

109TH CONGRESS
2^D SESSION

H. R. 5946

AN ACT

To amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Stevens-Inouye International Fisheries Monitoring and
 4 Compliance Legacy Act of 2006”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.

TITLE I—INTERNATIONAL FISHERIES MONITORING AND
COMPLIANCE

- Sec. 101. International fisheries monitoring and compliance.
- Sec. 102. Finding with respect to illegal, unreported, and unregulated fishing.
- Sec. 103. Action to end illegal, unreported, or unregulated fishing and reduce bycatch of protected marine species.
- Sec. 104. Monitoring of Pacific Insular Area fisheries.
- Sec. 105. Reauthorization of Atlantic Tunas Convention Act.
- Sec. 106. International overfishing and domestic equity.
- Sec. 107. United States catch history.
- Sec. 108. Secretarial representative for international fisheries.

TITLE II—IMPLEMENTATION OF WESTERN AND CENTRAL
PACIFIC FISHERIES CONVENTION

- Sec. 201. Short title.
- Sec. 202. Definitions.
- Sec. 203. Appointment of United States Commissioners.
- Sec. 204. Authority and responsibility of the Secretary of State.
- Sec. 205. Rulemaking authority of the Secretary of Commerce.
- Sec. 206. Enforcement.
- Sec. 207. Prohibited acts.
- Sec. 208. Cooperation in carrying out Convention.
- Sec. 209. Territorial participation.
- Sec. 210. Exclusive Economic Zone notification.
- Sec. 211. Authorization of appropriations.

TITLE III—PACIFIC WHITING

- Sec. 301. Short title.
- Sec. 302. Definitions.
- Sec. 303. United States representation on joint management committee.
- Sec. 304. United States representation on the scientific review group.
- Sec. 305. United States representation on joint technical committee.
- Sec. 306. United States representation on advisory Panel.
- Sec. 307. Responsibilities of the Secretary.
- Sec. 308. Rulemaking.
- Sec. 309. Administrative matters.

Sec. 310. Enforcement.

Sec. 311. Authorization of appropriations.

1 **SEC. 2. AMENDMENT OF MAGNUSON-STEVENSON FISHERY**
 2 **CONSERVATION AND MANAGEMENT ACT.**

3 Except as otherwise expressly provided, whenever in
 4 this Act an amendment or repeal is expressed in terms
 5 of an amendment to, or repeal of, a section or other provi-
 6 sion, the reference shall be considered to be made to a
 7 section or other provision of the Magnuson-Stevens Fish-
 8 ery Conservation and Management Act (16 U.S.C. 1801
 9 et seq.).

10 **TITLE I—INTERNATIONAL FISHERIES**
 11 **MONITORING AND**
 12 **COMPLIANCE**

13 **SEC. 101. INTERNATIONAL FISHERIES MONITORING AND**
 14 **COMPLIANCE.**

15 (a) IN GENERAL.—Title II (16 U.S.C. 1821 et seq.)
 16 is amended by adding at the end the following:

17 **“SEC. 207. INTERNATIONAL FISHERIES MONITORING AND**
 18 **COMPLIANCE.**

19 “(a) IN GENERAL.—The Secretary may undertake
 20 activities to promote improved monitoring and compliance
 21 for high seas fisheries, or fisheries governed by inter-
 22 national fishery management agreements, and to imple-
 23 ment the requirements of this title.

1 “(b) SPECIFIC AUTHORITIES.—In carrying out sub-
2 section (a), the Secretary may—

3 “(1) share information on harvesting and proc-
4 essing capacity and illegal, unreported and unregu-
5 lated fishing on the high seas, in areas covered by
6 international fishery management agreements, and
7 by vessels of other nations within the United States
8 exclusive economic zone, with relevant law enforce-
9 ment organizations of foreign nations and relevant
10 international organizations;

11 “(2) further develop real time information shar-
12 ing capabilities, particularly on harvesting and proc-
13 essing capacity and illegal, unreported and unregu-
14 lated fishing;

15 “(3) participate in global and regional efforts to
16 build an international network for monitoring, con-
17 trol, and surveillance of high seas fishing and fishing
18 under regional or global agreements;

19 “(4) support efforts to create an international
20 registry or database of fishing vessels, including by
21 building on or enhancing registries developed by
22 international fishery management organizations;

23 “(5) enhance enforcement capabilities through
24 the application of commercial or governmental re-
25 mote sensing technology to locate or identify vessels

1 engaged in illegal, unreported, or unregulated fish-
2 ing on the high seas, including encroachments into
3 the exclusive economic zone by fishing vessels of
4 other nations;

5 “(6) provide technical or other assistance to de-
6 veloping countries to improve their monitoring, con-
7 trol, and surveillance capabilities; and

8 “(7) support coordinated international efforts
9 to ensure that all large-scale fishing vessels oper-
10 ating on the high seas are required by their flag
11 State to be fitted with vessel monitoring systems no
12 later than December 31, 2008, or earlier if so de-
13 cided by the relevant flag State or any relevant
14 international fishery management organization.”.

15 (b) CLERICAL AMENDMENT.—The table of contents
16 in the first section is amended by inserting after the item
17 relating to section 206 the following:

“Sec. 207. International fisheries monitoring and compliance.”.

18 **SEC. 102. FINDING WITH RESPECT TO ILLEGAL, UNRE-**
19 **PORTED, AND UNREGULATED FISHING.**

20 Section 2(a) (16 U.S.C. 1801(a)) is further amended
21 by adding at the end the following:

22 “(11) International cooperation is necessary to
23 address illegal, unreported, and unregulated fishing
24 and other fishing practices which may harm the sus-

1 tainability of living marine resources and disadvan-
2 tage the United States fishing industry.”.

3 **SEC. 103. ACTION TO END ILLEGAL, UNREPORTED, OR UN-**
4 **REGULATED FISHING AND REDUCE BYCATCH**
5 **OF PROTECTED MARINE SPECIES.**

6 (a) IN GENERAL.—Title VI of the High Seas Driftnet
7 Fishing Moratorium Protection Act (16 U.S.C. 1826d et
8 seq.), is amended by adding at the end the following:

9 **“SEC. 607. BIENNIAL REPORT ON INTERNATIONAL COMPLI-**
10 **ANCE.**

11 “The Secretary, in consultation with the Secretary of
12 State, shall provide to Congress, by not later than 2 years
13 after the date of enactment of the Stevens-Inouye Inter-
14 national Fisheries Monitoring and Compliance Legacy Act
15 of 2006, and every 2 years thereafter, a report that in-
16 cludes—

17 “(1) the state of knowledge on the status of
18 international living marine resources shared by the
19 United States or subject to treaties or agreements to
20 which the United States is a party, including a list
21 of all such fish stocks classified as overfished, over-
22 exploited, depleted, endangered, or threatened with
23 extinction by any international or other authority
24 charged with management or conservation of living
25 marine resources;

1 “(2) a list of nations whose vessels have been
2 identified under sections 609(a) or 610(a), including
3 the specific offending activities and any subsequent
4 actions taken pursuant to section 609 or 610;

5 “(3) a description of efforts taken by nations on
6 those lists to take appropriate corrective action con-
7 sistent with sections 609 and 610, and an evaluation
8 of the progress of those efforts, including steps
9 taken by the United States to implement those sec-
10 tions and to improve international compliance;

11 “(4) progress at the international level, con-
12 sistent with section 608, to strengthen the efforts of
13 international fishery management organizations to
14 end illegal, unreported, or unregulated fishing; and

15 “(5) steps taken by the Secretary at the inter-
16 national level to seek adoption of international meas-
17 ures comparable to those of the United States to re-
18 duce impacts of fishing and other practices on pro-
19 tected living marine resources, if no international
20 agreement to achieve such goal exists, or if the rel-
21 evant international fishery or conservation organiza-
22 tion has failed to implement effective measures to
23 end or reduce the adverse impacts of fishing prac-
24 tices on such species.

