

**SECTION-BY-SECTION SUMMARY OF DRAFT "COOPERATIVE HAKE  
IMPROVEMENT AND CONSERVATION ACT"**

**SECTION 1 – Short Title – “COOPERATIVE HAKE IMPROVEMENT AND CONSERVATION ACT”**

**SECTION 2 - Findings, Purposes, and Policy – Provide the reasons for the bill (establish a rationalized management system for the domestic Pacific whiting fishery; promote conservation; make clear that this fishery is unique).**

**SECTION 3 – Definitions – Contains definitions for terms used in the bill.**

**SECTION 4 – Authorizations – Authorizes appropriations to the Secretary of Commerce to carry out responsibilities under the Act.**

**SECTION 5 – General – Provides a specific time frame for final regulations to be promulgated to implement the Act, including regulations for monitoring the fishery, and direction to the Pacific Fishery Management Council to amend fishery management plans to conform with the title.**

**SECTION 6 – Rationalization of the Pacific Whiting Fishery – Provides the means to identify participants eligible for allocation; allocates the on-shore portion of the fishery among participants after providing for incidental harvest of whiting in other fisheries; establishes the mechanism under which cooperative harvesting will occur; imposes certain restrictions on transfer; requires agreements between fishermen and processors; sets the level of fees, uses of the money, and provides for pass-through transfers to States to offset costs incurred by the States in managing the fishery.**

**SECTION 7 – Conservation of Pacific Whiting – Provides for Council recommended limits on incidental catch of other groundfish species by whiting fishermen; establishes a goal of minimizing, to the extent practicable, the discard of other groundfish and Pacific whiting; provides for monitoring; directs the Council to recommend: limits on incidental catch, monitoring, and transfer of incidental catch limits; provides for expedited regulatory approval if certain conservation standards are met.**

**SECTION 8 – Enforcement and Penalties – Links violations to the enforcement provisions of the Magnuson-Stevens Act; prohibits ownership or control of cooperative harvesting shares in violation of the Sherman Anti-Trust Act.**

**SECTION 9 – Report to Congress – Requires the Secretary of Commerce to report every five years on the implementation of the Act and any recommendations for changes.**

**SECTION 10 – Savings Clause – Makes clear that unless otherwise provided, the Act makes no changes to the Magnuson-Stevens Act or to the prohibition on establishing a processor quota system as contained in the Consolidated Appropriations Act of 2004.**

**HOW IT ALL WORKS**

Under the Agreement on Pacific Hake/Whiting between the U.S. and Canada, a mechanism is in place to annually determine the coast-wide catch level of Pacific whiting. A formula for sharing

the catch between the two countries is also included in the Agreement.

Within the U.S., the catch level has already been divided among sectors. The tribal fishery amount (set by agreement between the U.S. government and the treaty tribes) is taken off the top, as is a certain amount to account for scientific research catch. Of the remainder, 34% has been allocated to the catcher-processor fishery, 24% to the mothership fishery, and 42% to the shore-based fishery, all under the Pacific Groundfish Fishery Management Plan.

The catcher-processor fishery has already been rationalized through a system of private contracts approved by the Department of Justice and thus is not considered here. Participants in the mothership fishery are still discussing rationalization proposals so at the moment they are also not included. The bill thus deals just with the shore-based fishery.

The bill proposes to establish cooperative harvest shares based on catch and processing history. Once those shares are established, they will be applied each year to the 42% of the U.S. catch level of Pacific whiting allocated to the shore-based fishery, after first making an allowance for whiting incidentally taken in other fisheries. The shares are of two types: fisherman and processor. Unlike the "two-pie" systems that have been discussed in other fisheries, all of the shares apply to harvesting. However, similar to the system for pollock under the American Fisheries Act, an agreement must be reached between a fisherman and a processor on using the shares. Once that agreement is reached, the fisherman catches whiting using his own shares *plus* an equal amount of the processor's share. Thus, a fisherman who has shares equivalent to 100,000 pounds of whiting in one year will actually be able to harvest 200,000 pounds of whiting utilizing his shares and the equivalent amount of processor cooperative share.

Since neither set of shares can be used on their own, processors and fishermen are forced to work cooperatively if they want to participate in the fishery. Fishermen are free to negotiate prices and to shop around among processors. Processors will have confidence in how much fish they will have landed at their docks and be able to prepare processing crews, packaging, and marketing accordingly. The end to the derby fishery should lead to better recovery rates and less wastage of whiting, and reduced incidental catch of other species. Conservation and management costs will be no higher than they would be if no rationalization plan was in effect, but there will now be some level of cost recovery through fees.

