

LEGISLATIVE MATTERS

The Pacific Fishery Management Council's (Council's) Legislative Committee (Committee) is scheduled to meet Friday, April 9th at 1:00 p.m. to review a variety of legislative matters of interest to the Council. Council staff has provided a summary of legislation introduced in the 111th U.S. Congress of potential interest to the Council and on the Committee's April agenda (Agenda Item K.1.a, Attachment 1).

Among the bills to be discussed is H.R. 4363, the *National Sustainable Offshore Aquaculture Act of 2009* introduced in the U.S. House to establish a regulatory system and research program for sustainable offshore aquaculture in the United States Exclusive Economic Zone, and for other purposes. The Council and the Committee comments on previous bills pertaining to offshore aquaculture have focused on ensuring the ability of the coastal States to "opt-out" of offshore aquaculture activities off their coastlines and in assuring that appropriate environmental reviews are conducted and research and monitoring plans developed prior to the permitting of any proposed aquaculture activities. The Committee is scheduled to focus a considerable portion of their meeting time to this issue and make recommendations to the Council.

The Committee is also anticipated to review S. 2870, the *International Fisheries Stewardship and Enforcement Act* introduced in the U.S. Senate to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes. Of particular interest to the Council, S.2870 would ratify the Antigua Convention. The Inter-American Tropical Tuna Commission (IATTC) adopted and the U.S. is signatory to the Antigua Convention, but it cannot be fully implemented without U.S. ratification and implementing Federal legislation.

In March, the Committee recommended that the Council's Highly Migratory Species (HMS) Advisory Bodies review this legislation. Central to the previous concerns of the Committee and the Highly Migratory Species (HMS) Advisory Bodies is the membership of the U.S. Delegation and Advisory Bodies to the IATTC and the funding and legal status of such representatives when travelling on IATTC business. S. 2870 includes amendatory language to Title V of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 concerning U.S. representation to the Western and Central Pacific Fisheries Commission and similar language is included in the bill under the implementation the Antigua Convention.

As time allows, the Committee may discuss other Federal legislation of interest to the Council.

Council Action:

Consider the recommendations of the Legislative Committee.

Reference Materials:

1. Agenda Item K.1.a, Attachment 1: Staff Summary of Federal Legislation in the 111th U.S. Congress on the Legislative Committee Agenda.
2. Agenda Item K.1.a, Attachment 2: H.R. 4363, the *National Sustainable Offshore Aquaculture Act of 2009*.
3. Agenda Item K.1.a, Attachment 3: S. 2870, the *International Fisheries Stewardship and Enforcement Act* (**only in electronic format on the April Briefing Book CD and on the Council web page.**)
4. Agenda Item K.1.b, Supplemental Legislative Committee Report.

Agenda Order:

- a. Agenda Item Overview
- b. Legislative Committee Report
- c. Reports and Comments of Management Entities and Advisory Bodies
- d. Public Comment
- e. **Council Action:** Consider Legislative Committee Recommendations

Mike Burner
Dave Hanson

PFMC
03/23/10

STAFF SUMMARY OF FEDERAL LEGISLATION IN THE 111TH U.S. CONGRESS ON
THE LEGISLATIVE COMMITTEE AGENDA

This summary is intended as a general overview for discussion purposes. Full text of these bills, additional summary and background information, and current status can be found by entering the bill number in the search engine at the THOMAS web site of the Library of Congress (<http://thomas.loc.gov>). Portions of this report are derived from summaries provided by the Congressional Research Service of the Library of Congress.

H.R. 4363 - National Sustainable Offshore Aquaculture Act of 2009. A bill to establish a regulatory system and research program for sustainable offshore aquaculture in the United States exclusive economic zone, and for other purposes.

Introduced December 16, 2009 by Congresswoman Capps, California and referred to the U.S. House Subcommittee on Insular Affairs, Oceans and Wildlife on January 4, 2010.

The Council comments on previous bills pertaining to offshore aquaculture have focused on ensuring the ability of the coastal States to “opt-out” of offshore aquaculture activities off their coastlines and in assuring that appropriate environmental reviews are conducted and research and monitoring plans developed prior to the permitting of any proposed aquaculture activities.

H.R. 4363 would, among other things;

- Establish an Office of Sustainable Offshore Aquaculture within the National Marine Fisheries Service,
- Require the U.S. Secretary of Commerce (Secretary) to complete Regional Programmatic Environmental Impact Statements including one for the west coast,
- Establish an application process and allow the Secretary to approve transferrable permits for up to 10-year periods with an option to renew permits for subsequent 10-year periods,
- Require the Secretary to notify a coastal State upon receiving an application for any new aquaculture operation proposed within 12 miles of the coastline,
- Allows a State to submit a list of locations, species or categories of species for which the State opposes the conduct of offshore aquaculture and the Secretary may not issue or renew any permits included in such a list.
- Limit aquaculture to species of a genotype native to the geographic region of operation that have not been genetically altered or are not listed under the Endangered Species Act,
- Require marking of cultured stocks that identify them as belonging to the permittee,
- Prohibit the use of wild fish feed ingredients unless sourced from healthy populations under ecosystem-based management while minimizing the use of fishmeal or fish oil derived from forage species, and
- Establish a research program for sustainable offshore aquaculture.

S. 2870 - International Fisheries Stewardship and Enforcement Act. A bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes including implement the Antigua Convention.

Introduced December 10, 2009 by Senator Inouye, Hawaii and referred to the U.S. Senate Committee on Commerce, Science, and Transportation.

- TITLE IV – Implementation of the Antigua Convention.
(*Italicized text* represents text directly from S.2870, portions of which are underlined for emphasis.)

The Inter-American Tropical Tuna Commission (IATTC) adopted the Convention for the Strengthening of the [IATTC] (Antigua Convention) in June of 2003 which cannot be fully implemented without U.S. ratification and implementing Federal legislation. S.2870 would implement the Antigua Convention by amending the Tuna Conventions Act of 1950 to, among other things, strengthen enforcement, reduce bycatch, and to specify U.S. representation to the IATTC and its advisory groups. Under this bill, five U.S. Commissioners would be appointed by the President “*among individuals who are knowledgeable or experienced concerning highly migratory fish stocks in the eastern tropical Pacific Ocean, one of whom shall be an officer or employee of the Department of Commerce, one of whom shall be the chairman or a member of the Western Pacific Fishery Management Council, and one of whom shall be the chairman or a member of the Pacific Fishery Management Council. Not more than 2 Commissioners may be appointed who reside in a State other than a State whose vessels maintain a substantial fishery in the area of the Convention.*” Additionally, the IATTC General Advisory Committee would include “*the chair of the Pacific Fishery Management Council's Advisory Subpanel for Highly Migratory Fisheries.*” Members of the General Advisory Committee would receive per diem but no pay and would not have a conflict of interest as they “*shall not be considered Federal employees except for purposes of injury compensation and tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code*”. Regarding the IATTC’s Scientific Advisory Committee the bill states that, “*The Secretary [of Commerce], in consultation with the Secretary of State, shall appoint a Scientific Advisory Subcommittee of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations.*”

PFMC
03/25/10

111TH CONGRESS
1ST SESSION

H. R. 4363

To establish a regulatory system and research program for sustainable off-shore aquaculture in the United States exclusive economic zone, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Mrs. CAPPS introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To establish a regulatory system and research program for sustainable offshore aquaculture in the United States exclusive economic zone, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Sustainable Offshore Aquaculture Act of
6 2009”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

- Sec. 3. NOAA Office; Advisory Board.
- Sec. 4. Regional programmatic environmental impact statements.
- Sec. 5. Offshore aquaculture permitting.
- Sec. 6. Fees.
- Sec. 7. Sustainable offshore aquaculture research program.
- Sec. 8. Compatibility with other uses; State input.
- Sec. 9. Relationship to other laws.
- Sec. 10. Unlawful activities.
- Sec. 11. Enforcement.
- Sec. 12. Natural resources damages assessment and liability.
- Sec. 13. Encouraging worldwide adherence to the aquaculture provisions of the Code of Conduct for Responsible Fisheries.
- Sec. 14. Definitions.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are the following:

3 (1) To establish a regulatory system for sus-
4 tainable offshore aquaculture in the United States
5 exclusive economic zone.

6 (2) To authorize the Secretary of Commerce to
7 determine appropriate locations for, permit, regu-
8 late, monitor, and enforce offshore aquaculture in
9 the exclusive economic zone.

10 (3) To require the Secretary of Commerce to
11 issue regulations for permitting of offshore aqua-
12 culture in the exclusive economic zone that prevent
13 impacts on the marine ecosystem and fisheries or
14 minimize such impacts to the extent they cannot be
15 avoided.

16 (4) To establish a research program to guide
17 the precautionary development of offshore aqua-
18 culture in the exclusive economic zone that ensures

1 ecological sustainability and compatibility with
2 healthy, functional ecosystems.

3 **SEC. 3. NOAA OFFICE; ADVISORY BOARD.**

4 (a) NOAA OFFICE.—

5 (1) IN GENERAL.—The Secretary shall establish
6 an Office of Sustainable Offshore Aquaculture with-
7 in the National Marine Fisheries Service at National
8 Oceanic and Atmospheric Administration head-
9 quarters, and satellite offices of such office in each
10 of the National Oceanic and Atmospheric Adminis-
11 tration’s regional fisheries offices.

12 (2) DUTIES.—The Office shall be responsible
13 for implementing this Act, and shall—

14 (A) conduct the regional programmatic en-
15 vironmental impact studies under section 4;

16 (B) implement the permitting and regu-
17 latory program under section 5;

18 (C) administer the research program estab-
19 lished under section 7;

20 (D) coordinate aquaculture and related
21 issues within the National Oceanic and Atmos-
22 pheric Administration;

23 (E) perform outreach, education, and
24 training;

1 (F) provide opportunities for consultation
2 among owners and operators of offshore aqua-
3 culture facilities, Regional Fishery Management
4 Councils, nonprofit conservation organizations,
5 and other interested stakeholders;

6 (G) organize through each regional office a
7 network of regional experts, in coordination
8 with relevant organizations such as the Na-
9 tional Sea Grant College program and other
10 academic institutions, to provide technical ex-
11 pertise on aquaculture;

12 (H) maintain the database required by
13 paragraph (3); and

14 (I) perform such other functions as are
15 necessary to carry out this Act.

16 (3) DATABASE.—The Secretary shall establish
17 and maintain within the Office an aquaculture data-
18 base, which shall include information on research,
19 technologies, monitoring techniques, best manage-
20 ment practices, and recommendations of the Sus-
21 tainable Offshore Aquaculture Advisory Board estab-
22 lished under subsection (b). The Secretary shall
23 make the database available to the general public in
24 a manner that protects proprietary information of

1 owners and operators of offshore aquaculture facili-
2 ties.

3 (b) ADVISORY BOARD.—

4 (1) IN GENERAL.—The Office shall establish a
5 Sustainable Offshore Aquaculture Advisory Board,
6 the members of which shall be appointed by the Sec-
7 retary.

8 (2) STRUCTURE.—The membership of the Advi-
9 sory Board shall include, at a minimum, representa-
10 tives from the National Marine Fisheries Service,
11 the commercial and recreational fishing industries,
12 State or local governments, the Coast Guard, non-
13 profit conservation organizations, members of aca-
14 demia with scientific or technical expertise in ocean
15 and coastal matters, and representatives of the
16 aquaculture industry.

17 (3) APPOINTMENT AND TERMS.—

18 (A) IN GENERAL.—Members of the Advi-
19 sory Board shall be appointed by the Secretary
20 for a term of 2 years.

21 (B) VACANCIES.—Whenever a vacancy oc-
22 curs, the Secretary shall appoint an individual
23 representing the same interests or affiliation
24 represented by the individual's predecessor to

1 fill that vacancy for the remainder of the appli-
2 cable term.

3 (4) CHAIRPERSON.—The Advisory Board shall
4 have a chairperson, who shall be elected by the Advi-
5 sory Board from among its members. The chair-
6 person shall serve for a 2-year term.

7 (5) DUTIES.—The Advisory Board shall—

8 (A) meet at least once every six months;
9 and

10 (B) provide advice to the Secretary on all
11 aspects of offshore aquaculture, including devel-
12 oping technologies, emerging risks, issues
13 unique to each region, and priorities for re-
14 search authorized under section 7.

15 (6) CONTINUING EXISTENCE.—Section 14(a)(2)
16 of the Federal Advisory Committee Act (5 U.S.C.
17 App.) shall not apply to the Advisory Board.

18 **SEC. 4. REGIONAL PROGRAMMATIC ENVIRONMENTAL IM-**
19 **PACT STATEMENTS.**

20 (a) IN GENERAL.—The Secretary shall issue for each
21 region described in subsection (b) a regional programmatic
22 environmental impact statement under section 102 of the
23 National Environmental Policy Act of 1969 (42 U.S.C.
24 4332) regarding permitting of offshore aquaculture under
25 this Act.

1 (b) REGIONS DESCRIBED.—The regions referred to
2 in subsection (a) are each of the geographic regions for
3 which a Regional Fishery Management Council is estab-
4 lished under section 302(a) of the Magnuson-Stevens
5 Fishery Conservation and Management Act (16 U.S.C.
6 1852(a)).

