



# Fishery, Aquaculture, and Marine Mammal Issues in the 111<sup>th</sup> Congress

**Eugene H. Buck**

Specialist in Natural Resources Policy

**Harold F. Upton**

Analyst in Natural Resources Policy

December 18, 2009

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R40172

**CRS Report for Congress**

*Prepared for Members and Committees of Congress*

## Summary

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

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 Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) through eight regional fishery management councils. Beyond 200 miles, the United States participates in international agreements relating to specific areas or species. The 111<sup>th</sup> Congress may oversee implementation of the MSFCMA as well as address individual habitat and management concerns for U.S. commercial and sport fisheries to achieve a sustainable balance between resource use and protection. Current concerns include whether additional effort should be taken to eliminate overfishing, how fishery disaster assistance should be funded, and whether to more aggressively encourage fishing vessel capacity reduction and limited access privilege programs. The 111<sup>th</sup> Congress has enacted P.L. 111-5, including language to broaden the basis for determining import increases for trade adjustment assistance for fishing and aquaculture to include wild-caught fish and seafood in addition to farm-raised fish and seafood. In addition, P.L. 111-11 authorized implementation of the San Joaquin River Restoration Settlement providing for the reintroduction of Chinook salmon; extended the authorizations for the Upper Colorado and San Juan River Basin endangered fish recovery programs through FY2023; directed the Secretary of Commerce to establish an ocean acidification program within NOAA, and to establish an interagency committee to develop an ocean acidification research and monitoring plan; and reauthorized (through FY2015) and amend the Fisheries Restoration and Irrigation Mitigation Act of 2000.

Aquaculture—the farming of fish, shellfish, and other aquatic animals and plants in a controlled environment—is expanding rapidly abroad, with more modest growth in the United States. In the United States, important species cultured include catfish, salmon, shellfish, and trout. The 111<sup>th</sup> Congress has enacted P.L. 111-5, including language (1) providing as much as \$50 million in total assistance to aquaculture producers for losses associated with high feed input costs during the 2008 calendar year and (2) including National Fish Hatcheries as eligible for \$165 million in resource management funding as well as \$115 million in construction funding for the U.S. Fish and Wildlife Service.

Marine mammals are protected under the Marine Mammal Protection Act (MMPA). With few exceptions, the MMPA prohibits harm or harassment (“take”) of marine mammals, unless restrictive permits are obtained. It also addresses specific situations of concern, such as dolphin mortality, primarily associated with the eastern tropical Pacific tuna fishery. The 111<sup>th</sup> Congress may consider bills to reauthorize and amend the MMPA as well as measures to address specific marine mammal habitat and management concerns, such as how to deal with the effects of increasing noise in the ocean.

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## Most Recent Developments

On December 17, 2009, the Senate Committee on Commerce, Science, and Transportation ordered (1) S. 2856 reported (amended), allowing the United States-Canada Transboundary Resource Sharing Understanding to be considered an international agreement for the purposes of Section 304(e)(4) of the MSFCMA, creating an exemption and allowing federal fisheries managers to extend stock rebuilding deadlines for New England groundfish and scallop fisheries covered under the bilateral agreement; (2) S. 2859 reported, amending and reauthorizing the Coral Reef Conservation Act of 2000 through FY2014; and (3) S. 1609 reported, authorizing a single fisheries cooperative for the Bering Sea Aleutian Islands longline catcher processor subsector for Pacific cod. On December 16, 2009, President Obama signed H.R. 3288 into law, providing more than \$984 million for NMFS and related programs in FY2010. On December 16, 2009, the Senate Committee on Energy and Natural Resources ordered S. 1453 reported and the House Committee on Natural Resources ordered H.R. 2288 reported (amended), both amending P.L. 106-392 to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through FY2023. On December 10, 2009, the Senate Committee on Environment and Public Works ordered S. 1421 reported, amending the Lacey Act to add bighead carp to the list of injurious species that are prohibited from being imported or shipped interstate. On December 7, 2009, the House Committee on Natural Resources reported (amended) H.R. 1672, amending and reauthorizing the Northwest Straits Marine Conservation Initiative Act to direct county marine resources committees to assist in identifying local implications, needs, and strategies associated with the recovery of Puget Sound salmon, and the House subsequently passed this measure (amended). On December 3, 2009, the House Committee on Transportation and Infrastructure reported H.R. 2652 (amended), including language to (1) amend Title 46 relating to fishing vessel safety; and (2) amend the American Fisheries Act to modify provisions for vessel rebuilding and replacement, vessel exemptions, and fishery cooperative exemptions. On December 3, 2009, the Senate Environment and Public Works Subcommittee on Water and Wildlife held a hearing on (1) H.R. 509, reauthorizing the Marine Turtle Conservation Act of 2004 through FY2014; (2) S. 1214, seeking to conserve fish and aquatic communities through partnerships that foster fish habitat conservation; and (3) S. 1421. On November 19, 2009, the Senate Committee on Commerce, Science, and Transportation ordered S. 850 reported (amended), modifying language in the MSFCMA and the High Seas Driftnet Act related to prohibiting shark finning. (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](mailto:gbuck@crs.loc.gov) and requesting to be added to the notification list.)

## Introduction

Increasing use of coastal and marine resources is driving proposals for Congress and the Administration to alter current relationships between environmental protection and sustainable resource management. Recent reports note declines in marine resources and shortcomings in what are perceived as fragmented and limited approaches to resource protection and management in federal and state waters.<sup>1</sup> A further concern is the increasing pressures and conflicts that arise

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<sup>1</sup> For example, see *America's Living Oceans: Charting a Course for Sea Change*, available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Protecting\\_ocean\\_life/env\\_pew\\_oceans\\_final\\_report.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Protecting_ocean_life/env_pew_oceans_final_report.pdf), and *An Ocean Blueprint for the 21<sup>st</sup> Century*, available at (continued...)

from economic activity associated with continued human population growth in coastal areas. A common concern is habitat loss or alteration, due both to natural processes, such as climate variation, and to 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 and protection of the marine environment.

Congress last reauthorized and extensively amended the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) in the 109<sup>th</sup> Congress (P.L. 109-479); the current funding authorization expires on September 30, 2013. The Marine Mammal Protection Act was last reauthorized in 1994 by P.L. 103-238, and funding authorization expired on September 30, 1999. The 111<sup>th</sup> Congress may consider measures to reauthorize the MMPA, address aquatic habitat concerns, provide funding for disaster assistance, and address fishery-specific concerns, as well as conducting oversight of MSFCMA implementation.

## Commercial and Sport Fisheries

### Background

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 1950, 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 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<sup>2</sup> negotiations in the early and mid-1970s as well as actions by other coastal nations provided impetus for unilateral U.S. action.

The enactment of the Fishery Conservation and Management Act (FCMA); 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

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[http://www.oceancommission.gov/documents/full\\_color\\_rpt/000\\_ocean\\_full\\_report.pdf](http://www.oceancommission.gov/documents/full_color_rpt/000_ocean_full_report.pdf)

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

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.<sup>3</sup> The 200-mile fishery conservation zone was superseded by a 200-mile 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.<sup>4</sup> Council members are appointed by the Secretary of Commerce from lists of candidates knowledgeable about fishery resources, provided by coastal state governors.<sup>5</sup> 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 109<sup>th</sup> Congress by P.L. 109-479, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.<sup>6</sup> The authorization of appropriations in Section 7 of the act expires at the end of FY2013.

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.