1 **“SEC. 608. ACTION TO STRENGTHEN INTERNATIONAL FISH-**
2 **ERY MANAGEMENT ORGANIZATIONS.**

3 “The Secretary, in consultation with the Secretary of
4 State, and in cooperation with relevant fishery manage-
5 ment councils and any relevant advisory committees, shall
6 take actions to improve the effectiveness of international
7 fishery management organizations in conserving and man-
8 aging fish stocks under their jurisdiction. These actions
9 shall include—

10 “(1) urging international fishery management
11 organizations to which the United States is a mem-
12 ber—

13 “(A) to incorporate multilateral market-re-
14 lated measures against member or nonmember
15 governments whose vessels engage in illegal, un-
16 reported, or unregulated fishing;

17 “(B) to seek adoption of lists that identify
18 fishing vessels and vessel owners engaged in il-
19 legal, unreported, or unregulated fishing that
20 can be shared among all members and other
21 international fishery management organizations;

22 “(C) to seek international adoption of a
23 centralized vessel monitoring system in order to
24 monitor and document capacity in fleets of all
25 nations involved in fishing in areas under the

1 an international fishery management organiza-
2 tion’s jurisdiction;

3 “(D) to increase use of observers and tech-
4 nologies needed to monitor compliance with con-
5 servation and management measures estab-
6 lished by the organization, including vessel
7 monitoring systems and automatic identification
8 systems; and

9 “(E) to seek adoption of stronger port
10 state controls in all nations, particularly those
11 nations in whose ports vessels engaged in ille-
12 gal, unreported, or unregulated fishing land or
13 transship fish;

14 “(2) urging international fishery management
15 organizations to which the United States is a mem-
16 ber, as well as all members of those organizations,
17 to adopt and expand the use of market-related meas-
18 ures to combat illegal, unreported, or unregulated
19 fishing, including—

20 “(A) import prohibitions, landing restric-
21 tions, or other market-based measures needed
22 to enforce compliance with international fishery
23 management organization measures, such as
24 quotas and catch limits;

1 “(B) import restrictions or other market-
2 based measures to prevent the trade or impor-
3 tation of fish caught by vessels identified multi-
4 laterally as engaging in illegal, unreported, or
5 unregulated fishing; and

6 “(C) catch documentation and certification
7 schemes to improve tracking and identification
8 of catch of vessels engaged in illegal, unre-
9 ported, or unregulated fishing, including ad-
10 vance transmission of catch documents to ports
11 of entry; and

12 “(3) urging other nations at the appropriate bi-
13 lateral, regional, and international levels to take all
14 steps necessary, consistent with international law, to
15 adopt measures and policies that will prevent fish or
16 other living marine resources harvested by vessels
17 engaged in illegal, unreported, or unregulated fish-
18 ing from being traded or imported into their nation
19 or territories.

20 **“SEC. 609. ILLEGAL, UNREPORTED, OR UNREGULATED**
21 **FISHING.**

22 “(a) IDENTIFICATION.—The Secretary shall identify,
23 and list in the report under section 607, a nation if fishing
24 vessels of that nation are engaged, or have been engaged

1 at any point during the preceding two years in illegal, un-
2 reported, or unregulated fishing; and—

3 “(1) the relevant international fishery manage-
4 ment organization has failed to implement effective
5 measures to end the illegal unreported, or unregu-
6 lated fishing activity by vessels of that nation or the
7 nation is not a party to, or does not maintain co-
8 operating status with, such organization; or

9 “(2) where no international fishery manage-
10 ment organization exists with a mandate to regulate
11 the fishing activity in question.

12 “(b) NOTIFICATION.—An identification under sub-
13 section (a) or section 610(a) is deemed to be an identifica-
14 tion under section 101(b)(1)(A) of the High Seas Driftnet
15 Fisheries Enforcement Act (16 U.S.C. 1826a(b)(1)(A)),
16 and the Secretary shall notify the President and that na-
17 tion of such identification.

18 “(c) CONSULTATION.—No later than 60 days after
19 submitting a report to Congress under section 607, the
20 Secretary, acting through the Secretary of State, shall—

21 “(1) notify nations listed in the report of the
22 requirements of this section;

23 “(2) initiate consultations for the purpose of
24 encouraging such nations to take the appropriate
25 corrective action with respect to the offending activi-

1 ties of their fishing vessels identified in the report;
2 and

3 “(3) notify any relevant international fishery
4 management organization of the actions taken by
5 the United States under this section.

6 “(d) IUU CERTIFICATION PROCEDURE.—

7 “(1) CERTIFICATION.—The Secretary shall es-
8 tablish a procedure, consistent with the provisions of
9 subchapter II of chapter 5 of title 5, United States
10 Code, and including notice and an opportunity for
11 comment by the governments of any nation listed by
12 the Secretary under subsection (a), for determining
13 if that government has taken appropriate corrective
14 action with respect to the offending activities of its
15 fishing vessels identified in the report under section
16 607. The Secretary shall determine, on the basis of
17 the procedure, and certify to the Congress no later
18 than 90 days after the date on which the Secretary
19 promulgates a final rule containing the procedure,
20 and biennially thereafter in the report under section
21 607—

22 “(A) whether the government of each na-
23 tion identified under subsection (b) has pro-
24 vided documentary evidence that it has taken
25 corrective action with respect to the offending

1 activities of its fishing vessels identified in the
2 report; or

3 “(B) whether the relevant international
4 fishery management organization has imple-
5 mented measures that are effective in ending
6 the illegal, unreported, or unregulated fishing
7 activity by vessels of that nation.

8 “(2) ALTERNATIVE PROCEDURE.—The Sec-
9 retary may establish a procedure for certification, on
10 a shipment-by-shipment, shipper-by-shipper, or other
11 basis of fish or fish products from a vessel of a har-
12 vesting nation not certified under paragraph (1) if
13 the Secretary determines that—

14 “(A) the vessel has not engaged in illegal,
15 unreported, or unregulated fishing under an
16 international fishery management agreement to
17 which the United States is a party; or

18 “(B) the vessel is not identified by an
19 international fishery management organization
20 as participating in illegal, unreported, or un-
21 regulated fishing activities.

22 “(3) EFFECT OF CERTIFICATION.—The provi-
23 sions of section 101(a) and section 101(b)(3) and
24 (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and
25 (b)(4)) (except to the extent that such provisions

1 apply to sport fishing equipment or fish or products
2 thereof not managed under the relevant inter-
3 national fishery agreement (or, where there is no
4 such agreement, not caught by the vessels engaged
5 in illegal, unreported, or unregulated fishing)) shall
6 apply to any nation identified under subsection (a)
7 that has not been certified by the Secretary under
8 this subsection, or for which the Secretary has
9 issued a negative certification under this subsection,
10 but shall not apply to any nation identified under
11 subsection (a) for which the Secretary has issued a
12 positive certification under this subsection.

13 “(e) ILLEGAL, UNREPORTED, OR UNREGULATED
14 FISHING DEFINED.—

15 “(1) IN GENERAL.—In this Act the term ‘ille-
16 gal, unreported, or unregulated fishing’ has the
17 meaning established under paragraph (2).

18 “(2) SECRETARY TO DEFINE TERM WITHIN
19 LEGISLATIVE GUIDELINES.—Within 3 months after
20 the date of enactment of the Stevens-Inouye Inter-
21 national Fisheries Monitoring and Compliance Leg-
22 acy Act of 2006, the Secretary shall publish a defini-
23 tion of the term ‘illegal, unreported, or unregulated
24 fishing’ for purposes of this Act.

1 “(3) GUIDELINES.—The Secretary shall include
2 in the definition, at a minimum—

3 “(A) fishing activities that violate con-
4 servation and management measures required
5 under an international fishery management
6 agreement to which the United States is a
7 party, including catch limits or quotas, capacity
8 restrictions, and bycatch reduction require-
9 ments;

10 “(B) overfishing of fish stocks shared by
11 the United States, for which there are no appli-
12 cable international conservation or management
13 measures or in areas with no applicable inter-
14 national fishery management organization or
15 agreement, that has adverse impacts on such
16 stocks; and

17 “(C) fishing activity that has adverse im-
18 pacts on seamounts, hydrothermal vents, and
19 cold water corals located beyond national juris-
20 diction, for which there are no applicable con-
21 servation or management measures or in areas
22 with no applicable international fishery manage-
23 ment organization or agreement.

1 **“SEC. 610. EQUIVALENT CONSERVATION MEASURES.**

2 “(a) IDENTIFICATION.—The Secretary shall identify,
3 and list in the report under section 607, a nation if—

4 “(1) fishing vessels of that nation are engaged,
5 or have been engaged during the preceding calendar
6 year, in fishing activities or practices—

7 “(A) beyond the exclusive economic zone of
8 any nation that result in bycatch of a protected
9 living marine resource; or

10 “(B) beyond the exclusive economic zone of
11 the United States that result in bycatch of a
12 protected living marine resource shared by the
13 United States;

14 “(2) the relevant international organization for
15 the conservation and protection of such resources or
16 the relevant international or regional fishery organi-
17 zation has failed to implement effective measures to
18 end or reduce such bycatch, or the nation is not a
19 party to, or does not maintain cooperating status
20 with, such organization; and

21 “(3) the nation has not adopted a regulatory
22 program governing such fishing practices designed
23 to end or reduce such bycatch that is comparable to
24 that of the United States, taking into account dif-
25 ferent conditions.