7 (c) IDENTIFICATION OF AREAS.—The Secretary shall
8 include in the statement under subsection (a) for a region
9 identification of—

10 (1) areas of the region that are not appropriate
11 locations for the conduct of offshore aquaculture;
12 and

13 (2) areas of the region that may be appropriate
14 locations for the conduct of offshore aquaculture.

15 (d) MATTERS TO BE CONSIDERED.—Each regional
16 programmatic environmental impact statement shall in-
17 clude consideration of the following:

18 (1) Appropriate areas for siting offshore aqua-
19 culture facilities and operations to avoid adverse im-
20 pacts, and to minimize any unavoidable impacts on
21 user groups, public trust values, and the marine en-
22 vironment, including effects on commercial and rec-
23 reational fishing and other important ocean uses.

1 (2) Impacts on marine ecosystems, sensitive
2 ocean and coastal habitats, and other plant and ani-
3 mal species, including—

4 (A) the impacts of escaped fish on wild
5 fish populations;

6 (B) the impacts of interactions with ma-
7 rine mammals, marine wildlife, and birds;

8 (C) the impacts of the use of chemical and
9 biological products, pollutants, and nutrient
10 wastes on the marine environment; and

11 (D) effects of removal of forage fish for
12 feed, fishmeal, and fish oil on marine eco-
13 systems.

14 (3) Cumulative effects of a number of offshore
15 aquaculture facilities on the ability of the marine en-
16 vironment to maintain preexisting flora and fauna.

17 (4) Design of offshore aquaculture facilities and
18 operations to avoid adverse environmental impacts,
19 and to minimize any unavoidable impacts.

20 (e) REVIEW AND REVISION.—The Administrator
21 shall review, revise, and publish in the Federal Register
22 each regional programmatic environmental impact state-
23 ment under this section every 10 years, including by—

24 (1) reviewing and revising, as appropriate, iden-
25 tifications of areas under subsection (c); and

1 (2) reassessing the analysis of each such identi-
2 fication, taking into account changes in environ-
3 mental conditions and information that has become
4 available since the date of such identification.

5 (f) PROGRAMMATIC EIS REQUIRED.—No permit may
6 be issued under section 5 for an offshore aquaculture facil-
7 ity before the date of the issuance of all programmatic
8 environmental impact statements under this section.

9 (g) ENVIRONMENTAL REVIEW.—In addition to the
10 requirement to issue regional programmatic environmental
11 impact statements under this section, a separate environ-
12 mental review under section 102 of the National Environ-
13 mental Policy Act of 1969 (42 U.S.C. 4332) shall be con-
14 ducted for issuing permits under this Act.

15 **SEC. 5. OFFSHORE AQUACULTURE PERMITTING.**

16 (a) PERMITTING REQUIREMENT.—

17 (1) IN GENERAL.—No person may engage in
18 offshore aquaculture except as authorized by a per-
19 mit issued under this Act.

20 (2) PERMITTING AUTHORITY.—The Secretary
21 may issue permits in accordance with this Act au-
22 thorizing a person to engage in offshore aquaculture.

23 (3) EXISTING AUTHORIZATIONS NOT EFFEC-
24 TIVE.—No permit or other authorization issued
25 under any other Federal law before the date of the

1 enactment of this Act shall be construed as author-
2 izing activity for which a permit is required by this
3 Act.

4 (b) REGULATIONS.—

5 (1) IN GENERAL.—The Secretary shall issue
6 regulations that govern the issuance of permits
7 under this Act and the conduct of activities under
8 such permits by not later than 180 days after the
9 regional programmatic environmental impact state-
10 ments required under section 4 are completed.

11 (2) PRIORITY OF METHOD.—The regulations
12 shall—

13 (A) to the extent feasible, establish numer-
14 ical standards for environmental performance
15 under such permits;

16 (B) to the extent such numerical standards
17 are not feasible, establish narrative standards
18 for such performance; and

19 (C) to the extent such numerical standards
20 and narrative standards are not feasible, re-
21 quire management practices, including imple-
22 mentation of best management practices for
23 such performance.

1 (3) BEST SCIENTIFIC INFORMATION AVAIL-
2 ABLE.—The regulations shall be based on the best
3 scientific information available.

4 (4) REVIEW OF REGULATIONS.—The Secretary
5 shall review and revise the regulations under this
6 section at the same time the Secretary conducts re-
7 views of regional programmatic environmental im-
8 pact statements under section 4(e).

9 (c) APPLICATION.—The applicant for a permit under
10 this section shall submit to the Secretary an application—

11 (1) specifying—

12 (A) the proposed location to be developed
13 under the permit, including—

14 (i) size;

15 (ii) depth;

16 (iii) water conditions, including cur-
17 rents;

18 (iv) substrate;

19 (v) preliminary habitat and ecological
20 community assessment data;

21 (vi) distribution and composition of
22 species;

23 (vii) proximity to other offshore aqua-
24 culture facilities; and

25 (viii) proximity to other uses;

1 (B) the proposed operation to be developed
2 under the permit;

3 (C) the marine species to be propagated or
4 reared, or both; and

5 (D) design, construction, and operational
6 information as may be specified in the regula-
7 tions under this section;

8 (2) demonstrating that the location is sufficient
9 to avoid or minimize adverse effects on resources
10 and other resource users; and

11 (3) containing such other information as may
12 be required by the Secretary.

13 (d) ELIGIBILITY.—A person shall not be eligible to
14 apply for a permit under this section unless the person
15 is an individual who is a resident of the United States
16 or a corporation, partnership, or other entity organized
17 and existing under the laws of a State or the United
18 States.

19 (e) PUBLIC NOTICE AND COMMENT.—The Secretary
20 shall—

21 (1) promptly publish public notice of each appli-
22 cation received by the Secretary for a permit under
23 this section;

24 (2) determine whether a permit application is
25 complete within 30 days of receipt; and

1 (3) provide a period of at least 90 days after
2 determining that the application is complete for the
3 submission of public comment on the application.

4 (f) CONSIDERATION BY SECRETARY.—

5 (1) IN GENERAL.—Within 180 days after deter-
6 mining that a permit application under this section
7 is complete and the applicant has satisfied all appli-
8 cable statutory and regulatory requirements, the
9 Secretary shall issue or deny the permit. If the Sec-
10 retary is unable to issue or deny a permit within this
11 time period, the Secretary shall provide written no-
12 tice to the applicant indicating the reasons for the
13 delay and establishing a reasonable timeline for
14 issuing or denying the permit.

15 (2) CONSULTATION NOT AFFECTED.—Para-
16 graph (1) shall not be construed to affect the appli-
17 cation of any requirement under section 7 of the En-
18 dangered Species Act of 1973 (16 U.S.C. 1536) or
19 any other Federal law.

20 (g) PERMIT TERMS.—

21 (1) EFFECTIVE PERIOD; RENEWAL.—A permit
22 under this section—

23 (A) shall be effective for an initial period
24 of 10 years; and

1 (B) may be renewed by the Secretary for
2 subsequent 10-year periods.

3 (2) PERMITTEE'S RIGHT OF FIRST REFUSAL.—

4 The Secretary may not issue a permit under this
5 section to a person for an area that is subject to an-
6 other permit under this section held by another per-
7 son, unless—

8 (A) the other person elects not to renew
9 the other permit; or

10 (B) the other permit expires or is termi-
11 nated by its terms.

12 (3) TRANSFERABILITY.—A permit under this
13 section shall be transferable to any person who is
14 otherwise eligible for the permit.

15 (h) PRIORITIZATION OF PERMITS.—The Secretary—

16 (1) shall give priority to issuance of permits for
17 activities to be conducted in an area that has been
18 identified in a statement under section 4(c)(2) as an
19 area that may be an appropriate location for the
20 conduct of offshore aquaculture;

21 (2) shall give priority to issuance of permits for
22 activities to be conducted using technologies and
23 practices that will substantially exceed compliance
24 with the permit terms and conditions required under
25 subsection (j); and

1 (3) may waive some or all of the requirements
2 to pay a fee under section 6 with respect to a permit
3 required to be given priority under paragraph (1) or
4 (2).

5 (i) ANNUAL REVIEW AND REPORTING.—

6 (1) IN GENERAL.—The Secretary shall con-
7 duct—

8 (A) an annual review of compliance with
9 permits under this Act by each permittee; and

10 (B) announced and unannounced site in-
11 spections at locations of offshore aquaculture
12 facilities operated under such permits.

13 (2) REPORTING REQUIREMENTS.—With respect
14 to activities under a permit under this section, the
15 permittee shall report annually to the Secretary—

16 (A) comprehensive data regarding escape
17 events, including estimates of stocked and har-
18 vested fish and mortalities;

19 (B) nutrient-loading data and community
20 structure data to assess the impact of offshore
21 aquaculture on the water column and the
22 benthos;

23 (C) prevalence and extent of disease and
24 parasites;

1 (D) the use and amounts of antibiotics,
2 pesticides, prescription drugs and nonprescrip-
3 tion drugs, and other chemical treatments;

4 (E) sources of fish feed, including invoices,
5 receipts, or bills of lading showing source of
6 wild fish stock; and

7 (F) other information, as required by the
8 Secretary.

9 (3) AVAILABILITY OF INFORMATION.—The Sec-
10 retary shall make all data reported by permittees
11 publically available, subject to reasonable restrictions
12 to protect proprietary information of owners and op-
13 erators of offshore aquaculture facilities.

14 (4) ASSESSMENT OF REPORTED DATA.—The
15 Secretary shall conduct an independent assessment
16 of all data reported by permittees to ensure permit
17 compliance and identify potential cumulative impacts
18 of offshore aquaculture.

19 (j) PERMIT TERMS AND CONDITIONS.—The Sec-
20 retary shall include in the terms and conditions of each
21 permit under this Act the following:

22 (1) BROODSTOCK MANAGEMENT AND FISH ES-
23 CAPES.—

24 (A) Offshore aquaculture under such per-
25 mit shall be limited to species of a genotype na-

1 tive to the geographic region of the offshore
2 aquaculture facility or operations authorized by
3 the permit.

4 (B) Species of special concern or those of
5 protected status under the Endangered Species
6 Act of 1973 (16 U.S.C. 1531 et seq.) shall not
7 be cultured for growout and harvest.

8 (C) Genetically modified species shall not
9 be cultured.

10 (D) Native species shall be cultured in a
11 manner that ensures fish escapes will not harm
12 the genetics of local wild fish. Stocked fish shall
13 be no further than two generations from the
14 relevant wild stock, and shall not have been ex-
15 posed to intentional selective breeding.

16 (E) All cultured fish shall be marked,
17 tagged, or otherwise identified as belonging to
18 the permittee in a manner determined appro-
19 priate by the Secretary, unless the Secretary
20 determines that identifying cultured fish is un-
21 necessary for protecting wild fish stocks, the
22 marine environment, or other ocean uses.

23 (F) All facilities and operations shall be
24 designed, operated, and shown to be effective at
25 preventing the escape of cultured fish into the

1 marine environment and withstanding severe
2 weather conditions and marine accidents. The
3 permittee shall maintain records on all escapes.
4 In the event of escapement, the number of es-
5 caped fish and the circumstances surrounding
6 the incident shall be reported immediately to
7 the Secretary.

8 (G) Wild-caught fish shall not be contained
9 in any research project under section 7 or off-
10 shore aquaculture facility permitted under this
11 Act for the purposes of growing such fish to
12 market size or mass, or with the intention of
13 selling such fish.

14 (2) DISEASE AND PATHOGEN PREVENTION.—

15 The Secretary shall—

16 (A) require offshore aquaculture facilities
17 to be designed, located, and operated to prevent
18 the incubation and spread of disease and patho-
19 gens and ecosystem impacts from disease and
20 pathogen introduction;

21 (B) prohibit the use, including the prophylactic
22 use, of antibiotics, pesticides, prescription
23 and nonprescription drugs, or other chemical
24 treatments; except that—

1 (i) such use may be allowed as nec-
2 essary to treat a diagnosed disease; and

3 (ii) the use of vaccines may be al-
4 lowed;

5 (C) require that if use of antibiotics, pes-
6 ticides, prescription or nonprescription drugs,
7 or other chemical treatments is necessary to
8 treat a diagnosed disease and multiple options
9 for treatment of such disease exist—

10 (i) the option with the least environ-
11 mental impact shall be used; and

12 (ii) such use shall be minimized to the
13 maximum extent practicable;

14 (D) require that the use of antifouling
15 paints on all offshore aquaculture facilities, ves-
16 sels, and in-water structures be minimized to
17 the maximum extent practicable; and

18 (E) prohibit the use of any antibiotic, pes-
19 ticide, prescription or nonprescription drug, or
20 other chemical treatment for marine aqua-
21 culture except after consultation with the Com-
22 missioner of the Food and Drug Administra-
23 tion.