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

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

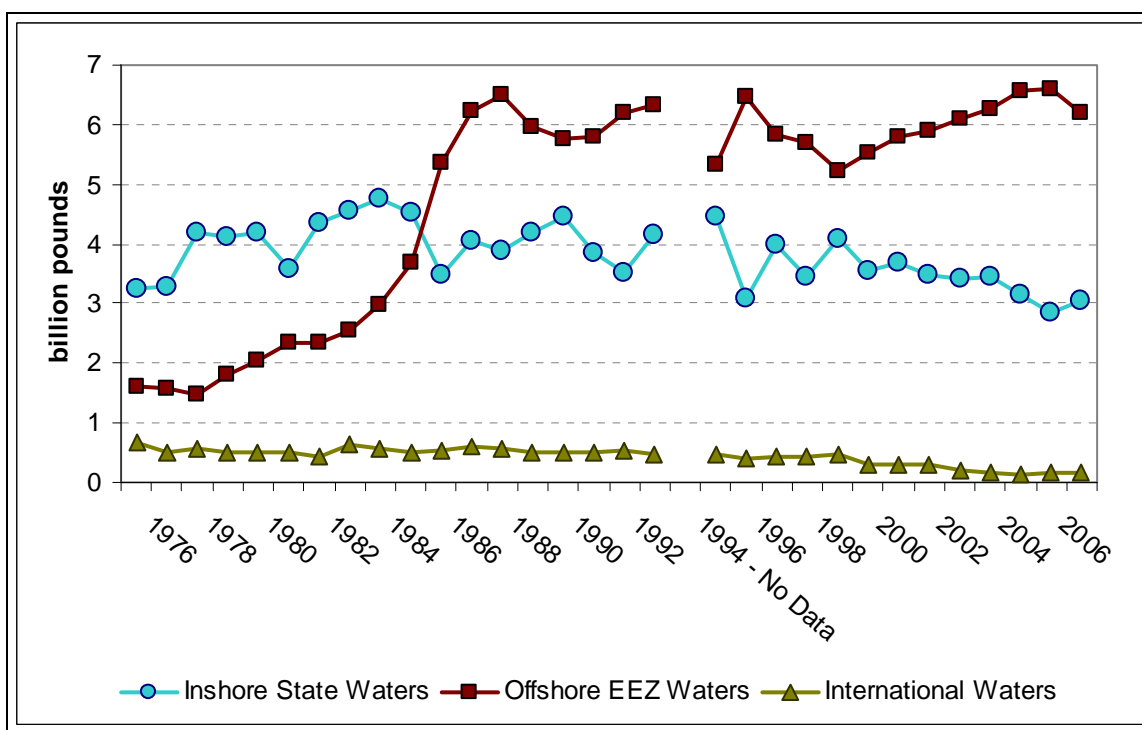
<sup>5</sup> For the 2007 report to Congress on council membership, see [http://www.nmfs.noaa.gov/sfa/reg\\_svcs/Council\\_Reporttocongress/07\\_RptCongress.pdf](http://www.nmfs.noaa.gov/sfa/reg_svcs/Council_Reporttocongress/07_RptCongress.pdf).

<sup>6</sup> 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/>.

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.<sup>7</sup> Since this peak, annual landings have hovered around 6 billion pounds (**Figure 1**).

In 2008, U.S. commercial fishermen landed slightly more than 6.6 billion pounds of edible, unprocessed fish and shellfish from combined state, federal, and international waters, worth more than \$4.2 billion at the dock.<sup>8</sup> Imports of mostly processed products supplied 5.2 billion pounds, worth \$14.2 billion. U.S. consumers spent an estimated \$69.8 billion on edible seafood in 2008, with \$46.8 billion of that amount spent in restaurants and other food service establishments. In addition, marine recreational anglers caught an estimated 464 million fish in 2008, of which the retained catch was about 248 million pounds.<sup>9</sup> In 2006, a nationwide survey estimated that recreational anglers spent more than \$40 billion each year pursuing their sport.<sup>10</sup>

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



Source: NMFS, *Fisheries of the United States* (various years), Current Fishery Statistics series.

NMFS reports annually on the status of fish stocks managed under the MSFCMA.<sup>11</sup> For 2008, NMFS made determinations for 251 fish stocks and complexes,<sup>12</sup> finding that 41 (16%) of them

<sup>7</sup> 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.

<sup>8</sup> For additional domestic commercial fishery harvest statistics, see <http://www.st.nmfs.noaa.gov/st1/commercial/index.html>. Statistics for 2008 are available at <http://www.st.nmfs.noaa.gov/st1/fus/fus08/index.html>.

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

<sup>10</sup> Results of the 2006 survey can be found at [http://library.fws.gov/pubs/nat\\_survey2006\\_final.pdf](http://library.fws.gov/pubs/nat_survey2006_final.pdf).

<sup>11</sup> See [http://www.nmfs.noaa.gov/sfa/statusoffisheries/booklet\\_status\\_of\\_us\\_fisheries08.pdf](http://www.nmfs.noaa.gov/sfa/statusoffisheries/booklet_status_of_us_fisheries08.pdf).

were subject to overfishing<sup>13</sup> and 210 (84%) were not. In addition, NMFS made determinations for 199 stocks and complexes, finding that 46 (23%) were overfished<sup>14</sup> and 153 (77%) were not. These numbers reflect a slight decline in the overfishing percentage compared to 2007 (when 17% were subject to overfishing) as well as a slight decline in the overfished percentage compared to that year (when 24% were overfished).

In addition, NMFS developed a Fish Stock Sustainability Index (FSSI) in 2005 as a performance measure to evaluate progress nationwide in addressing overfishing.<sup>15</sup> Out of a possible maximum FSSI of 920, this index of success in curbing overfishing has increased from 481.5 (third quarter of calendar year 2005) to 555.5 (fourth quarter of calendar year 2008).

## **Magnuson-Stevens Act**

The MSFCMA was reauthorized in the 109<sup>th</sup> Congress in 2006 by P.L. 109-479, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.<sup>16</sup> 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;
- 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;

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<sup>12</sup> NMFS reviewed 531 individual stocks and stock complexes but had insufficient information to make determinations on all of them.

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

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

<sup>15</sup> 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](http://www.nmfs.noaa.gov/sfa/domes_fish/StatusofFisheries/2008/3rdQuarter/Q32008FSSISummaryChanges.pdf).

<sup>16</sup> For additional summary information on this measure, see <http://www.nmfs.noaa.gov/msa2005/MSA%202006%20Implementation%20Overview.pdf>.

- 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.<sup>17</sup>

### **Implementation of P.L. 109-479**

NMFS has summarized various tasks associated with implementing P.L. 109-479.<sup>18</sup> On January 13, 2009, NMFS released its first report to Congress on implementing Title IV of P.L. 109-479, relating to better control of illegal, unreported, and unregulated (IUU) fishing activities.<sup>19</sup> On January 15, 2009, NMFS issued final guidance amending the guidelines for National Standard 1, designed to end overfishing in response to provisions in P.L. 109-479 providing new requirements for annual catch limits and other accountability measures.<sup>20</sup>

### **Action in the 111<sup>th</sup> Congress**

On October 27, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held an oversight hearing on implementation of the MSFCMA. In addition, the 111<sup>th</sup> Congress is considering several bills that would amend the MSFCMA:

- H.R. 81, S. 850, and S. 2870 amend the MSFCMA to modify language related to the prohibition of shark finning; the House passed H.R. 81 on March 2, 2009. On November 19, 2009, the Senate Committee on Commerce, Science, and Transportation ordered S. 850 reported (amended).
- S. 1124, Section 605 of S. 1194, Section 2 of H.R. 2652, and Section 802 of H.R. 3619 amend the American Fisheries Act to modify provisions for vessel rebuilding and replacement, vessel exemptions, and fishery cooperative exemption provisions. On December 3, 2009, the House Committee on Transportation and Infrastructure reported (amended) H.R. 2652 (H.Rept. 111-351). On October 30, 2009, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 1194 (S.Rept. 111-95). On October 16, 2009, the House Committee on Transportation and Infrastructure reported (amended) H.R. 3619 (H.Rept. 111-303, Part I); and the House passed this measure (amended) on October 23, 2009.
- H.R. 1379 prohibits the commercial harvesting of Atlantic striped bass in coastal waters and the EEZ.
- H.R. 1584 and S. 1255 amend the MSFCMA to extend the authorized time period for rebuilding certain overfished populations. S. 2856 and H.R. 4369 allow the United States-Canada Transboundary Resource Sharing Understanding

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<sup>17</sup> 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>.