1 “(b) CONSULTATION AND NEGOTIATION.—The Sec-
2 retary, acting through the Secretary of State, shall—

3 “(1) notify, as soon as possible, other nations
4 whose vessels engage in fishing activities or practices
5 described in subsection (a), about the provisions of
6 this section and this Act;

7 “(2) initiate discussions as soon as possible
8 with all foreign governments which are engaged in,
9 or which have persons or companies engaged in,
10 fishing activities or practices described in subsection
11 (a), for the purpose of entering into bilateral and
12 multilateral treaties with such countries to protect
13 such species;

14 “(3) seek agreements calling for international
15 restrictions on fishing activities or practices de-
16 scribed in subsection (a) through the United Na-
17 tions, the Food and Agriculture Organization’s Com-
18 mittee on Fisheries, and appropriate international
19 fishery management bodies; and

20 “(4) initiate the amendment of any existing
21 international treaty for the protection and conserva-
22 tion of such species to which the United States is a
23 party in order to make such treaty consistent with
24 the purposes and policies of this section.

25 “(c) CONSERVATION CERTIFICATION PROCEDURE.—

1 “(1) CERTIFICATION.—The Secretary shall de-
2 termine, on the basis of a procedure consistent with
3 the provisions of subchapter II of chapter 5 of title
4 5, United States Code, and including notice and an
5 opportunity for comment by the governments of any
6 nation identified by the Secretary under subsection
7 (a). The Secretary shall certify to the Congress by
8 January 31, 2007, and biennially thereafter whether
9 the government of each harvesting nation—

10 “(A) has provided documentary evidence of
11 the adoption of a regulatory program governing
12 the conservation of the protected living marine
13 resource that is comparable to that of the
14 United States, taking into account different
15 conditions, and which, in the case of pelagic
16 longline fishing, includes mandatory use of cir-
17 cle hooks, careful handling and release equip-
18 ment, and training and observer programs; and

19 “(B) has established a management plan
20 containing requirements that will assist in gath-
21 ering species-specific data to support inter-
22 national stock assessments and conservation en-
23 forcement efforts for protected living marine re-
24 sources.

1 “(2) ALTERNATIVE PROCEDURE.—The Sec-
2 retary shall establish a procedure for certification,
3 on a shipment-by-shipment, shipper-by-shipper, or
4 other basis of fish or fish products from a vessel of
5 a harvesting nation not certified under paragraph
6 (1) if the Secretary determines that such imports
7 were harvested by practices that do not result in by-
8 catch of a protected marine species, or were har-
9 vested by practices that—

10 “(A) are comparable to those of the United
11 States, taking into account different conditions,
12 and which, in the case of pelagic longline fish-
13 ing, includes mandatory use of circle hooks,
14 careful handling and release equipment, and
15 training and observer programs; and

16 “(B) include the gathering of species spe-
17 cific data that can be used to support inter-
18 national and regional stock assessments and
19 conservation efforts for protected living marine
20 resources.

21 “(3) EFFECT OF CERTIFICATION.—The provi-
22 sions of section 101(a) and section 101(b)(3) and
23 (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and
24 (b)(4)) (except to the extent that such provisions
25 apply to sport fishing equipment or fish or fish prod-

1 ucts not caught by the vessels engaged in illegal, un-
2 reported, or unregulated fishing) shall apply to any
3 nation identified under subsection (a) that has not
4 been certified by the Secretary under this sub-
5 section, or for which the Secretary has issued a neg-
6 ative certification under this subsection, but shall
7 not apply to any nation identified under subsection
8 (a) for which the Secretary has issued a positive cer-
9 tification under this subsection.

10 “(d) INTERNATIONAL COOPERATION AND ASSIST-
11 ANCE.—To the greatest extent possible consistent with ex-
12 isting authority and the availability of funds, the Secretary
13 shall—

14 “(1) provide appropriate assistance to nations
15 identified by the Secretary under subsection (a) and
16 international organizations of which those nations
17 are members to assist those nations in qualifying for
18 certification under subsection (c);

19 “(2) undertake, where appropriate, cooperative
20 research activities on species statistics and improved
21 harvesting techniques, with those nations or organi-
22 zations;

23 “(3) encourage and facilitate the transfer of ap-
24 propriate technology to those nations or organiza-

1 tions to assist those nations in qualifying for certifi-
2 cation under subsection (c); and

3 “(4) provide assistance to those nations or or-
4 ganizations in designing and implementing appro-
5 priate fish harvesting plans.

6 “(e) PROTECTED LIVING MARINE RESOURCE DE-
7 FINED.—In this section the term ‘protected living marine
8 resource’—

9 “(1) means non-target fish, sea turtles, or ma-
10 rine mammals, that are protected under United
11 States law or international agreement, including the
12 Marine Mammal Protection Act of 1972, the Endan-
13 gered Species Act of 1973, provisions enacted by the
14 Shark Finning Prohibition Act, and the Convention
15 on International Trade in Endangered Species of
16 Wild Flora and Fauna; but

17 “(2) does not include species, except sharks,
18 managed under the Magnuson-Stevens Fishery Con-
19 servation and Management Act, the Atlantic Tunas
20 Convention Act, or any international fishery man-
21 agement agreement.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) DENIAL OF PORT PRIVILEGES.—Section
24 101(b) of the High Seas Driftnet Fisheries Enforce-
25 ment Act (16 U.S.C. 1826a(b)) is amended by in-

1 are adequate to monitor the harvest,
2 bycatch, and compliance with the laws
3 of the United States by foreign fish-
4 ing vessels that fish under Pacific In-
5 sular Area fishing agreements;”.

6 **SEC. 105. REAUTHORIZATION OF ATLANTIC TUNAS CON-**
7 **VENTION ACT.**

8 (a) IN GENERAL.—Section 10 of the Atlantic Tunas
9 Convention Act of 1975 (16 U.S.C. 971h) is amended to
10 read as follows:

11 **“SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

12 “(a) IN GENERAL.—There are authorized to be ap-
13 propriated to the Secretary to carry out this Act, including
14 use for payment of the United States share of the joint
15 expenses of the Commission as provided in Article X of
16 the Convention \$5,495,000 for each of the fiscal years
17 2007 through 2012.

18 “(b) ALLOCATION.—Of the amounts made available
19 under subsection (a) for each fiscal year—

20 “(1) \$150,000 are authorized for the advisory
21 committee established under section 4 of this Act
22 and the species working groups established under
23 section 4A of this Act; and

24 “(2) \$4,240,000 are authorized for research ac-
25 tivities under this Act and section 3 of Public Law

1 96–339 (16 U.S.C. 971i), of which \$3,000,000 shall
2 be for the cooperative research program under sec-
3 tion 3(b)(2)(H) of that section (16 U.S.C.
4 971i(b)(2)(H)).”.

5 (b) ATLANTIC BILLFISH COOPERATIVE RESEARCH
6 PROGRAM.—Section 3(b)(2) of Public Law 96–339 (16
7 U.S.C. 971i(b)(2)) is amended—

8 (1) by striking “and” after the semicolon in
9 subparagraph (G);

10 (2) by redesignating subparagraph (H) as sub-
11 paragraph (I); and

12 (3) by inserting after subparagraph (G) the fol-
13 lowing:

14 “(H) include a cooperative research pro-
15 gram on Atlantic billfish based on the South-
16 east Fisheries Science Center Atlantic Billfish
17 Research Plan of 2002; and”.

18 **SEC. 106. INTERNATIONAL OVERFISHING AND DOMESTIC**
19 **EQUITY.**

20 (a) INTERNATIONAL OVERFISHING.—Section 304
21 (16 U.S.C. 1854) is amended by adding at the end thereof
22 the following:

23 “(i) INTERNATIONAL OVERFISHING.—The provisions
24 of this subsection shall apply in lieu of subsection (e) to
25 a fishery that the Secretary determines is overfished or

1 approaching a condition of being overfished due to exces-
2 sive international fishing pressure, and for which there are
3 no management measures to end overfishing under an
4 international agreement to which the United States is a
5 party. For such fisheries—

6 “(1) the Secretary, in cooperation with the Sec-
7 retary of State, immediately take appropriate action
8 at the international level to end the overfishing; and

9 “(2) within 1 year after the Secretary’s deter-
10 mination, the appropriate Council, or Secretary, for
11 fisheries under section 302(a)(3) shall—

12 “(A) develop recommendations for domes-
13 tic regulations to address the relative impact of
14 fishing vessels of the United States on the stock
15 and, if developed by a Council, the Council shall
16 submit such recommendations to the Secretary;
17 and

18 “(B) develop and submit recommendations
19 to the Secretary of State, and to the Congress,
20 for international actions that will end over-
21 fishing in the fishery and rebuild the affected
22 stocks, taking into account the relative impact
23 of vessels of other nations and vessels of the
24 United States on the relevant stock.”.