24 (3) HABITAT AND ECOSYSTEM IMPACTS.—The
25 Secretary—

1 (A) shall establish appropriate numerical
2 limitations of nutrient inputs into the marine
3 environment from offshore aquaculture facili-
4 ties—

5 (i) in consultation with the Adminis-
6 trator of the Environmental Protection
7 Agency;

8 (ii) at a local or regional level as nec-
9 essary to protect the environment; and

10 (iii) taking into account cumulative
11 and secondary impacts of such inputs at
12 the local and regional level from the expan-
13 sion of offshore aquaculture; and

14 (B) shall require each permittee under this
15 Act to prevent discharges of pollutants into
16 ocean waters to the maximum extent prac-
17 ticable.

18 (4) INTERACTIONS WITH AND IMPACTS ON MA-
19 RINE WILDLIFE.—The Secretary shall—

20 (A) require each permittee under this Act
21 to develop a comprehensive, integrated predator
22 management plan that—

23 (i) employs nonlethal deterrents as a
24 primary course of action; and

1 (ii) contains measures to prevent en-
2 tanglement, migration disruption, and
3 change in predator behavior, so as to not
4 unreasonably disrupt wildlife or their use
5 of critical marine habitat; and

6 (B) prohibit permittees under this Act—

7 (i) from using underwater acoustic de-
8 terrent devices of any kind; and

9 (ii) from intentionally killing or seri-
10 ously injuring marine mammals and other
11 predators of cultured fish, except if human
12 safety is immediately threatened.

13 (5) USE OF MARINE RESOURCES FOR FEEDS.—

14 The Secretary shall—

15 (A) prohibit the use under permits under
16 this Act of wild fish as feed ingredients for off-
17 shore aquaculture unless—

18 (i) they are sourced from populations
19 with ecosystem-based management meas-
20 ures in place; and

21 (ii) they are sourced from populations
22 whose biomass is at or above maximum
23 sustainable yield;

1 (B) require that use under such permits of
2 fishmeal and fish oil derived from forage fish-
3 eries be minimized;

4 (C) require that alternatives to fishmeal
5 and fish oil, or fishmeal and fish oil made from
6 fish byproducts be utilized under such permits
7 to the maximum extent practicable; and

8 (D) issue guidance that incorporates the
9 results of the joint NOAA–USDA Alternative
10 Feeds Initiative and other research efforts in-
11 vestigating alternative feed ingredients.

12 (6) INTERACTIONS WITH FISHERIES.—The Sec-
13 retary shall minimize displacement of commercial
14 and recreational fisherman and economic harm to
15 fishing communities resulting from activities under
16 permits under this Act.

17 (7) SITING.—The Secretary shall prohibit siting
18 of an offshore aquaculture facility under a permit
19 under this Act—

20 (A) in sensitive habitat, including any ma-
21 rine protected area, marine reserve, Habitat
22 Area of Particular Concern, Special Manage-
23 ment Zone, or National Marine Sanctuary;

24 (B) in an area that is identified in a re-
25 gional programmatic environmental impact

1 statement under section 4(c)(1) as an area that
2 is not an appropriate location for the conduct
3 of offshore aquaculture; or

4 (C) on or attached to any portion of an oil
5 or gas platform, including one that is no longer
6 in service.

7 (k) LIMITED RIGHT.—The Secretary shall not issue
8 any permit under this Act that constitutes a property right
9 for which compensation could be required under the Fifth
10 Amendment to the Constitution.

11 (l) LIMITATION IN THE PUBLIC INTEREST.—The
12 Secretary shall not issue a permit under this Act for an
13 offshore aquaculture project if the Secretary determines
14 that denial of a permit for the project is in the public in-
15 terest.

16 **SEC. 6. FEES.**

17 (a) PERMIT FEES.—

18 (1) IN GENERAL.—The Secretary shall estab-
19 lish, assess, and collect application fees and annual
20 fees with respect to permits under this Act that are
21 sufficient to pay the costs of issuance, monitoring,
22 and enforcement of such permits.

23 (2) DEPOSIT AND USE.—Such fees shall be de-
24 posited as offsetting collections in the Operations,

1 Research, and Facilities account of the Department
2 of Commerce.

3 (b) RESOURCE RENTAL FEES.—

4 (1) IN GENERAL.—The Secretary shall estab-
5 lish, assess, and collect resource rental fees to re-
6 cover from permittees under this Act a reasonable
7 portion of the value of the use under the permits of
8 ocean resources held in public trust.

9 (2) DEPOSIT AND USE.—Amounts received by
10 the United States as fees under this subsection—

11 (A) shall be deposited into a separate ac-
12 count in the Treasury, which shall be known as
13 the Offshore Aquaculture Development and Re-
14 source Trust Fund; and

15 (B) shall be available to the Secretary,
16 subject to the availability of appropriations and
17 review by the Offshore Aquaculture Advisory
18 Board established under section 3(b), to en-
19 hance the research program under section 7.

20 (c) FINANCIAL GUARANTEE.—The Secretary shall re-
21 quire each permittee under this Act to post a bond or
22 other form of financial guarantee, in an amount to be de-
23 termined by the Secretary to be sufficient to cover any
24 unpaid fees, the cost of removing an offshore aquaculture
25 facility at the expiration or termination of offshore aqua-

1 culture operations, and other financial risks as identified
2 by the Secretary.

3 **SEC. 7. SUSTAINABLE OFFSHORE AQUACULTURE RE-**
4 **SEARCH PROGRAM.**

5 (a) PURPOSE.—The purpose of this section is to es-
6 tablish a research program to—

7 (1) inform how offshore aquaculture permitting
8 and regulation can adopt a precautionary approach
9 to industry expansion to ensure ecological sustain-
10 ability and compatibility with healthy, functional
11 ecosystems and fisheries; and

12 (2) develop cost-effective solutions to environ-
13 mental and socioeconomic impacts of offshore aqua-
14 culture.

15 (b) ESTABLISHMENT OF PROGRAM.—The Secretary,
16 in consultation with other Federal agencies, coastal
17 States, Regional Fishery Management Councils, academic
18 institutions, and other interested stakeholders, shall estab-
19 lish and conduct a research program to guide the sustain-
20 able development of offshore aquaculture.

21 (c) TOPICS OF PROGRAM.—The Secretary, through
22 the research program, shall—

23 (1) identify environmental factors, aquaculture
24 technologies, and practices that address the permit
25 terms and conditions required under section 5(j);

1 (2) assess and mitigate the cumulative impacts
2 of multiple offshore aquaculture facilities;

3 (3) analyze potential socioeconomic impacts of
4 offshore aquaculture on fisheries and communities
5 that are dependent on such fisheries;

6 (4) evaluate financial, public policy, and market
7 incentives for sustainable development of offshore
8 aquaculture; and

9 (5) conduct or support research on other topics
10 as considered appropriate by the Secretary to
11 achieve the purpose of this section.

12 (d) GRANT PROGRAM.—

13 (1) IN GENERAL.—The Secretary, subject to
14 the availability of appropriations, shall establish a
15 competitive, peer-reviewed grant program to support
16 research related to the topics of the program under
17 subsection (c).

18 (2) ELIGIBILITY.—The Secretary, in consulta-
19 tion with the Offshore Aquaculture Advisory Board
20 established under section 3, shall establish criteria
21 for determining persons who are eligible for grants
22 under this section.

23 (e) TRANSPARENCY; USE OF RESULTS.—The Sec-
24 retary, in consultation with the Advisory Board, shall—

1 (1) issue rules for the grant program under
2 subsection (d) that enable the public to understand
3 the administration of the grant program, including
4 the process for application, submission of materials,
5 and awarding of grants;

6 (2) utilize and regularly incorporate the infor-
7 mation gathered from the research program to guide
8 Federal permitting and rulemaking decisions relat-
9 ing to offshore aquaculture, with an adaptive man-
10 agement approach; and

11 (3) make the findings of the research and devel-
12 opment program available to the public.

13 (f) COORDINATION WITH OTHER FEDERAL PRO-
14 GRAMS.—The Secretary shall coordinate the research pro-
15 gram with other Federal programs that provide grant
16 funding for purposes similar to that described in this sec-
17 tion, such as grants administered by the National Insti-
18 tute of Science and Technology and its Advanced Tech-
19 nology Program.

20 (g) PERMIT MODIFICATION.—The Secretary shall re-
21 vise permits to accommodate research conducted on or
22 near offshore aquaculture facilities permitted under sec-
23 tion 5.

1 **SEC. 8. COMPATIBILITY WITH OTHER USES; STATE INPUT.**

2 (a) CONSULTATION.—The Secretary shall consult, as
3 appropriate, with other Federal agencies and coastal
4 States to ensure that offshore aquaculture for which per-
5 mits are issued under this Act is compatible with the use
6 of the exclusive economic zone for navigation, resource
7 protection, recreation, fisheries, national defense (includ-
8 ing military readiness), mineral exploration and develop-
9 ment, and other activities.

10 (b) PERMITS FOR REGULATED SPECIES AND
11 AREAS.—

12 (1) IN GENERAL.—The Secretary may not issue
13 a permit under this Act authorizing a person to
14 propagate or rear a species of a fishery for which
15 there is in effect a fishery management plan under
16 the Magnuson-Stevens Fishery Conservation and
17 Management Act (16 U.S.C. 1801 et seq.), or to
18 propagate or rear any species in an area that is
19 within the jurisdiction of a Regional Fishery Man-
20 agement Council, unless all Regional Fishery Man-
21 agement Councils that have authority under such
22 Act to issue such a plan for that fishery or that have
23 jurisdiction over that area, respectively, have rec-
24 ommended approval of issuance of the permit.

25 (2) ENSURING FISHING ACCESS.—The Sec-
26 retary, in consultation with Regional Fishery Man-

1 agement Councils, shall ensure that offshore aqua-
2 culture permits under this Act do not interfere with
3 access to commercial and recreational fish stocks.

4 (c) STATE INPUT.—

5 (1) NOTICE TO STATE.—The Secretary—

6 (A) shall promptly provide to a coastal
7 State notice of the receipt by the Secretary of
8 any application for a permit under this Act for
9 any new offshore aquaculture facility to be lo-
10 cated within 12 miles of the coastline of that
11 coastal State; and

12 (B) shall not issue such permit before the
13 end of the 90-day period beginning on the date
14 the Secretary provides such notice.

15 (2) STATE OPT-OUT.—

16 (A) SUBMISSION OF LIST.—A coastal State
17 may submit to the Secretary a list of locations,
18 species, or categories of species (such as finfish
19 or shellfish) for which the coastal State opposes
20 the conduct of offshore aquaculture, by no later
21 than 180 days after the regional programmatic
22 environmental impact statements under section
23 4 are published.

24 (B) SUBSEQUENT SUBMISSION OR REVI-
25 SION.—A coastal State may submit a list under

1 subparagraph (A), or revise or revoke such a
2 list previously submitted, within 90 days after
3 the review of a regional environmental impact
4 statement under section 4(e) is published.

5 (C) PROHIBITION ON PERMITS.—The Sec-
6 retary may not issue or renew any permit under
7 this Act authorizing offshore aquaculture in any
8 location, or of any species, or category of spe-
9 cies, that is included in a list submitted under
10 subparagraph (A) by the nearest coastal State
11 with respect to that facility.

12 (d) INTEGRATION WITH OTHER FEDERAL PLAN-
13 NING.—The Secretary shall integrate the permitting of
14 offshore aquaculture under this Act with other Federal re-
15 gional marine spatial planning that has as its purpose eco-
16 system-based management of United States marine wa-
17 ters.

18 **SEC. 9. RELATIONSHIP TO OTHER LAWS.**

19 (a) MAGNUSON-STEVENSON FISHERY CONSERVATION
20 AND MANAGEMENT ACT.—Notwithstanding the definition
21 of “fishing” in section 3(16) of the Magnuson-Stevens
22 Fishery Conservation and Management Act (16 U.S.C.
23 1802(16)), the conduct of offshore aquaculture in accord-
24 ance with permits issued under this Act shall not be con-
25 sidered fishing for purposes of that Act, and no Regional

1 Fishery Management Council may issue any permit au-
2 thorizing offshore aquaculture. The Secretary shall ensure
3 that offshore aquaculture does not interfere with conserva-
4 tion and management measures promulgated under the
5 Magnuson-Stevens Fishery Conservation and Manage-
6 ment Act (16 U.S.C. 1801 et seq.).

7 (b) ACTIONS AFFECTING THE OUTER CONTINENTAL
8 SHELF.—

9 (1) CONCURRENCE OF SECRETARY OF THE IN-
10 TERIOR REQUIRED.—The Secretary must obtain the
11 concurrence of the Secretary of the Interior before
12 issuing any permit under this Act for offshore aqua-
13 culture facilities located—

14 (A) on any lease, right-of-use and ease-
15 ments, or right-of-way authorized or permitted
16 under the Outer Continental Shelf Lands Act
17 (43 U.S.C. 1331 et seq.); or

18 (B) within 1 mile of any other facility for
19 which a permit has been issued, or for which a
20 plan has been approved, under that Act.

21 (2) PRIOR CONSENT REQUIRED.—The Sec-
22 retary may not issue any permit under this Act au-
23 thorizing offshore aquaculture on any lease, right-of-
24 use and easements, or right-of-way referred to in
25 paragraph (1)(A) without the prior consent of the

1 lessee, its designated operator, and the owner of the
2 facility concerned.

