

CRS Issue Brief for Congress

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

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

SUMMARY

Fish and marine mammals are important resources in open ocean and nearshore coastal areas. Many laws and regulations guide the management of these resources by federal agencies.

Reauthorization of major legislation — the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and the Marine Mammal Protection Act (MMPA) — will likely be on the agenda of the 109th Congress, since the authorization of appropriations for both laws expired at the end of FY1999. In the 108th Congress, reauthorization bills were introduced and oversight hearings were held. One MMPA reauthorization bill was reported. Recommendations by the U.S. Commission on Ocean Policy will likely play a role in actions considered during the 109th Congress.

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

Legislation related to commercial and sport fisheries enacted by the 108th Congress authorized several commercial fishing capacity reduction programs, required increased legal and fiscal accountability for Pacific salmon recovery, provided fishery disaster

funding, required regulations allowing wild seafood to be certified or labeled as organic, rationalized certain Alaska crab fisheries and instituted crab processor quotas, reauthorized the Yukon River Salmon Act, made Department of Defense Buy American requirements permanently inapplicable to the procurement of seafood, increased consultation on fishery law enforcement, and extended income averaging to commercial fishermen.

Aquaculture — the farming of fish, shellfish, and other aquatic animals and plants in a controlled environment — is expanding rapidly, both in the United States and abroad. In the United States, important species cultured include catfish, salmon, shellfish, and trout. Legislation related to aquaculture enacted by the 108th Congress authorized interim assistance to operators awaiting recovery of damages for oil spill injuries and provided restoration funding for hurricane-damaged oyster reefs.

Marine mammals are protected under the MMPA. This Act authorizes restricted use (“take”) of marine mammals. It addresses specific situations of concern, such as dolphin mortality, which is primarily associated with the eastern tropical Pacific tuna fishery. Legislation enacted by the 108th Congress required the evaluation of foreign compliance with the dolphin conservation programs, permitted imports of polar bears harvested prior to final regulations, modified the provisions on taking marine mammals related to military readiness activities and federal scientific research, and required studies to reduce vessel strikes on North Atlantic right whales.

MOST RECENT DEVELOPMENTS

On May 11, 2005, President Bush signed P.L. 109-13 (H.R. 1268), wherein language (1) revises requirements for H-2B visas allowing certain seasonal immigrant seafood processing workers to enter the United States; (2) reaffirms and clarifies the authority of states to regulate certain hunting and fishing activities to distinguish between state residents and non-residents; and (3) increases the authorization to \$25 million for design and construction of a multispecies fish hatchery at Fort Peck Lake, Montana. Senate language encouraging the government of Ecuador to enforce laws to prohibit destructive fishing and to discourage illegal fishing in the Galapagos Islands was deleted from H.R. 1268 in conference. On April 26, 2005, the Senate Committee on Environment and Public Works reported S. 728 (amended), containing language to (1) increase the authorization to \$25 million for design and construction of a multispecies fish hatchery at Fort Peck Lake, Montana; (2) authorize projects to restore and rehabilitate oyster beds, bars, reefs, and shellfish habitat in Chesapeake Bay and in Long Island Sound; and (3) authorize the FWS to manage bird colonies in the proposed McNary National Wildlife Refuge, to reduce the loss of juvenile salmonids. On April 26, 2005, the House Resources Subcommittee on Fisheries and Oceans held a hearing on H.R. 1428, proposing to reauthorize the National Fish and Wildlife Foundation. On April 21, 2005, the Senate Committee on the Judiciary reported S. 339, proposing to reaffirm the authority of states to regulate certain hunting and fishing activities to distinguish between state residents and non-residents. On April 21, 2005, the House passed H.R. 6 (amended), wherein §231 would allow federal hydropower licensees to propose alternatives to fishways required by the Federal Energy Regulatory Commission as long as the alternatives would not diminish fish passage. On April 20, 2005, President Bush signed P.L. 109-8 (S. 256) into law, wherein §1007 would extend similar protection to family fishermen as currently applies to family farmers under Chapter 12 of bankruptcy laws. (Members and staff may request e-mail notification of new CRS reports in the areas of marine and freshwater fisheries, aquaculture, and marine mammal issues by contacting Gene Buck at [gbuck@crs.loc.gov] and requesting to be added to his notification list.)

