S. 1549

To improve the conservation and management of Pacific whiting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2005

Mr. SMITH introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To improve the conservation and management of Pacific whiting, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cooperative Hake Improvement and Conservation Act".

SEC. 2. FINDINGS, SENSE OF CONGRESS, PURPOSES, AND POLICY.

(a) FINDINGS.—Congress makes the following findings:
(1) The United States has an obligation to ensure that, to the extent practicable in accordance with applicable law, stocks of Pacific whiting are conserved and managed in a sustainable manner so as to prevent overfishing while providing economic opportunities for the United States fishing industry, including commercial fishermen and seafood processors, and coastal communities.

(2) The Pacific whiting fishery is uniquely suited to the establishment of a distinct market-based program due to the relatively small and easily identifiable numbers of fishermen and processors involved, and to the existence of a management system that clearly allocates harvest among discrete sectors of the fishery.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) a regional program of market-based incentives for management and conservation should be established in order to meet the obligation described in subsection (a)(1); and

(2) as actions taken to reduce excess capacity in fisheries may result in adverse impacts on fishermen, processors, and local coastal communities, any
such program should be designed, to the extent practicable, to avoid such impacts.

(e) PURPOSE.—The purpose of this Act is to facilitate the continued economic viability of the Pacific whiting fishery for the benefit of the United States through the establishment of a market-based cooperative system for the harvesting and processing of Pacific whiting.

(d) POLICY.—It is the policy of the United States to demonstrate the conservation and economic benefits of a market-based cooperative system by using the shore-based vessels and processors of the Pacific whiting in a fishery management program without disrupting other sectors of the whiting fishery or other fisheries.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGGREGATE CATCH.—The term "aggregate catch" means the total amount of Pacific whiting harvested and delivered on shore in California, Oregon, and Washington without further processing during the benchmark period during a year from 1994 through 2004, excluding any such Pacific whiting harvested pursuant to a treaty between the United States and a treaty tribe.

(2) AGGREGATE LANDED CATCH.—The term "aggregate landed catch" means the total amount of
Pacific whiting processed on shore in California, Oregon, and Washington during the benchmark period during a year from 1999 through 2004.

(3) BENCHMARK PERIOD.—The term “benchmark period” means for a year, the period from April 1 through September 30 of such year.

(4) CATCH.—The term “catch” means all fishery removals from the offshore whiting resource, including landings, discards, and bycatch in fisheries other than the Pacific whiting fishery.

(5) COOPERATIVE SHARE.—The term “cooperative share” means the percentage of allowable Pacific whiting harvest assigned to each qualified fisherman or qualified processor based on the formula established in section 4.

(6) COUNCIL.—The term “Council” means the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(F)).

(7) MAGNUSON-STEVELNS ACT.—The term “Magnuson-Stevens Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(8) OFFSHORE WHITING RESOURCE.—The term “offshore whiting resource” means the
transboundary stock of fish of the species Merluccius productus that—

(A) is located in the offshore waters of the United States and Canada; and

(B) does not include any fish of that species located in Puget Sound or the Strait of Georgia.

(9) ON-SHORE ALLOCATION.—The term “on-shore allocation” means that amount of the United States catch level required under a Plan to be delivered to processors located on shore in the States of California, Oregon, or Washington.

(10) PACIFIC COAST GROUNDFISH FISHERY MANAGEMENT PLAN.—The term “Pacific Coast Groundfish Fishery Management Plan” means the Pacific Coast Groundfish Fishery Management Plan and Environmental Impact Statement for the California, Oregon, and Washington groundfish fishery approved by the Secretary on January 4, 1982, and all subsequent approved amendments to that plan.

(11) PACIFIC GROUNDFISH.—The term “Pacific groundfish” means all species of fish included in the Pacific Coast Groundfish Fishery Management Plan.

(12) PACIFIC WHITING.—The term “Pacific whiting” means that portion of the harvest of the
offshore whiting resource that is under the jurisdiction of the United States.

(13) PLAN.—The term “Plan” means a fishery management plan prepared by the Council and approved by the Secretary under the Magnuson-Stevens Act.

(14) PERSON.—The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State).

(15) PROCESSING.—The term “processing” means the preparation or packaging of Pacific whiting to render it suitable for human consumption, retail sale, industrial uses, or long-term storage by cooking, filleting, freezing, conversion to fish protein compounds, mincing, or heading and gutting.