1 (b) HIGHLY MIGRATORY SPECIES TAGGING RE-
2 SEARCH.—Section 304(g)(2) (16 U.S.C. 1854(g)(2)) is
3 amended by striking “(16 U.S.C. 971d)” and inserting
4 “(16 U.S.C. 971d), or highly migratory species harvested
5 in a commercial fishery managed by a Council under this
6 Act or the Western and Central Pacific Fisheries Conven-
7 tion Implementation Act,”.

8 **SEC. 107. UNITED STATES CATCH HISTORY.**

9 In establishing catch allocations under international
10 fisheries agreements, the Secretary of Commerce, in con-
11 sultation with the Secretary of the Department in which
12 the Coast Guard is operating, and the Secretary of State,
13 shall ensure that all catch history in a fishery associated
14 with a vessel of the United States remains with the United
15 States in that fishery, and is not transferred or credited
16 to any other nation or vessel of such nation, including
17 when a vessel of the United States is sold or transferred
18 to a citizen of another nation or to an entity controlled
19 by citizens of another nation.

20 **SEC. 108. SECRETARIAL REPRESENTATIVE FOR INTER-**
21 **NATIONAL FISHERIES.**

22 (a) IN GENERAL.—The Secretary of Commerce, in
23 consultation with the Under Secretary of Commerce for
24 Oceans and Atmosphere, shall designate a Senate-con-
25 firmed, senior official within the National Oceanic and At-

1 mospheric Administration to perform the duties of the
2 Secretary with respect to international agreements involv-
3 ing fisheries and other living marine resources, including
4 policy development and representation as a U.S. Commis-
5 sioner, under any such international agreements.

6 (b) ADVICE.—The designated official shall, in con-
7 sultation with the Deputy Assistant Secretary for Inter-
8 national Affairs and the Administrator of the National
9 Marine Fisheries Service, advise the Secretary, Undersec-
10 retary of Commerce for Oceans and Atmosphere, and
11 other senior officials of the Department of Commerce and
12 the National Oceanic and Atmospheric Administration on
13 development of policy on international fisheries conserva-
14 tion and management matters.

15 (c) CONSULTATION.—The designated official shall
16 consult with the Senate Committee on Commerce, Science,
17 and Transportation and the House Committee on Re-
18 sources on matters pertaining to any regional or inter-
19 national negotiation concerning living marine resources,
20 including shellfish, including before initialing any agree-
21 ment concerning living marine resources or attending any
22 official meeting at which management measures will be
23 discussed, and shall otherwise keep the committees in-
24 formed throughout the negotiation process.

1 (d) DELEGATION.—The designated official may dele-
2 gate and authorize successive re-delegation of such func-
3 tions, powers, and duties to such officers and employees
4 of the National Oceanic and Atmospheric Administration
5 as deemed necessary to discharge the responsibility of the
6 Office.

7 **TITLE II—IMPLEMENTATION OF**
8 **WESTERN AND CENTRAL PA-**
9 **CIFIC FISHERIES CONVEN-**
10 **TION**

11 **SEC. 201. SHORT TITLE.**

12 This title may be cited as the “Western and Central
13 Pacific Fisheries Convention Implementation Act”.

14 **SEC. 202. DEFINITIONS.**

15 In this title:

16 (1) 1982 CONVENTION.—The term “1982 Con-
17 vention” means the United Nations Convention on
18 the Law of the Sea of 10 December 1982.

19 (2) AGREEMENT.—The term “Agreement”
20 means the Agreement for the Implementation of the
21 Provisions of the United Nations Convention on the
22 Law of the Sea of 10 December 1982 relating to the
23 Conservation and Management of Straddling Fish
24 Stocks and Highly Migratory Fish Stocks.

1 (3) COMMISSION.—The term “Commission”
2 means the Commission for the Conservation and
3 Management of Highly Migratory Fish Stocks in the
4 Western and Central Pacific Ocean established in
5 accordance with this Convention.

6 (4) CONVENTION AREA.—The term “convention
7 area” means all waters of the Pacific Ocean bounded
8 to the south and to the east by the following line:

9 From the south coast of Australia due south
10 along the 141th meridian of east longitude to its
11 intersection with the 55th parallel of south latitude;
12 thence due east along the 55th parallel of south lati-
13 tude to its intersection with the 150th meridian of
14 east longitude; thence due south along the 150th
15 meridian of east longitude to its intersection with
16 the 60th parallel of south latitude; thence due east
17 along the 60th parallel of south latitude to its inter-
18 section with the 130th meridian of west longitude;
19 thence due north along the 130th meridian of west
20 longitude to its intersection with the 4th parallel of
21 south latitude; thence due west along the 4th par-
22 allel of south latitude to its intersection with the
23 150th meridian of west longitude; thence due north
24 along the 150th meridian of west longitude.

1 (5) EXCLUSIVE ECONOMIC ZONE.—The term
2 “exclusive economic zone” means the zone estab-
3 lished by Presidential Proclamation Numbered 5030
4 of March 10, 1983.

5 (6) FISHING.—The term “fishing” means:

6 (A) searching for, catching, taking, or har-
7 vesting fish.

8 (B) attempting to search for, catch, take,
9 or harvest fish.

10 (C) engaging in any other activity which
11 can reasonably be expected to result in the lo-
12 cating, catching, taking, or harvesting of fish
13 for any purpose.

14 (D) placing, searching for, or recovering
15 fish aggregating devices or associated electronic
16 equipment such as radio beacons.

17 (E) any operations at sea directly in sup-
18 port of, or in preparation for, any activity de-
19 scribed in subparagraphs (A) through (D), in-
20 cluding transshipment.

21 (F) use of any other vessel, vehicle, air-
22 craft, or hovercraft, for any activity described
23 in subparagraphs (A) through (E) except for
24 emergencies involving the health and safety of
25 the crew or the safety of a vessel.

1 (7) FISHING VESSEL.—The term “fishing ves-
2 sel” means any vessel used or intended for use for
3 the purpose of fishing, including support ships, car-
4 rier vessels, and any other vessel directly involved in
5 such fishing operations.

6 (8) HIGHLY MIGRATORY FISH STOCKS.—The
7 term “highly migratory fish stocks” means all fish
8 stocks of the species listed in Annex 1 of the 1982
9 Convention occurring in the Convention Area, and
10 such other species of fish as the Commission may
11 determine.

12 (9) SECRETARY.—The term “Secretary” means
13 the Secretary of Commerce.

14 (10) STATE.—The term “State” means each of
15 the several States of the United States, the District
16 of Columbia, the Commonwealth of the Northern
17 Mariana Islands, American Samoa, Guam, and any
18 other commonwealth, territory, or possession of the
19 United States.

20 (11) TRANSHIPMENT.—The term “trans-
21 shipment” means the unloading of all or any of the
22 fish on board a fishing vessel to another fishing ves-
23 sel either at sea or in port.

24 (12) WCPCF CONVENTION; WESTERN AND
25 CENTRAL PACIFIC CONVENTION.—The terms

1 “WCPCF Convention” and “Western and Central
2 Pacific Convention” means the Convention on the
3 Conservation and Management of the Highly Migra-
4 tory Fish Stocks in the Western and Central Pacific
5 Ocean, with Annexes, which was adopted at Hono-
6 lulu, Hawaii, on September 5, 2000, by the Multilat-
7 eral High Level Conference on the Highly Migratory
8 Fish Stocks in the Western and Central Pacific
9 Ocean.

10 **SEC. 203. APPOINTMENT OF UNITED STATES COMMIS-**
11 **SIONERS.**

12 (a) IN GENERAL.—The United States shall be rep-
13 resented on the Commission by 5 United States Commis-
14 sioners. The President shall appoint individuals to serve
15 on the Commission at the pleasure of the President. In
16 making the appointments, the President shall select Com-
17 missioners from among individuals who are knowledgeable
18 or experienced concerning highly migratory fish stocks in
19 the Western and Central Pacific Ocean, one of whom shall
20 be an officer or employee of the Department of Commerce,
21 and one of whom shall be a member of either the Pacific
22 Fishery Management Council or Western Pacific Fishery
23 Management Council. Each appointment shall coordinate
24 with the other Council to ensure that the jurisdictional
25 concerns of both Councils are addressed. The Commis-

1 sioners shall be entitled to adopt such rules of procedures
2 as they find necessary and to select a chairman from
3 among members who are officers or employees of the
4 United States Government.

5 (b) ALTERNATE COMMISSIONERS.—The Secretary of
6 State, in consultation with the Secretary, may designate
7 from time to time and for periods of time deemed appro-
8 priate Alternate United States Commissioners to the Com-
9 mission. Any Alternate United States Commissioner may
10 exercise at any meeting of the Commission, Council, any
11 Panel, or the advisory committee established pursuant to
12 subsection (d), all powers and duties of a United States
13 Commissioner in the absence of any Commissioner ap-
14 pointed pursuant to subsection (a) of this section for what-
15 ever reason. The number of such Alternate United States
16 Commissioners that may be designated for any such meet-
17 ing shall be limited to the number of United States Com-
18 missioners appointed pursuant to subsection (a) of this
19 section who will not be present at such meeting.