<sup>18</sup> Available at [http://www.nmfs.noaa.gov/msa2007/Reauthorization\\_tasks.pdf](http://www.nmfs.noaa.gov/msa2007/Reauthorization_tasks.pdf). Additional information on NMFS's implementation of P.L. 109-479 can be found at <http://www.nmfs.noaa.gov/msa2007/>.

<sup>19</sup> Available at [http://www.nmfs.noaa.gov/msa2007/docs/biennial\\_report011309.pdf](http://www.nmfs.noaa.gov/msa2007/docs/biennial_report011309.pdf).

<sup>20</sup> 74 *Federal Register* 3178-3213, January 16, 2009.

to be considered an international agreement for the purposes of Section 304(e)(4) of the MSFCMA, creating an exemption and allowing federal fisheries managers to extend stock rebuilding deadlines for New England groundfish and scallop fisheries covered under the bilateral agreement. On December 17, 2009, the Senate Committee on Commerce Science, and Transportation ordered S. 2856 reported (amended).

- S. 918/H.R. 3270 amend the MSFCMA to add New York to the New England Fishery Management Council.
- H.R. 3307 directs the Secretary of Commerce to study the South Atlantic red snapper fishery and limits the authority of the Secretary to promulgate any interim rule that prohibits fishing in this fishery.
- S. 1609 and H.R. 3910 authorize a single fisheries cooperative for the Bering Sea Aleutian Islands longline catcher processor subsector for Pacific cod. On December 17, 2009, the Senate Committee on Commerce, Science, and Transportation ordered S. 1609 reported.
- Section 704 of H.R. 3534 prohibits regional fishery management councils from implementing offshore aquaculture through fishery management plans and their amendments and invalidates any such action already taken. On September 16-17, 2009, the House Committee on Natural Resources held hearings on this measure.

## **Pacific Salmon**

### **Background**

Steelhead trout and 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 the same freshwater rivers and lakes to spawn. Management is complicated because these fish may cross several state and national boundaries during their life spans, and their different subpopulations/stocks intermingle on fishing grounds. In addition to natural environmental fluctuations, threats to salmon include hydropower dams that block rivers and create reservoirs, sport and commercial harvests, habitat modification by competing resource industries and other 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.<sup>21</sup> On September 13, 2006, a San Joaquin River Restoration Settlement Agreement was announced, ending an 18-year legal dispute over the operation of Friant Dam in California. This agreement provides for river channel improvements and water flow to sustain Chinook salmon upstream (south) from the confluence of the Merced River tributary while reducing or avoiding adverse water supply impacts to Friant Division long-term water contractors that may result from restoration flows provided in the agreement.

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

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<sup>21</sup> 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 Harold F. Upton.

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 steelhead trout. Annex IV was recently renegotiated and took effect on January 1, 2009.<sup>22</sup>

### **Action in the 111<sup>th</sup> Congress**

Language in the “construction” account for the U.S. Fish and Wildlife Service in P.L. 111-8 (H.R. 1105, the Omnibus Appropriations Act for 2009) permanently rescinded all unobligated balances under the authority of the Anadromous Fish Conservation Act. Title X, Subtitle A, of P.L. 111-11 (H.R. 146) authorized the implementation of the San Joaquin River Restoration Settlement<sup>23</sup> providing for the reintroduction of Chinook salmon.<sup>24</sup> The 111<sup>th</sup> Congress is considering several additional bills relating to Pacific salmon:

- H.R. 1080 amends the Pacific Salmon Treaty Act to strengthen enforcement mechanisms to stop illegal, unreported, and unregulated fishing; on March 19, 2009, the House Natural Resources, Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on this bill, and on July 24, 2009, the House Committee on Natural Resources reported this measure, amended (H.Rept. 111-228). The House passed H.R. 1080 (amended) on September 22, 2009.
- S. 817 and H.R. 2055 establish a Salmon Stronghold Partnership program to protect wild Pacific salmon; on June 16, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on this bill.
- On March 31, 2009, the House Committee on Natural Resources held an oversight hearing on the California drought and actions by federal and state agencies to address impacts on lands, fisheries, and water users. H.R. 2977 directs the Bureau of Reclamation to enter into an agreement with the National Academy of Sciences to study sustainable water and environmental management in the Sacramento-San Joaquin Delta, California. H.R. 3794 amends the Central Valley Project Improvement Act to assist in efforts to avoid losses of juvenile anadromous fish.
- H.R. 1672 and S. 668 direct county marine resources committees to assist in identifying local implications, needs, and strategies associated with the recovery of Puget Sound salmon. On October 20, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 1672. On October 21, 2009, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 668 (S.Rept. 111-90). On December 7, 2009, the House Committee on Natural Resources reported (amended) H.R. 1672 (H.Rept. 111-354), and the House subsequently passed this measure (amended).

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<sup>22</sup> For background information on the Pacific Salmon Treaty, see CRS Report RL30234, *The Pacific Salmon Treaty: The 1999 Agreement and Renegotiated Annex IV*, by Eugene H. Buck. For additional information on the renegotiated Annex IV, see <http://www.dfo-mpo.gc.ca/media/back-fiche/2009/pr01-eng.htm>.

<sup>23</sup> For additional information on this settlement, see CRS Report RL34237, *San Joaquin River Restoration Settlement*, coordinated by Betsy A. Cody and Pervaze A. Sheikh.

<sup>24</sup> For more background, see CRS Report R40125, *Title X of H.R. 146: San Joaquin River Restoration*, by Betsy A. Cody and Pervaze A. Sheikh.

- H.R. 3503 requires a scientific analysis of Federal salmon recovery efforts by the National Academy of Sciences and authorizes removal of the four lower Snake River dams by the Army Corps of Engineers.
- H.R. 3999 would direct the Commissioner of the Bureau of Reclamation to initiate ESA consultations on the Central Valley Project and the California State Water Project.

## **Additional Fishery Issues in the 111<sup>th</sup> Congress**

### **Assistance**

Section 1886 of P.L. 111-5 broadens the basis for determining import increases relating to trade adjustment assistance for fishing and aquaculture to include wild-caught fish and seafood in addition to farm-raised fish and seafood. Several other bills in the 111<sup>th</sup> Congress deal with assistance to the fishing industry:

- S. 533 and H.R. 2548 amend the Coastal Zone Management Act to establish a grant program to ensure waterfront access for aquaculture operators and commercial fishermen. On October 20, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 2548.
- H.R. 1983 recodifies Title 53 (Small Business) of the U.S. Code, including disaster assistance programs applicable to commercial fishermen and aquaculture operations.
- H.R. 3583 provides for a subsidy to sellers and buyers of fish directly delivered to American Samoa from vessels with U.S. fisheries endorsements. On November 4, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on this measure.
- Section 208 of S. 2731 would require a report to Congress providing information on economic injury disaster declarations under Section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) based on a fishery resource disaster declaration from the Secretary of Commerce.