3 (3) REVIEW OF LEASE, ETC., COMPLIANCE.—

4 The Secretary of the Interior shall review and ap-
5 prove any agreement between a lessee, designated
6 operator, and owner of a facility described in para-
7 graph (1) and a prospective offshore aquaculture fa-
8 cility operator to ensure that it is consistent with the
9 Federal lease terms, Department of the Interior reg-
10 ulations, and the Secretary of the Interior's role in
11 the protection of the marine environment, property,
12 or human life or health. An agreement under this
13 subsection shall be part of the information reviewed
14 pursuant to the Coastal Zone Management Act of
15 1972 review process described in paragraph (4) and
16 shall not be subject to a separate review under the
17 Coastal Zone Management Act of 1972 (16 U.S.C.
18 1451 et seq.).

19 (4) COORDINATED COASTAL ZONE MANAGE-
20 MENT ACT OF 1972 REVIEW.—

21 (A) REVIEW IF CONSISTENCY DETERMINA-
22 TION REQUIRED FOR PERMIT APPLICATIONS.—

23 If the applicant for a permit under this Act for
24 an offshore aquaculture facility that will utilize
25 a facility described in paragraph (1) is required

1 to submit for its offshore aquaculture permit
2 application under this Act a consistency certifi-
3 cation under section 307(c)(3)(A) of the Coast-
4 al Zone Management Act of 1972 (16 U.S.C.
5 1456(c)(3)(A)) to a coastal State, the coastal
6 State's review under such Act and cor-
7 responding Federal regulations shall also in-
8 clude any modification to a lessee's approved
9 plan or other document for which a consistency
10 certification would otherwise be required under
11 applicable Federal regulations, including
12 changes to its plan for decommissioning any fa-
13 cilities, resulting from or necessary for the
14 issuance of the permit under this Act, if infor-
15 mation related to such modifications or changes
16 is received by the coastal State at the time the
17 coastal State receives the offshore aquaculture
18 permit applicant's consistency certification. If
19 the information related to such modifications or
20 changes is received by the coastal State at the
21 time the coastal State receives the offshore
22 aquaculture permit applicant's consistency cer-
23 tification, a lessee is not required to submit a
24 separate consistency certification for any such
25 modification or change under section

1 307(c)(3)(B) of the Coastal Zone Management
2 Act of 1972 (16 U.S.C. 1456(c)(3)(B)) and the
3 coastal State’s concurrence or objection, or pre-
4 sumed concurrence, under section 307(c)(3)(A)
5 of the Coastal Zone Management Act of 1972
6 (16 U.S.C. 1456(c)(3)(A)) in a consistency de-
7 termination for the offshore aquaculture permit,
8 shall apply to both the offshore aquaculture
9 permit and to any related modifications or
10 changes to a lessee’s plan approved under the
11 Outer Continental Shelf Lands Act.

12 (B) REVIEW IF STATE IS NOT AUTHORIZED
13 TO REVIEW PERMIT APPLICATION.—If a coastal
14 State is not authorized by section 307(c)(3)(A)
15 of the Coastal Zone Management Act (16
16 U.S.C. 1456(c)(3)(A)) and corresponding Fed-
17 eral regulations to review an offshore aqua-
18 culture permit application submitted under this
19 Act, then any modifications or changes to a les-
20 see’s approved plan or other document requir-
21 ing approval from the Department of the Inte-
22 rior, shall be subject to coastal State review
23 pursuant to the requirements of section
24 307(c)(3)(B) of the Coastal Zone Management
25 Act of 1972 (16 U.S.C. 1456(c)(3)(B)), if a

1 consistency certification for those modifications
2 or changes is required under applicable Federal
3 regulations.

4 (c) COASTAL ZONE MANAGEMENT ACT OF 1972.—

5 (1) IN GENERAL.—This Act shall not affect the
6 application of the Coastal Zone Management Act of
7 1972 (16 U.S.C. 1451 et seq.), and regulations pro-
8 mulgated thereunder, with respect to offshore aqua-
9 culture.

10 (2) ASSISTANCE TO STATES.—The Secretary
11 shall provide technical and, subject to the availability
12 of appropriations, financial assistance to States to
13 review and, if necessary, revise their management
14 plans under that Act to address offshore aquaculture
15 in State and Federal marine waters.

16 (d) RESERVATION OF AUTHORITIES, ETC.—Nothing
17 in this Act shall be construed to displace, supersede, or
18 limit the jurisdiction, responsibilities, or authorities of any
19 Federal or State agency, or Indian tribe or Alaska Native
20 organization, under any Federal law or treaty.

21 **SEC. 10. UNLAWFUL ACTIVITIES.**

22 It is unlawful for any person—

23 (1) to engage in offshore aquaculture, except in
24 accordance with this Act and valid permits issued
25 under this Act;

1 (2) to falsify any information required to be re-
2 ported, communicated, or recorded pursuant to this
3 Act or any regulation or permit issued under this
4 Act, or to fail to submit in a timely fashion any re-
5 quired information, or to fail to report to the Sec-
6 retary immediately any change in circumstances that
7 has the effect of rendering any such information
8 false, incomplete, or misleading;

9 (3) to refuse to permit an authorized officer to
10 conduct any lawful boarding, lawful search, or lawful
11 inspection in connection with the enforcement of this
12 Act or any regulation or permit issued under this
13 Act;

14 (4) to forcibly assault, resist, oppose, impede,
15 intimidate, or interfere with an authorized officer in
16 the conduct of any boarding, search, or inspection in
17 connection with the enforcement of this Act or any
18 regulation or permit issued under this Act;

19 (5) to resist a lawful arrest or detention for any
20 act prohibited by this section;

21 (6) to interfere with, delay, or prevent, by any
22 means, the apprehension, arrest, or detection of an-
23 other person, knowing that such person has com-
24 mitted any act prohibited by this section;

1 (7) upon the expiration or termination of any
2 offshore aquaculture permit under this Act for any
3 reason, to fail to remove all structures, gear, and
4 other property from the site, or take other measures,
5 as prescribed by the Secretary, to restore the site;

6 (8) to violate any provision of this Act, any reg-
7 ulation promulgated under this Act, or any term or
8 condition of any permit issued under this Act; or

9 (9) to attempt to commit any act described in
10 paragraph (1), (2), (7), or (8).

11 **SEC. 11. ENFORCEMENT.**

12 (a) DUTIES OF SECRETARIES.—This Act shall be en-
13 forced by the Secretary and the Secretary of the depart-
14 ment in which the Coast Guard is operating.

15 (b) POWERS OF ENFORCEMENT.—

16 (1) IN GENERAL.—Any officer who is author-
17 ized pursuant to subsection (a) by the Secretary or
18 the Secretary of the department in which the Coast
19 Guard is operating to enforce the provisions of this
20 Act may—

21 (A) with or without a warrant or other
22 process—

23 (i) arrest any person, if the officer has
24 reasonable cause to believe that such per-

1 son has committed or is committing an act
2 prohibited by section 10;

3 (ii) board, search, or inspect any off-
4 shore aquaculture facility and any related
5 land-based facility;

6 (iii) seize any offshore aquaculture fa-
7 cility (together with its equipment, records,
8 furniture, appurtenances, stores, and
9 cargo), and any vessel or vehicle, used or
10 employed in aid of, or with respect to
11 which it reasonably appears that such off-
12 shore aquaculture facility was used or em-
13 ployed in aid of, the violation of any provi-
14 sion of this Act or any regulation or permit
15 issued under this Act;

16 (iv) seize any marine species (wher-
17 ever found) retained, in any manner, in
18 connection with or as a result of the com-
19 mission of any act prohibited by section
20 10; and

21 (v) seize any evidence related to any
22 violation of any provision of this Act or
23 any regulation or permit issued under this
24 Act;

1 (B) execute any warrant or other process
2 issued by any court of competent jurisdiction;
3 and

4 (C) exercise any other lawful authority.

5 (2) ARRESTS, SUBPOENAS, AND WARRANTS.—

6 (A) ARREST WITHOUT WARRANT.—Any of-
7 ficer who is authorized pursuant to subsection
8 (a) of this section by the Secretary or the Sec-
9 retary of the department in which the Coast
10 Guard is operating to enforce the provisions of
11 this Act may make an arrest without a warrant
12 for—

13 (i) an offense against the United
14 States committed in his or her presence; or

15 (ii) a felony cognizable under the laws
16 of the United States, if he has reasonable
17 grounds to believe that the person to be ar-
18 rested has committed or is committing a
19 felony.

20 (B) SUBPOENAS AND WARRANTS.—Any
21 such authorized officer may execute and serve
22 a subpoena, arrest warrant, or search warrant
23 issued in accordance with rule 41 of the Fed-
24 eral Rules of Criminal Procedure, or other war-
25 rant of civil or criminal process issued by any

1 officer or court of competent jurisdiction for en-
2 forcement of the Act, or any regulation or per-
3 mit issued under this Act.

4 (c) ISSUANCE OF CITATIONS.—If any officer referred
5 to in subsection (b)(2)(A) finds that a person who is the
6 holder of a permit under this Act is engaging in or has
7 engaged in offshore aquaculture in violation of any provi-
8 sion of this Act, such officer may issue a citation to that
9 person for purposes of subsection (d)(1).

10 (d) PERMIT SUSPENSION, MODIFICATION, OR REV-
11 OCATION.—

12 (1) REPEATED CITATION.—If the Secretary
13 finds that a person is repeatedly cited under sub-
14 section (c) with respect to offshore aquaculture
15 under a permit, the Secretary shall immediately sus-
16 pend or revoke the permit for which the citations
17 were issued.

18 (2) EMERGENCY.—If the Secretary determines
19 that an emergency exists with respect to offshore
20 aquaculture under a permit under this Act that
21 poses a risk to the safety of humans, to the marine
22 environment or marine species, or to the security of
23 the United States, the Secretary shall immediately
24 suspend, modify, or revoke the permit for such time

1 as the Secretary may determine necessary to address
2 the emergency.

3 (3) NEW INFORMATION.—The Secretary may
4 suspend, modify, or revoke a permit under this Act
5 at any time if the Secretary determines, based on in-
6 formation obtained after the issuance of the permit
7 (including information obtained under the research
8 program under section 7), that the permit terms and
9 conditions are no longer consistent with the terms of
10 this Act.

11 (4) OPPORTUNITY TO BE HEARD.—The Sec-
12 retary shall afford the permit holder a prompt
13 postsuspension, postmodification, or postrevocation
14 opportunity to be heard regarding the suspension,
15 modification, or revocation.

16 (e) ENFORCEMENT UNDER MAGNUSON-STEVENSON
17 FISHERY CONSERVATION AND MANAGEMENT ACT.—For
18 purposes of sections 308, 309, and 310 of the Magnuson-
19 Stevens Fishery Conservation and Management Act (16
20 U.S.C. 1858, 1859, 1860), a violation of this Act shall
21 be treated as a violation of section 307(1) of that Act (16
22 U.S.C. 1857(1)).

23 (f) CITIZEN SUITS.—

24 (1) IN GENERAL.—

1 (A) ACTIONS AUTHORIZED.—Except as
2 provided in paragraph (2), any person may
3 commence a civil suit on his or her own be-
4 half—

5 (i) to enjoin any person, including the
6 United States and any other governmental
7 instrumentality or agency (to the extent
8 permitted by the Eleventh Amendment to
9 the Constitution), who is alleged to be in
10 violation of any provision of this Act, per-
11 mit, or regulation issued under the author-
12 ity thereof; or

13 (ii) against the Secretary where there
14 is alleged a failure of the Secretary to per-
15 form any act or duty under this Act that
16 is not discretionary with the Secretary.

17 (B) JURISDICTION.—The district courts
18 shall have jurisdiction, without regard to the
19 amount in controversy or the citizenship of the
20 parties, to enforce any such provision or regula-
21 tion or to order the Secretary to perform such
22 act or duty, as the case may be.

23 (2) LIMITATIONS.—

24 (A) ACTION TO ENJOIN.—No action may
25 be commenced under paragraph (1)(A)(i)—

1 (i) prior to 60 days after written no-
2 tice of the violation has been given to the
3 Secretary, and to any alleged violator of
4 any such provision, permit, or regulation;

5 (ii) if the Secretary has commenced
6 action to impose a penalty pursuant to the
7 other provisions of this Act; or

8 (iii) if the United States has com-
9 menced and is diligently prosecuting a
10 criminal action in a court of the United
11 States or a State to redress a violation of
12 any such provision, permit, or regulation.

13 (B) ACTION AGAINST SECRETARY.—No ac-
14 tion may be commenced under paragraph
15 (1)(A)(ii) prior to 60 days after written notice
16 has been given to the Secretary.

17 (3) VENUE.—Any suit under this subsection
18 may be brought in the judicial district in which the
19 violation occurs.

20 (4) INTERVENTION BY ATTORNEY GENERAL.—
21 In any such suit under this subsection in which the
22 United States is not a party, the Attorney General,
23 at the request of the Secretary, may intervene on be-
24 half of the United States as a matter of right.

1 (5) AWARD OF COSTS.—The court, in issuing
2 any final order in any suit brought pursuant to
3 paragraph (1), may award costs of litigation (includ-
4 ing reasonable attorney and expert witness fees) to
5 any party, whenever the court determines such
6 award is appropriate.

