on the safety of Chinese imports, including oversight and analysis of the federal response.

Asian Carp

H.R. 83, S. 726, and Section 171 of S. 791 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. H.R. 6031 would have directed the U. S. Fish and Wildlife Service to study various approaches to eradicating Asian carp from the Great Lakes and their tributaries.

National Fish Hatcheries

Section 8(b) of S. 3473 would have directed the Secretary of the Interior, subject to the availability of appropriations, to operate, maintain, rehabilitate, and upgrade the Alchesay-Williams Creek National Fish Hatchery Complex.

Tax Provisions

H.R. 2110 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

In 1972, Congress enacted the Marine Mammal Protection Act (MMPA; 16 U.S.C. §§ 1361, et seq.), 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. 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 the MMPA 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 MMPA established a moratorium on the “taking” of marine mammals in U.S. waters and by U.S. nationals on the high seas. It also established a moratorium on importing marine mammals and marine mammal products into the United States. The MMPA 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 MMPA, 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 MMPA 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 MMPA.

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 MMPA. 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 MMPA’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 (including the Bering Sea) or

Arctic Ocean (including the Chukchi and Beaufort Seas), 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 MMPA 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.

Section 319 of P.L. 108-136 amended the MMPA to provide a broad exemption for “national defense.” This section also amended the definition of “harassment” of marine mammals, as it applies to military readiness activities, to require greater scientific evidence of harm, and the consideration of impacts on military readiness in the issuance of permits for incidental takings. On January 23, 2007, the Department of Defense announced the authorization of a two-year exemption under these provisions for mid-frequency active sonar use.³⁰

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.³¹

Congressional Action

In the 109th Congress, several bills were introduced, proposing to extensively amend the MMPA and authorize appropriations for several marine mammal programs. Although the House passed H.R. 4075 (amended), no further action was taken before 109th Congress adjourned.³²

In the 110th Congress, several bills were introduced to amend the MMPA, but none were enacted:

³⁰ See http://www.news.navy.mil/search/display.asp?story_id=27415.

³¹ For more background and information on the 1994 amendments, see out-of-print CRS Report 94-751 ENR, *Marine Mammal Protection Act Amendments of 1994*, by Eugene H. Buck, available from the author at [gbuck@crs.loc.gov].

³² For additional background on reauthorization issues, see CRS Report RL30120, *The Marine Mammal Protection Act: Reauthorization Issues*, by Eugene H. Buck.

- H.R. 1006 would have modified provisions of the John H. Prescott Marine Mammal Rescue Assistance Grant Program, including reauthorizing funding for the Marine Mammal Unusual Mortality Event Fund; the House passed this bill on March 19, 2007. On July 15, 2008, the Senate Committee on Commerce, Science, and Transportation reported (amended) this bill (S.Rept. 110-421).
- H.R. 1007 would have repealed the long-term goal for reducing the incidental mortality and serious injury of marine mammals to zero in commercial fishing operations, and to modify the goal of take reduction plans for reducing such takings.
- H.R. 1769 would have authorized taking of California sea lions to reduce their predation on endangered Columbia River salmon; the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on this bill on August 2, 2007.
- H.R. 2327 and S. 1406 would have deleted the authorization for importing polar bear sport hunting trophies from Canada. H.R. 6936 would have allowed importing polar bear trophies taken in Canadian sport hunts before the polar bear was listed as a threatened species. H.R. 7171 would have amended the MMPA to allow the importation of polar bear trophies taken in sport hunts in Canada.
- Section 901 of S. 1892 would have required a Coast Guard report on efforts taken from FY2000 through FY2007 to enforce the MMPA; the Senate Committee on Commerce, Science, and Transportation reported this bill (amended) on February 5, 2008 (S.Rept. 110-261).
- H.R. 3156 and S. 1860 would have modified how certain MMPA offenses might be prosecuted.
- H.R. 5106 would have authorized the Marine Mammal Commission to establish a national program to fund basic and applied research on marine mammals.
- H.R. 5429 would have amended the MMPA to authorize marine mammal cooperative management agreements in Alaska.
- Section 33 of H.R. 6428, Section 238 of H.R. 6779, and Section 610 of H.R. 7239 would have directed the Secretary of the Interior to establish regional OCS Joint Permitting Offices, with expertise in MMPA consultations and preparation of documents.

Miscellaneous Issues

Canadian Seal Hunt

H.Res. 427 expressed the sense of the House urging Canada to halt its commercial seal hunt.