### **Habitat Protection and Restoration**

Section 9107 of P.L. 111-11 (H.R. 146) amended P.L. 106-392 to extend the authorizations for the Upper Colorado and San Juan River Basin endangered fish recovery programs through FY2023. Other measures have been introduced:

- H.R. 790 and S. 851 prohibit federal oil or natural gas leases in any marine national monument or national marine sanctuary or Georges Bank. H.R. 204 permanently prohibits oil and gas leasing off the coast of Mendocino, Humboldt, and Del Norte Counties in the state of California. H.R. 1696 and S. 783 permanently prohibit offshore drilling on the outer Continental Shelf in the Mid-Atlantic and North Atlantic planning areas. H.R. 1906 permanently prohibits oil and gas leasing off the California coast. H.R. 2439 prohibits oil and gas leases on portions of the Outer Continental Shelf located off the coast of New Jersey.

- Section 106 of S. 684 authorizes the Coast Guard and NOAA to identify U.S. areas where special navigational measures are warranted to reduce the risk of oil spills and potential damage to natural resources, including commercial fisheries.
- Section 15 of H.R. 2120 authorizes expenditures for monitoring and management of fish and their habitat related to energy and minerals development on federal onshore and offshore lands.
- H.R. 1672 and S. 668 amend and reauthorize the Northwest Straits Marine Conservation Initiative Act. On October 20, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 1672. On October 21, 2009, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 668 (S.Rept. 111-90). On December 7, 2009, the House Committee on Natural Resources reported (amended) H.R. 1672 (H.Rept. 111-354), and the House subsequently passed this measure (amended).
- H.R. 2288/S. 1453 amend P.L. 106-392 to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through FY2023. The Senate Energy and Natural Resources Subcommittee on Water and Power held a hearing on S. 1453 on July 23, 2009. On September 22, 2009, the House Natural Resources Subcommittee on Water and Power held a hearing on H.R. 2288. On December 16, 2009, the Senate Committee on Energy and Natural Resources ordered S. 1453 reported and the House Committee on Natural Resources ordered H.R. 2288 reported (amended).
- H.R. 2565 and S. 1214 seek to conserve fish and aquatic communities through partnerships that foster fish habitat conservation; on June 16, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 2565. On December 3, 2009, the Senate Environment and Public Works Subcommittee on Water and Wildlife held a hearing on S. 1214.
- S. 1252 would amend and reauthorize the Oceans and Human Health Act through FY2014. Section 605 of H.R. 3534 creates an Ocean Resources Conservation and Assistance Fund to support activities that promote and protect ocean ecosystem health and biodiversity. On September 16-17, 2009, the House Committee on Natural Resources held hearings on H.R. 3534.
- H.R. 2977 directs the Bureau of Reclamation to enter into an agreement with the National Academy of Sciences to study sustainable water and environmental management in the Sacramento-San Joaquin Delta, California.
- S. 1601 provides for the release of water from the Ruedi Reservoir for the benefit of endangered fish habitat in the Colorado River.
- S.Res. 247 and H.Res. 710 voice support for the objectives of “National Estuaries Day” (September 26, 2009). On September 10, 2009, the Senate agreed to S.Res. 247; the House agreed to H.Res. 710 on October 6, 2009.
- S. 1311 amends the Federal Water Pollution Control Act (Clean Water Act) to enhance cooperative efforts to monitor, restore, and protect water quality and marine ecosystems of the Gulf of Mexico. On November 9, 2009, the Senate Environment Subcommittee on Water and Wildlife held a hearing on this measure.

- H.R. 3622 amends the Internal Revenue Code of 1986 to allow a credit for the construction of ponds for recreational fishing and conservation of water-based wildlife habitat.

## **Climate Change**

Title XII, Subtitle D, of P.L. 111-11 (H.R. 146) directed the Secretary of Commerce to establish an ocean acidification program within NOAA, and to establish an interagency committee to develop an ocean acidification research and monitoring plan.<sup>25</sup> Several additional bills deal with climate change and fisheries:

- H.R. 2192; Title IV, Subtitle E, Part 1, Subpart C, of H.R. 2454/H.R. 2998; Division A, Title III, Subpart C, of S. 1733; and S. 1933 establish and fund an integrated federal program to protect, restore, and conserve natural resources in response to the threats of climate change.<sup>26</sup> The House Committee on Energy and Commerce held hearings on H.R. 2454 on May 18-21, 2009, and reported this measure (amended) on June 5, 2009 (H.Rept. 111-137, Part I). On June 26, 2009, the House passed H.R. 2454 (amended). The Senate Committee on Environment and Public Works held a hearing on S. 1733 on October 27-29, 2009. Section 6(c)(1)(N) of S. 2877 provides funding for climate change and ocean acidification mitigation and adaptation projects, activities, and research to increase the resilience of fish and wildlife and ecosystems.
- Section 4 of S. 810 directs NOAA and EPA to establish four regional Institutes for Ocean and Coastal Adaptation to Climate Change and Ocean Acidification, to conduct research, planning, and related efforts to assess, prepare for, and adapt to the ongoing and expected impacts of climate change and ocean acidification.
- H.Res. 989 expresses the sense of the House that the United States should adopt national policies and pursue international agreements to prevent ocean acidification, to study the impacts of ocean acidification, and to address the effects of ocean acidification on marine ecosystems and coastal economies.

## **Energy and Water Projects**

Section 13002 of P.L. 111-11 (H.R. 146) reauthorized (through FY2015) and amended the Fisheries Restoration and Irrigation Mitigation Act of 2000. Section 15 of H.R. 2120 authorizes expenditures for monitoring and management of fish and their habitat related to energy and minerals development on federal onshore and offshore lands.

## **Sport Fisheries**

Section 3513 of P.L. 111-84 (H.R. 2647) modified the authorization for applications to the Secretary of Transportation for obsolete vessels to be used as artificial reefs. Several bills contain provisions related to sport and recreational fisheries:

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<sup>25</sup> For background information, see CRS Report R40143, *Ocean Acidification*, by Eugene H. Buck and Peter Folger.

<sup>26</sup> For additional information, see CRS Report R40911, *Comparison of Climate Change Adaptation Provisions in S. 1733 and H.R. 2454*, coordinated by Melissa D. Ho.