7 (6) OTHER RIGHTS NOT AFFECTED.—The in-
8 junctive relief provided by this subsection shall not
9 restrict any right that any person (or class of per-
10 sons) may have under any statute or common law to
11 seek enforcement of any standard or limitation or to
12 seek any other relief (including relief against the
13 Secretary or a State agency).

14 **SEC. 12. NATURAL RESOURCES DAMAGES ASSESSMENT**
15 **AND LIABILITY.**

16 (a) NATURAL RESOURCES DAMAGES ASSESSMENT.—
17 The Secretary shall—

18 (1) assess natural resource damages resulting
19 from the conduct of offshore aquaculture other than
20 as authorized under Federal or State law; and

21 (2) carry out remediation of destruction or loss
22 of, or injury to, natural resources resulting from
23 such conduct and determined in such an assessment.

24 (b) LIABILITY FOR DAMAGES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), any person who conducts offshore aqua-
3 culture other than as authorized under Federal or
4 State law shall be strictly liable to the United States
5 for natural resources damages resulting from such
6 offshore aquaculture that are assessed by the Sec-
7 retary under subsection (a).

8 (2) LIMITATION.—A person is not liable under
9 this section for natural resources damages if that
10 person establishes that—

11 (A) the destruction or loss of, or injury to,
12 natural resources from which such damages
13 arose was caused solely by an act of God, an
14 act of war, or an act of omission of a third
15 party, and the person acted with due care;

16 (B) such destruction, loss, or injury was
17 caused by an activity authorized by Federal or
18 State law; or

19 (C) such destruction, loss, or injury was
20 negligible.

21 **SEC. 13. ENCOURAGING WORLDWIDE ADHERENCE TO THE**
22 **AQUACULTURE PROVISIONS OF THE CODE**
23 **OF CONDUCT FOR RESPONSIBLE FISHERIES.**

24 The Secretary shall—

1 (1) urge United Nations Food and Agriculture
2 Organization to adopt a protocol to the Code of Con-
3 duct for Responsible Fisheries elaborating the need
4 for, and ways to achieve, net seafood production
5 from aquaculture;

6 (2) work to ensure that international fisheries
7 agreements recognize the importance of—

8 (A) forage fish in marine ecosystem dy-
9 namics; and

10 (B) fishery management that maintains
11 the structure and function of marine food webs;

12 (3) use bilateral economic and scientific rela-
13 tionships to encourage countries to manage their do-
14 mestic stocks of forage fish on an ecosystem basis;
15 and

16 (4) lead an international effort for the develop-
17 ment of a traceability system for distinguishing,
18 identifying, and sourcing fishmeal and fish oil so
19 that ecologically sustainable feeds are available and
20 distinguishable to aquaculture.

21 **SEC. 14. DEFINITIONS.**

22 In this Act:

23 (1) **ADVISORY BOARD.**—The term “advisory
24 board” means the Sustainable Offshore Aquaculture
25 Advisory Board established under section 3(b).

1 (2) ANTIFOULING PAINT.—The term
2 “antifouling paint” has the meaning that term has
3 in section 3 of the Organotin Antifouling Paint Con-
4 trol Act of 1988 (33 U.S.C. 2402).

5 (3) COASTAL STATE.—The term “coastal
6 State” means—

7 (A) a State of the United States in, or bor-
8 dering on, the Atlantic, Pacific, or Arctic
9 Ocean, the Gulf of Mexico, or Long Island
10 Sound; and

11 (B) Puerto Rico, the Virgin Islands,
12 Guam, the Commonwealth of the Northern
13 Mariana Islands, the Trust Territories of the
14 Pacific Islands, and American Samoa.

15 (4) COASTLINE.—The term “coastline” means
16 the line of ordinary low water along that portion of
17 the coast that is in direct contact with the open sea
18 and the line marking the seaward limit of inland wa-
19 ters.

20 (5) DAMAGES.—The term “damages” in-
21 cludes—

22 (A) compensation for—

23 (i) the cost of replacing, restoring, or
24 acquiring natural resources that are equiv-

1 alent to natural resources that are de-
2 stroyed, lost, or injured; or

3 (ii) the value of natural resources that
4 are destroyed, lost, or injured, if the nat-
5 ural resources cannot be restored or re-
6 placed or if the equivalent of such natural
7 resources cannot be acquired;

8 (B) the cost of a natural resource damage
9 assessment under subsection 12(a);

10 (C) the reasonable cost of monitoring ap-
11 propriate to injured, restored, or replaced nat-
12 ural resources; and

13 (D) the cost of enforcement actions under-
14 taken by the Secretary in response to the de-
15 struction or loss of, or injury to natural re-
16 sources, including storage, care, and mainte-
17 nance of any marine species or other seized
18 property.

19 (6) EXCLUSIVE ECONOMIC ZONE.—The term
20 “exclusive economic zone” has the meaning that
21 term has in the Magnuson-Stevens Fishery Con-
22 servation and Management Act (16 U.S.C. 1801 et
23 seq.).

24 (7) FISH BYPRODUCTS.—The term “fish by-
25 products”—

1 (A) except as provided in subparagraph
2 (B), means fish parts, including skin, head,
3 viscera, and bone that result from the proc-
4 essing of either fish produced by aquaculture or
5 wild-caught fish; and

6 (B) does not include bycatch.

7 (8) GENETICALLY MODIFIED SPECIES.—The
8 term “genetically modified species” means an orga-
9 nism with genetic material that has been deliberately
10 altered using genetic engineering technologies.

11 (9) HABITAT AREAS OF PARTICULAR CON-
12 CERN.—The term “habitat area of particular con-
13 cern” means a habitat area that is ecologically vul-
14 nerable based on one or more of the following con-
15 siderations:

16 (A) The importance of the ecological func-
17 tion provided by the habitat.

18 (B) The extent to which the habitat is sen-
19 sitive to human-induced environmental degrada-
20 tion.

21 (C) Whether, and to what extent, develop-
22 ment activities are, or will be, stressing the
23 habitat type.

24 (D) The rarity of the habitat type.

1 (10) MARINE PROTECTED AREA.—The term
2 “marine protected area” means any area of the ma-
3 rine environment that has been reserved by Federal,
4 State, territorial, tribal, or local laws or regulations
5 to provide lasting protection for part or all of the
6 natural and cultural resources therein.

7 (11) MARINE RESERVE.—The term “marine re-
8 serve” means a type of marine protected area where
9 extractive uses are prohibited.

10 (12) MARINE SPECIES.—The term “marine spe-
11 cies” means finfish, mollusks, crustaceans, marine
12 algae, and all other forms of marine life, excluding
13 marine mammals and birds.

14 (13) NATIONAL MARINE SANCTUARY.—The
15 term “national marine sanctuary” means any area
16 designated as a national marine sanctuary for pur-
17 poses of the National Marine Sanctuaries Act (16
18 U.S.C. 1431 et seq.).

19 (14) NATURAL RESOURCE.—The term “natural
20 resource” means land, fish, wildlife, biota, air,
21 water, and other such resources belonging to, man-
22 aged by, held in trust by, appertaining to, or other-
23 wise controlled by the United States, any State or
24 local government, or any Indian tribe.

1 (15) OFFICE.—The term “Office” means the
2 Office of Sustainable Offshore Aquaculture estab-
3 lished under section 3(a).

4 (16) OFFSHORE AQUACULTURE.—The term
5 “offshore aquaculture” means all activities related
6 to—

7 (A) the placement of any installation, facil-
8 ity, or structure in the exclusive economic zone
9 for the purposes of propagation and rearing, or
10 attempted propagation and rearing, of marine
11 species; and

12 (B) the operation of any installation, facil-
13 ity, or structure in the exclusive economic zone
14 for the purposes of propagation and rearing, or
15 attempted propagation and rearing, of marine
16 species.

17 (17) OFFSHORE AQUACULTURE FACILITY.—The
18 term “offshore aquaculture facility” means—

19 (A) a structure, installation, or other com-
20 plex placed, in whole or in part, for the pur-
21 poses of propagation and rearing, or attempted
22 propagation and rearing of marine species in
23 the exclusive economic zone; and

24 (B) an area of the seabed or the subsoil
25 used for such placement.

1 (18) OVERFISHING AND OVERFISHED.—Each of
2 the terms “overfishing” and “overfished” has the
3 meaning that term has in the Magnuson-Stevens
4 Fishery Conservation and Management Act (16
5 U.S.C. 1801 et seq.).

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

8 (20) SPECIAL MANAGEMENT ZONE.—The term
9 “special management zone” means an area managed
10 by a State under a special area management plan,
11 as that term is defined in section 304 of the Coastal
12 Zone Management Act of 1972 (16 U.S.C. 1453).

○

111TH CONGRESS
1ST SESSION

S. 2870

To establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2009

Mr. INOUE (for himself, Ms. SNOWE, Mr. BEGICH, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “International Fisheries Stewardship and Enforcement
6 Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ADMINISTRATION AND ENFORCEMENT OF CERTAIN FISHERY AND
 RELATED STATUTES.

Sec. 101. Authority of the Secretary to enforce statutes.

Sec. 102. Conforming, minor, and technical amendments.

Sec. 103. Illegal, unreported, or unregulated fishing.

Sec. 104. Liability.

TITLE II—LAW ENFORCEMENT AND INTERNATIONAL OPERATIONS

Sec. 201. International fisheries enforcement program.

Sec. 202. International cooperation and assistance program.

TITLE III—MISCELLANEOUS AMENDMENTS

Sec. 301. Atlantic Tunas Convention Act of 1975.

Sec. 302. Data Sharing.

Sec. 303. Permits under the High Seas Fishing Compliance Act of 1995.

Sec. 304. Technical corrections to the Western and Central Pacific Fisheries
 Convention Implementation Act.

Sec. 305. Pacific Whiting Act of 2006.

Sec. 306. Committee on Scientific Cooperation for Pacific Salmon Agreement.

Sec. 307. Reauthorizations.

TITLE IV—IMPLEMENTATION OF ANTIGUA CONVENTION

Sec. 401. Short title.

Sec. 402. Amendment of the Tuna Conventions Act of 1950.

Sec. 403. Definitions.

Sec. 404. Commissioners; number, appointment, and qualifications.

Sec. 405. General advisory committee and scientific advisory subcommittee.

Sec. 406. Rulemaking.

Sec. 407. Prohibited acts.

Sec. 408. Enforcement.

Sec. 409. Reduction of bycatch.

Sec. 410. Repeal of Eastern Pacific Tuna Licensing Act of 1984.

3 **TITLE I—ADMINISTRATION AND**
 4 **ENFORCEMENT OF CERTAIN**
 5 **FISHERY AND RELATED STAT-**
 6 **UTES.**

7 **SEC. 101. AUTHORITY OF THE SECRETARY TO ENFORCE**
 8 **STATUTES.**

9 (a) IN GENERAL.—

1 (1) ENFORCEMENT OF STATUTES.—The Sec-
2 retary of Commerce and the Secretary of the depart-
3 ment in which the Coast Guard is operating shall
4 enforce the statutes to which this section applies in
5 accordance with the provisions of this section.

6 (2) UTILIZATION OF NONDEPARTMENTAL RE-
7 SOURCES.—The Secretary may, by agreement, on a
8 reimbursable basis or otherwise, utilize the personnel
9 services, equipment (including aircraft and vessels),
10 and facilities of any other Federal agency, including
11 all elements of the Department of Defense, and of
12 any State agency, in carrying out this section.

13 (3) STATUTES TO WHICH APPLICABLE.—This
14 section applies to—

15 (A) the High Seas Driftnet Fishing Mora-
16 torium Protection Act (16 U.S.C. 1826d et
17 seq.);

18 (B) the Pacific Salmon Treaty Act of 1985
19 (16 U.S.C. 3631 et seq.);

20 (C) the Dolphin Protection Consumer In-
21 formation Act (16 U.S.C. 1385);

22 (D) the Tuna Conventions Act of 1950 (16
23 U.S.C. 951 et seq.);

24 (E) the North Pacific Anadromous Stocks
25 Act of 1992 (16 U.S.C. 5001 et seq.);

1 (F) the South Pacific Tuna Act of 1988
2 (16 U.S.C. 973 et seq.);

3 (G) the Antarctic Marine Living Resources
4 Convention Act of 1984 (16 U.S.C. 2431 et
5 seq.);

6 (H) the Atlantic Tunas Convention Act of
7 1975 (16 U.S.C. 971 et seq.);

8 (I) the Northwest Atlantic Fisheries Con-
9 vention Act of 1995 (16 U.S.C. 5601 et seq.);

10 (J) the Western and Central Pacific Fish-
11 eries Convention Implementation Act (16
12 U.S.C. 6901 et seq.);

13 (K) the Northern Pacific Halibut Act of
14 1982 (16 U.S.C. 773 et seq.);

15 (L) any other Act in pari materia, so des-
16 igned by the Secretary after notice and an op-
17 portunity for a hearing; and

18 (M) the Antigua Convention Implementing
19 Act of 2009.