BACKGROUND AND ANALYSIS

Commercial and Sport Fisheries: Background and Issues

Historically, coastal states managed marine sport and commercial fisheries in nearshore waters, where most seafood was caught. However, as fishing techniques improved, fishermen ventured farther offshore. Before the 1950s, the federal government assumed limited responsibility for marine fisheries, responding primarily to international fishery concerns and treaties (by enacting implementing legislation for treaties, e.g., the Northern Pacific Halibut Act in 1937) as well as to interstate fishery conflicts (by consenting to interstate fishery compacts, e.g., the Pacific Marine Fisheries Compact in 1947). In the late 1940s and early 1950s, several Latin American nations proclaimed marine jurisdictions extending 200 miles offshore. This action was denounced by those within the United States and other distant-water fishing nations who sought to preserve access for far-ranging fishing vessels. Beginning in the 1950s (Atlantic) and 1960s (Pacific), increasing numbers of

foreign fishing vessels steamed into U.S. offshore waters to catch the substantially unexploited seafood resources. Since the United States then claimed only a 3-mile jurisdiction (in 1964, P.L. 88-308 prohibited fishing by foreign-flag vessels within 3 miles of the coast; in 1966, P.L. 89-658 proclaimed an expanded 12-mile exclusive U.S. fishery jurisdiction), foreign vessels could fish many of the same stocks caught by U.S. fishermen. U.S. fishermen deplored this “foreign encroachment” and alleged that overfishing was causing stress on, or outright depletion of, fish stocks. Protracted Law of the Sea Treaty negotiations in the early and mid-1970s provided impetus for unilateral U.S. action.

The enactment of the Fishery Conservation and Management Act (FCMA) in 1976 (later renamed the Magnuson Fishery Conservation and Management Act and more recently the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA); see [<http://www.nmfs.noaa.gov/sfa/magact/>]) 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 more popularly referred to as “NOAA Fisheries” — see [<http://www.nmfs.noaa.gov/>]) within the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. The 200-mile fishery conservation zone was superseded by an Exclusive Economic Zone (EEZ), proclaimed by President Reagan on March 10, 1983 (Presidential Proclamation 5030).

Eight Regional Fishery Management Councils were created by the FCMA (see [<http://www.nmfs.noaa.gov/councils/>]). Council members are appointed by the Secretary of Commerce from lists of candidates knowledgeable of fishery resources, provided by coastal state governors. The councils prepare fishery management plans (FMPs) for those fisheries that they determine require active federal management. After public hearings, revised FMPs are submitted to the Secretary of Commerce for approval. Approved plans are implemented through regulations published in the *Federal Register*. Together these councils and NMFS have developed and implemented 40 FMPs for various fish and shellfish resources, with 9 additional plans in various stages of development. Some plans are created for an individual species or a few related ones (e.g., FMPs for red drum by the South Atlantic Council and for shrimp by the Gulf of Mexico Council). Others are developed for larger species assemblages inhabiting similar habitats (e.g., FMPs for Gulf of Alaska groundfish by the North Pacific Council and for reef fish by the Gulf of Mexico Council). Many of the implemented plans have been amended (one over 30 times), and three have been developed and implemented jointly by two or more councils. The MSFCMA was last reauthorized in 1996 by P.L. 104-297, the Sustainable Fisheries Act (see [<http://www.nmfs.noaa.gov/sfa/sfaguide/>]). This authorization of appropriations expired in FY1999.