- S. 297/S. 477 authorize charter boat operators and recreational fishermen to form associations to catch and market aquatic products, implement vessel capacity reduction programs, and undertake research.
- Section 19(b) of H.R. 1108 and Section 21(b) of H.R. 2120 amend the Outer Continental Shelf 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 require a study of how the removal of offshore oil and gas platforms and other outer continental shelf facilities might affect existing fish stocks and coral populations.
- Section 9(b)(2)(B) of S. 503 makes a portion of adjusted bonus, rental, and royalty revenues from federal oil and gas leasing and operations in the western Arctic coastal plain of Alaska available for federal sport fish restoration grants.
- H.R. 1379 prohibits the commercial harvesting of Atlantic striped bass in coastal waters and the EEZ.
- Section 4(b)(1) of S. 730 eliminates the duty on lug-bottom boots for use in fishing waders. S. 1824 extends the temporary suspension of duty on lug-bottom boots for use in fishing waders.
- H.R. 2430 directs 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 agreed to this measure on June 2, 2009. The Senate Energy and Natural Resources Subcommittee on National Parks held a hearing on H.R. 2430 on July 22, 2009.
- H.R. 2717 and S. 1205 exempt guides for hire and other operators of uninspected vessels on Lake Texoma from Coast Guard and other regulations.
- Section 3(b) of S. 1496 extends the allocation of appropriations for several subaccounts of the Sport Fish Restoration and Boating Trust Fund through March 31, 2011; this measure was reported on July 22, 2009, by the Senate Committee on Commerce, Science, and Transportation. Sections 8 and 11 of H.R. 3617 extend the allocation of appropriations for several subaccounts of the Sport Fish Restoration and Boating Trust Fund for three months; the House passed this measure on September 23, 2009.
- H.R. 3622 amends the Internal Revenue Code of 1986 to allow a credit for the construction of ponds for recreational fishing and conservation of water-based wildlife habitat.
- H.R. 3749 and S. 1770 seek to promote opportunities for recreational fishing, hunting, and shooting on federal public lands.

## **Coral**

Several bills relate to coral and coral reefs:

- H.R. 52/S. 345 amend the Tropical Forest Conservation Act of 1998 to provide debt relief to developing countries that protect coral reefs and associated coastal marine ecosystems; on July 16, 2009, the Senate Committee on Foreign Relations reported S. 345 (S.Rept. 111-49).

- H.R. 860 and S. 2859 amend and reauthorize the Coral Reef Conservation Act of 2000 through FY2014; the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 860 on February 25, 2009. On July 10, 2009, the House Committee on Natural Resources reported (amended) H.R. 860 (H.Rept. 111-196). The House passed H.R. 860 (amended) on September 22, 2009. On December 17, 2009, the Senate Committee on Commerce, Science, and Transportation ordered S. 2859 reported.
- Section 19(b) of H.R. 1108 and Section 21(b) of H.R. 2120 amend the Outer Continental Shelf Lands Act to require a study of how the removal of offshore oil and gas platforms and other outer continental shelf facilities might affect existing coral populations.

## **Invasive Species**

Title I of H.R. 500/S. 237 amends the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to establish vessel ballast water management standards; the remainder of this title focuses on improving coordination among various national and international efforts to control invasive species and authorizes various research programs to address invasive species concerns. Several bills would amend the Lacey Act to add bighead carp (S. 1421/H.R. 3173) or four species of non-native carp (H.R. 48) to the list of injurious species that are prohibited from being imported or shipped interstate; the Senate Environment and Public Works Subcommittee on Water and Wildlife held a hearing on S. 1421 on December 3, 2009, and the full committee ordered this bill reported on December 10, 2009. H.R. 51 directs the U.S. Fish and Wildlife Service to study the feasibility of various approaches to eradicating Asian carp from the Great Lakes watershed. H.R. 669 directs the Secretary of the Interior to promulgate regulations that establish a process for assessing the risk of non-native species proposed for importation into the United States, including lists of approved and unapproved species; the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held hearings on this measure on April 23, 2009. Section 103(b) of H.R. 3481 gives priority to funding projects that monitor the distribution of or studies means of reducing or eliminating quagga mussels in the Lower Colorado River. H.R. 4001 and S. 2724 amend the Lake Tahoe Restoration Act to direct that certain activities be undertaken to address aquatic invasive species concerns in the Lake Tahoe Basin.

## **Fishing Vessels**

S. 532 amends the Internal Revenue Code to provide a business credit against income for the purchase of fishing safety equipment. S. 1124, Section 605 of S. 1194, and Section 2 of H.R. 2652 amend Title 46, *United States Code*, to modify the vessel size limit eligibility criteria for a fishery endorsement; in addition, Section 4 of H.R. 2652 and Section 804 of H.R. 3619 amend various provisions of Title 46 relating to fishing vessel safety. On December 3, 2009, the House Committee on Transportation and Infrastructure reported (amended) H.R. 2652 (H.Rept. 111-351). On October 30, 2009, the Senate Committee on Commerce, Science, and Transportation reported (amended) S. 1194 (S.Rept. 111-95). On October 16, 2009, the House Committee on Transportation and Infrastructure reported (amended) H.R. 3619 (H.Rept. 111-303, Part I). The House passed H.R. 3619 (amended) on October 23, 2009, including language in Section 1324 to extend the moratorium from EPA regulations and fines governing incidental discharges from commercial fishing vessels less than 79 feet until December 2013. H.R. 3583 provides for a subsidy to sellers and buyers of fish directly delivered to American Samoa from vessels with U.S.

fisheries endorsements; on November 4, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on this measure.

## **Tuna**

H.R. 1309 redefines terms used in the Harmonized Tariff Schedule of the United States relating to tuna products to lower duties on imported tuna loins used in U.S. tuna canneries. On April 2, 2009, the House Foreign Affairs Subcommittee on Asia, the Pacific, and the Global Environment held a hearing on the South Pacific Tuna Treaty. H.R. 3583 provides for a subsidy to sellers and buyers of fish directly delivered to American Samoa from vessels with U.S. fisheries endorsements; on November 4, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on this measure. Section 1115 of H.R. 3619 specifies officer requirements for distant water tuna vessels; on October 16, 2009, the House Committee on Transportation and Infrastructure reported (amended) H.R. 3619 (H.Rept. 111-303, Part I), with the tuna vessel provision in Section 1315; the House passed this measure (amended) on October 23, 2009. S.Res. 346 expresses the sense of the Senate regarding the U.S. position at the 21<sup>st</sup> Regular Meeting of the International Commission on the Conservation of Atlantic Tunas relative to Atlantic bluefin tuna; the Senate agreed to this measure on November 9, 2009. S. 2871 makes technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act.

## **International Agreements**

Section 103(4) of H.R. 2410 authorizes appropriations for International Fisheries Commissions at \$12.608 million for FY2010 and such sums as may be necessary for FY2011; on June 4, 2009, the House Committee on Foreign Affairs reported this measure (H.Rept. 111-136), amended to authorize the Administration's request of \$43.576 million for International Fisheries Commissions for FY2010 and such sums as may be necessary for FY2011. On June 10, 2009, the House passed H.R. 2410 (amended). Section 103(4) of H.R. 2475 authorizes appropriations for International Fisheries Commissions at \$29.925 million for FY2010 and such sums as may be necessary for FY2011. On June 26, 2009, the House Committee on Appropriations reported H.R. 3081, recommending that \$48.576 million be appropriated for International Fisheries Commissions for FY2010 (H.Rept. 111-187); the House passed this measure (amended) on July 9, 2009. On July 9, 2009, the Senate Committee on Appropriations reported S. 1434, recommending that \$48.976 million be appropriated for International Fisheries Commissions for FY2010 (S.Rept. 111-44). S. 2871 makes technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act and the Pacific Whiting Act of 2006.

## **Hypoxia and Algal Blooms**

Section 6 of S. 878 and Section 13 of H.R. 2093 (as reported) require the EPA Administrator to complete a study on the impact of algae blooms on coastal recreation waters; the Senate Committee on Environment and Public Works ordered S. 878 reported (amended) on June 16, 2009. The House Committee on Transportation reported (amended) H.R. 2093 on July 20, 2009 (H.Rept. 111-214). On July 29, 2009, the House passed H.R. 2093 (amended). S. 952 and H.R. 3650 authorize a comprehensive national strategy to address harmful algal blooms and hypoxia; on August 5, 2009, the Senate Committee on Commerce, Science, and Transportation ordered S. 952 reported (amended), and on October 7, 2009, the House Committee on Science and Technology ordered H.R. 3650 reported (amended). S. 1252 would amend and reauthorize the

Oceans and Human Health Act through FY2014. On September 17, 2009, the House Science and Technology Subcommittee on Energy and Environment held a hearing on formulating an action plan to address harmful algal blooms and hypoxia.