20 (b) ADMINISTRATION AND ENFORCEMENT.—The
21 Secretary shall prevent any person from violating any Act
22 to which this section applies in the same manner, by the
23 same means, and with the same jurisdiction, powers, and
24 duties as though sections 307 through 311 of the Magnu-
25 son-Stevens Fishery Conservation and Management Act

1 (16 U.S.C. 1857 through 1861) were incorporated into
2 and made a part of each such Act. Except as provided
3 in subsection (c), any person that violates any Act to
4 which this section applies is subject to the penalties, and
5 entitled to the privileges and immunities, provided in the
6 Magnuson-Stevens Fishery Conservation and Manage-
7 ment Act (16 U.S.C. 1801 et seq.) in the same manner
8 and by the same means as though sections 307 through
9 311 of that Act were incorporated into and made a part
10 of each such Act.

11 (c) SPECIAL RULES.—

12 (1) IN GENERAL.—Notwithstanding the incor-
13 poration by reference of certain sections of the Mag-
14 nuson-Stevens Fishery Conservation and Manage-
15 ment Act under subsection (b), if there is a conflict
16 between a provision of this subsection and the cor-
17 responding provision of any section of the Magnu-
18 son-Stevens Fishery Conservation and Management
19 Act so incorporated, the provision of this subsection
20 shall apply.

21 (2) CIVIL ADMINISTRATIVE ENFORCEMENT.—

22 The amount of the civil penalty for a violation of
23 any Act to which this section applies shall not exceed
24 \$250,000 for each violation. Each day of a con-
25 tinuing violation shall constitute a separate violation.

1 (3) CIVIL JUDICIAL ENFORCEMENT.—The At-
2 torney General, upon the request of the Secretary,
3 may commence a civil action in an appropriate dis-
4 trict court of the United States to enforce this Act
5 and any Act to which this section applies, and such
6 court shall have jurisdiction to award civil penalties
7 or such other relief as justice may require, including
8 a permanent or temporary injunction. The amount
9 of the civil penalty for a violation of any Act to
10 which this section applies shall not exceed \$250,000
11 for each violation. Each day of a continuing violation
12 shall constitute a separate violation. In determining
13 the amount of a civil penalty, the court shall take
14 into account the nature, circumstances, extent, and
15 gravity of the prohibited acts committed and, with
16 respect to the violator, the degree of culpability, any
17 history of prior violations and such other matters as
18 justice may require. In imposing such penalty, the
19 district court may also consider information related
20 to the ability of the violator to pay.

21 (4) CRIMINAL FINES AND PENALTIES.—

22 (A) INDIVIDUALS.—In the case of an indi-
23 vidual, any offense described in subsection
24 (e)(2), (3), (4), (5), or (6) is punishable by a
25 fine of not more than \$500,000, imprisonment

1 for not more than 5 years, or both. If, in the
2 commission of such offense, an individual uses
3 a dangerous weapon, engages in conduct that
4 causes bodily injury to any officer authorized to
5 enforce the provisions of this Act, or places any
6 such officer in fear of imminent bodily injury
7 the maximum term of imprisonment is 10
8 years.

9 (B) OTHER PERSONS.—In the case of any
10 other person, any offense described in sub-
11 section (e)(2), (3), (4), (5), or (6) is punishable
12 by a fine of not more than \$1,000,000.

13 (5) OTHER CRIMINAL VIOLATIONS.—Any person
14 (other than a foreign government or any entity of
15 such government) who knowingly violates any provi-
16 sion of subsection (e) of this section, or any provi-
17 sion of any regulation promulgated pursuant to this
18 Act, is guilty of a criminal offense punishable—

19 (A) in the case of an individual, by a fine
20 of not more than \$500,000, imprisonment for
21 not more than 5 years, or both; and

22 (B) in the case of any other person, by a
23 fine of not more than \$1,000,000.

24 (6) CRIMINAL FORFEITURES.—

1 (A) IN GENERAL.—A person found guilty
2 of an offense described in subsection (e), or who
3 is convicted of a criminal violation of any Act
4 to which this section applies, shall forfeit to the
5 United States—

6 (i) any property, real or personal, con-
7 stituting or traceable to the gross proceeds
8 obtained, or retained, as a result of the of-
9 fense including any marine species (or the
10 fair market value thereof) taken or re-
11 tained in connection with or as a result of
12 the offense; and

13 (ii) any property, real or personal,
14 used or intended to be used to commit or
15 to facilitate the commission of the offense,
16 including any shoreside facility, including
17 its conveyances, structure, equipment, fur-
18 niture, appurtenances, stores, and cargo.

19 (B) PROCEDURE.—Pursuant to section
20 2461(c) of title 28, United States Code, the
21 provisions of section 413 of the Controlled Sub-
22 stances Act (21 U.S.C. 853), other than sub-
23 section (d) thereof, shall apply to criminal for-
24 feitures under this section.

1 (7) ADDITIONAL ENFORCEMENT AUTHORITY.—

2 In addition to the powers of officers authorized pur-
3 suant to subsection (b), any officer who is author-
4 ized by the Secretary, or the head of any Federal or
5 State agency that has entered into an agreement
6 with the Secretary under subsection (a) to enforce
7 the provisions of any Act to which this section ap-
8 plies may, with the same jurisdiction, powers, and
9 duties as though section 311 of the Magnuson-Ste-
10 vens fishery Conservation and Management Act (16
11 U.S.C. 1861) were incorporated into and made a
12 part of each such Act—

13 (A) search or inspect any facility or con-
14 veyance used or employed in, or which reason-
15 ably appears to be used or employed in, the
16 storage, processing, transport, or trade of fish
17 or fish products;

18 (B) inspect records pertaining to the stor-
19 age, processing, transport, or trade of fish or
20 fish products;

21 (C) detain, for a period of up to 14 days,
22 any shipment of fish or fish product imported
23 into, landed on, introduced into, exported from,
24 or transported within the jurisdiction of the
25 United States, or, if such fish or fish product

1 is deemed to be perishable, sell and retain the
2 proceeds therefrom for a period of up to 14
3 days; and

4 (D) make an arrest, in accordance with
5 any guidelines which may be issued by the At-
6 torney General, for any offense under the laws
7 of the United States committed in the person's
8 presence, or for the commission of any felony
9 under the laws of the United States, if the per-
10 son has reasonable grounds to believe that the
11 person to be arrested has committed or is com-
12 mitting a felony; may search and seize, in ac-
13 cordance with any guidelines which may be
14 issued by the Attorney General and may exe-
15 cute and serve any subpoena, arrest warrant,
16 search warrant issued in accordance with rule
17 41 of the Federal Rules of Criminal Procedure,
18 or other warrant or civil or criminal process
19 issued by any officer or court of competent ju-
20 risdiction.

21 (8) SUBPOENAS.—In addition to any subpoena
22 authority pursuant to subsection (b), the Secretary
23 may, for the purposes of conducting any investiga-
24 tion under this section, or any other statute adminis-
25 tered by the Secretary, issue subpoenas for the pro-

1 duction of relevant papers, photographs, records,
2 books, and documents in any form, including those
3 in electronic, electrical, or magnetic form.

4 (d) DISTRICT COURT JURISDICTION.—The several
5 district courts of the United States shall have jurisdiction
6 over any actions arising under this section. For the pur-
7 pose of this section, American Samoa shall be included
8 within the judicial district of the District Court of the
9 United States for the District of Hawaii. Each violation
10 shall be a separate offense and the offense shall be deemed
11 to have been committed not only in the district where the
12 violation first occurred, but also in any other district as
13 authorized by law. Any offenses not committed in any dis-
14 trict are subject to the venue provisions of section 3238
15 of title 18, United States Code.

16 (e) PROHIBITED ACTS.—It is unlawful for any per-
17 son—

18 (1) to violate any provision of this section or
19 any Act to which this section applies or any regula-
20 tion promulgated thereunder;

21 (2) to refuse to permit any authorized enforce-
22 ment officer to board, search, or inspect a vessel,
23 conveyance, or shoreside facility that is subject to
24 the person's control for purposes of conducting any
25 search, investigation, or inspection in connection

1 with the enforcement of this section or any Act to
2 which this section applies or any regulation promul-
3 gated thereunder;

4 (3) to forcibly assault, resist, oppose, impede,
5 intimidate, or interfere with any such authorized of-
6 ficer in the conduct of any search, investigation, or
7 inspection described in paragraph (2);

8 (4) to resist a lawful arrest for any act prohib-
9 ited by this section or any Act to which this section
10 applies;

11 (5) to interfere with, delay, or prevent, by any
12 means, the apprehension, arrest, or detection of an-
13 other person, knowing that such person has com-
14 mitted any act prohibited by this section or any Act
15 to which this section applies;

16 (6) to forcibly assault, resist, oppose, impede,
17 intimidate, sexually harass, bribe, or interfere with
18 any observer on a vessel under this section or any
19 Act to which this section applies, or any data col-
20 lector employed by or under contract to the National
21 Marine Fisheries Service to carry out responsibilities
22 under this section or any Act to which this section
23 applies;

24 (7) to import, export, transport, sell, receive,
25 acquire, or purchase in interstate or foreign com-

1 merce any fish or fish product taken, possessed,
2 transported, or sold in violation of any treaty or
3 binding conservation measure adopted pursuant to
4 an international agreement or organization to which
5 the United States is a party; or

6 (8) to make or submit any false record, ac-
7 count, or label for, or any false identification of, any
8 fish or fish product (including false identification of
9 the species, harvesting vessel or nation, or the loca-
10 tion where harvested) which has been, or is intended
11 to be imported, exported, transported, sold, offered
12 for sale, purchased, or received in interstate or for-
13 eign commerce.

14 (f) REGULATIONS.—The Secretary may promulgate
15 such regulations, in accordance with section 553 of title
16 5, United States Code, as may be necessary to carry out
17 this section or any Act to which this section applies.

18 **SEC. 102. CONFORMING, MINOR, AND TECHNICAL AMEND-**
19 **MENTS.**

20 (a) HIGH SEAS DRIFTNET FISHING MORATORIUM
21 PROTECTION ACT.—

22 (1) Section 606 of the High Seas Driftnet Fish-
23 ing Moratorium Protection Act (16 U.S.C. 1826g) is
24 amended—

1 (A) by inserting “(a) DETECTING, MONI-
2 TORING, AND PREVENTING VIOLATIONS.—” be-
3 fore “The President”; and

4 (B) by adding at the end thereof the fol-
5 lowing:

6 “(b) ENFORCEMENT.—This Act shall be enforced
7 under section 101 of the International Fisheries Steward-
8 ship and Enforcement Act.”.

9 (2) Section 607(2) of the High Seas Driftnet
10 Fishing Moratorium Protection Act (16 U.S.C.
11 1826h(2)) is amended by striking “whose vessels”
12 and inserting “that”.

13 (3) Section 609(a) of the High Seas Driftnet
14 Fishing Moratorium Protection Act (16 U.S.C.
15 1826j(a)) is amended to read as follows:

16 “(a) IDENTIFICATION.—

17 “(1) IN GENERAL.—The Secretary shall iden-
18 tify, and list in the report under section 607, a na-
19 tion if that nation is engaged, or has been engaged
20 at any time during the preceding 3 years, in illegal,
21 unreported, or unregulated fishing and—

22 “(A) such fishing undermines the effective-
23 ness of measures required under the relevant
24 international fishery management organization;

1 “(B) the relevant international fishery
2 management organization has failed to imple-
3 ment effective measures to end the illegal, unre-
4 ported, or unregulated fishing activity by ves-
5 sels of that nation, or the nation is not a party
6 to, or does not maintain cooperating status
7 with, such organization; or

8 “(C) there is no international fishery man-
9 agement organization with a mandate to regu-
10 late the fishing activity in question.

11 “(2) OTHER IDENTIFYING ACTIVITIES.—The
12 Secretary shall also identify, and list in the report
13 under section 607, a nation if—

14 “(A) it is violating, or has violated at any
15 time during the preceding 3 years, conservation
16 and management measures required under an
17 international fishery management agreement to
18 which the United States is a party and the vio-
19 lations undermine the effectiveness of such
20 measures, taking into account the factors de-
21 scribed in paragraph (1); or

22 “(B) it is failing, or has failed at any time
23 during the preceding 3 years, to effectively ad-
24 dress or regulate illegal, unreported, or unregu-

1 lated fishing in areas described in paragraph
2 (1)(C).

3 “(3) TREATMENT OF CERTAIN ENTITIES AS IF
4 THEY WERE NATIONS.—Where the provisions of this
5 Act apply to the act, or failure to act, of a nation,
6 they shall also be applicable, as appropriate, to any
7 other entity that is competent to enter into an inter-
8 national fishery management agreement.”.

9 (4) Section 609(d)(1) of the High Seas Driftnet
10 Fishing Moratorium Protection Act (16 U.S.C.
11 1826j(d)(1)) is amended by striking “of its fishing
12 vessels” each place it appears.

13 (5) Section 609(d)(2) of the High Seas Driftnet
14 Fishing Moratorium Protection Act (16 U.S.C.
15 1826j(d)(2)) is amended—

16 (A) by striking “procedure for certifi-
17 cation,” and inserting “procedure,”;

18 (B) by striking “basis of fish” and insert-
19 ing “basis, for allowing importation of fish”;
20 and

21 (C) by striking “harvesting nation not cer-
22 tified under paragraph (1)” and inserting “na-
23 tion issued a negative certification under para-
24 graph (1)”.