Today, individual states manage marine fisheries in inshore and coastal waters, generally within 3 miles of the coast. Interstate coordination occurs through three regional (Atlantic, Gulf, and Pacific) interstate marine fishery commissions, created by congressionally approved compacts. Beyond state waters, out to 200 miles, the federal government manages fish and shellfish resources for which FMPs have been developed

under the MSFCMA. Individual states manage fishermen operating state-registered vessels under state regulations consistent with any existing federal FMP when fishing in inshore state waters and, in the absence of a federal FMP, wherever they fish.

Under initial FCMA authority, a substantial portion of the fish catch from federal offshore waters was allocated to foreign fishing fleets. However, the 1980 American Fisheries Promotion Act (Title II of P.L. 96-561) and other FCMA amendments orchestrated a decrease in foreign catch allocations as domestic fishing and processing industries expanded. Foreign catch from the U.S. EEZ declined from about 3.8 billion pounds in 1977 to zero since 1992. Commensurate with the decline of foreign catch, domestic offshore catch in federal waters increased dramatically, from about 1.6 billion pounds (1977) to more than 6.3 billion pounds. Total (U.S. and foreign) offshore fishery landings from the U.S. EEZ (i.e., federal waters) increased about 24% between 1977 and 1986-1988 to a peak of 6.65 billion pounds. Since this peak, annual landings have declined slightly and stabilized at around 6 billion pounds.

In 2003, U.S. commercial fishermen landed about 7.5 billion pounds of edible, unprocessed fish and shellfish (see [<http://www.st.nmfs.noaa.gov/st1/commercial/index.html>]) from combined state, federal, and international waters, worth almost \$3.2 billion at the dock. Imports of mostly processed products supplied another 4.9 billion pounds, worth about \$11.1 billion. U.S. consumers spent an estimated \$61.2 billion on edible seafood in 2003, with about \$42 billion of that amount spent in restaurants and other food service establishments. In addition, marine recreational anglers caught an estimated 452 million fish in 2003, of which the retained catch was about 263 million pounds (see [<http://www.st.nmfs.gov/st1/recreational/index.html>]). In 2001, a nationwide survey estimated that recreational anglers spent almost \$36 billion each year pursuing their sport (see [<http://www.census.gov/prod/www/abs/fishing.html>]).

Magnuson Act Reauthorization

Background. The MSFCMA was last reauthorized in 1996 by P.L. 104-297, the Sustainable Fisheries Act; authorization for appropriations expired on September 30, 1999. The 1996 amendments established fish conservation initiatives directing NMFS and regional councils to protect essential fish habitat, minimize incidental fish bycatch, and restore overfished stocks. In addition, a host of modifications to regional council management procedures and federal management policy were enacted. NMFS contends that implementation of the 1996 amendments has met many of the Act's objectives (see [<http://www.publicaffairs.noaa.gov/releases99/jan99/noaa99-4.html>]); fishing industry and environmental groups have criticized NMFS and regional council implementation efforts. While environmental groups have expressed concerns that NMFS and regional councils have not been as responsive as needed on conservation measures, fishing industry representatives are concerned that too stringent an application of conservation measures may cripple commercial fishing and bankrupt many fishermen. A key issue in any reauthorization debate in the 109th Congress may be seeking a balance between conserving fish and maintaining a viable commercial fishing industry.

Congressional Action. At issue for the 109th Congress will be the terms and conditions of provisions designed to reauthorize and amend the MSFCMA to address the concerns of various interest groups. For additional information on reauthorization issues

likely to be discussed in the 109th Congress, see CRS Report RL30215, *The Magnuson-Stevens Fishery Conservation and Management Act: Reauthorization Issues*.