(16) PROCESSOR.—The term “processor” means a person that engages in processing of Pacific whiting harvested as part of an on-shore allocation.

(17) QUALIFIED FISHERMAN.—The term “qualified fisherman” means the current owner of a trawl-endorsed Pacific groundfish limited entry permit issued under regulations implementing the Pacific Coast Groundfish Fishery Management Plan.
which during any two years from 1994 through 2004 delivered not less than of 500 metric tons of Pacific whiting during each such year to a processor during the benchmark period.

(18) QUALIFIED PROCESSOR.—The term “qualified processor” means—

(A) a processor that operated in any year from 1999 through 2004, and processed at least 1,000,000 pounds of whiting during such year; or

(B) a successor in ownership of a processor described in subparagraph (A).

(19) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(20) SHAREHOLDER.—The term “share-holder” means the current owner of cooperative shares.

(21) TREATY TRIBE.—The term “treaty tribe” means any Indian tribe determined by the United States courts to have rights to harvest Pacific whiting within specified areas.

(22) UNITED STATES CATCH LEVEL.—The term “United States catch level” means that portion of the offshore whiting resource which may be harvested by persons subject to the jurisdiction of the United States.
SEC. 4. RATIONALIZATION OF THE PACIFIC WHITING FISHERY.

(a) IDENTIFICATION OF QUALIFIED PARTICIPANTS.—

(1) REQUIREMENT FOR PERMITS.—The Secretary shall issue a permit to—

(A) any person who demonstrates by appropriate records that such person is a qualified fisherman; and

(B) any person who demonstrates by appropriate records that such person is a qualified processor.

(2) LIMITATIONS.—Permits issued under this subsection will be clearly designated as qualified fisherman or qualified processor permits, are not interchangeable, and shall not confer ownership in any stock of fish over which the United States exercises sovereign jurisdiction.

(3) TRANSFER OF PERMITS.—Permits may be transferred through sale, lease, barter, gift, inheritance, or any other legal means. A permit which is transferred may not be redesignated and may only be used in accordance with this Act and any regulations issued pursuant to this Act.

(4) FEE.—The Secretary may charge a fee to issue a permit under this subsection which shall not
exceed the administrative costs incurred in issuing
the permit.

(5) ENDORSEMENT.—For the purposes of para-
graph (1)(A), the permit issued by the Secretary
shall be an appropriate permanent endorsement of a
Pacific groundfish trawl limited entry permit issued
under the Pacific Coast Groundfish Fishery Manage-
ment Plan.

(b) ALLOCATION OF RESOURCE.—Prior to March 1
of the calendar year following the issuance of final regu-
lations as required by section 6, the Secretary shall make
an initial allocation of cooperative shares as follows:

(1) Each qualified fisherman who currently
owns a Pacific groundfish trawl limited entry permit
issued under the Pacific Coast Groundfish Fishery
Management Plan that has been endorsed under
subsection (a) shall be assigned a percentage of co-
operative share using the following formula:

(A) For each permit, the amount of Pacific
whiting harvested by any vessel to which the
permit was assigned during the benchmark pe-
period in each of the years from 1994 through
2004 shall be divided by the aggregate catch for
each of those years.
(B) The 9 highest percentages shall be averaged and the result shall be considered the permit’s catch history.

(C) Each permit’s catch history shall be divided by the sum of all catch histories to determine the qualified fisherman’s cooperative share.

(2) Each qualified processor who has been issued a permit under subsection (a) shall be assigned a percentage of cooperative share using the following formula:

(A) For each qualified processor, the amount of Pacific whiting purchased by that processor during the benchmark period in each of the years from 1999 through 2004 shall be divided by the aggregate landed catch for each of those years.

(B) The 4 highest percentages shall be averaged and the result shall be considered the qualified processor’s processing history.

(C) Each qualified processor’s processing history shall be divided by the sum of all processing histories to determine the qualified processor’s cooperative share.
(3) The percentages assigned to qualifying fishermen shall be designated fishermen’s cooperative share and the percentages assigned to qualifying processors shall be designated processors’ cooperative share. Except as provided in subsection (d), cooperative shares may be transferred, in whole or in part, through sale, lease, barter, gift, inheritance or any other legal means but will retain their original designation.