1 (6) Section 610(a)(1) of the High Seas Driftnet
2 Fishing Moratorium Protection Act (16 U.S.C.
3 1826k(a)(1)) is amended—

4 (A) by striking “calendar year” and insert-
5 ing “3 years”; and

6 (B) by striking “practices;” and inserting
7 “practices—”.

8 (b) DOLPHIN PROTECTION CONSUMER INFORMATION
9 ACT.—Section 901 of the Dolphin Protection Consumer
10 Information Act (16 U.S.C. 1385) is amended—

11 (1) by adding at the end of subsection (d) the
12 following:

13 “(4) It is a violation of section 101 of the Inter-
14 national Fisheries Stewardship and Enforcement Act for
15 any person to assault, resist, oppose, impede, intimidate,
16 or interfere with and authorized officer in the conduct of
17 any search, investigation or inspection under this Act.”;
18 and

19 (2) by striking subsection (e) and inserting the
20 following:

21 “(e) ENFORCEMENT.—This Act shall be enforced
22 under section 101 of the International Fisheries Steward-
23 ship and Enforcement Act.”.

1 (c) TUNA CONVENTIONS ACT OF 1950.—Section 8
2 of the Tuna Conventions Act of 1950 (16 U.S.C. 957)
3 is amended—

4 (1) by striking “regulations.” in subsection (a)
5 and inserting “regulation or for any person to make
6 or submit any false record, account, or label for, or
7 any false identification of, any fish or fish product
8 (including the false identification of species, har-
9 vesting vessel or nation or the location where har-
10 vested) which has been, or is intended to be im-
11 ported, exported, transported, sold, offered for sale,
12 purchased, or received in interstate or foreign com-
13 merce.”;

14 (2) by striking subsection (d) and inserting the
15 following:

16 “(d) It shall be unlawful for any person—

17 “(1) to refuse to permit any officer authorized
18 to enforce the provisions of this Act to board a fish-
19 ing vessel subject to such person’s control for pur-
20 poses of conducting any search, investigation, or in-
21 spection in connection with the enforcement of this
22 Act or any regulation promulgation or permit issued
23 under this Act;

24 “(2) to forcibly assault, resist, oppose, impede,
25 intimidate, or interfere with any such authorized of-

1 ficer in the conduct of any search, investigation or
2 inspection described in paragraph (1);

3 “(3) to resist a lawful arrest for any act prohib-
4 ited by this section; or

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

9 (3) by striking subsections (e) through (g) and
10 redesignating subsection (h) as subsection (f); and

11 (4) by inserting after subsection (d) the fol-
12 lowing:

13 “(e) ENFORCEMENT.—This section shall be enforced
14 under section 101 of the International Fisheries Steward-
15 ship and Enforcement Act.”.

16 (d) NORTHERN PACIFIC ANADROMOUS STOCKS ACT
17 OF 1992.—

18 (1) UNLAWFUL ACTIVITIES.—Section 810 of
19 the Northern Pacific Anadromous Stocks Act of
20 1992 (16 U.S.C. 5009) is amended—

21 (A) by striking “purchases” in paragraph
22 (5) and inserting “purposes”;

23 (B) by striking “search or inspection” in
24 paragraph (5) and inserting “search, investiga-
25 tion, or inspection”;

1 (C) by striking “search or inspection” in
2 paragraph (6) and inserting “search, investiga-
3 tion, or inspection”;

4 (D) by striking “or” after the semicolon in
5 paragraph (8);

6 (E) by striking “title.” in paragraph (9)
7 and inserting “title; or”; and

8 (F) by adding at the end thereof the fol-
9 lowing:

10 “(10) for any person to make or submit any
11 false record, account, or label for, or any false iden-
12 tification of, any fish or fish product (including false
13 identification of the species, harvesting vessel or na-
14 tion, or the location where harvested) which has
15 been, or is intended to be imported, exported, trans-
16 ported, sold, offered for sale, purchased, or received
17 in interstate or foreign commerce.”.

18 (2) ADMINISTRATION AND ENFORCEMENT.—
19 Section 811 of the Northern Pacific Anadromous
20 Stocks Act of 1992 (16 U.S.C. 5010) is amended to
21 read as follows:

22 **“SEC. 811. ADMINISTRATION AND ENFORCEMENT.**

23 “This Act shall be enforced under section 101 of the
24 International Fisheries Stewardship and Enforcement
25 Act.”.

1 (e) PACIFIC SALMON TREATY ACT OF 1985.—Sec-
2 tion 8 of the Pacific Salmon Treaty Act of 1985 (16
3 U.S.C. 3637) is amended—

4 (1) by striking “search or inspection” in sub-
5 section (a)(2) and inserting “search, investigation,
6 or inspection”;

7 (2) by striking “search or inspection” in sub-
8 section (a)(3) and inserting “search, investigation,
9 or inspection”;

10 (3) by striking “or” after the semicolon in sub-
11 section (a)(5);

12 (4) by striking “section.” in subsection (a)(6)
13 and inserting “section; or”;

14 (5) by adding at the end of subsection (a) the
15 following:

16 “(7) for any person to make or submit any false
17 record, account, or label for, or any false identifica-
18 tion of, any fish or fish product (including false
19 identification of the species, harvesting vessel or na-
20 tion, or the location where harvested) which has
21 been, or is intended to be imported, exported, trans-
22 ported, sold, offered for sale, purchased, or received
23 in interstate or foreign commerce.”; and

24 (6) by striking subsections (b) through (f) and
25 inserting the following:

1 “(b) ADMINISTRATION AND ENFORCEMENT.—This
2 Act shall be enforced under section 101 of the Inter-
3 national Fisheries Stewardship and Enforcement Act.”.

4 (f) SOUTH PACIFIC TUNA ACT OF 1988.—

5 (1) PROHIBITED ACTS.—Section 5(a) of the
6 South Pacific Tuna Act of 1988 (16 U.S.C. 973c(a))
7 is amended—

8 (A) by striking “search or inspection” in
9 paragraph (8) and inserting “search, investiga-
10 tion, or inspection”;

11 (B) by striking “search or inspection” in
12 paragraph (10)(A) and inserting “search, inves-
13 tigation, or inspection”;

14 (C) by striking “or” after the semicolon in
15 paragraph (12);

16 (D) by striking “retained.” in paragraph
17 (13) and inserting “retained; or”; and

18 (E) by adding at the end thereof the fol-
19 lowing:

20 “(14) for any person to make or submit any
21 false record, account, or label for, or any false iden-
22 tification of, any fish or fish product (including false
23 identification of the species, harvesting vessel or na-
24 tion, or the location where harvested) which has
25 been, or is intended to be imported, exported, trans-

1 ported, sold, offered for sale, purchased, or received
2 in interstate or foreign commerce.”.

3 (2) ADMINISTRATION AND ENFORCEMENT.—

4 The South Pacific Tuna Act of 1988 (16 U.S.C. 973
5 et seq.) is amended by striking sections 7 and 8 (16
6 U.S.C. 973e and 973f) and inserting the following:

7 **“SEC. 7. ADMINISTRATION AND ENFORCEMENT.**

8 “This Act shall be enforced under section 101 of the
9 International Fisheries Stewardship and Enforcement
10 Act.”.

11 (g) ANTARCTIC MARINE LIVING RESOURCES CON-
12 VENTION ACT OF 1984.—

13 (1) UNLAWFUL ACTIVITIES.—Section 306 of
14 the Antarctic Marine Living Resources Convention
15 Act (16 U.S.C. 2435) is amended—

16 (A) by striking “which he knows, or rea-
17 sonably should have known, was” in paragraph
18 (3);

19 (B) by striking “search or inspection” in
20 paragraph (4) and inserting “search, investiga-
21 tion, or inspection”;

22 (C) by striking “search or inspection” in
23 paragraph (5) and inserting “search, investiga-
24 tion, or inspection”;

1 (D) by striking “or” after the semicolon in
2 paragraph (6);

3 (E) by striking “section.” in paragraph (7)
4 and inserting “section; or”; and

5 (F) by adding at the end thereof the fol-
6 lowing:

7 “(8) to make or submit any false record, ac-
8 count, or label for, or any false identification of, any
9 fish or fish product (including false identification of
10 the species, harvesting vessel or nation, or the loca-
11 tion where harvested) which has been, or is intended
12 to be imported, exported, transported, sold, offered
13 for sale, purchased, or received in interstate or for-
14 eign commerce.”.

15 (2) REGULATIONS.—Section 307 of the Ant-
16 arctic Marine Living Resources Convention Act (16
17 U.S.C. 2436) is amended by inserting after “title.”
18 the following: “Notwithstanding the provisions of
19 subsections (b), (c), and (d) of section 553 of title
20 5, United States Code, the Secretary of Commerce
21 may publish in the Federal Register a final rule to
22 implement conservation measures, described in sec-
23 tion 305(a) of this Act, that are in effect for 12
24 months or less, adopted by the Commission, and not
25 objected to by the United States within the time pe-

1 riod allotted under Article IX of the Convention.
2 Upon publication in the Federal Register, such con-
3 servation measures shall be in force with respect to
4 the United States.”.

5 (3) PENALTIES AND ENFORCEMENT.—The
6 Antarctic Marine Living Resources Convention Act
7 (16 U.S.C. 2431 et seq.) is amended—

8 (A) by striking sections 308 and 309 (16
9 U.S.C. 2437 and 2438);

10 (B) by striking subsection (b), (c), and (d)
11 of section 310 (16 U.S.C. 2439) and redesignig-
12 nating subsection (e) as subsection (c); and

13 (C) by inserting after subsection (a) the
14 following:

15 “(b) ADMINISTRATION AND ENFORCEMENT.—This
16 title shall be enforced under section 101 of the Inter-
17 national Fisheries Stewardship and Enforcement Act.”.

18 (h) ATLANTIC TUNAS CONVENTION ACT OF 1975.—

19 (1) VIOLATIONS.—Section 7 of the Atlantic
20 Tunas Convention Act of 1975 (16 U.S.C. 971e) is
21 amended—

22 (A) by striking subsections (e) and (f) and
23 redesignating subsection (g) as subsection (f);
24 and

1 (B) by inserting after subsection (d) the
2 following:

3 “(e) MISLABELING.—It shall be unlawful for any per-
4 son to make or submit any false record, account, or label
5 for, or any false identification of, any fish or fish product
6 (including the false identification of the species, harvesting
7 vessel or nation, or the location where harvested) which
8 has been, or is intended to be, imported, exported, trans-
9 ported, sold, offered for sale, purchased or received in
10 interstate or foreign commerce.”.

11 (2) ENFORCEMENT.—Section 8 of the Atlantic
12 Tunas Convention Act of 1975 (16 U.S.C. 971f) is
13 amended—

14 (A) by striking subsections (a) and (c);

15 (B) by striking “(b) INTERNATIONAL EN-
16 FORCEMENT.—” in subsection (b) and inserting
17 “This Act shall be enforced under section 101
18 of the International Fisheries Stewardship and
19 Enforcement Act.”; and

20 (C) by striking “shall have the authority to
21 carry out the enforcement activities specified in
22 section 8(a) of this Act” each place it appears
23 and inserting “shall enforce this Act”.

24 (i) NORTHWEST ATLANTIC FISHERIES CONVENTION
25 ACT OF 1995.—Section 207 of the Northwest Atlantic

1 Fisheries Convention Act of 1995 (16 U.S.C. 5606) is
2 amended—

3 (1) by striking “**AND PENALTIES.**” in the
4 section caption and inserting “**AND ENFORCE-**
5 **MENT.**”;

6 (2) by striking “search or inspection” in sub-
7 section (a)(2) and inserting “search, investigation,
8 or inspection”;

9 (3) by striking “search or inspection” in sub-
10 section (a)(3) and inserting “search, investigation,
11 or inspection”;

12 (4) by striking “or” after the semicolon in sub-
13 section (a)(5);

14 (5) by striking “section.” in subsection (a)(6)
15 and inserting “section ; or”;

16 (6) by adding at the end of subsection (a) the
17 following:

18 “(7) to make or submit any false record, ac-
19 count, or label for, or any false identification of, any
20 fish or fish product (including false identification of
21 the species, harvesting vessel or nation, or the loca-
22 tion where harvested) which has been, or is intended
23 to be imported, exported, transported, sold, offered
24 for sale, purchased, or received in interstate or for-
25 eign commerce.”; and

1 (7) by striking subsection (b) through (f) and
2 inserting the following:

3 “(b) ADMINISTRATION AND ENFORCEMENT.—This
4 title shall be enforced under section 101 of the Inter-
5 national Fisheries Stewardship and Enforcement Act.”.

6 (j) WESTERN AND CENTRAL PACIFIC FISHERIES
7 CONVENTION IMPLEMENTATION ACT.—

8 (1) ADMINISTRATION AND ENFORCEMENT.—
9 Section 506(c) of the Western and Central Pacific
10 Fisheries Convention Implementation Act (16 U.S.C.
11 6905(c)) is amended to read as follows:

12 “(c) ADMINISTRATION AND ENFORCEMENT.—This
13 title shall be enforced under section 101 of the Inter-
14 national Fisheries Stewardship and Enforcement Act.”.