Through a system of scientifically-based bycatch limits that are transferable among participants in the fishery, there will no longer be a "race for bycatch" in order to prevent one individual or group from shutting down another. While incidental catch is unpredictable, this should generally lead to greater care being taken to avoid known bycatch hot spots.

Finally, through firm application of the anti-trust laws and a savings clause protecting Congressional action on certain quota systems, the bill makes clear that we are dealing with the unique circumstances of a unique fishery and that massive consolidation will not be taking place.

In sum, the bill provides market-based conservation while preserving a fishery that was developed from the water up through the hard work and investment of American fishermen and processors.

**SECTION 1. SHORT TITLE**

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

**SEC.2. FINDINGS, PURPOSES, AND POLICY.**

(a) **FINDINGS.**—The Congress finds and declares the following:

(1) The Governments of the United States and Canada have entered into an agreement to cooperate in the conservation and management of shared stocks of Pacific hake/whiting, signed in Seattle, Washington, on November 21, 2003.

(2) The United States has a further obligation to ensure to the extent practicable in accordance with existing law that Pacific whiting stocks 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.

(3) In order to meet these obligations, a regional program of market-based incentives for conservation and management should be established.

(4) 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.

(5) Because actions taken to reduce excess capacity in fisheries can have adverse impacts on fishermen, processors, and local coastal communities, a market-based program should be designed, to the extent practicable, to avoid such impacts.

(b) **PURPOSE.**— It is therefore declared to be the purpose of the Congress in this Act to facilitate the continued economic viability of the Pacific whiting for the benefit of the nation through establishment of a market-based cooperative system for the harvesting and processing of Pacific whiting.

(c) POLICY.—It is further declared to be the policy of the Congress in this Act 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 fishery in a pilot project.

### SEC.3.DEFINITIONS.

As used in this Act—

(1) 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 in any of the years 1994 to 2004 inclusive, excluding any such Pacific whiting harvested pursuant to a treaty between the United States and a treaty tribe.

(2) The term “aggregate landed catch” means the total amount of Pacific whiting processed on shore in California, Oregon and Washington during the benchmark period in any of the years 1999 to 2004 inclusive.

(3) The term “benchmark period” means the period between April 1<sup>st</sup> and September 30<sup>th</sup>, inclusive.

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

(5) 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 6 of this Act.

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

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

(8) The term “offshore whiting resource” means the transboundary stock of *Merluccius productus* that is located in the offshore waters of the United States and Canada but does not include any fish of that species located in Puget Sound or the Strait of Georgia.

(9) 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) The term "Pacific whiting" means that portion of the offshore whiting resource the harvest of which is under the jurisdiction of the United States.

(11) The term "Plan" means a fishery management plan prepared by the Council and approved by the Secretary under the Magnuson-Stevens Act.

(12) 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).

(13) 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.

(14) The term "processor" means a person that engages in processing of Pacific whiting harvested as part of an on-shore allocation.

(15) 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 between 1994 and 2004, inclusive, delivered a minimum of 500 metric tons of Pacific whiting each year to a processor during the benchmark period.

(16) The term "qualified processor" means a processor that operated in any year between 1999 and 2004, inclusive, and processed at least 1,000,000 pounds of whiting in that year, or any successor in ownership.

(17) The term "Secretary" means the Secretary of Commerce.

(18) The term "share-holder" means the current owner of cooperative shares.

(19) The term "treaty tribe" means any Indian tribe determined by the United States courts to have rights to harvest Pacific whiting within specified areas.

(20) 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.AUTHORIZATIONS.**

There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the provisions of this Act.

#### **SEC.5.IN GENERAL.**

(a) Not later than six 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 created in this Act. In developing regulations, the Secretary shall allow the Council the opportunity to propose draft regulations.

(b) The Council shall amend a 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).

#### **SEC.6.RATIONALIZATION OF THE PACIFIC WHITING FISHERY.**

(a) IDENTIFICATION OF QUALIFIED PARTICIPANTS.--(1) The Secretary shall issue a permit to--

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

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

(2) 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) 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 under this Act.

(4) 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) For the purposes of subparagraph (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 Management Plan.

(b) ALLOCATION OF RESOURCE.—Prior to March 1<sup>st</sup> of the calendar year following the issuance of final regulations under this Act, 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 cooperative 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 period in each of the years 1994 to 2004 inclusive will be divided by the aggregate catch for each of those years. The 9 highest percentages will be averaged and the result will be considered the permit's catch history. Each permit's catch history will be divided by the sum of all catch histories to determine the 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 1999 to 2004 inclusive will be divided by the aggregate landed catch for each of those years. The 4 highest percentages will be averaged and the result will be considered the processor's processing history. Each processor's processing history will be divided by the sum of all processing histories to determine the 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.