In the 109th Congress, S. 797 and §1825 of H.R. 3 seek to clarify the eligibility for communities to participate in the western Alaska community development quota (CDQ) program. On March 7, 2005, the House Committee on Transportation and Infrastructure reported H.R. 3, amended (H.Rept. 109-12); on March 10, 2005, the House passed this bill (amended). H.R. 1431 proposes to amend the MSFCMA to modify requirements for the appointment and training of members of regional councils, and to modify how certain regional council committees and panels conduct business. Section 1622 of S. 732 proposes to repeal the P.L. 108-199 prohibition on FY2004 New England fisheries expenditures (this provision appears to have already been repealed by §304 of P.L. 108-219). H.R. 2059 would prohibit all commercial fishing for Atlantic striped bass. On April 14, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the relationship between the MSFCMA and the National Environmental Policy Act.

Pacific Salmon

Background. Five species of salmon spawn in Pacific coastal rivers and lakes, after which juveniles migrate to North Pacific ocean waters where they mature. Since these fish may cross several state and national boundaries during their life spans, management is complicated. 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. For background on this issue, see CRS Report 98-666 ENR, *Pacific Salmon and Anadromous Trout: Management Under the Endangered Species Act*; and CRS Report RL31546, *The Endangered Species Act and Science: The Case of Pacific Salmon*.

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

Congressional Action. In the 109th Congress, §1119(b)(2) of H.R. 3 would limit the expenditures to no more than \$2.5 million annually from the Highway Trust Fund for federal forest highways to repair, maintain, or remove culverts and bridges on forest highways to facilitate fish passage. On March 7, 2005, the House Committee on Transportation and Infrastructure reported H.R. 3, amended (H.Rept. 109-12), with the cited provision at §1120(b)(2); the House passed this bill (amended) on March 10, 2005, with this fish passage provision at §1121(b)(2). H.R. 1615 would require a National Academy of Sciences analysis of federal salmon recovery efforts and a Government Accountability Office study of the effects of partially removing four lower Snake River dams, and would authorize

partial removal of these four dams under certain conditions. Section 3099(c)(2)(F) of S. 728, as reported (amended) by the Senate Committee on Environment and Public Works on April 26, 2005 (S.Rept. 109-61), would authorize the FWS to manage bird colonies in the proposed McNary National Wildlife Refuge, to reduce the loss of juvenile salmonids.

Miscellaneous Issues

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

Seasonal Labor. Section 402 of P.L. 109-13 revises requirements for H-2B visas allowing certain seasonal immigrant seafood processing workers to enter the United States.

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

Invasive Species. S. 363 would amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to promote the development and adoption of new ballast water treatment technologies and standards. Section 12 of S. 793/H.R. 1636 would express the sense of Congress that strong mandatory standards for ballast water be enacted. H.R. 1591 and S. 770 would reauthorize and amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to address ballast water management and other concerns. (For background on ballast water management, see CRS Report RL32344, *Ballast Water Management to Combat Invasive Species*.) Section 7(d)(4) of H.R. 792 would allocate funds to the State of Illinois for a project to establish a permanent invasive species barrier between the Mississippi River and Lake Michigan. S.Con.Res. 12 would require that any agreement signed by the United States not preclude measures to combat invasive species. S. 507 and H.R. 1593 would authorize and establish the National Invasive Species Council. Section 4(b)(1)(C) of S. 508 would authorize Great Lakes Environmental Restoration Grants for invasive species prevention and control. H.R. 1592 would authorize various marine and freshwater research, development, and demonstration programs to address invasive species concerns.

Recreational Fishing. S. 421 would reauthorize and expand the Aquatic Resources Trust Fund (ARTF) and its programs relating to sport fishing and recreational boating safety. H.R. 996 would extend the authorization for transfer of motorboat and small engine fuel tax receipts to the ARTF through FY2011, terminate the allocation of a portion of these fuel tax receipts to the General Fund, and extend the authorization of appropriations from the Boat Safety Account for state recreational boating safety programs through FY2009. On March 8, 2005, H.R. 996 was reported (amended) by the House Committee on Ways and Means (H.Rept. 109-13). Title III of S. 732, reported April 6, 2005, would modify the ARTF by specifying percentage allocations to various programs from the Sport Fish Restoration Account (§3004). H.R. 3, as passed by the House on March 10, 2005, includes §10002(c) to extend deposits of fuel taxes into the ARTF through FY2011, and §10002(d)(2)(B) to extend the authorization for expenditures from the Boat Safety Account through FY2009. (For background on the ARTF and programs, see CRS Report RS22060, *The Aquatic Resources Trust Fund*.) H.R. 1351 and S. 548 would establish a grant program to encourage private landowners to provide public access for fishing and other outdoor recreation.