(e) COOPERATIVE HARVEST OF PACIFIC WHITING.—

(1) In each calendar year, the on-shore allocation shall be divided so that—

(A) an amount sufficient to account for the incidental commercial or recreational catch of Pacific whiting in fisheries other than the Pacific whiting fishery, but not to exceed 1 percent of the on-shore allocation, shall be available for harvest by any person legally eligible to harvest Pacific whiting; and

(B) after subtracting the amounts described in subparagraph (A), 50 percent of the remainder shall be available for harvest using fishermen’s cooperative shares and 50 percent of the remainder shall be available for harvest using processors’ cooperative shares.
(2) At any time during a calendar year, a holder of fisherman's cooperative shares may enter into one or more agreements with holders of processor's cooperative shares to use all or a portion of those processors' cooperative shares. No Pacific whiting may be harvested using fishermen's cooperative shares or processors' cooperative shares without a registered agreement. Such an agreement shall not be valid if—

(A) it does not require the use of an equal amount of fishermen's cooperative shares and processors' cooperative shares; or

(B) it is not registered with the Secretary prior to the time the cooperative shares covered by the agreement are used to harvest Pacific whiting.

(d) Restrictions on Transfer.—Fishermen's cooperative shares may only be transferred to a person holding a Pacific groundfish trawl limited entry permit issued under the Pacific Coast Groundfish Fishery Management Plan.

(e) Contribution to Research and Management.—

(1) Fee.—In addition to any fee which may be collected under subsection (a), the Secretary is au-
thorized and shall collect a fee equally from share-
holders to recover the costs of carrying out this sec-
tion (including costs associated with carrying out ac-
tivities under section 5) and of conducting scientific
research on the offshore whiting resource.

(2) Determination of fee.—

(A) In general.—Each share-holder will
be liable for a fee up to 3 percent of the ex-ves-
sel value of the Pacific whiting that was har-
vested in a calendar year using fishermen’s co-
operative shares owned by that share-holder
and up to 3 percent of the ex-vessel value of the
Pacific whiting that was harvested in a calendar
year using processors’ cooperative shares owned
by that share-holder.

(B) Schedule of payment.—The fee re-
ferred to in subparagraph (A) shall be payable
not later than 30 days after the end of the cal-
endar year during which the Pacific whiting on
which the fee is imposed was harvested.

(3) Availability of fees.—Fees collected
under this subsection shall be available to the Sec-
retary without fiscal year limitation and may only be
used to carry out the Secretary’s obligations under
this Act, except as provided in paragraph (4).
(4) Use by States.—Upon application from
the States of Washington, Oregon, or California, the
Secretary may transfer up to 33 percent of the fees
collected under this subsection in any calendar year
to 1 or more of such States to offset costs incurred
by such States in the conservation and management
of Pacific whiting.

SEC. 5. CONSERVATION OF PACIFIC WHITING.

(a) Limits on Incidental Catch.—

(1) Recommendation of incidental catch
limitations.—The Council may recommend to the
Secretary appropriate amounts of any species of Pa-
cific groundfish, other than Pacific whiting, that
may be harvested incidentally to the harvest of Pa-
cific whiting under this Act and any other Act.

(2) Schedule for recommendations.—The
Council may make recommendations annually or in
such other time increment that facilitates conserva-
tion and management of the Pacific groundfish fish-
ery.

(3) Recommendations.—

(A) Basis for recommendations.—
Such recommendations shall be—

(i) based on the best scientific infor-
mation available;
(ii) reasonably calculated to promote conservation;

(iii) fair and equitable to holders of cooperative shares and others who harvest Pacific groundfish; and

(iv) to the extent practicable, designed to minimize the discard of Pacific whiting and other species of Pacific groundfish.

(4) CONSIDERATIONS.—The Council shall, in making such recommendations, consider the percentage of Pacific whiting available for harvest by holders of cooperative shares relative to the percentage of Pacific whiting available for harvest by others.

(5) USE OF FUNDS.—The amounts recommended under paragraph (1) shall include specific subamounts by species or species group which shall be available only to holders of cooperative shares and which may be transferred among holders of cooperative shares who are harvesting Pacific whiting under a valid agreement under section 4.

(6) PUBLICATION.—Not later than 45 days after receiving the recommendations of the Council, the Secretary shall publish a proposed rule which applies the aggregate limits to the Pacific whiting
fishery and allow 30 days for public comment before publishing a final rule.