(c) COOPERATIVE HARVEST OF PACIFIC WHITING.—(1) In each calendar year, the on-shore allocation shall be divided as follows-

(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% of the on-shore allocation, will be available for harvest by any person legally eligible to harvest Pacific whiting, and

(B) after subtracting the amounts described in subparagraph (A), fifty percent of the remainder will be available for harvest using fishermen's cooperative shares and fifty percent of the remainder will 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. Agreements shall be registered with the Secretary prior to the time the cooperative shares are used to harvest Pacific whiting. No Pacific whiting may be harvested using fishermen's cooperative shares or processors' cooperative shares without a registered agreement. Each agreement shall require an equal amount of fisherman's cooperative share and processor's cooperative share be used. An agreement will 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.



(d) RESTRICTIONS ON TRANSFER.-- Fishermen's cooperative shares may only be transferred to a person holding a trawl limited entry groundfish permit issued under the Pacific Coast Groundfish Fishery Management Plan.

(e) CONTRIBUTION TO RESEARCH AND MANAGEMENT.--(1) In addition to any fee which may be collected under subsection (a), the Secretary is authorized and shall collect a fee equally from share-holders to recover the costs of carrying out this section (including costs associated with section 7) and of conducting scientific research on the offshore whiting resource.

(2) Each share-holder will be liable for a fee up to 3 per cent of the ex-vessel value of the whiting that was harvested in a calendar year using fishermen's cooperative shares owned by that share-holder and up to 3 per cent of the ex-vessel value of the whiting that was harvested in a calendar year using processors' cooperative shares owned by that share-holder. The fee shall be payable thirty days after the end of the calendar year in which the Pacific whiting was harvested.

(3) Fees collected under this subsection shall be available to the Secretary 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) Upon application from the States of Washington, Oregon, or California, the Secretary may transfer up to 33 per cent of the fees collected under this subsection in any calendar year to one or more of those States to offset costs incurred by the States in the conservation and management of Pacific whiting.

#### **SEC. 7. CONSERVATION OF PACIFIC WHITING.**

(a) LIMITS ON INCIDENTAL CATCH.--(1) The Council shall recommend to the Secretary appropriate amounts of any species of Pacific groundfish other than Pacific whiting that may be harvested incidentally to the harvest of Pacific whiting under this Act and any other Act.

(2) The recommendations by the Council may be made annually or in such other time increment that facilitates conservation and management of the Pacific groundfish fishery.

(3) The recommendations by the Council shall be based on the best scientific information available, shall be reasonably calculated to promote conservation, shall be fair and equitable to holders of cooperative shares and others who harvest Pacific groundfish, shall be based on 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, and shall have as their goal minimizing, to the extent practicable, the discard of Pacific whiting and other species of Pacific groundfish.

(4) The amounts recommended under paragraph (1) shall include specific sub-amounts 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 6.

(5) Upon 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 thirty 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) The Council shall 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 6. Amendments recommended under this paragraph shall meet the requirements of subsection (a)(3) of this section.

(2) Regulations issued by the Secretary under subsections (a) or (b) shall be superseded by regulations issued 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. 8. ENFORCEMENT AND PENALTIES.**

(a) It is unlawful for any person to violate any provision of this Act or any regulation issued under this Act.

(b) It is unlawful for any person to harvest Pacific whiting using cooperative shares without having a valid agreement registered with the Secretary under section 6(c)(2).

(c) Any person who commits an action that is unlawful under subsections (a) or (b) of this section shall be liable to the United States for a civil penalty or permit sanction as provided by section 308 of the Magnuson-Stevens Act.

(d) No person may own or control cooperative shares in an amount or manner that violates the Sherman Anti-Trust Act (15 U.S.C. 1 et seq.).

#### **SEC. 9. REPORT TO CONGRESS**

(a) Not later than five years after the issuance of final regulations under section 5(a) and each five-year period thereafter, the Secretary, after consultation with the Council, shall issue a report to the United States House of Representatives and the United States Senate on the implementation of this Act, with special regard to the conservation and management of the Pacific whiting fishery, including the extent to which bycatch (including discard) of Pacific groundfish has been minimized, the number of active fishing vessels and processing facilities remaining in the fishery, the economic impact on local coastal communities, and whether the amounts specified in section 6(c)(1)(A) continue to be appropriate.

(b) The Secretary may include in the report any recommendations for changes in this Act, along with a justification for those recommendations.

#### **SEC. 10. SAVINGS CLAUSE.**

Except as otherwise provided in this Act, nothing in this Act shall be deemed to amend section 804 of the Consolidated Appropriations Act, 2004 (P.L. 108-99) or the Magnuson-Stevens Act.