Hydropower and Water Projects. S. 232 proposes to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in implementing fish passage and screening facilities at non-federal water projects. On March 10, 2005, the Committee on Energy and Natural Resources reported S. 232 (S.Rept. 109-31). Section 101(a)(7) of H.R. 737 would set a goal for Department of Energy hydropower programs to decrease damage to fish and aquatic ecosystems. Section 201 of S. 753 would amend the Water Resources Development Act of 1986 to require full mitigation for aquatic resource losses at Corps of Engineers projects. Section 231 of H.R. 6/H.R. 1640 would allow federal hydropower licensees to propose alternatives to fishways required by the Federal Energy Regulatory Commission as long as the alternatives would not diminish fish passage; the House passed H.R. 6 (amended) on April 21, 2005.

Habitat Restoration. S. 218 would amend the Food Security Act to authorize the Natural Resources Conservation Service to establish a stream habitat improvement program, funded at \$60 million annually for FY2006-FY2008. S. 260/H.R. 2018 would expand the authorization of the Secretary of the Interior to assist private landowners in restoring, enhancing, and managing fish habitat on private land through the Partners for Fish and Wildlife Program. S. 728, as reported (amended) on April 26, 2005 (S.Rept. 109-61), would specifically authorize projects to restore and rehabilitate oyster beds, bars, reefs, and shellfish habitat in Chesapeake Bay (§3095) and in Long Island Sound (§3064).

Assistance. Section 104(b) of H.R. 27 proposes to amend the Workforce Investment Act to specifically require state plans to discuss how states would address the employment and training needs of dislocated fishermen. This bill was reported (amended) by the House Committee on Education and the Workforce on February 25, 2005 (H.Rept. 109-9), with supplement report filed March 1, 2005 (H.Rept. 109-9, Part II). On March 2, 2005, the House passed H.R. 27, amended.

International Fisheries. Section 103(4) of S. 600 would authorize an appropriation of \$25,123,000 for “International Fisheries Commissions” for FY2006, and such sums as may be necessary for FY2007; this bill was reported by the Senate Committee on Foreign Relations on March 10, 2005 (S.Rept. 109-35). Section 6054 of H.R. 1268, as passed by the Senate (amended) on April 21, 2005, would have encouraged the government of Ecuador to enforce laws, prohibit destructive fishing, and discourage illegal fishing in the Galapagos Islands; however, this language was deleted in conference (H.Rept. 109-72) and was not included in P.L. 109-13.

Seafood Safety. S. 131 would amend the Clean Air Act to promote research to clarify the contribution of U.S. electricity generation to mercury contamination in fish and seafood. Section 12 of S. 730 would amend the Clean Air Act to require the EPA Administrator to evaluate and improve fish consumption advisories concerning mercury contamination of fish. Section 102 of H.R. 1507/S. 729 would consolidate food safety and inspection programs, including seafood inspection.

Trade. Section 343(b) of S. 14 would authorize a program for trade adjustment assistance to commercial fishermen, fish processors, and fishing communities. S. 270 would establish a framework for legislative and executive consideration of unilateral economic sanctions against foreign nations.

Tuna. H.R. 629 would extend certain tax credits, beneficial to American Samoa tuna canneries, through January 1, 2016. S. 599 would modify the duty treatment of tuna to specifically identify tuna packed in pouches, and would eliminate duties on certain tuna products imported from cited ASEAN nations.