20 (c) ADMINISTRATIVE MATTERS.—

21 (1) EMPLOYMENT STATUS.—Individuals serving
22 as such Commissioners, other than officers or em-
23 ployees of the United States Government, shall be
24 considered to be Federal employees while performing
25 such service, only for purposes of—

1 (A) injury compensation under chapter 81
2 of title 5, United States Code;

3 (B) tort claims liability as provided under
4 chapter 171 of title 28 United States Code;

5 (C) requirements concerning ethics, con-
6 flicts of interest, and corruption as provided
7 under title 18, United States Code; and

8 (D) any other criminal or civil statute or
9 regulation governing the conduct of Federal em-
10 ployees.

11 (2) COMPENSATION.—The United States Com-
12 missioners or Alternate Commissioners, although of-
13 ficers of the United States while so serving, shall re-
14 ceive no compensation for their services as such
15 Commissioners or Alternate Commissioners.

16 (3) TRAVEL EXPENSES.—

17 (A) The Secretary of State shall pay the
18 necessary travel expenses of United States
19 Commissioners and Alternate United States
20 Commissioners in accordance with the Federal
21 Travel Regulations and sections 5701, 5702,
22 5704 through 5708, and 5731 of title 5, United
23 States Code.

24 (B) The Secretary of Commerce may reim-
25 burse the Secretary of State for amounts ex-

1 pended by the Secretary of State under this
2 subsection.

3 (d) ADVISORY COMMITTEES.—

4 (1) ESTABLISHMENT OF PERMANENT ADVISORY
5 COMMITTEE.—

6 (A) MEMBERSHIP.—There is established
7 an advisory committee that shall be composed
8 of—

9 (i) not less than 15 nor more than 20
10 individuals appointed by the United States
11 Commissioners appointed under section
12 203, who shall select such individuals from
13 the various groups concerned with the fish-
14 eries covered by the WCPFC Convention,
15 providing, to the maximum extent prac-
16 ticable, an equitable balance among such
17 groups;

18 (ii) the chairs of the Pacific Fishery
19 Management Council and the Western Pa-
20 cific Fishery Management Council's fishing
21 industry Advisory Committees or such a
22 chair's designee; and

23 (iii) officials of the fisheries manage-
24 ment authorities of American Samoa,

1 Guam, and the Northern Mariana Islands
2 (or their designees).

3 (B) TERMS AND PRIVILEGES.—Each mem-
4 ber of the advisory committee appointed under
5 subparagraph (A) shall serve for a term of 2
6 years and shall be eligible for reappointment.
7 Members of the advisory committee may attend
8 all public meetings of the Commission, Council,
9 or any Panel to which they are invited by the
10 Commission, Council, or any Panel. The advi-
11 sory committee shall be invited to attend all
12 non-executive meetings of the United States
13 Commissioners and at such meetings shall be
14 given opportunity to examine and to be heard
15 on all proposed programs of investigation, re-
16 ports, recommendations, and regulations of the
17 Commission.

18 (C) PROCEDURES.—The advisory com-
19 mittee established by subparagraph (A) shall
20 determine its organization, and prescribe its
21 practices and procedures for carrying out its
22 functions under this chapter, the Magnuson-
23 Stevens Fishery Conservation and Management
24 Act (16 U.S.C. 1801 et seq.), and the WCPFC
25 Convention. The advisory committee shall pub-

1 lish and make available to the public a state-
2 ment of its organization, practices, and proce-
3 dures. A majority of the members of the advi-
4 sory committee shall constitute a quorum.
5 Meetings of the advisory committee, except
6 when in executive session, shall be open to the
7 public, and prior notice of meetings shall be
8 made public in a timely fashion. and the advi-
9 sory committee shall not be subject to the Fed-
10 eral Advisory Committee Act (5 U.S.C. App.).

11 (D) PROVISION OF INFORMATION.—The
12 Secretary and the Secretary of State shall fur-
13 nish the advisory committee with relevant infor-
14 mation concerning fisheries and international
15 fishery agreements.

16 (2) ADMINISTRATIVE MATTERS.—

17 (A) SUPPORT SERVICES.—The Secretary
18 shall provide to advisory committees in a timely
19 manner such administrative and technical sup-
20 port services as are necessary for their effective
21 functioning.

22 (B) COMPENSATION; STATUS; EX-
23 PENSES.—Individuals appointed to serve as a
24 member of an advisory committee—

1 (i) shall serve without pay, but while
2 away from their homes or regular places of
3 business in the performance of services for
4 the advisory committee shall be allowed
5 travel expenses, including per diem in lieu
6 of subsistence, in the same manner as per-
7 sons employed intermittently in the Gov-
8 ernment service are allowed expenses under
9 section 5703 of title 5, United States
10 Code; and

11 (ii) shall not be considered Federal
12 employees by reason of their service as
13 members of an advisory committee, except
14 for purposes of injury compensation or tort
15 claims liability as provided in chapter 81 of
16 title 5, United States Code, and chapter
17 171 of title 28, United States Code.

18 (e) MEMORANDUM OF UNDERSTANDING.—For highly
19 migratory species in the Pacific, the Secretary, in coordi-
20 nation with the Secretary of State, shall develop a memo-
21 randum of understanding with the Western Pacific, Pa-
22 cific, and North Pacific Fishery Management Councils,
23 that specifies the role of the relevant Council or Councils
24 with respect to—

1 (1) participation in United States delegations to
2 international fishery organizations in the Pacific
3 Ocean, including government-to-government con-
4 sultations;

5 (2) providing formal recommendations to the
6 Secretary and the Secretary of State regarding nec-
7 essary measures for both domestic and foreign ves-
8 sels fishing for these species;

9 (3) coordinating positions with the United
10 States delegation for presentation to the appropriate
11 international fishery organization; and

12 (4) recommending those domestic fishing regu-
13 lations that are consistent with the actions of the
14 international fishery organization, for approval and
15 implementation under the Magnuson-Stevens Fish-
16 ery Conservation and Management Act (16 U.S.C.
17 1801 et seq.)

18 **SEC. 204. AUTHORITY AND RESPONSIBILITY OF THE SEC-**

19 **RETARY OF STATE.**

20 The Secretary of State may—

21 (1) receive and transmit, on behalf of the
22 United States, reports, requests, recommendations,
23 proposals, decisions, and other communications of
24 and to the Commission;

1 (2) in consultation with the Secretary of Com-
2 merce and the United States Commissioners, ap-
3 prove, disapprove, object to, or withdraw objections
4 to bylaws and rules, or amendments thereof, adopted
5 by the WCPFC Commission, and, with the concur-
6 rence of the Secretary of Commerce to approve or
7 disapprove the general annual program of the
8 WCPFC Commission with respect to conservation
9 and management measures and other measures pro-
10 posed or adopted in accordance with the WCPFC
11 Convention; and

12 (3) act upon, or refer to other appropriate au-
13 thority, any communication referred to in paragraph
14 (1).

15 **SEC. 205. RULEMAKING AUTHORITY OF THE SECRETARY OF**
16 **COMMERCE.**

17 (a) PROMULGATION OF REGULATIONS.—The Sec-
18 retary of Commerce, in consultation with the Secretary of
19 State and, with respect to enforcement measures, the Sec-
20 retary of the department in which the Coast Guard is op-
21 erating, is authorized to promulgate such regulations as
22 may be necessary to carry out the United States inter-
23 national obligations under the WCPFC Convention and
24 this title, including recommendations and decisions adopt-
25 ed by the Commission. In cases where the Secretary of

1 Commerce has discretion in the implementation of one or
2 more measures adopted by the Commission that would
3 govern fisheries under the authority of a Regional Fishery
4 Management Council, the Secretary may, to the extent
5 practicable within the implementation schedule of the
6 WCPFC Convention and any recommendations and deci-
7 sions adopted by the Commission, promulgate such regula-
8 tions in accordance with the procedures established by the
9 Magnuson-Stevens Fishery Conservation and Manage-
10 ment Act (16 U.S.C. 1801 et seq.).

11 (b) ADDITIONS TO FISHERY REGIMES AND REGULA-
12 TIONS.—The Secretary of Commerce may promulgate reg-
13 ulations under this title applicable to all vessels and per-
14 sons subject to the jurisdiction of the United States, in-
15 cluding United States flag vessels wherever they may be
16 operating, on such date as the Secretary shall prescribe.