Polar Bear

H.R. 2327 and S. 1406 would have deleted the authorization in the MMPA for importing polar bear sport hunting trophies from Canada. On June 26, 2007, the Senate Committee on Appropriations reported S. 1696 (S.Rept. 110-91), in which § 120, in Title I would have

prohibited the expenditure of funds for issuing permits to import polar bear sport hunting trophies during FY2008. This provision was not included in P.L. 110-161 (the Consolidated Appropriations Act, 2008) signed by President Bush on December 26, 2007. On January 17, 2008, the House Select Committee on Energy Independence and Global Warming held a hearing on the delay by U.S. Fish and Wildlife Service in announcing their decision on whether to list polar bears as threatened under the Endangered Species Act.³³ H.R. 5058 would have prohibited the Secretary of the Interior from leasing any tract in the Chukchi Sea Lease Sale 193 off Alaska until the Secretary determines whether to list the polar bear as a threatened or endangered species. On January 30, 2008, the Senate Committee on Environment and Public Works held an oversight hearing to examine threats to and protection for the polar bear. H.R. 6057 would have amended the Outer Continental Shelf Lands Act to prohibit oil and gas leasing and related activities in the Beaufort and Chukchi Sea Planning Areas unless certain conditions are met.

Climate Change

Section 202(b)(5) of H.R. 620, H.R. 2338, S. 280, and H.R. 4226; Subtitle G of H.R. 6186, S. 2191, and S. 3036; Title IV, Subtitle D, of H.R. 2337; Subtitle B, Part 2, of H.R. 6316; and Section 7456 of H.R. 3220/H.R. 3221 would have authorized funding for efforts to strengthen and restore habitat to improve the ability of wildlife to adapt successfully to climate change; Section 301 of H.R. 620 also would have amended the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451, et seq.) to require the Secretary of Commerce to prepare a report on the observed and projected effects of climate change on marine life and habitat. The House passed H.R. 3221 (amended) on August 4, 2007; the Senate passed this measure (amended) on April 10, 2008, without the House-passed language on habitat and climate change. Section 101 of S. 317 would have amended the Clean Air Act (42 U.S.C. §§ 7401, et seq.) to create a Climate Action Trust Fund, funding (among many programs) efforts to identify coastal and marine resources (such as coral reefs, submerged aquatic vegetation, shellfish beds, and other coastal or marine ecosystems) at greatest risk of damage by climate change; to monitor for impacts; and to restore damaged resources.

Whales

S.Res. 456 would have expressed the sense of the Senate that the United States should undertake bilateral discussions with Canada to negotiate an agreement to conserve populations of large whales that migrate along the Atlantic coast of North America. S. 2657 and H.R. 5536 would have required the Secretary of Commerce to prescribe regulations limiting vessel speed to reduce collisions with North Atlantic right whales; the Senate Committee on Commerce, Science, and Transportation reported S. 2657 (amended) on July 22, 2008 (S.Rept. 110-429). H.Con.Res. 350 and S.Con.Res. 86 would have expressed the sense of Congress that the United States, through the International Whaling Commission, should use all appropriate measures to end commercial whaling and strengthen the conservation and management of whale species. The House agreed to H.Con.Res. 350 on June 18, 2008. H.R. 6624 and S. 3333 would have amended the Whaling Convention Act so that it expressly applies to aboriginal subsistence whaling, and authorizes the Secretary of Commerce to set bowhead whale catch limits in the event that the IWC fails to adopt such limits.

³³ For additional information, see CRS Report RL33941, *Polar Bears: Listing Under the Endangered Species Act*, by Eugene H. Buck, M. Lynne Corn, and Kristina Alexander.

Military Sonar

On May 11, 2007, the House Committee on Armed Services reported H.R. 1585 expressing concern in the committee report (H.Rept. 110-146) about the Department of Defense authorizing a two-year MMPA exemption, in January 2007,³⁴ for the use of mid-frequency sonar in naval training exercises. In addition, the committee encouraged the Navy to assess the number and species of marine mammals injured and killed as a result of activities conducted under the two-year exemption. On May 17, 2007, the House passed H.R. 1585 (amended). The Senate passed H.R. 1585 (amended) on October 1, 2007. A conference report was filed on H.R. 1585 on December 6, 2007 (H.Rept. 110-477); the House (December 12, 2007) and Senate (December 14, 2007) agreed to the conference report. H.R. 1585 was pocket vetoed by President Bush on December 28, 2007.

Fur Seals

Section 918 of S. 1892 would have extended the authorization of the Fur Seal Act of 1966 through FY2009; the Senate Committee on Commerce, Science, and Transportation reported this bill (amended) on February 5, 2008 (S.Rept. 110-261).