Marine Debris. S. 362 would establish NOAA and Coast Guard programs to manage marine debris — including lost fishing gear — and address its adverse impacts. The Senate Committee on Commerce, Science, and Transportation reported this bill (with amendment) on April 13, 2005 (S.Rept. 109-56).

Health Care. Section 2 of H.R. 525/S. 406 and §402 of H.R. 2203 would amend the Employee Retirement Income Security Act of 1974 to authorize fishing industry associations to provide health care plans for association members. On April 13, 2005, the House Committee on Education and the Workforce reported H.R. 525 (H.Rept. 109-41).

Corals and Coral Reefs. On March 1, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on the Coral Reef Conservation Act of 2000. H.R. 1996 would amend the Foreign Assistance Act of 1961 to provide for debt relief to developing countries that take action to protect critical coral reef habitats.

Tax Provisions. Section 308 of S. 6 proposes to amend the Internal Revenue Code to provide tax incentives for participation in the Fish and Wildlife Services' "Partners for Fish and Wildlife Program."

Great Lakes. Section 4(b)(1)(D) of S. 508 would authorize state and local grants for fish habitat improvement in the Great Lakes region. Title I of H.R. 2129 would reauthorize various programs to restore fisheries and aquatic habitat in the Great Lakes.

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

Marketing. H.R. 710 would provide financial assistance for the construction, improvement, and rehabilitation of farmers markets, including those selling products from local aquaculture and commercial fishing.

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

National Fish and Wildlife Foundation. H.R. 1428 would reauthorize the National Fish and Wildlife Foundation. The House Resources Subcommittee on Fisheries and Oceans held a hearing on this bill on April 26, 2005.

Aquaculture: Background and Issues

Aquaculture is broadly defined as the farming or husbandry of fish, shellfish, and other aquatic animals and plants, usually in a controlled or selected environment. The diversity of aquaculture is typified by such activities as: fish farming, usually applied to freshwater commercial aquaculture operations (e.g., catfish and trout farms; see [<http://www.usda.gov/nass/pubs/stathigh/2002/livestock02.pdf>]); shellfish and seaweed culture; net-pen culture, used by the salmon industry, wherein fish remain captive throughout their lives in marine pens built from nets; and ocean ranching, used by the Pacific Coast salmon industry, which cultures juveniles, releases them to mature in the open ocean, and catches them when they return as adults to spawn. Fish hatcheries are government and commercial aquaculture facilities that raise fish for recreational and commercial stocking as well as to mitigate aquatic resource and habitat damage.

The United Nations' Food and Agriculture Organization (FAO) has characterized aquaculture as one of the world's fastest growing food production activities. World aquaculture production more than doubled in 10 years, from about 10 million metric tons in 1984 to a record 25.5 million metric tons in 1994, with a value of approximately \$40 billion. The FAO predicts that world aquaculture production will reach between 35 million metric tons and 40 million metric tons in 2010 (see [http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/w9900e/w9900e05.htm]). U.S. aquaculture, until recently and with a few exceptions, has been considered a minor industry. Despite considerable growth, the domestic aquaculture industry faces strong competition from imports of foreign aquacultural products, from the domestic poultry and livestock industries, and from wild harvests (see [<http://usda.mannlib.cornell.edu/reports/erssor/livestock/ldp-aqs/2004/aqs20.pdf>]). With growth, however, aquaculture operations are facing increasing scrutiny for habitat destruction, pollution, and other concerns. The major statute affecting U.S. aquaculture is the National Aquaculture Act of 1980, as amended (16 U.S.C. §2801, et seq.). For more information, see CRS Report 97-436, *Aquaculture and the Federal Role* (Out of print. For copies, contact author at gbuck@crs.loc.gov); and CRS Report RL32694, *Open Ocean Aquaculture*.