17 **SEC. 206. ENFORCEMENT.**

18 (a) IN GENERAL.—The Secretary of Commerce
19 may—

20 (1) administer and enforce this title and any
21 regulations issued under this title, except to the ex-
22 tent otherwise provided for in this Act;

23 (2) request and utilize on a reimbursed or non-
24 reimbursed basis the assistance, services, personnel,

1 equipment, and facilities of other Federal depart-
2 ments and agencies in—

3 (A) the administration and enforcement of
4 this title; and

5 (B) the conduct of scientific, research, and
6 other programs under this title;

7 (3) conduct fishing operations and biological ex-
8 periments for purposes of scientific investigation or
9 other purposes necessary to implement the WCPFC
10 Convention;

11 (4) collect, utilize, and disclose such informa-
12 tion as may be necessary to implement the WCPFC
13 Convention, subject to sections 552 and 552a of title
14 5, United States Code, and section 402(b) of the
15 Magnuson-Stevens Fishery Conservation and Man-
16 agement Act (16 U.S.C. 1881a(b));

17 (5) if recommended by the United States Com-
18 missioners or proposed by a Council with authority
19 over the relevant fishery, assess and collect fees, not
20 to exceed three percent of the ex-vessel value of fish
21 harvested by vessels of the United States in fisheries
22 managed pursuant to this title, to recover the actual
23 costs to the United States of management and en-
24 forcement under this title, which shall be deposited
25 as an offsetting collection in, and credited to, the ac-

1 count providing appropriations to carry out the func-
2 tions of the Secretary under this title; and

3 (6) issue permits to owners and operators of
4 United States vessels to fish in the convention area
5 seaward of the United States Exclusive Economic
6 Zone, under such terms and conditions as the Sec-
7 retary may prescribe, and shall remain valid for a
8 period to be determined by the Secretary.

9 (b) CONSISTENCY WITH OTHER LAWS.—The Sec-
10 retary shall ensure the consistency, to the extent prac-
11 ticable, of fishery management programs administered
12 under this Act, the Magnuson-Stevens Fishery Conserva-
13 tion and Management Act (16 U.S.C. 1801 et seq.), the
14 Tuna Conventions Act (16 U.S.C. 951 et seq.), the South
15 Pacific Tuna Act (16 U.S.C. 973 et seq.), section 401 of
16 Public Law 108–219 (16 U.S.C. 1821 note) (relating to
17 Pacific albacore tuna), and the Atlantic Tunas Convention
18 Act (16 U.S.C. 971).

19 (c) ACTIONS BY THE SECRETARY.—The Secretary
20 shall prevent any person from violating this title in the
21 same manner, by the same means, and with the same ju-
22 risdiction, powers, and duties as though all applicable
23 terms and provisions of the Magnuson-Stevens Fishery
24 Conservation and Management Act (16 U.S.C. 1857) were
25 incorporated into and made a part of this title. Any person

1 that violates any provision of this title is subject to the
2 penalties and entitled to the privileges and immunities
3 provided in the Magnuson-Stevens Fishery Conservation
4 and Management Act in the same manner, by the same
5 means, and with the same jurisdiction, power, and duties
6 as though all applicable terms and provisions of that Act
7 were incorporated into and made a part of this title.

8 (d) CONFIDENTIALITY.—

9 (1) IN GENERAL.—Any information submitted
10 to the Secretary in compliance with any requirement
11 under this Act shall be confidential and shall not be
12 disclosed, except—

13 (A) to Federal employees who are respon-
14 sible for administering, implementing, and en-
15 forcing this Act;

16 (B) to the Commission, in accordance with
17 requirements in the Convention and decisions of
18 the Commission, and, insofar as possible, in ac-
19 cordance with an agreement with the Commis-
20 sion that prevents public disclosure of the iden-
21 tity or business of any person;

22 (C) to State or Marine Fisheries Commis-
23 sion employees pursuant to an agreement with
24 the Secretary that prevents public disclosure of
25 the identity or business or any person;

1 (D) when required by court order; or

2 (E) when the Secretary has obtained writ-
3 ten authorization from the person submitting
4 such information to release such information to
5 persons for reasons not otherwise provided for
6 in this subsection, and such release does not
7 violate other requirements of this Act.

8 (2) USE OF INFORMATION.—The Secretary
9 shall, by regulation, prescribe such procedures as
10 may be necessary to preserve the confidentiality of
11 information submitted in compliance with any re-
12 quirement or regulation under this Act, except that
13 the Secretary may release or make public any such
14 information in any aggregate or summary form that
15 does not directly or indirectly disclose the identity or
16 business of any person. Nothing in this subsection
17 shall be interpreted or construed to prevent the use
18 for conservation and management purposes by the
19 Secretary of any information submitted in compli-
20 ance with any requirement or regulation under this
21 Act.

22 **SEC. 207. PROHIBITED ACTS.**

23 (a) IN GENERAL.—It is unlawful for any person—

24 (1) to violate any provision of this title or any
25 regulation or permit issued pursuant to this title;

1 (2) to use any fishing vessel to engage in fish-
2 ing after the revocation, or during the period of sus-
3 pension, or an applicable permit issued pursuant to
4 this title;

5 (3) to refuse to permit any officer authorized to
6 enforce the provisions of this title to board a fishing
7 vessel subject to such person's control for the pur-
8 poses of conducting any search, investigation, or in-
9 spection in connection with the enforcement of this
10 title or any regulation, permit, or the Convention;

11 (4) to forcibly assault, resist, oppose, impede,
12 intimidate, or interfere with any such authorized of-
13 ficer in the conduct of any search, investigations, or
14 inspection in connection with the enforcement of this
15 title or any regulation, permit, or the Convention;

16 (5) to resist a lawful arrest for any act prohib-
17 ited by this title;

18 (6) to ship, transport, offer for sale, sell, pur-
19 chase, import, export, or have custody, control, or
20 possession of, any fish taken or retained in violation
21 of this title or any regulation, permit, or agreement
22 referred to in paragraph (1) or (2);

23 (7) to interfere with, delay, or prevent, by any
24 means, the apprehension or arrest of another person,

1 knowing that such other person has committed any
2 chapter prohibited by this section;

3 (8) to knowingly and willfully submit to the
4 Secretary false information (including false informa-
5 tion regarding the capacity and extent to which a
6 United States fish processor, on an annual basis,
7 will process a portion of the optimum yield of a fish-
8 ery that will be harvested by fishery vessels of the
9 United States), regarding any matter that the Sec-
10 retary is considering in the course of carrying out
11 this title;

12 (9) to forcibly assault, resist, oppose, impede,
13 intimidate, sexually harass, bribe, or interfere with
14 any observer on a vessel under this title, or any
15 data collector employed by the National Marine
16 Fisheries Service or under contract to any person to
17 carry out responsibilities under this title;

18 (10) to engage in fishing in violation of any
19 regulation adopted pursuant to section 206(a) of
20 this title;

21 (11) to ship, transport, purchase, sell, offer for
22 sale, import, export, or have in custody, possession,
23 or control any fish taken or retained in violation of
24 such regulations;

1 (12) to fail to make, keep, or furnish any catch
2 returns, statistical records, or other reports as are
3 required by regulations adopted pursuant to this
4 title to be made, kept, or furnished;

5 (13) to fail to stop a vessel upon being hailed
6 and instructed to stop by a duly authorized official
7 of the United States;

8 (14) to import, in violation of any regulation
9 adopted pursuant to section 206(a) of this title, any
10 fish in any form of those species subject to regula-
11 tion pursuant to a recommendation, resolution, or
12 decision of the Commission, or any tuna in any form
13 not under regulation but under investigation by the
14 Commission, during the period such fish have been
15 denied entry in accordance with the provisions of
16 section 206(a) of this title.

17 (b) ENTRY CERTIFICATION.—In the case of any fish
18 described in subsection (a) offered for entry into the
19 United States, the Secretary of Commerce shall require
20 proof satisfactory to the Secretary that such fish is not
21 ineligible for such entry under the terms of section 206(a)
22 of this title.

23 **SEC. 208. COOPERATION IN CARRYING OUT CONVENTION.**

24 (a) FEDERAL AND STATE AGENCIES; PRIVATE INSTI-
25 TUTIONS AND ORGANIZATIONS.—The Secretary of Com-

1 merce may cooperate with agencies of the United States
2 government, any public or private institutions or organiza-
3 tions within the United States or abroad, and, through
4 the Secretary of State, the duly authorized officials of the
5 government of any party to the WCPFC Convention, in
6 carrying out responsibilities under this title.

7 (b) SCIENTIFIC AND OTHER PROGRAMS; FACILITIES
8 AND PERSONNEL.—All Federal agencies are authorized,
9 upon the request of the Secretary of Commerce, to cooper-
10 ate in the conduct of scientific and other programs and
11 to furnish facilities and personnel for the purpose of as-
12 sisting the Commission in carrying out its duties under
13 the WCPFC Convention.