## **Chesapeake Bay**

Section 2 of H.R. 1771/S. 1224 requires the Director of NOAA's Chesapeake Bay Office to establish a Chesapeake Bay coastal living resources management and habitat program to support coordinated management, protection, characterization, and restoration of priority habitats and living resources. The House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 1771 on July 8, 2009. The House Committee on Natural Resources reported H.R. 1771 (amended) on September 29, 2009 (H.Rept. 111-271), and the House passed this measure (amended) on September 30, 2009. S. 1816 includes provisions (1) authorizing a study on the impacts of the commercial harvesting of menhaden on the water quality of the Chesapeake Bay and (2) prohibiting the introduction of Asian oysters into Chesapeake Bay.

## **Seafood Safety and Nutrition**

S. 92 directs the Secretary of Health and Human Service to refuse entry of certain seafood imports and to specify actions to be taken on rejected shipments. Section 102 of H.R. 875 consolidates food safety and inspection programs, including seafood inspection. H.R. 1370 directs the Secretaries of Commerce and of Health and Human Services to strengthen programs to better ensure that seafood in interstate commerce is fit for human consumption. S. 1252 would amend and reauthorize the Oceans and Human Health Act through FY2014. H.R. 4022, S. 2735, and S. 2752 prohibit additional requirements for the control of *Vibrio vulnificus* applicable to the post-harvest processing of oysters; in addition, S. 2752 requires an education campaign to increase awareness of the risks associated with consuming raw oysters.

## **Tax Provisions**

H.R. 115 amends the Internal Revenue Code to provide for tax-exempt qualified small issue bonds to finance fish processing facilities. S. 532 amends the Internal Revenue Code to provide a business credit against income for the purchase of fishing safety equipment. S. 1250, Section 1306 of H.R. 2300/H.R. 2828, Section 2 of H.R. 3460, H.R. 3985, and H.R. 4168 amend the Internal Revenue Code to provide benefits for production of algae-based fuel. H.R. 3622 amends the Internal Revenue Code of 1986 to allow a credit for the construction of ponds for recreational fishing and conservation of water-based wildlife habitats.

## **Marketing**

Section 131 of H.R. 759 and Section 201 of H.R. 2749 amend the Federal Food, Drug, and Cosmetic Act to require labeling as a color additive whenever carbon monoxide is used to treat meat, poultry, and seafood.<sup>27</sup> On July 29, 2009, the House Committee on Energy and Commerce

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<sup>27</sup> For additional information, see CRS Report RL34247, *Federal Regulation of Substances Generally Recognized As Safe (GRAS) and the Use of Carbon Monoxide in Packaging for Meat and Fish*, by Vanessa K. Burrows and Cynthia Brougher.

reported H.R. 2749 (H.Rept. 111-234), amended to remove the section relating to carbon monoxide. On July 7, 2009, the Senate Committee on Appropriations reported S. 1406, with report language encouraging the Food and Drug Administration to more aggressively combat fraud in parts of the seafood industry (S.Rept. 111-39).

## **Marine Turtles**

H.R. 509 reauthorizes the Marine Turtle Conservation Act of 2004 through FY2014; the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on this bill on May 5, 2009. On July 10, 2009, the House Committee on Natural Resources reported this measure, amended (H.Rept. 111-200). The House passed H.R. 509 (amended) on July 28, 2009. On December 3, 2009, the Senate Environment and Public Works Subcommittee on Water and Wildlife held a hearing on this measure.

## **National Marine Sanctuaries**

Section 7(b)(2)(h) of H.R. 223/S. 212 promotes cooperative research and education efforts with commercial fishermen operating within the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary; on August 4, 2009, the Senate Committee on Commerce, Science and Transportation reported (amended) S. 212 (S.Rept. 111-64). H.R. 790 and S. 851 prohibit federal oil or natural gas leases in any marine national monument or national marine sanctuary or Georges Bank.

## **Enforcement**

H.R. 1080 amends various fishery statutes to strengthen enforcement mechanisms to stop illegal, unreported, and unregulated fishing; on March 19, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on this bill, and on July 24, 2009, the House Committee on Natural Resources reported this measure, amended (H.Rept. 111-228). The House passed H.R. 1080 (amended) on September 22, 2009.

## **Health Care**

Section 2(a) of H.R. 2607, Section 112(a) of S. 1240, Section 232(a) of H.R. 3400, Section 121(a) of H.R. 3713, Section 502(a) of H.R. 3889, and Section 201(a) of H.R. 4038 amend the Employee Retirement Income Security Act of 1974 (ERISA; P.L. 93-406; 29 U.S.C. §§ 1001, et seq.) to authorize fishing industry associations to provide health care plans for association members.

## **Sharks**

H.R. 81, S. 850, and S. 2870 amend the High Seas Driftnet Fishing Moratorium Protection Act to increase sanctions on nations that permit shark finning; the House passed H.R. 81 on March 2, 2009. On November 19, 2009, the Senate Committee on Commerce, Science, and Transportation ordered S. 850 reported (amended).

## Trade

Section 4(b)(1) of S. 730 eliminates the duty on lug-bottom boots for use in fishing waders. S. 1824 extends the temporary suspension of duty on lug-bottom boots for use in fishing waders. S. 2273 extends the temporary suspension of duty on oysters (other than smoked), prepared or preserved.

## Fisheries Research Vessel

As reported by the Senate Committee on Commerce, Science, and Transportation (S.Rept. 111-95), Section 901 of S. 1194 requires the NOAA Administrator to take certain actions relative to determining the homeport of the fisheries research vessel *HENRY B BIGELOW*.

# Aquaculture

## Background

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.<sup>28</sup> 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);<sup>29</sup> 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.<sup>30</sup> FAO has projected that aquaculture will surpass wild-harvested seafood as the source of more than half of global seafood consumption in 2008. In addition, FAO predicts that world aquaculture production could exceed 130 million metric tons by 2030.<sup>31</sup>

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

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<sup>28</sup> 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](mailto:gbuck@crs.loc.gov).

<sup>29</sup> For statistics on freshwater production, see <http://www.agcensus.usda.gov/Publications/2002/Aquaculture/index.asp>.

<sup>30</sup> For more details, see <http://www.fao.org/newsroom/en/news/2006/1000383/index.html>.

<sup>31</sup> For more discussion of FAO projections for 2030, see Part 3 of <http://www.fao.org/docrep/007/y5600e/y5600e00.htm>.

Alabama, Arkansas, Louisiana, and Mississippi.<sup>32</sup> 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. 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.). The purpose of this act is to ensure coordination of various federal programs and policies affecting the aquaculture industry, and to promote and support aquaculture research and development.

In October 2007, NOAA released a 10-year plan for its marine aquaculture program.<sup>33</sup> Legislation to modify the regulatory environment and promote the development of U.S. offshore, open-ocean aquaculture was introduced in the 110<sup>th</sup> Congress, but was not considered by either chamber.