Miscellaneous Issues

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

Mitigation Hatcheries. Section 6007 of P.L. 109-13 increases the authorization to \$25 million for the design and construction of a multispecies fish hatchery at Fort Peck Lake, Montana. H.R. 537 would authorize specific activities wherein National Fish Hatchery production would compensate for the impacts of federal water development projects on aquatic resources.

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

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

Marketing. H.R. 710 would provide financial assistance for the construction, improvement, and rehabilitation of farmers markets, including those selling products from local aquaculture and commercial fishing.

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

Open Ocean Facilities. S. 796 would prohibit the issuance of permits for marine aquaculture facilities in federal waters until requirements for such permits are enacted.

Disease. S. 572 and S. 573 seek to improve the federal response to agricultural diseases, including diseases at aquaculture operations.

Marine Mammals: Background and Issues

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

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

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

Prior to passage of the MMPA, states were responsible for marine mammal management on lands and in waters under their jurisdiction. The MMPA shifted marine

mammal management authority to the federal government. It provides, however, that management authority, on a species-by-species basis, could be returned to states that adopt conservation and management programs consistent with the purposes and policies of the Act. It also provides that the moratorium on taking can be waived for specific purposes, if the taking will not disadvantage the affected species or population. Permits may be issued to take or import any marine mammal species, including depleted species, for scientific research or to enhance the survival or recovery of the species or stock. The MMPA allows U.S. citizens to apply for and obtain authorization for taking small numbers of mammals incidental to activities other than commercial fishing (e.g., offshore oil and gas exploration and development) if the taking would have only a negligible impact on any marine mammal species or stock, provided that monitoring requirements and other conditions are met.

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

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

Marine Mammal Protection Act Reauthorization

Background. The MMPA was reauthorized in 1994 by P.L. 103-238, the Marine Mammal Protection Act Amendments of 1994; the authorization for appropriations expired on September 30, 1999. The 1994 amendments indefinitely authorized the taking of marine mammals incidental to commercial fishing operations and provided for 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. For more information on the 1994 amendments, see CRS Report 94-751 ENR, *Marine Mammal Protection Act Amendments of 1994* (Out of print. For copies, contact author at gbuck@crs.loc.gov).

Congressional Action. At issue for the 109th Congress will be the terms and conditions of any provisions designed to reauthorize and amend the MMPA to address the concerns of various interest groups. H.R. 2130 proposes various amendments to the MMPA and authorizes appropriations for several programs. For additional information on potential reauthorization issues in the 109th Congress, see CRS Report RL30120, *The Marine Mammal Protection Act: Reauthorization Issues*.

Miscellaneous Issues

Marine Debris. S. 362 would establish NOAA and Coast Guard programs to manage marine debris and address its adverse impacts. The Senate Committee on Commerce, Science, and Transportation reported this bill (with amendment) on April 13, 2005 (S.Rept. 109-56).

Habitat. S. 260/H.R. 2018 would expand the authorization of the Secretary of the Interior to assist private landowners in restoring, enhancing, and managing marine mammal habitat on private land through the Partners for Fish and Wildlife Program.

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

Climate Change. H.R. 759 would require the Secretary of Commerce to prepare a report on the observed and projected effects of climate change on marine life and habitat.

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

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

NMFS Appropriations

On February 7, 2005, the Bush Administration requested FY2006 funds for federal agencies and programs, including \$625.5 million in direct program funds for NMFS (see **Table 1**) — this is a \$51 million (7.5%) reduction from FY2005 direct program funding for NMFS enacted in the omnibus appropriations bill, P.L. 108-447. The FY2005 omnibus appropriations measure also authorized capacity reduction funding for the Southeast Alaska purse seine salmon fishery (\$50 million; §209, Division B), the Gulf of Mexico reef fish longline fishery (\$35 million; §218, Division B), the Bering Sea Aleutian Island non-pollock groundfish fishery (\$75 million; §219(b), Division B), the U.S. distant water tuna fleet (\$40 million; Fisheries Finance Program Account, Division B), and the menhaden fishery (\$19 million; Fisheries Finance Program Account, Division B); and increased the coordination of interagency ocean science programs, including U.S. research and monitoring programs related to seafood safety, and identified hypoxia and harmful algal blooms as important in addressing the role of oceans in human health (Title IX, Division B). On March 10, 2005, the House Resources Subcommittee on Fisheries and Oceans held an oversight hearing on NMFS's FY2006 budget request.