14 (c) SANCTIONED FISHING OPERATIONS AND FISH-
15 ERIES EXPERIMENTS.—Nothing in this title, or in the
16 laws or regulations of any State, prevents the Secretary
17 or the Commission from—

18 (1) conducting or authorizing the conduct of
19 fishing operations and fisheries experiments at any
20 time for purposes of scientific investigation; or

21 (2) discharging any other duties prescribed by
22 the WCPFC Convention.

23 (d) STATE JURISDICTION NOT AFFECTED.—Except
24 as provided in subsection (e) of this section, nothing in
25 this title shall be construed to diminish or to increase the

1 jurisdiction of any State in the territorial sea of the
2 United States.

3 (e) APPLICATION OF REGULATIONS.—

4 (1) IN GENERAL.—regulations promulgated
5 under section 206(a) of this title shall apply within
6 the boundaries of any State bordering on the Con-
7 vention area if the Secretary has provided notice to
8 such State, the State does not request an agency
9 hearing, and the Secretary determines that the
10 State—

11 (A) has not, within a reasonable period of
12 time after the promulgation of regulations pur-
13 suant to this title, enacted laws or promulgated
14 regulations that implement the recommenda-
15 tions of the Commission within the boundaries
16 of such State; or

17 (B) has enacted laws or promulgated regu-
18 lations that implement the recommendations of
19 the commission within the boundaries of such
20 State that—

21 (i) are less restrictive than the regula-
22 tions promulgated under section 206(a) of
23 this title; or

24 (ii) are not effectively enforced.

1 (2) DETERMINATION BY SECRETARY.—The reg-
2 ulations promulgated pursuant to section 206(a) of
3 this title shall apply until the Secretary determines
4 that the State is effectively enforcing within its
5 boundaries measures that are not less restrictive
6 than the regulations promulgated under section
7 206(a) of this title.

8 (3) HEARING.—If a State requests a formal
9 agency hearing, the Secretary shall not apply the
10 regulations promulgated pursuant section 206(a) of
11 this title within that State’s boundaries unless the
12 hearing record supports a determination under para-
13 graph (1)(A) or (B).

14 (f) REVIEW OF STATE LAWS AND REGULATIONS.—
15 To ensure that the purposes of subsection (e) are carried
16 out, the Secretary of Commerce shall undertake a con-
17 tinuing review of the laws and regulations of all States
18 to which subsection (e) applies or may apply and the ex-
19 tent to which such laws and regulations are enforced.

20 **SEC. 209. TERRITORIAL PARTICIPATION.**

21 The Secretary of State shall ensure participation in
22 the Commission and its subsidiary bodies by American
23 Samoa, Guam, and the Northern Mariana Islands to the
24 same extent provided to the territories of other nations.

1 **SEC. 210. EXCLUSIVE ECONOMIC ZONE NOTIFICATION.**

2 Masters of commercial fishing vessels of nations fish-
3 ing for species under the management authority of the
4 Western and Central Pacific Fisheries Convention that do
5 not carry vessel monitoring systems capable of commu-
6 nicating with United States enforcement authorities shall,
7 prior to, or as soon as reasonably possible after, entering
8 and transiting the Exclusive Economic Zone seaward of
9 Hawaii and of the Commonwealths, territories, and pos-
10 sessions of the United States in the Pacific Ocean area—

11 (1) notify the Coast Guard or the National Ma-
12 rine Fisheries Service Office of Law Enforcement in
13 the appropriate region of the name, flag state, loca-
14 tion, route, and destination of the vessel and of the
15 circumstances under which it will enter United
16 States waters;

17 (2) ensure that all fishing gear on board the
18 vessel is stowed below deck or otherwise removed
19 from the place where it is normally used for fishing
20 and placed where it is not readily available for fish-
21 ing; and

22 (3) if requested by an enforcement officer, pro-
23 ceed to a specified location so that a vessel inspec-
24 tion can be conducted.

1 **SEC. 211. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated to the Sec-
3 retary of Commerce \$1,000,000 for each of the fiscal
4 years 2007 through 2012 to carry out this title and to
5 pay the United States' contribution to the Commission
6 under section 5 of part III of the WCPFC Convention.

7 **TITLE III—PACIFIC WHITING**

8 **SEC. 301. SHORT TITLE.**

9 This title may be cited as the “Pacific Whiting Act
10 of 2006”.

11 **SEC. 302. DEFINITIONS.**

12 In this title:

13 (1) **ADVISORY PANEL.**—The term “advisory
14 panel” means the Advisory Panel on Pacific Hake/
15 Whiting established by the Agreement.

16 (2) **AGREEMENT.**—The term “Agreement”
17 means the Agreement between the Government of
18 the United States and the Government of Canada on
19 Pacific Hake/Whiting, signed at Seattle, Wash-
20 ington, on November 21, 2003.

21 (3) **CATCH.**—The term “catch” means all fish-
22 ery removals from the offshore whiting resource, in-
23 cluding landings, discards, and bycatch in other fish-
24 eries.

25 (4) **JOINT MANAGEMENT COMMITTEE.**—The
26 term “joint management committee” means the

1 joint management committee established by the
2 Agreement.

3 (5) JOINT TECHNICAL COMMITTEE.—The term
4 “joint technical committee” means the joint tech-
5 nical committee established by the Agreement.

6 (6) OFFSHORE WHITING RESOURCE.—The term
7 “offshore whiting resource” means the
8 transboundary stock of *Merluccius productus* that is
9 located in the offshore waters of the United States
10 and Canada except in Puget Sound and the Strait
11 of Georgia.

12 (7) SCIENTIFIC REVIEW GROUP.—The term
13 “scientific review group” means the scientific review
14 group established by the Agreement.

15 (8) SECRETARY.—The term “Secretary” means
16 the Secretary of Commerce.

17 (9) UNITED STATES SECTION.—The term
18 “United States Section” means the United States
19 representatives on the joint management committee.

20 **SEC. 303. UNITED STATES REPRESENTATION ON JOINT**
21 **MANAGEMENT COMMITTEE.**

22 (a) REPRESENTATIVES.—

23 (1) IN GENERAL.—The Secretary, in consulta-
24 tion with the Secretary of State, shall appoint 4 in-
25 dividuals to represent the United States as the

1 United States Section on the joint management com-
2 mittee. In making the appointments, the Secretary
3 shall select representatives from among individuals
4 who are knowledgeable or experienced concerning
5 the offshore whiting resource. Of these—

6 (A) 1 shall be an official of the National
7 Oceanic and Atmospheric Administration;

8 (B) 1 shall be a member of the Pacific
9 Fishery Management Council, appointed with
10 consideration given to any recommendation pro-
11 vided by that Council;

12 (C) 1 shall be appointed from a list sub-
13 mitted by the treaty Indian tribes with treaty
14 fishing rights to the offshore whiting resource;
15 and

16 (D) 1 shall be appointed from the commer-
17 cial sector of the whiting fishing industry con-
18 cerned with the offshore whiting resource.

19 (2) TERM OF OFFICE.—Each representative ap-
20 pointed under paragraph (1) shall be appointed for
21 a term not to exceed 4 years, except that, of the ini-
22 tial appointments, 2 representatives shall be ap-
23 pointed for terms of 2 years. Any individual ap-
24 pointed to fill a vacancy occurring prior to the expi-
25 ration of the term of office of that individual's pred-

1 review group while serving on the joint technical com-
2 mittee.

3 (b) TERM.—An individual appointed under sub-
4 section (a) shall be appointed for a term of not to exceed
5 4 years, but shall be eligible for reappointment. An indi-
6 vidual appointed to fill a vacancy occurring prior to the
7 expiration of a term of office of that individual's prede-
8 cessor shall be appointed to serve for the remainder of that
9 term.

10 (c) JOINT APPOINTMENTS.—In addition to individ-
11 uals appointed under subsection (a), the Secretary, jointly
12 with the Government of Canada, may appoint to the sci-
13 entific review group, from a list of names provided by the
14 advisory panel —

15 (1) up to 2 independent members of the sci-
16 entific review group; and

17 (2) 2 public advisors.

18 **SEC. 305. UNITED STATES REPRESENTATION ON JOINT**

19 **TECHNICAL COMMITTEE.**

20 (a) SCIENTIFIC EXPERTS.—

21 (1) IN GENERAL.—The Secretary, in consulta-
22 tion with the Secretary of State, shall appoint at
23 least 6 but not more than 12 individuals to serve as
24 scientific experts on the joint technical committee, at

1 least 1 of whom shall be an official of the National
2 Oceanic and Atmospheric Administration.