## **Action in the 111<sup>th</sup> Congress**

### **Assistance**

P.L. 111-5 contains language in (1) Section 103(d) providing as much as \$50 million in total assistance to aquaculture producers for losses associated with high feed input costs during the 2008 calendar year; and (2) Section 1886 broadening the basis for determining import increases relating to trade adjustment assistance for fishing and aquaculture to include wild-caught fish and seafood in addition to farm-raised fish and seafood. S. 533 and H.R. 2548 amend the Coastal Zone Management Act to establish a grant program to ensure waterfront access for aquaculture operators and commercial fishermen; on October 20, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 2548. Section 106 of S. 684 authorizes the Coast Guard and NOAA to identify U.S. areas where special navigational measures are warranted to reduce the risk of oil spills and potential damage to natural resources, including aquaculture facilities. H.R. 1983 recodifies Title 53 (Small Business) of the U.S. Code, including disaster assistance programs applicable to commercial fishermen and aquaculture operations. Section 205 of S. 2731 would delete aquaculture from the definition of “agricultural enterprises” for Small Business Administration disaster recovery funds.

### **National Fish Hatchery System**

P.L. 111-5 contains language including National Fish Hatcheries as eligible for \$165 million in resource management funding as well as \$115 million in construction funding for the U.S. Fish and Wildlife Service. Section 8 of S. 313/H.R. 1065 addresses the relationship between the Department of the Interior and the White Mountain Apache Tribe (WMAT) for the operation and maintenance of the Alchesay-Williams Creek National Fish Hatchery Complex and the WMAT Fishery Center.

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<sup>32</sup> See <http://www.agcensus.usda.gov/Publications/2002/Aquaculture/AQUACEN.pdf>. For the latest information on domestic production and statistics, see <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1375>.

<sup>33</sup> Available at <http://aquaculture.noaa.gov/about/tenyear.html>.

## **Research**

P.L. 111-80 (H.R. 2997), signed into law by President Obama on October 21, 2009, provided \$3.9 million for regional aquaculture centers, \$6.56 million for aquaculture pest and disease management (including \$5.188 million for viral hemorrhagic septicemia), and \$13.913 million in congressionally directed appropriations for aquaculture research and development (including \$1.238 million for viral hemorrhagic septicemia and \$465,000 for cormorant control) for FY2010.

## **Chesapeake Bay**

Section 2 of H.R. 1771/S. 1224 requires the Director of NOAA's Chesapeake Bay Office to establish a Chesapeake Bay coastal living resources management and habitat program to support various activities, including fish and shellfish aquaculture and submerged aquatic vegetation propagation. The House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 1771 on July 8, 2009. The House Committee on Natural Resources reported H.R. 1771 (amended) on September 29, 2009 (H.Rept. 111-271), and the House passed this measure (amended) on September 30, 2009. H.R. 3852 and S. 1816 include a provision amending Section 117 of the Federal Water Pollution Control Act to prohibit the introduction of Asian oysters in Chesapeake Bay. On November 9, 2009, the Senate Environment and Public Works Subcommittee on Water and Wildlife held a hearing on S. 1816.

## **Oysters**

Section 124 of Title I, P.L. 111-88 (H.R. 2996) authorized the Secretary of the Interior to extend Drake's Bay Oyster Company's Reservation of Use and Occupancy and associated special use permit within Drake's Estero at Point Reyes National Seashore. H.R. 3852 and H.R. 1816 include a provision amending Section 117 of the Federal Water Pollution Control Act to prohibit the introduction of Asian oysters in Chesapeake Bay; on November 9, 2009, the Senate Environment and Public Works Subcommittee on Water and Wildlife held a hearing on S. 1816. S. 2273 extends the temporary suspension of duty on oysters (other than smoked), prepared or preserved. H.R. 4022, S. 2735, and S. 2752 prohibit additional requirements for the control of *Vibrio vulnificus* applicable to the post-harvest processing of oysters; in addition, S. 2752 requires an education campaign to increase awareness of the risks associated with consuming raw oysters.

## **Asian Carp**

Several bills would amend the Lacey Act to add bighead carp (S. 1421/H.R. 3173) or four species of non-native carp (H.R. 48) to the list of injurious species that are prohibited from being imported or shipped interstate. On December 3, 2009, the Senate Environment and Public Works Subcommittee on Water and Wildlife held a hearing on S. 1421. Section 171 of S. 237 amends the Lacey Act to add bighead carp to the list of injurious species that are prohibited from being imported or shipped.

## **Offshore Aquaculture**

On September 9, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held an oversight hearing on offshore aquaculture. Section 704 of H.R. 3534

prohibits regional fishery management councils from implementing offshore aquaculture through fishery management plans and their amendments and invalidates any such action already taken; on September 16-17, 2009, the House Committee on Natural Resources held hearings on this measure. H.R. 4363 establishes a regulatory system and research program for sustainable offshore aquaculture in the U.S. EEZ.

## **Food Safety**

H.R. 1370 directs the Secretaries of Commerce and of Health and Human Services to strengthen programs to better ensure that fish in interstate commerce is fit for human consumption. On July 7, 2009, the Senate Committee on Appropriations reported S. 1406, with report language strongly encouraging the Food and Drug Administration to develop a program for increasing the inspection of imported shrimp for banned antibiotics (S.Rept. 111-39).

## **Delta Smelt**

Section 4 of H.R. 856 authorizes the Secretary of the Interior to enter into a cooperative agreement with the State of California to establish a fish hatchery program for Delta smelt in the Sacramento-San Joaquin Delta.

## **Algae**

S. 1250, Section 1306 of H.R. 2300/H.R. 2828, Section 2 of H.R. 3460, H.R. 3985, and H.R. 4168 amend the Internal Revenue Code to provide benefits for production of algae-based fuel.

## **Marketing**

Section 131 of H.R. 759 amends the Federal Food, Drug, and Cosmetic Act to require labeling as a color additive whenever carbon monoxide is used to treat meat, poultry, and seafood.

# **Marine Mammals**

## **Background**

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, and porpoises (cetaceans), and seals and sea lions (pinnipeds). 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 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 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 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” activities. 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.<sup>34</sup> The Navy's use of mid-frequency sonar and its possible effects on marine mammals has been the focus of much controversy and litigation.<sup>35</sup>

## **Marine Mammal Protection Act Reauthorization**

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 have been reduced or are being maintained below their optimum sustainable population levels due to interactions with commercial fisheries, and for studying pinniped-fishery interactions.<sup>36</sup>

A December 2008 study by the Government Accountability Office (GAO) found that limitations in information available make it difficult for NMFS to accurately determine which marine mammal stocks meet the statutory requirements for establishing take reduction teams.<sup>37</sup> GAO found that NMFS did not have a human-caused mortality estimate or a maximum removal level for 39 of 113 marine mammal stocks, making it impossible to determine their strategic status in accordance with MMPA requirements. For the remaining 74 stocks, NMFS data have significant limitations that call into questions their accuracy. NMFS contends that funding constraints limit their ability to gather sufficient data. In addition, NMFS has not established take reduction teams for 14 marine mammal stocks for which NMFS data show them to be strategic and interacting significantly with commercial fisheries.

In the 111<sup>th</sup> Congress, H.R. 843 amends the MMPA to repeal 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. 844 and S. 859 reauthorize and amend the MMPA provisions relating to the John H. Prescott Marine Mammal Rescue Assistance Grant Program; the House passed H.R. 844 on March 2, 2009, and the Senate Committee on Commerce, Science, and Transportation reported S. 859 on August 6, 2009 (S.Rept. 111-70). H.R. 1054/S. 1395 amend the MMPA to allow imports of polar bear trophies taken in sport hunts in Canada before the date the polar bear was listed as a threatened species under the Endangered Species Act; on September 22, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 1054. H.R. 1055 amends the MMPA to allow imports of polar bear trophies taken in sport hunts in Canada. Section 30 of H.R. 1108 directs the Secretary of the Interior to establish regional OCS Joint Permitting Offices, with expertise in MMPA consultations and preparation of documents. H.R. 2029

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<sup>34</sup> For more background, see CRS Report RS22149, *Exemptions from Environmental Law for the Department of Defense (DOD)*, by David M. Bearden.

<sup>35</sup> For more background, see CRS Report RL34403, *Whales and Sonar: Environmental Exemptions for the Navy's Mid-Frequency Active Sonar Training*, by Kristina Alexander, and CRS Report RL33133, *Active Military Sonar and Marine Mammals: Events and References*, by Eugene H. Buck and Kori Calvert.

<sup>36</sup> 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](mailto:gbuck@crs.loc.gov).

<sup>37</sup> U.S. Government Accountability Office, *Improvements Are Needed in the Federal Process Used to Protect Marine Mammals from Commercial Fishing*, GAO-09-78 (December 8, 2008). Available at <http://www.gao.gov/new.items/d0978.pdf>.

authorizes the Marine Mammal Commission to establish a national research program to fund basic and applied research on marine mammals.

## **Additional Marine Mammal Issues in the 111<sup>th</sup> Congress**

### **Climate Change**

H.R. 2192; Title IV, Subtitle E, Part 1, Subpart C, of H.R. 2454/H.R. 2998; Division A, Title III, Subpart C, of S. 1733; and S. 1933 authorize funding for efforts to strengthen and restore habitat to improve the ability of wildlife to adapt successfully to climate change.<sup>38</sup> The House Committee on Energy and Commerce held hearings on H.R. 2454 on May 18-21, 2009, and reported this measure (amended) on June 5, 2009 (H.Rept. 111-137, Part I). On June 26, 2009, the House passed H.R. 2454 (amended). The Senate Committee on Environment and Public Works held a hearing on S. 1733 on October 27-29, 2009.

### **Dolphin Protection**

H.R. 1080 amends the Dolphin Protection Consumer Information Act to strengthen enforcement mechanisms to stop illegal, unreported, and unregulated fishing; on March 19, 2009, the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on this bill, and on July 24, 2009, the House Committee on Natural Resources reported this measure, amended (H.Rept. 111-228). The House passed H.R. 1080 (amended) on September 22, 2009.

### **Southern Sea Otter**

H.R. 556 and S. 1748 establish a research program for the recovery of the southern sea otter; the House Natural Resources Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 556 on May 5, 2009. The House Committee on Natural Resources reported H.R. 556 (amended) on June 23, 2009 (H.Rept. 111-175), and the House passed this measure (amended) on July 28, 2009.

### **Whales and Whaling**

H.R. 2455 amends the Whale Conservation and Protection Study Act to promote international whale conservation, protection, and research. H.R. 2955 amends the Whaling Convention Act of 1949 to require that the United States Commissioner to the International Whaling Commission be a federal employee. H.R. 4137 authorizes the Secretary of the Interior to provide preservation and interpretation assistance to the New Bedford Whaling National Historical Park in Massachusetts.

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<sup>38</sup> For additional information, see CRS Report R40911, *Comparison of Climate Change Adaptation Provisions in S. 1733 and H.R. 2454*, coordinated by Melissa D. Ho.

## Seals

S.Res. 84 expresses the sense of the Senate urging (1) Canada to halt its commercial seal hunt and (2) the European Union to prohibit trade in seal products; on May 7, 2009, the Senate agreed to this measure after it had been reported by the Senate Committee on Foreign Relations.

## Military Sonar

H.R. 672 restricts the use of military and national security exemptions to MMPA restrictions on marine mammal taking.

## Habitat Protection

S. 1252 would amend and reauthorize the Oceans and Human Health Act through FY2014.

# NMFS Appropriations

On May 7, 2009, the Obama Administration released its FY2010 budget request, including about \$912 million for NMFS. (See **Table 1.**) The FY2010 request for funding for NMFS within NOAA's Operations, Research, and Facilities (OR&F) Account is \$136.637 million (18.1%) more than funding enacted for FY2009, primarily because funds formerly provided in a separate Pacific Coastal Salmon Recovery Account are now proposed to be allocated in the OR&F Account. Total NMFS funding is to increase by \$32.778 million (3.7%) from that enacted for FY2009.

**Table 1. NMFS Appropriations, FY2009-FY2010**

(in thousands of dollars)

|   | <b>FY2009<br/>Request</b> | <b>FY2009<br/>Enacted</b> | <b>FY2010<br/>Request</b> | <b>FY2010<br/>Enacted</b> |
|---|---------------------------|---------------------------|---------------------------|---------------------------|
| Fisheries                                 | 424,480                   | 436,320                   | 499,949                   | 512,097                   |
| Protected Resources                       | 167,241                   | 173,945                   | 243,538                   | 201,577                   |
| Habitat Conservation                      | 43,405                    | 53,655                    | 44,023                    | 50,343                    |
| Enforcement Surveillance                  | 89,085                    | 90,085                    | 103,132                   | 106,747                   |
| Cong.-Directed Projects                   |                           |                           |                           | 33,775                    |
| <b>SUBTOTAL (OR&amp;F)</b>                | <b>724,211</b>            | <b>754,005</b>            | <b>890,642</b>            | <b>904,539</b>            |
| Procurement, Acquisition,<br>Construction | 0                         | 4,600                     | 0                         | 0                         |
| Pacific Coastal Salmon Recovery           | 35,000                    | 80,000                    | 0 <sup>a</sup>            | 80,000                    |
| Other Accounts                            | 23,112                    | 35,768                    | 21,110                    | 0                         |
| <b>TOTAL</b>                              | <b>782,323</b>            | <b>878,974</b>            | <b>911,752</b>            | <b>984,539</b>            |

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

- a. The Administration's budget request proposes to transfer \$50 million from species recovery grants within NMFS to fund activities within the Pacific Coastal Salmon Recovery account.

On June 12, 2009, the House Committee on Appropriations reported H.R. 2847, recommending FY2010 appropriations of almost \$916 million for NMFS (H.Rept. 111-149). The House recommendation is about 4.2% greater than the FY2009 enacted level and about 0.5% larger than the FY2010 Administration request. The House passed this measure on June 18, 2009. On June 25, 2009, the Senate Committee on Appropriations reported (amended) H.R. 2847, recommending FY2010 appropriations of more than \$952 million for NMFS (S.Rept. 111-34). The Senate recommendation is about 8.4% greater than the FY2009 enacted level, about 4.5% more than the FY2010 Administration request, and about 4.0% larger than the House FY2010 recommendation. The Senate passed H.R. 2847 (amended) on November 5, 2009. A conference report on H.R. 3288 (an omnibus measure including the material formerly in H.R. 2847) was filed on December 8, 2009 (H.Rept. 111-366), including more than \$984 million for NMFS and related programs. President Obama signed H.R. 3288 into law on December 16, 2009.

Division A of P.L. 110-329 provided continuing FY2009 appropriations for NMFS, through March 6, 2009, at the level of FY2008 appropriations; P.L. 111-6 extended continuing appropriations for NMFS through March 11, 2009. In the 111<sup>th</sup> Congress, P.L. 111-8 (H.R. 1105, omnibus appropriations for FY2009) provided more than \$833 million for NMFS and related programs.

## **Author Contact Information**

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

Harold F. Upton  
Analyst in Natural Resources Policy  
hupton@crs.loc.gov, 7-2264