Table 1. NMFS Appropriations
(in thousands of dollars)

	FY2004 Enacted	FY2005 Request	FY2005 Enacted	FY2006 Request
Fisheries	363,815	368,546	377,390	351,932
Protected Resources	145,118	154,965	175,530	159,273
Habitat Conservation	41,221	46,280	53,248	34,096
Enforcement Surveillance	71,187	53,401	70,347	80,163
SUBTOTAL	621,341	623,192	676,515	625,464
Procurement, Acquisition, and Construction	23,200	2,000	31,048	2,000
Pacific Coastal Salmon Recovery	89,052	100,000	88,798	90,000
Other Accounts	24,500	5,792	27,284	10,419
TOTAL	758,093	735,203	823,645	727,883

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

LEGISLATION

Fisheries

P.L. 109-8 (S. 256) and P.L. 109-13 (H.R. 1268).

H.R. 3 (Young of Alaska); H.R. 6 (Barton); H.R. 27 (McKeon); H.R. 525 (Sam Johnson); H.R. 629 (Faleomavaega); H.R. 685 (Sensenbrenner); H.R. 710 (Kaptur); H.R. 731 (Udall); H.R. 737 (Woolsey); H.R. 759 (Gilchrest); H.R. 792 (Emanuel); H.R. 996 (Thomas); H.R. 1351 (Pomeroy); H.R. 1428 (Pombo); H.R. 1431 (Rahall); H.R. 1507 (DeLauro); H.R. 1591 (Gilchrest); H.R. 1592 (Ehlers); H.R. 1593 (Ehlers); H.R. 1615 (McDermott); H.R. 1636 (Farr); H.R. 1640 (Barton); H.R. 1996 (Kirk); H.R. 2018 (Sullivan); H.R. 2059 (Pallone); H.R. 2129 (Ehlers); H.R. 2174 (Capps); H.R. 2203 (Shadegg); S.Con.Res. 12 (Feingold); S. 6 (Santorum); S. 14 (Stabenow); S. 131 (Inhofe); S. 218 (Kohl); S. 232 (Smith); S. 260 (Inhofe); S. 270 (Lugar); S. 339 (Reid); S. 343 (Wyden); S. 352 (Mikulski); S. 362 (Inouye); S. 363 (Inouye); S. 406 (Snowe); S. 421 (Lott); S. 507 (DeWine); S. 508 (DeWine); S. 548 (Conrad); S. 599 (Kerry); S. 600 (Lugar); S. 728 (Bond); S. 729 (Durbin); S. 730 (Leahy); S. 732 (Inhofe); S. 753 (Feingold); S. 770 (Levin); S. 793 (Durbin); and S. 797 (Murkowski).

Aquaculture

P.L. 109-8 (S. 256) and P.L. 109-13 (H.R. 1268).

H.R. 537 (Deal); H.R. 685 (Sensenbrenner); H.R. 710 (Kaptur); H.R. 1591 (Gilchrest); H.R. 1712 (Woolsey); S. 572 (Akaka); S. 573 (Akaka); S. 728 (Bond); S. 770 (Levin); S. 796 (Murkowski); and S. 880 (Boxer).

Marine Mammals

H.R. 759 (Gilchrest); H.R. 2018 (Sullivan); H.R. 2130 (Gilchrest); S.Res. 33 (Levin); S.Res. 99 (Lautenberg); S. 260 (Inhofe); S. 270 (Lugar); and S. 362 (Inouye).