Southern Sea Otter

H.R. 3639 would have established a research program for the recovery of the southern sea otter; the House Natural Resources Subcommittee on Fisheries, Wildlife, and Oceans held a hearing on this measure on April 24, 2008.

NMFS Appropriations

Signed by President Bush on December 26, 2007, P.L. 110-161 (the Consolidated Appropriations Act, 2008) provided more than \$829 million for NMFS for FY2008.

On February 4, 2008, the Bush Administration released its FY2009 budget request, including about \$782 million for NMFS (see **Table 1**). The FY2009 request for funding for NMFS under the Operations, Research, and Facilities (OR&F) Account is \$15.87 million (2.24%) more than funding enacted for FY2008. However, total NMFS funding would decrease by \$46.76 million (5.64%) from that enacted for FY2008, primarily due to decreases for Pacific Coastal Salmon Recovery and Other Accounts.

³⁴ For additional background, see CRS Report RL33133, *Active Military Sonar and Marine Mammals: Events and References*, by Eugene H. Buck and Kori Calvert.

Table I. NMFS Appropriations
(in thousands of dollars)

	FY2007 Enacted	FY2008 Request	FY2008 Enacted	FY2009 Request	FY2009 House Rpt	FY2009 Senate Rpt
Fisheries	515,301	402,096	409,209	424,480	429,184	460,672
Protected Resources	141,015	165,095	163,992	167,241	176,241	178,105
Habitat Conservation	43,544	50,415	50,245	43,405	49,905	48,405
Enforcement Surveillance	78,126	86,973	84,894	89,085	89,085	90,085
SUBTOTAL	828,716^a	704,579	708,340	724,211	744,415	777,267
Procurement, Acquisition, Construction	11,190	0	2,021	0	0	4,600
Pacific Coastal Salmon Recovery	66,638	66,825	67,000	35,000	65,000	90,000
Other Accounts	27,385	24,550	51,722	23,112	0	54,000
TOTAL	933,929	795,954	829,083	782,323	809,415	925,867

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

a. Includes \$ 50.73 million for "Alaska Composite Research and Development Program."

Major increases requested in excess of enacted FY2008 funding in NMFS's portion of the OR&F Account include:

- Fisheries Research and Management Programs: + \$21.5 million
- Expand Annual Stock Assessments: + \$8.5 million
- Survey and monitoring projects: + \$8.2 million
- Economics and social science research: + \$4.7 million
- Atlantic salmon habitat restoration + \$4.17 million
- Pacific Salmon Recovery and Research: + \$3.17 million
- Recreational fisheries statistics: + \$3 million
- Enforcement of IUU fishing: + \$2.4 million
- Sustainable habitat management: + \$1.96 million
- Marine Mammal Conservation and Recovery: + \$1.5 million

Major decreases requested from enacted FY2008 funding in NMFS's portion of the OR&F Account include:

- Massachusetts groundfish support: -\$13.4 million
- Penobscot River habitat restoration: -\$10 million
- Magnuson implementation off Alaska: -\$7.3 million
- NW Hawaii Monument fishery assistance: -\$6.7 million
- SE area monitoring and assessment: -\$4.4 million
- Marine turtles: -\$3.7 million

- Alaska Sea Life Center: -\$3.5 million
- Community-based restoration and open rivers: -\$3.1 million

On December 10, 2008, the House Committee on Appropriations reported H.R. 7322 (H.Rept. 110-919), containing FY2009 NMFS appropriations. The committee recommended almost \$810 million for NMFS for FY2009, \$19.7 million (-2.4%) less than the FY2008 enacted level and \$27.1 million (3.5%) more than the FY2009 request. Included in the House measure was an additional \$30 million for Pacific Coastal Salmon Restoration, in addition to what the Administration had requested.

On June 23, 2008, the Senate Committee on Appropriations reported S. 3182 (S.Rept. 110-397), recommending almost \$926 million for NMFS for FY2009, \$97.8 million (11.8%) more than the FY2008 enacted level and \$143.5 million (18.3%) more than the FY2009 request. In addition to what the Administration had requested, the Senate bill included an additional \$55 million for Pacific Coastal Salmon Restoration, \$50 million for fishery disaster mitigation, and \$30 million for various fishery management activities.

Division A of P.L. 110-329 provided continuing appropriations for NMFS, until March 6, 2009, at the level of FY2008 appropriations.

Author Contact Information

Eugene H. Buck
Specialist in Natural Resources Policy
gbuck@crs.loc.gov, 7-7262