3 (2) TERM OF OFFICE.—An individual appointed
4 under paragraph (1) shall be appointed for a term
5 of not to exceed 4 years, but shall be eligible for re-
6 appointment. An individual appointed to fill a va-
7 cancy occurring prior to the expiration of the term
8 of office of that individual's predecessor shall be ap-
9 pointed for the remainder of that term.

10 (b) INDEPENDENT MEMBER.—In addition to individ-
11 uals appointed under subsection (a), the Secretary, jointly
12 with the Government of Canada, shall appoint 1 inde-
13 pendent member to the joint technical committee selected
14 from a list of names provided by the advisory panel.

15 **SEC. 306. UNITED STATES REPRESENTATION ON ADVISORY**
16 **PANEL.**

17 (a) IN GENERAL.—

18 (1) APPOINTMENT.—The Secretary, in con-
19 sultation with the Secretary of State, shall appoint
20 at least 6 but not more than 12 individuals to serve
21 as members of the advisory panel, selected from
22 among individuals who are—

23 (A) knowledgeable or experienced in the
24 harvesting, processing, marketing, management,

1 conservation, or research of the offshore whiting
2 resource; and

3 (B) not employees of the United States.

4 (2) TERM OF OFFICE.—An individual appointed
5 under paragraph (1) shall be appointed for a term
6 of not to exceed 4 years, but shall be eligible for re-
7 appointment. An individual appointed to fill a va-
8 cancy occurring prior to the expiration of the term
9 of office of that individual's predecessor shall be ap-
10 pointed for the remainder of that term.

11 **SEC. 307. RESPONSIBILITIES OF THE SECRETARY.**

12 (a) IN GENERAL.—The Secretary is responsible for
13 carrying out the Agreement and this title, including the
14 authority, to be exercised in consultation with the Sec-
15 retary of State, to accept or reject, on behalf of the United
16 States, recommendations made by the joint management
17 committee.

18 (b) REGULATIONS; COOPERATION WITH CANADIAN
19 OFFICIALS.—In exercising responsibilities under this title,
20 the Secretary—

21 (1) may promulgate such regulations as may be
22 necessary to carry out the purposes and objectives of
23 the Agreement and this title; and

24 (2) with the concurrence of the Secretary of
25 State, may cooperate with officials of the Canadian

1 Government duly authorized to carry out the Agree-
2 ment.

3 **SEC. 308. RULEMAKING.**

4 (a) APPLICATION WITH MAGNUSON-STEVENSONS ACT.—

5 The Secretary shall establish the United States catch level
6 for Pacific whiting according to the standards and proce-
7 dures of the Agreement and this title rather than under
8 the standards and procedures of the Magnuson-Stevens
9 Fishery Conservation and Management Act (16 U.S.C.
10 1801 et seq.), except to the extent necessary to address
11 the rebuilding needs of other species. Except for estab-
12 lishing the catch level, all other aspects of Pacific whiting
13 management shall be—

14 (1) subject to the Magnuson-Stevens Fishery
15 Conservation and Management Act; and

16 (2) consistent with this title.

17 (b) JOINT MANAGEMENT COMMITTEE REC-

18 OMMENDATIONS.—For any year in which both parties to
19 the Agreement approve recommendations made by the
20 joint management committee with respect to the catch
21 level, the Secretary shall implement the approved rec-
22 ommendations. Any regulation promulgated by the Sec-
23 retary to implement any such recommendation shall apply,
24 as necessary, to all persons and all vessels subject to the
25 jurisdiction of the United States wherever located.

1 (c) YEARS WITH NO APPROVED CATCH REC-
2 OMMENDATIONS.—If the parties to the Agreement do not
3 approve the joint management committee’s recommenda-
4 tion with respect to the catch level for any year, the Sec-
5 retary shall establish the total allowable catch for Pacific
6 whiting for the United States catch. In establishing the
7 total allowable catch under this subsection, the Secretary
8 shall—

9 (1) take into account any recommendations
10 from the Pacific Fishery Management Council, the
11 joint management committee, the joint technical
12 committee, the scientific review group, and the advi-
13 sory panel;

14 (2) base the total allowable catch on the best
15 scientific information available;

16 (3) use the default harvest rate set out in para-
17 graph 1 of Article III of the Agreement unless the
18 Secretary determines that the scientific evidence
19 demonstrates that a different rate is necessary to
20 sustain the offshore whiting resource; and

21 (4) establish the United State’s share of the
22 total allowable catch based on paragraph 2 of Article
23 III of the Agreement and make any adjustments
24 necessary under section 5 of Article II of the Agree-
25 ment.

1 **SEC. 309. ADMINISTRATIVE MATTERS.**

2 (a) **EMPLOYMENT STATUS.**—Individuals serving as
3 such Commissioners, other than officers or employees of
4 the United States Government, shall be considered to be
5 Federal employees while performing such service, only for
6 purposes of—

7 (1) injury compensation under chapter 81 of
8 title 5, United States Code;

9 (2) tort claims liability as provided under chap-
10 ter 171 of title 28 United States Code;

11 (3) requirements concerning ethics, conflicts of
12 interest, and corruption as provided under title 18,
13 United States Code; and

14 (4) any other criminal or civil statute or regula-
15 tion governing the conduct of Federal employees.

16 (b) **COMPENSATION.**—

17 (1) **IN GENERAL.**—Except as provided in para-
18 graph (2), an individual appointed under this title
19 shall receive no compensation for the individual's
20 service as a representative, alternate representative,
21 scientific expert, or advisory panel member under
22 this title.

23 (2) **SCIENTIFIC REVIEW GROUP.**—Notwith-
24 standing paragraph (1), the Secretary may employ
25 and fix the compensation of an individual appointed
26 under section 304(a) to serve as a scientific expert

1 on the scientific review group who is not employed
2 by the United States government, a State govern-
3 ment, or an Indian tribal government in accordance
4 with section 3109 of title 5, United States Code.

5 (c) TRAVEL EXPENSES.—Except as provided in sub-
6 section (d), the Secretary shall pay the necessary travel
7 expenses of individuals appointed under this title in ac-
8 cordance with the Federal Travel Regulations and sections
9 5701, 5702, 5704 through 5708, and 5731 of title 5,
10 United States Code.

11 (d) JOINT APPOINTEES.—With respect to the 2 inde-
12 pendent members of the scientific review group and the
13 2 public advisors to the scientific review group jointly ap-
14 pointed under section 304(c), and the 1 independent mem-
15 ber to the joint technical committee jointly appointed
16 under section 305(b), the Secretary may pay up to 50 per-
17 cent of—

18 (1) any compensation paid to such individuals;

19 and

20 (2) the necessary travel expenses of such indi-
21 viduals.

22 **SEC. 310. ENFORCEMENT.**

23 (a) IN GENERAL.—The Secretary may—

24 (1) administer and enforce this title and any
25 regulations issued under this title;

1 (2) request and utilize on a reimbursed or non-
2 reimbursed basis the assistance, services, personnel,
3 equipment, and facilities of other Federal depart-
4 ments and agencies in the administration and en-
5 forcement of this title; and

6 (3) collect, utilize, and disclose such informa-
7 tion as may be necessary to implement the Agree-
8 ment and this title, subject to sections 552 and 552a
9 of title 5, United States Code.

10 (b) PROHIBITED ACTS.—It is unlawful for any per-
11 son to violate any provision of this title or the regulations
12 promulgated under this title.

13 (c) ACTIONS BY THE SECRETARY.—The Secretary
14 shall prevent any person from violating this title in the
15 same manner, by the same means, and with the same ju-
16 risdiction, powers, and duties as though all applicable
17 terms and provisions of the Magnuson-Stevens Fishery
18 Conservation and Management Act (16 U.S.C. 1857) were
19 incorporated into and made a part of this title. Any person
20 that violates any provision of this title is subject to the
21 penalties and entitled to the privileges and immunities
22 provided in the Magnuson-Stevens Fishery Conservation
23 and Management Act in the same manner, by the same
24 means, and with the same jurisdiction, power, and duties

1 as though all applicable terms and provisions of that Act
2 were incorporated into and made a part of this title.

3 (d) PENALTIES.—This title shall be enforced by the
4 Secretary as if a violation of this title or of any regulation
5 promulgated by the Secretary under this title were a viola-
6 tion of section 307 of the Magnuson-Stevens Fishery Con-
7 servation and Management Act (16 U.S.C. 1857).

8 **SEC. 311. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated to the Sec-
10 retary \$1,000,000 for each of the fiscal years 2007
11 through 2012 to carry out the obligations of the United
12 States under the Agreement and this title.

Passed the House of Representatives September 27,
2006.

Attest:

Clerk.

109TH CONGRESS
2^D SESSION

H. R. 5946

AN ACT

To amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes.