

Pacific Fishery Management Council



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Dorothy M. Lowman, Chair | Charles A. Tracy, Acting Executive Director

DRAFT: June 2, 2016

William Ball
Committee on Natural Resources
Subcommittee on Water, Power and Oceans
1522 Longworth House Office Building
Washington, D.C. ZIP

Dear Mr. Ball:

Thank you for requesting the Pacific Fishery Management Council's comments on HR 4576, the Ensuring Access to Pacific Fisheries Act. We also appreciate the opportunity to discuss the bill with you during a conference call on May 13. The Pacific Council has the following comments:

- The highest priority for the Pacific Council is the inclusion of Council representatives for the Pacific, North Pacific, and Western Pacific Councils as Commissioners. The Pacific Council does not support a rotation among the Councils, and recommends retention of Section 102(a)(1) and 102(a)(2)(B)-(D).
- The Pacific Council also supports the formation of an Advisory Committee to advise the Commissioners on issues of importance to the Councils as in Section 102(d). The Pacific Council believes the Committee should be funded to meet prior to the Commission meetings so that its advice could be considered by the Commissioners, but understands that funding the Committee to travel to the Commission, as in Section 102(d)(1)(B) meetings may be problematic.
- If there are funding issues for the Committee, the three Councils discussed some alternative mechanisms for establishing the Committee, including a Memorandum of Understanding process (similar to the Council process in regard to the Western and Central Pacific Fisheries Commission). Another possibility was to delay formation of the Committee until a specific need was identified or until a specified time.
- If the bill were modified to allow the Councils to establish the Committee without financial assistance, the Council's should have the flexibility to determine the composition of the Committee, and do not need legislative authority to establish their own committees. Under such an eventuality, the language in Section 102(d)(1)(A), paragraphs (i)-(viii) should be stricken.
- Regarding Section. 106 Prohibited Acts, The Pacific Council recommends deleting the phrase "knowing and willfully" from paragraphs (6), (8) as that would impose a difficult standard to prove. Paragraph (11) should be deleted as it is duplicative of paragraph (6)
- The Pacific Council is sensitive to the transit issues in Section 109 regarding consistency with other policies, and defers to others with regard to paragraphs (1) and (3); however, the Pacific Council requests that paragraph (2) regarding the gear stowage language be kept in effect.

Thank you again for your request for comment. Please feel free to contact us with any questions.

Sincerely

Etc.

114TH CONGRESS
2D SESSION

H. R. 4576

To implement the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, to implement the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2016

Mrs. RADEWAGEN (for herself and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To implement the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, to implement the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, 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 “Ensuring Access to Pacific Fisheries Act”.

TITLE I—NORTH PACIFIC FISHERIES CONVENTION IMPLEMENTATION

SEC. 101. DEFINITIONS.

In this title:

(1) **ADVISORY COMMITTEE.**—The term “Advisory Committee” means the advisory committee established under section 102(d).

(2) **COMMISSION.**—The term “Commission” means the North Pacific Fisheries Commission established in accordance with the North Pacific Fisheries Convention.

(3) **COMMISSIONER.**—The term “Commissioner” means a United States Commissioner appointed under section 102(a).

(4) **CONVENTION AREA.**—The term “Convention Area” means the area to which the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean applies under Article 4 of such Convention.

(5) **COUNCIL.**—The term “Council” means the North Pacific Fishery Management Council, the Pacific Fishery Management Council, or the Western Pacific Fishery Management Council established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1852](#)), as the context requires.

(6) **EXCLUSIVE ECONOMIC ZONE.**—The term “exclusive economic zone” means—

(A) with respect to the United States, the zone established by Presidential Proclamation Numbered 5030 of March 10, 1983 ([16 U.S.C. 1453](#) note); and

(B) with respect to a foreign country, a designated zone similar to the zone referred to in subparagraph (A) for that country.

(7) **FISHERIES RESOURCES.**—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “fisheries resources” means all fish, mollusks, crustaceans, and other marine species caught by a fishing vessel within the Convention Area.

(B) EXCLUSIONS.—The term “fisheries resources” does not include—

(i) sedentary species insofar as they are subject to the sovereign rights of coastal nations consistent with Article 77, paragraph 4 of the 1982 Convention and indicator species of vulnerable marine ecosystems as listed in, or adopted pursuant to, Article 13, paragraph 5 of the North Pacific Fisheries Convention;

(ii) catadromous species;

(iii) marine mammals, marine reptiles, or seabirds; or

(iv) other marine species already covered by preexisting international fisheries management instruments within the area of competence of such instruments.

(8) FISHING ACTIVITIES.—

(A) IN GENERAL.—The term “fishing activities” means—

(i) the actual or attempted searching for, catching, taking, or harvesting of fisheries resources;

(ii) engaging in any activity that can reasonably be expected to result in the locating, catching, taking, or harvesting of fisheries resources for any purpose;

(iii) the processing of fisheries resources at sea;

(iv) the transshipment of fisheries resources at sea or in port; or

(v) any operation at sea in direct support of, or in preparation for, any activity described in clauses (i) through (iv), including transshipment.

(B) EXCLUSIONS.—The term “fishing activities” does not include any operation related to an emergency involving the health or safety of a crew member or the safety of a fishing vessel.

(9) FISHING VESSEL.—The term “fishing vessel” means any vessel used or intended for use for the purpose of engaging in fishing activities, including a processing vessel, a support ship, a carrier vessel, or any other vessel directly engaged in such fishing activities.

(10) HIGH SEAS.—The term “high seas” does not include an area that is within the exclusive economic zone of the United States or of any other country.

(11) NORTH PACIFIC FISHERIES CONVENTION.—The term “North Pacific Fisheries Convention” means the Convention on the Conservation and Management of the High Seas Fisheries Resources in the North Pacific Ocean (including any annexes, amendments, or protocols that are in force, or have come into force) for the United States, which was adopted at Tokyo on February 24, 2012.

(12) PERSON.—The term “person” means—

(A) any individual, whether or not a citizen or national of the United States;

(B) any corporation, partnership, association, or other entity, whether or not organized or existing under the laws of any State; or

(C) any Federal, State, local, tribal, or foreign government or any entity of such government.

(13) SECRETARY.—Except as otherwise specifically provided, the term “Secretary” means the Secretary of Commerce.

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

(15) STRADDLING STOCK.—The term “straddling stock” means a stock of fisheries resources that migrates between, or occurs in, the economic exclusion zone of one or more parties to the Convention and the Convention Area.

(16) TRANSSHIPMENT.—The term “transshipment” means the unloading of any fisheries resources taken in the Convention Area from one fishing vessel to another fishing vessel either at sea or in port.

(17) 1982 CONVENTION.—The term “1982 Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.

SEC. 102. UNITED STATES PARTICIPATION IN THE NORTH PACIFIC FISHERIES CONVENTION.

(a) UNITED STATES COMMISSIONERS.—

(1) NUMBER OF COMMISSIONERS.—The United States shall be represented on the Commission by 5 United States Commissioners.

(2) SELECTION OF COMMISSIONERS.—The Commissioners shall be as follows:

(A) APPOINTMENT BY THE PRESIDENT.—

(i) IN GENERAL.—Two of the Commissioners shall be appointed by the President and shall be an officer or employee of—

(I) the Department of Commerce;

(II) the Department of State; or

(III) the Coast Guard.

(ii) SELECTION CRITERIA.—In making each appointment under clause (i), the President shall select a Commissioner from among individuals who are knowledgeable or experienced concerning fisheries resources in the North Pacific Ocean.

(B) NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.—One Commissioner shall be the chairman of the North Pacific Fishery Management Council or a designee of such chairman.

(C) PACIFIC FISHERY MANAGEMENT COUNCIL.—One Commissioner shall be the chairman of the Pacific Fishery Management Council or a designee of such chairperson.

(D) WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL.—One Commissioner shall be the chairman of the Western Pacific Fishery Management Council or a designee of such chairperson.

(b) ALTERNATE COMMISSIONERS.—In the event of a vacancy in a position as a Commissioner appointed under subsection (a), the Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time considered appropriate an alternate Commissioner to the Commission. An alternate Commissioner may exercise all powers and duties of a Commissioner in the absence of a Commissioner appointed under subsection (a), and shall serve the remainder of the term of the absent Commissioner for which designated.

(c) ADMINISTRATIVE MATTERS.—

(1) EMPLOYMENT STATUS.—An individual serving as a Commissioner, or an alternative Commissioner, other than an officer or employee of the United States Government, shall not be considered a Federal employee, except for the purposes of injury compensation or tort claims liability as provided in [chapter 81](#) of title 5, United States Code, and [chapter 171](#) of title 28, United States Code.

(2) COMPENSATION.—An individual serving as a Commissioner or an alternate Commissioner, although an officer of the United States while so serving, shall receive no compensation for the individual's services as such Commissioner or alternate Commissioner.

(3) TRAVEL EXPENSES.—

(A) IN GENERAL.—The Secretary of State shall pay the necessary travel expenses of a Commissioner or an alternate Commissioner in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(B) REIMBURSEMENT.—The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this paragraph.

(d) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT OF PERMANENT ADVISORY COMMITTEE.—

(A) MEMBERSHIP.—There is established an advisory committee which shall be composed of 11 members appointed by the Secretary, including—

(i) a member engaging in commercial fishing activities in the management area of the North Pacific Fishery Management Council;

(ii) a member engaging in commercial fishing activities in the management area of the Pacific Fishery Management Council;

(iii) a member engaging in commercial fishing activities in the management area of the Western Pacific Fishery Management Council;

(iv) 3 members from the indigenous population of the North Pacific including an Alaska Native, a Native Hawaiian, or a native-born inhabitant of any State of the United States in the Pacific, and an individual from a Pacific Coast tribe;

(v) a member that is a marine fisheries scientist that is a resident of a State the adjacent exclusive economic zone for which is bounded by the Convention Area;

(vi) a member nominated by the Governor of the State of Alaska;

(vii) a member nominated by the Governor of the State of Hawaii; and

(viii) a member nominated by the Governor of the State of Washington.

(B) TERMS AND PRIVILEGES.—Each member of the Advisory Committee shall serve for a term of 2 years and shall be eligible for reappointment, except an individual may not be appointed to more than 3 terms. The Commissioners shall notify the Advisory Committee in advance of each meeting of the Commissioners. The Advisory Committee shall attend each such meeting and shall examine and be heard on all proposed programs, investigations, reports, and recommendations of the Commissioners.

(C) PROCEDURES.—

(i) IN GENERAL.—The Advisory Committee shall determine its organization and prescribe its practices and procedures for carrying out its functions under this title, the North Pacific Fisheries Convention, and the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1801 et seq.](#)).

(ii) PUBLIC AVAILABILITY OF PROCEDURES.—The Advisory Committee shall publish and make available to the public a statement of its organization, practices, and procedures.

(iii) QUORUM.—A majority of the members of the Advisory Committee shall constitute a quorum to conduct business.

(iv) PUBLIC MEETINGS.—Meetings of the Advisory Committee, except when in executive session, shall be open to the public. Prior notice of each nonexecutive meeting shall be made public in a timely fashion. The Advisory Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(D) PROVISION OF INFORMATION.—The Secretary and the Secretary of State shall furnish the Advisory Committee with relevant information concerning fisheries resources and international fishery agreements.

(2) ADMINISTRATIVE MATTERS.—

(A) SUPPORT SERVICES.—The Secretary shall provide to the Advisory Committee in a timely manner such administrative and technical support services as are necessary to function effectively.

(B) COMPENSATION; STATUS.—An individual appointed to serve as a member of the Advisory Committee—

(i) shall serve without pay; and

(ii) shall not be considered a Federal employee, except for the purposes of injury compensation or tort claims liability as provided in [chapter 81](#) of title 5, United States Code, and [chapter 171](#) of title 28, United States Code.

(C) TRAVEL EXPENSES.—

(i) IN GENERAL.—The Secretary of State shall pay the necessary travel expenses of members of the Advisory Committee in carrying out the duties of the Advisory Committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(ii) REIMBURSEMENT.—The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subparagraph.

(e) UNITED STATES PARTICIPATION.—In instances in which the United States is participating in any meeting of the parties to the North Pacific Fisheries Convention, the United States shall be represented by the Commissioners and the Advisory Committee.

SEC. 103. AUTHORITY AND RESPONSIBILITY OF THE SECRETARY OF STATE.

The Secretary of State may—

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

(2) in consultation with the Secretary, approve, disapprove, object to, or withdraw objections to bylaws and rules, or amendments thereof, adopted by the Commission;

(3) with the concurrence of the Secretary, approve or disapprove the general annual program of the Commission with respect to conservation and management measures and other measures proposed or adopted in accordance with the North Pacific Fisheries Convention; and

(4) act upon, or refer to other appropriate authority, any communication under paragraph (1).

SEC. 104. AUTHORITY OF THE SECRETARY OF COMMERCE.

(a) PROMULGATION OF REGULATIONS.—

(1) AUTHORITY.—The Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the department in which the Coast Guard is operating, may promulgate such regulations as may be necessary to carry out the United States international obligations under the North Pacific Fisheries Convention and this title, including recommendations and decisions adopted by the Commission.

(2) REGULATIONS OF STRADDLING STOCKS.—In the implementation of a measure adopted by the Commission that would govern a straddling stock under the authority

of a Council, any regulation promulgated by the Secretary to implement such measure shall be approved by such Council.

(b) **RULE OF CONSTRUCTION.**—Regulations promulgated under subsection (a) shall be applicable only to a person or a fishing vessel that is or has engaged in fishing activities, or fisheries resources covered by the North Pacific Fisheries Convention under this title.

(c) **ADDITIONAL AUTHORITY.**—The Secretary may conduct, and may request and utilize on a reimbursed or nonreimbursed basis the assistance, services, personnel, equipment, and facilities of other Federal departments and agencies in—

(1) scientific, research, and other programs under this title;

(2) fishing operations and biological experiments for purposes of scientific investigation or other purposes necessary to implement the North Pacific Fisheries Convention;

(3) the collection, utilization, and disclosure of such information as may be necessary to implement the North Pacific Fisheries Convention, subject to sections 552 and 552a of title 5, United States Code, and section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1881a\(b\)](#)); and

(4) the issuance of permits to owners and operators of United States vessels to engage in fishing activities in the Convention Area seaward of the exclusive economic zone of the United States, under such terms and conditions as the Secretary may prescribe, including the period of time that a permit is valid.

(d) **CONSISTENCY WITH OTHER LAWS.**—The Secretary shall ensure the consistency, to the extent practicable, of fishery management programs administered under this title, the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1801 et seq.](#)), the Tuna Conventions Act of 1950 ([16 U.S.C. 951 et seq.](#)), the South Pacific Tuna Act of 1988 ([16 U.S.C. 973 et seq.](#)), section 401 of [Public Law 108–219](#) ([16 U.S.C. 1821](#) note) (relating to Pacific albacore tuna), the Western and Central Pacific Fisheries Convention Implementation Act ([16 U.S.C. 6901 et seq.](#)), the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567) and the amendments made by that Act, and Public Law 100–629 (102 Stat. 3286).

(e) **JUDICIAL REVIEW OF REGULATIONS.**—

(1) **IN GENERAL.**—Regulations promulgated by the Secretary under this title shall be subject to judicial review to the extent authorized by, and in accordance with, [chapter 7](#) of

title 5, United States Code, if a petition for such review is filed not later than 30 days after the date on which the regulations are promulgated.

(2) **RESPONSES.**—Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1), not later than 30 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

(3) **COPIES OF ADMINISTRATIVE RECORD.**—A response of the Secretary under paragraph (2) shall include a copy of the administrative record for the regulations that are the subject of the petition.

(4) **EXPEDITED HEARINGS.**—Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date.

SEC. 105. ENFORCEMENT.

(a) **IN GENERAL.**—The Secretary and the Secretary of the department in which the Coast Guard is operating—

(1) shall administer and enforce this title and any regulations issued under this title, except to the extent otherwise provided for in the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1801 et seq.](#)); and

(2) may request and utilize on a reimbursed or nonreimbursed basis the assistance, services, personnel, equipment, and facilities of other Federal departments and agencies in the administration and enforcement of this title.

(b) **SECRETARIAL ACTIONS.**—Except as provided under subsection (c), the Secretary and the Secretary of the department in which the Coast Guard is operating shall prevent any person from violating this title with respect to fishing activities or the conservation of fisheries resources in the Convention Area in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though sections 308 through 311 of the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1858](#), 1859, 1860, and 1861) were incorporated into and made a part of this title. Any person that violates this title is subject to the penalties and entitled to the privileges and immunities provided in the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1801 et seq.](#)) in the same manner, by the same means, and with the same jurisdiction,

power, and duties as though sections 308 through 311 of that Act ([16 U.S.C. 1858](#), 1859, 1860, and 1861) were incorporated into and made a part of this title.

(c) JURISDICTION OF THE COURTS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this title, and any such court may at any time—

- (A) enter restraining orders or prohibitions;
- (B) issue warrants, process in rem, or other process;
- (C) prescribe and accept satisfactory bonds or other security; and
- (D) take such other actions as are in the interest of justice.

(2) HAWAII AND PACIFIC INSULAR AREAS.—In the case of Hawaii or any possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Hawaii, except that—

- (A) in the case of Guam and Wake Island, the appropriate court is the United States District Court for the District of Guam; and
- (B) in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands.

(3) CONSTRUCTION.—Each violation shall be a separate offense and the offense is deemed to have been committed not only in the district where the violation first occurred, but also in any other district authorized by law. Any offense not committed in any district is subject to the venue provisions of section 3238 of title 18, United States Code.

(d) CONFIDENTIALITY.—

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

(A) to a Federal employee who is responsible for administering, implementing, or enforcing this title;

(B) to the Commission, in accordance with requirements in the North Pacific Fisheries Convention and decisions of the Commission, and, insofar as possible, in accordance with an agreement with the Commission that prevents public disclosure of the identity or business of any person;

(C) to State, Council, or marine fisheries commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(D) when required by court order; or

(E) when the Secretary has obtained written authorization from the person submitting such information to release such information to another person for a reason not otherwise provided for in this paragraph, and such release does not violate other requirements of this title.

(2) USE OF INFORMATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall promulgate regulations regarding the procedures the Secretary considers necessary to preserve the confidentiality of information submitted under this title.

(B) EXCEPTION.—The Secretary may release or make public information submitted under this title if the information is in any aggregate or summary form that does not directly or indirectly disclose the identity or business of any person.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary of any information submitted under this title.

SEC. 106. PROHIBITED ACTS.

It is unlawful for any person—

(1) to violate this title or any regulation or permit issued under this title;

(2) to use any fishing vessel to engage in fishing activities without, or after the revocation or during the period of suspension of, an applicable permit issued pursuant to this title;

(3) to refuse to permit any officer authorized to enforce this title to board a fishing vessel subject to such person's control for the purposes of conducting any search, investigation, or inspection in connection with the enforcement of this title or any regulation, permit, or the North Pacific Fisheries Convention;

(4) to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection in connection with the enforcement of this title or any regulation, permit, or the North Pacific Fisheries Convention;

(5) to resist a lawful arrest for any act prohibited by this title or any regulation promulgated or permit issued under this title;

(6) to knowingly and willfully ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fisheries resources taken or retained in violation of this title or any regulation or permit referred to in paragraph (1) or (2);

(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;

(8) to knowingly and willfully submit to the Secretary false information (including false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States), regarding any matter that the Secretary is considering in the course of carrying out this title;

(9) to assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this title, or any data collector employed by or under contract to any person to carry out responsibilities under this title;

(10) to engage in fishing activities in violation of any regulation adopted pursuant to this title;

(11) to knowingly and willfully ship, transport, purchase, sell, offer for sale, import, export, or have in their custody, possession, or control any fisheries resources taken or retained in violation of such regulations;

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

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

(14) to import, in violation of any regulation adopted pursuant to this title, any fisheries resources in any form of those species subject to regulation pursuant to a recommendation, resolution, or decision of the Commission, or any fisheries resources in any form not under regulation but under investigation by the Commission, during the period such fisheries resources have been denied entry in accordance with this title;

(15) to make or submit any false record, account, or label for, or any false identification of, any fisheries resources that have been, or are intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce; or

(16) to refuse to authorize and accept boarding by a duly authorized inspector pursuant to procedures adopted by the Commission for the boarding and inspection of fishing vessels in the Convention Area.

SEC. 107. COOPERATION IN CARRYING OUT CONVENTION.

(a) FEDERAL AND STATE AGENCIES; PRIVATE INSTITUTIONS AND ORGANIZATIONS.—The Secretary may cooperate with any Federal agency, any public or private institution or organization within the United States or abroad, and, through the Secretary of State, a duly authorized official of the government of any party to the North Pacific Fisheries Convention, in carrying out responsibilities under this title.

(b) SCIENTIFIC AND OTHER PROGRAMS; FACILITIES AND PERSONNEL.—Each Federal agency may, upon the request of the Secretary, cooperate in the conduct of scientific and other programs and furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the North Pacific Fisheries Convention.

(c) SANCTIONED FISHING OPERATIONS AND BIOLOGICAL EXPERIMENTS.—Nothing in this title, or in the laws of any State, prevents the Secretary or the Commission from—

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

(2) discharging any other duties prescribed by the North Pacific Fisheries Convention.

(d) STATE JURISDICTION NOT AFFECTED.—Nothing in this title shall be construed to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

SEC. 108. TERRITORIAL PARTICIPATION.

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

SEC. 109. EXCLUSIVE ECONOMIC ZONE NOTIFICATION.

Masters of commercial fishing vessels of countries fishing under the management authority of the North Pacific Fisheries Convention that do not carry vessel monitoring systems capable of communicating with United States enforcement authorities shall, prior to or as soon as reasonably possible after, entering and transiting the exclusive economic zone bounded by the Convention Area—

(1) notify the Coast Guard of the name, flag state, location, route, and destination of the vessel and of the circumstances under which it will enter United States waters;

(2) ensure that all fishing gear on board the vessel is stowed below deck or otherwise removed from the place it is normally used for fishing activities and placed where it is not readily available for fishing activities; and

(3) if requested by an enforcement officer, proceed to a specified location so that a vessel inspection can be conducted.

TITLE II—IMPLEMENTATION OF THE CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGH SEAS FISHERY RESOURCES IN THE SOUTH PACIFIC OCEAN

SEC. 201. DEFINITIONS.

In this title:

(1) **ADVISORY COMMITTEE.**—The term “Advisory Committee” means the advisory committee established under section 202(d).

(2) **1982 CONVENTION.**—The term “1982 Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982.

(3) **COMMISSION.**—The term “Commission” means the Commission of the South Pacific Regional Fisheries Management Organization established in accordance with the South Pacific Fishery Resources Convention.

(4) **CONVENTION AREA.**—The term “Convention Area” means the area to which the Convention on the Conservation and Management of High Seas Fisheries Resources in the South Pacific Ocean applies under Article 5 of such Convention.

(5) **COUNCIL.**—The term “Council” means the Western Pacific Regional Fishery Management Council.

(6) **EXCLUSIVE ECONOMIC ZONE.**—The term “exclusive economic zone” means—

(A) with respect to the United States, the zone established by Presidential Proclamation Numbered 5030 of March 10, 1983 ([16 U.S.C. 1453](#) note); and

(B) with respect to a foreign country, a designated zone similar to the zone referred to in subparagraph (A) for that country.

(7) **FISHERIES RESOURCES.**—The term “fisheries resources” means all fish within the Convention Area, including mollusks, crustaceans, and other living marine resources as may be decided by the Commission, but excluding—

(A) sedentary species insofar as they are subject to the national jurisdiction of coastal States pursuant to Article 77 paragraph 4 of the 1982 Convention;

(B) highly migratory species listed in Annex I of the 1982 Convention;

(C) anadromous and catadromous species; and

(D) marine mammals, marine reptiles and sea birds.

(8) FISHING.—The term “fishing”—

(A) except as provided in subparagraph (B), means—

(i) the actual or attempted searching for, catching, taking, or harvesting of fishery resources;

(ii) engaging in any activity that can reasonably be expected to result in the locating, catching, taking or harvesting of fisheries resources for any purpose;

(iii) transshipment and any operation at sea, in support of, or in preparation for, any activity described in this subparagraph; and

(iv) the use of any vessel, vehicle, aircraft, or hovercraft in relation to any activity described in this subparagraph; and

(B) does not include any operation related to emergencies involving the health and safety of crew members or the safety of a fishing vessel.

(9) FISHING VESSEL.—The term “fishing vessel” means any vessel used or intended to be used for fishing, including any support ship, carrier vessel, or any other vessel directly engaged in fishing operations.

(10) 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); and any Federal, State, local, or foreign government or any entity of any such government.

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

(12) SOUTH PACIFIC FISHERY RESOURCES CONVENTION.—The term “South Pacific Fishery Resources Convention” means the Convention on the Conservation and Management of the High Seas Fishery Resources in the South Pacific Ocean (including any annexes, amendments, or protocols that are in force, or have come into force, for the United States), which was adopted at Auckland, New Zealand, on November 14, 2009, by the International Consultations on the Proposed South Pacific Regional Fisheries Management Organization.

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

SEC. 202. APPOINTMENT OR DESIGNATION OF UNITED STATES COMMISSIONERS.

(a) APPOINTMENT.—

(1) IN GENERAL.—The United States shall be represented on the Commission by not more than 3 Commissioners. In making each appointment, the President shall select a Commissioner from among individuals who are knowledgeable or experienced concerning fishery resources in the South Pacific Ocean.

(2) REPRESENTATION.—At least one of the Commissioners shall be—

(A) serving at the pleasure of the President, an officer or employee of—

(i) the Department of Commerce;

(ii) the Department of State; or

(iii) the Coast Guard; and

(B) the chairperson or designee of the Council.

(b) ALTERNATE COMMISSIONERS.—The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time considered appropriate an alternate Commissioner to the Commission. An alternate Commissioner may exercise all powers and duties of a Commissioner in the absence of a Commissioner appointed under subsection (a).

(c) ADMINISTRATIVE MATTERS.—

(1) EMPLOYMENT STATUS.—An individual serving as a Commissioner, or as an alternate Commissioner, other than an officer or employee of the United States Government, shall not be considered a Federal employee, except for the purposes of injury compensation or tort claims liability as provided in [chapter 81](#) of title 5, United States Code, and [chapter 171](#) of title 28, United States Code.

(2) COMPENSATION.—An individual serving as a Commissioner or an alternate Commissioner, although an officer of the United States while so serving, shall receive no compensation for the individual’s services as such Commissioner or alternate Commissioner.

(3) TRAVEL EXPENSES.—

(A) IN GENERAL.—The Secretary of State shall pay the necessary travel expenses of a Commissioner or an alternate Commissioner in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(B) REIMBURSEMENT.—The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this paragraph.

(d) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT OF PERMANENT ADVISORY COMMITTEE.—

(A) MEMBERSHIP.—There is established an advisory committee that shall be composed of 6 members appointed by the Secretary, including—

(i) a member engaging in commercial fishing in the management area of the Council;

(ii) 2 members from the indigenous population of the Pacific, including a Native American Samoan;

(iii) a member that is a marine fisheries scientist and a member of the Council’s Scientific and Statistical Committee;

(iv) a member nominated by the Governor of the State of Hawaii; and

(v) a member designated by the Council.

(B) TERMS AND PRIVILEGES.—Each member of the Advisory Committee shall serve for a term of 2 years and shall be eligible for reappointment, except an individual may not be appointed to more than 3 terms. The Commissioners shall notify the Advisory Committee in advance of each meeting of the Commissioners. The Advisory

Committee shall attend each meeting and shall examine and be heard on all proposed programs, investigations, reports, and recommendations of the Commissioners.

(C) PROCEDURES.—The Advisory Committee shall determine its organization and prescribe its practices and procedures for carrying out its functions under this title, the South Pacific Fisheries Convention, and the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1801 et seq.](#)). The Advisory Committee shall publish and make available to the public a statement of its organization, practices, and procedures. A majority of the members of the Advisory Committee shall constitute a quorum to conduct business. Meetings of the Advisory Committee, except when in executive session, shall be open to the public. Prior notice of each nonexecutive meeting shall be made public in a timely fashion. The Advisory Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(D) PROVISION OF INFORMATION.—The Secretary and the Secretary of State shall furnish the Advisory Committee with relevant information concerning fishery resources and international fishery agreements.

(2) ADMINISTRATIVE MATTERS.—

(A) SUPPORT SERVICES.—The Secretary shall provide to the Advisory Committee in a timely manner such administrative and technical support services as are necessary to function effectively.

(B) COMPENSATION; STATUS; EXPENSES.—An individual appointed to serve as a member of the Advisory Committee—

(i) shall serve without pay; and

(ii) shall not be considered a Federal employee, except for the purposes of injury compensation or tort claims liability as provided in [chapter 81](#) of title 5, United States Code, and [chapter 171](#) of title 28, United States Code.

SEC. 203. AUTHORITY AND RESPONSIBILITY OF THE SECRETARY OF STATE.

The Secretary of State may—

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

(2) in consultation with the Secretary, act upon, or refer to other appropriate authority, any communication pursuant to paragraph (1); and

(3) with the concurrence of the Secretary, and in accordance with the South Pacific Fishery Resources Convention, object to decisions of the Commission.

SEC. 204. RESPONSIBILITY OF THE SECRETARY AND RULEMAKING AUTHORITY.

(a) RESPONSIBILITIES.—The Secretary may—

(1) administer this title and any regulations issued under this title, except to the extent otherwise provided for in this title; and

(2) issue permits to vessels subject to the jurisdiction of the United States, and to owners and operators of such vessels, to fish in the Convention Area, under such terms and conditions as the Secretary may prescribe.

(b) PROMULGATION OF REGULATIONS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, may promulgate such regulations as may be necessary and appropriate to carry out the international obligations of the United States under the South Pacific Fishery Resources Convention and this title, including decisions adopted by the Commission.

(2) APPLICABILITY.—Regulations promulgated under this subsection shall be applicable only to a person or fishing vessel that is or has engaged in fishing, and fisheries resources covered by the Convention on the Conservation and Management of High Seas Fisheries Resources in the South Pacific Ocean under this title.

(c) CONSISTENCY WITH OTHER LAWS.—The Secretary shall ensure the consistency, to the extent practicable, of fishery management programs administered under this title, the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1801 et seq.](#)), the Tuna Conventions Act of 1950 ([16 U.S.C. 951 et seq.](#)), the South Pacific Tuna Act of 1988 ([16 U.S.C.](#)

[973 et seq.](#)), section 401 of [Public Law 108–219](#) ([16 U.S.C. 1821](#) note) (relating to Pacific albacore tuna), the Western and Central Pacific Fisheries Convention Implementation Act ([16 U.S.C. 6901 et seq.](#)), the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567) and the amendments made by that Act, and Public Law 100–629 (102 Stat. 3286).

(d) JUDICIAL REVIEW OF REGULATIONS.—

(1) IN GENERAL.—Regulations promulgated by the Secretary under this title shall be subject to judicial review to the extent authorized by, and in accordance with, [chapter 7](#) of title 5, United States Code, if a petition for such review is filed not later than 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable.

(2) RESPONSES.—Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1) not later than 30 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

(3) COPIES OF ADMINISTRATIVE RECORD.—A response of the Secretary under paragraph (2) shall include a copy of the administrative record for the regulations that are the subject of the petition.

(4) EXPEDITED HEARINGS.—Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date.

SEC. 205. ENFORCEMENT.

(a) RESPONSIBILITY.—This title, and any regulations or permits issued under this title, shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries shall, and the head of any Federal or State agency that has entered into an agreement with either such Secretary under this section may (if the agreement so provides), authorize officers to enforce this title or any regulation promulgated under this title. Any officer so authorized may enforce this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though section 311 of the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1861](#)) were incorporated into and made a part of this title.