(b) MONITORING.—The Secretary shall issue regulations providing for the statistically reliable monitoring of harvesting and processing of Pacific whiting to determine compliance with this Act and to collect necessary biological samples for the conservation and management of the Pacific whiting fishery and the offshore whiting resource.

c) ACTION BY THE COUNCIL.—

(1) RECOMMENDATIONS OF OTHER INCIDENTAL CATCH LIMITATIONS.—The Council may recommend amendments to the Pacific Coast Groundfish Fishery Management Plan which provide for limits on incidental catch of species other than Pacific whiting, monitoring of the Pacific whiting fishery, and a system allowing transfer of incidental catch amounts among persons harvesting Pacific whiting under a valid agreement under section 4. Amendments recommended under this paragraph shall meet the requirements of subsection (a)(3).

(2) ADDITIONAL REGULATIONS.—Regulations issued by the Secretary under subsections (a) or (b) shall be superseded by any regulations issued by the Secretary to implement Plan amendments recommended under paragraph (1).
(d) **Compliance With Environmental Standards.**—Amendments to the Pacific Coast Groundfish Fishery Management Plan and regulations implementing those amendments which are prepared in accordance with applicable provisions of the Magnuson-Stevens Act and regulations implementing this Act are deemed to have been prepared in compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

**SEC. 6. PROGRAM IMPLEMENTATION.**

(a) **Requirement.**—Not later than 6 months after the date of enactment of this Act, the Secretary shall issue final regulations to implement the program for Pacific whiting conservation and management described in this Act. In developing such regulations, the Secretary shall allow the Council the opportunity to propose draft regulations.

(b) **Plan Amendment.**—The Council may amend the appropriate Plan to conform with this Act or regulations issued under this Act. Failure of the Council to amend a Plan shall not delay the obligations of the Secretary under subsection (a).
1  SEC. 7. ENFORCEMENT AND PENALTIES.
2    (a) In General.—It is unlawful for any person to
3 violate any provision of this Act or any regulation issued
4 under this Act.
5    (b) Unlawful Harvest.—It is unlawful for any
6 person to harvest Pacific whiting using cooperative shares
7 without having a valid agreement registered with the Sec-
8 retary under section 4(e)(2).
9    (c) Penalty.—Any person who commits an action
10 that is unlawful under subsection (a) or (b) may be liable
11 for a civil penalty under subsection (a) of section 308 of
12 the Magnuson-Stevens Act (16 U.S.C. 1858) or permit
13 sanction imposed by subsection (g) of such section 308,
14 as if such person had committed an act prohibited by sec-
16    (d) Review.—Any person against whom a civil pen-
17 alty is assessed or against whom a permit sanction is im-
18 posed as described in subsection (e) may obtain review
19 thereof as described in subsection (b) of section 308 of
20 the Magnuson-Stevens Act.
21    (e) Sherman Act.—No person may own or control
22 cooperative shares in an amount or manner that violates
23 the Sherman Act (15 U.S.C. 1 et seq.).
24  SEC. 8. REPORTS TO CONGRESS.
25    (a) Requirement.—Not later than 5 years after the
26 issuance of final regulations under section 6(a), and dur-
ing each 5-year period thereafter, the Secretary, after con-
sultation with the Council, shall submit to Congress a re-
port on the implementation of this Act.

(b) CONTENTS.—Such reports shall include—

(1) a description of the conservation and man-
agement actions carried out for the Pacific whiting
fishery, including the extent to which bycatch (in-
cluding discard) of Pacific groundfish has been mini-
mized;

(2) the number of active fishing vessels and
processing facilities remaining in such fishery;

(3) the economic impact of such fishery on local
coastal communities;

(4) whether the amounts specified in section
4(c)(1)(A) continue to be appropriate; and

(5) any recommendations of the Secretary for
changes to this Act, along with a justification for
such recommendations.

SEC. 9. CONSTRUCTION.

The provisions of this Act shall be deemed not to vio-
late section 804 of the Departments of Commerce, Justice,
and State, the Judiciary, and Related Agencies Appropria-
tions Act, 2004 (division B of Public Law 108–199; 118
Stat. 111) or any provision of the Magnuson-Stevens Act
and may not be construed to have any effect on the application of such section 804.

SEC. 10. AUTHORIZATIONS.

There is authorized to be appropriated to the Secretary $750,000 for each of fiscal years 2006 and 2007 to carry out the provisions of this Act, of which $250,000 may be made available to the Council each fiscal year.