(b) ADMINISTRATION AND ENFORCEMENT.—The Secretary shall prevent any person from violating this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though sections 308 through 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858 through 1861) were incorporated into and made a part of this title. Any person that violates this title shall be subject to the penalties, and entitled to the privileges and immunities, provided in the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1801 et seq.](#)) in the same manner and by the same means as though sections 308 through 311 of that Act (16 U.S.C. 1858 through 1861) were incorporated into and made a part of this title.

(c) DISTRICT COURT JURISDICTION.—The district courts of the United States shall have jurisdiction over any actions arising under this section. Notwithstanding subsection (b), for the purpose of this section, for Hawaii or any possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Hawaii, except that in the case of Guam and Wake Island, the appropriate court is the United States District Court for the District of Guam, and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands. Each violation shall be a separate offense and the offense is deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law. Any offenses not committed in any district are subject to the venue provisions of section 3238 of title 18, United States Code.

SEC. 206. PROHIBITED ACTS.

It is unlawful for any person—

(1) to violate any provision of this title or of any regulation promulgated or permit issued under this title;

(2) to use any fishing vessel to engage in fishing without a valid permit or after the revocation, or during the period of suspension, of an applicable permit pursuant to this title;

(3) to refuse to permit any officer authorized to enforce this title to board a fishing vessel subject to such person's control for the purposes of conducting any investigation or inspection in connection with the enforcement of this title;

(4) to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection in connection with the enforcement of this title or any regulation promulgated or permit issued under this title;

(5) to resist a lawful arrest for any act prohibited by this title or any regulation promulgated or permit issued under this title;

(6) to knowingly and willfully ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fishery resources taken or retained in violation of this title or any regulation or permit referred to in paragraph (1) or (2);

(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this title;

(8) to knowingly and willfully submit to the Secretary false information, regarding any matter that the Secretary is considering in the course of carrying out this title;

(9) to assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel pursuant to the requirements of this title, or any data collector employed by the National Oceanic and Atmospheric Administration or under contract to any person to carry out responsibilities under this title;

(10) to knowingly and willfully ship, transport, purchase, sell, offer for sale, import, export, or have in their custody, possession, or control any fishery resources taken or retained in violation such regulations;

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

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

(13) to import, in violation of any regulation promulgated under this title, any fishery resources in any form of those species subject to regulation pursuant to a decision of the Commission;

(14) to make or submit any false record, account, or label for, or any false identification of, any fisheries resources that have been or are intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce;
or

(15) to refuse to authorize and accept boarding by a duly authorized inspector pursuant to procedures adopted by the Commission for the boarding and inspection of fishing vessels in the Convention Area.

SEC. 207. COOPERATION IN CARRYING OUT THE CONVENTION.

(a) FEDERAL AND STATE AGENCIES; PRIVATE INSTITUTIONS AND ORGANIZATIONS.—The Secretary may cooperate with agencies of the United States Government, any public or private institutions or organizations within the United States or abroad, and, through the Secretary of State, the duly authorized officials of the government of any party to the South Pacific Fishery Resources Convention, in carrying out responsibilities under this title.

(b) SCIENTIFIC AND OTHER PROGRAMS; FACILITIES AND PERSONNEL.—All Federal agencies may, upon the request of the Secretary, cooperate in the conduct of scientific and other programs and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the South Pacific Fishery Resources Convention.

(c) SANCTIONED FISHING OPERATIONS AND BIOLOGICAL EXPERIMENTS.—Nothing in this title, or in the laws or regulations of any State, prevents the Secretary or the Commission from—

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

(2) discharging any other duties prescribed by the South Pacific Fishery Resources Convention.

(d) STATE JURISDICTION NOT AFFECTED.—Nothing in this title shall be construed to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

SEC. 208. TERRITORIAL PARTICIPATION.

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

SEC. 209. EXCLUSIVE ECONOMIC ZONE NOTIFICATION.

Masters of commercial fishing vessels of countries fishing under the management authority of the South Pacific Fisheries Convention that do not carry vessel monitoring systems capable of

communicating with United States enforcement authorities shall, before or as soon as reasonably possible after, entering and transiting the exclusive economic zone bounded by the Convention Area—

(1) notify the Coast Guard of the name, flag state, location, route, and destination of the vessel and of the circumstances under which it will enter United States waters;

(2) ensure that all fishing gear on board the vessel is stowed below deck or otherwise removed from the place it is normally used for fishing activities and placed where it is not readily available for fishing activities; and

(3) if requested by an enforcement officer, proceed to a specified location so that a vessel inspection can be conducted.