15 (2) PROHIBITED ACTS.—Section 507(a) of the
16 Western and Central Pacific Fisheries Convention
17 Implementation Act (16 U.S.C. 6906(a)) is amend-
18 ed—

19 (A) by striking “suspension, on” in para-
20 graph (2) and inserting “suspension of”;

21 (B) by striking “title.” in paragraph (14)
22 and inserting “title; or”; and

23 (C) by adding at the end thereof the fol-
24 lowing:

1 “(15) to make or submit any false record, ac-
2 count, or label for, or any false identification of, any
3 fish or fish product (including false identification of
4 the species, harvesting vessel or nation, or the loca-
5 tion where harvested) which has been, or is intended
6 to be imported, exported, transported, sold, offered
7 for sale, purchased, or received in interstate or for-
8 eign commerce.”.

9 (k) NORTHERN PACIFIC HALIBUT ACT OF 1982.—

10 (1) PROHIBITED ACTS.—Section 7 of the
11 Northern Pacific Halibut Act of 1982 (16 U.S.C.
12 773e) is amended—

13 (A) by redesignating subdivisions (a) and
14 (b) as paragraphs (1) and (2), respectively, and
15 subdivisions (1) through (6) of paragraph (1),
16 as redesignated, as subparagraphs (A) through
17 (F);

18 (B) by striking “search or inspection” in
19 paragraph (1)(B), as redesignated, and insert-
20 ing “search, investigation, or inspection”;

21 (C) by striking “search or inspection” in
22 paragraph (1)(C), as redesignated, and insert-
23 ing “search, investigation, or inspection”;

24 (D) by striking “or” after the semicolon in
25 paragraph (1)(E), as redesignated;

1 (E) by striking “section.” in paragraph
2 (1)(F), as redesignated, and inserting “sec-
3 tion;”; and

4 (F) by adding at the end of paragraph (1),
5 as redesignated, the following:

6 “(G) to make or submit any false record, ac-
7 count, or label for, or any false identification of, any
8 fish or fish product (including false identification of
9 the species, harvesting vessel or nation, or the loca-
10 tion where harvested) which has been, or is intended
11 to be imported, exported, transported, sold, offered
12 for sale, purchased, or received in interstate or for-
13 eign commerce.”.

14 (2) ADMINISTRATION AND ENFORCEMENT.—
15 The Northern Pacific Halibut Act of 1982 (16
16 U.S.C. 773 et seq.) is amended—

17 (A) by striking sections 3, 9, and 10 (16
18 U.S.C. 773f, 773g, and 773h); and

19 (B) by striking subsections (b) through (f)
20 of section 11 (16 U.S.C. 773i) and inserting the
21 following:

22 “(b) ADMINISTRATION AND ENFORCEMENT.—This
23 Act shall be enforced under section 101 of the Inter-
24 national Fisheries Stewardship and Enforcement Act.”.

1 **SEC. 103. ILLEGAL, UNREPORTED, OR UNREGULATED FISH-**
2 **ING.**

3 (a) IN GENERAL.—Section 608 of the High Seas
4 Driftnet Fishing Moratorium Protection Act (16 U.S.C.
5 1826i), as amended by section 302(a) of this Act, is fur-
6 ther amended by adding at the end thereof the following:

7 “(c) VESSELS AND VESSEL OWNERS ENGAGED IN IL-
8 LEGAL, UNREPORTED, OR UNREGULATED FISHING.—The
9 Secretary may—

10 “(1) develop, maintain, and make public a list
11 of vessels and vessel owners engaged in illegal, unre-
12 ported, or unregulated fishing, including vessels or
13 vessel owners identified by an international fishery
14 management organization or arrangement made pur-
15 suant to an international fishery agreement, whether
16 or not the United States is a party to such organiza-
17 tion or arrangement;

18 “(2) take appropriate action against listed ves-
19 sels and vessel owners, including action against fish,
20 fish parts, or fish products from such vessels, in ac-
21 cordance with applicable United States law and con-
22 sistent with applicable international law, including
23 principles, rights, and obligations established in ap-
24 plicable international fishery management and trade
25 agreements; and

1 “(3) provide notification to the public of vessels
2 and vessel owners identified by international fishery
3 management organizations or arrangements made
4 pursuant to an international fishery agreement as
5 having been engaged in illegal, unreported, or un-
6 regulated fishing, as well as any measures adopted
7 by such organizations or arrangements to address il-
8 legal, unreported, or unregulated fishing.

9 “(d) RESTRICTIONS ON PORT ACCESS OR USE.—Ac-
10 tion taken by the Secretary under subsection (c)(2) that
11 includes measures to restrict use of or access to ports or
12 port services shall apply to all ports of the United States
13 and its territories.

14 “(e) REGULATIONS.—The Secretary may promulgate
15 regulations to implement subsections (c) and (d).”.

16 (b) ADDITIONAL MEASURES.—

17 (1) AMENDMENT OF THE HIGH SEAS DRIFTNET
18 FISHING MORATORIUM PROTECTION ACT.—

19 (A) Section 609(d)(3) of the High Seas
20 Driftnet Fishing Moratorium Protection Act
21 (16 U.S.C. 1826j(d)(3)) is amended by striking
22 “that has not been certified by the Secretary
23 under this subsection, or” in subparagraph
24 (A)(i).

1 (B) Section 610(c)(5) of the High Seas
2 Driftnet Fishing Moratorium Protection Act
3 (16 U.S.C. 1826k(c)(5)) is amended by striking
4 “that has not been certified by the Secretary
5 under this subsection, or”.

6 (2) AMENDMENT OF THE HIGH SEAS DRIFTNET
7 FISHERIES ENFORCEMENT ACT.—

8 (A) Section 101 of the High Seas Driftnet
9 Fisheries Enforcement Act (16 U.S.C. 1826a)
10 is amended—

11 (i) by striking subsection (a)(2) and
12 inserting the following:

13 “(2) DENIAL OF PORT PRIVILEGES.—The Sec-
14 retary of the Treasury shall, in accordance with rec-
15 ognized principles of international law—

16 “(A) withhold or revoke the clearance re-
17 quired by section 60105 of title 46, United
18 States Code, for—

19 “(i) any large-scale driftnet fishing
20 vessel that is documented under the law of
21 the United States or of a nation included
22 on a list published under paragraph (1); or

23 “(ii) any fishing vessel of a nation
24 that receives a negative certification under
25 section 609(d) or 610(e) of the High Seas

1 Driftnet Fishing Moratorium Protection
2 Act (16 U.S.C. 1826j(d) or 1826k(e)); and

3 “(B) deny entry of that vessel to any place
4 in the United States and to the navigable wa-
5 ters of the United States, except for the pur-
6 pose of inspecting the vessel, conducting an in-
7 vestigation, or taking other appropriate enforce-
8 ment action.”;

9 (ii) by striking “or illegal, unreported,
10 or unregulated fishing” each place it ap-
11 pears in subsection (b)(1) and (2);

12 (iii) by striking “or” after the semi-
13 colon in subsection (b)(3)(A)(i);

14 (iv) by striking “nation.” in sub-
15 section (b)(3)(A)(ii) and inserting “nation;
16 or”;

17 (v) by adding at the end of subsection
18 (b)(3)(A) the following:

19 “(iii) upon receipt of notification of a negative
20 certification under section 609(d)(1) or 610(c)(1) of
21 the High Seas Driftnet Fishing Moratorium Protec-
22 tion Act (16 U.S.C. 1826j(d)(1) or 1826k(c)(1)).”;

23 (vi) by inserting “or after issuing a
24 negative certification under section
25 609(d)(1) or 610(c)(1) of the High Seas

1 Driftnet Fishing Moratorium Protection
2 Act (16 U.S.C. 1826j(d)(1) or
3 1826k(c)(1),” after “paragraph (1),” in
4 subsection (b)(4)(A); and

5 (vii) by striking subsection
6 (b)(4)(A)(i) and inserting the following:

7 “(i) any prohibition established under para-
8 graph (3) is insufficient to cause that nation—

9 “(I) to terminate large-scale driftnet fish-
10 ing conducted by its nationals and vessels be-
11 yond the exclusive economic zone of any nation;

12 “(II) to address illegal, unreported, or un-
13 regulated fishing activities for which a nation
14 has been identified under section 609 of the
15 High Seas Driftnet Fishing Moratorium Protec-
16 tion Act (16 U.S.C. 1826j); or

17 “(III) to address bycatch of a protected
18 living marine resource for which a nation has
19 been identified under section 610 of such Act
20 (16 U.S.C. 1826k); or”.

21 (B) Section 102 of the High Seas Driftnet
22 Fisheries Enforcement Act (16 U.S.C. 1826b)
23 is amended by striking “such nation has termi-
24 nated large-scale driftnet fishing or illegal, un-
25 reported, or unregulated fishing by its nationals

1 and vessels beyond the exclusive economic zone
2 of any nation.” and inserting “such nation
3 has—

4 “(1) terminated large-scale driftnet fishing by
5 its nationals and vessels beyond the exclusive eco-
6 nomic zone of any nation;

7 “(2) addressed illegal, unreported, or unregu-
8 lated fishing activities for which a nation has been
9 identified under section 609 of the High Seas
10 Driftnet Fishing Moratorium Protection Act (16
11 U.S.C. 1826j); or

12 “(3) addressed bycatch of a protected living
13 marine resource for which a nation has been identi-
14 fied under section 610 of that Act (16 U.S.C.
15 1826k).”.

16 **SEC. 104. LIABILITY.**

17 Any claims arising from the actions of any officer,
18 authorized by the Secretary to enforce the provisions of
19 this Act or any Act to which this Act applies, taken pursu-
20 ant to any scheme for at-sea boarding and inspection au-
21 thorized under any international agreement to which the
22 United States is a party may be pursued under chapter
23 171 of title 28, United States Code, or such other legal
24 authority as may be pertinent.

1 **TITLE II—LAW ENFORCEMENT**
2 **AND INTERNATIONAL OPER-**
3 **ATIONS.**

4 **SEC. 201. INTERNATIONAL FISHERIES ENFORCEMENT PRO-**
5 **GRAM.**

6 (a) ESTABLISHMENT.—

7 (1) IN GENERAL.—Within 12 months after the
8 date of the enactment of this Act, the Secretary
9 shall, subject to the availability of appropriations,
10 establish an International Fisheries Enforcement
11 Program within the Office of Law Enforcement of
12 the National Marine Fisheries Service.

13 (2) PURPOSE.—The Program shall be an inter-
14 agency program established and administered by the
15 Secretary in coordination with the heads of other de-
16 partments and agencies for the purpose of detecting
17 and investigating illegal, unreported, or unregulated
18 fishing activity and enforcing the provisions of this
19 Act.

20 (3) STAFF.—The Program shall be staffed with
21 representation from the U.S. Coast Guard, U.S.
22 Customs and Border Protection, U.S. Food and
23 Drug Administration, and any other department or
24 agency determined by the Secretary to be appro-
25 priate and necessary to detect and investigate illegal,

1 unreported, or unregulated fishing activity and en-
2 force the provisions of this Act.

3 (b) PROGRAM ACTIONS.—

4 (1) STAFFING AND OTHER RESOURCES.—At the
5 request of the Secretary, the heads of other depart-
6 ments and agencies providing staff for the Program
7 shall—

8 (A) by agreement, on a reimbursable basis
9 or otherwise, participate in staffing the Pro-
10 gram;

11 (B) by agreement, on a reimbursable basis
12 or otherwise, share personnel, services, equip-
13 ment (including aircraft and vessels), and facili-
14 ties with the Program; and

15 (C) to the extent possible, and consistent
16 with other applicable law, extend the enforce-
17 ment authorities provided by their enabling leg-
18 islation to the other departments and agencies
19 participating in the Program for the purposes
20 of conducting joint operations to detect and in-
21 vestigate illegal, unreported or unregulated fish-
22 ing activity and enforcing the provisions of this
23 Act.

24 (2) BUDGET.—The Secretary and the heads of
25 other departments and agencies providing staff for

1 the Program, may, at their discretion, develop inter-
2 agency plans and budgets and engage in interagency
3 financing for such purposes.

4 (3) 5-YEAR PLAN.—Within 180 days after the
5 date on which the Program is established under sub-
6 section (a), the Secretary shall develop a 5-year stra-
7 tegic plan for guiding interagency and intergovern-
8 mental international fisheries enforcement efforts to
9 carry out the provisions of this Act. The Secretary
10 shall update the plan periodically as necessary, but
11 at least once every 5 years.

12 (4) COOPERATIVE ACTIVITIES.—The Secretary,
13 in coordination with the heads of other departments
14 and agencies providing staff for the Program, may—

15 (A) create and participate in task forces,
16 committees, or other working groups with other
17 Federal, State or local governments as well as
18 with the governments of other nations for the
19 purposes of detecting and investigating illegal,
20 unreported, or unregulated fishing activity and
21 carrying out the provisions of this Act; and

22 (B) enter into agreements with other Fed-
23 eral, State, or local governments as well as with
24 the governments of other nations, on a reim-
25 bursable basis or otherwise, for such purposes.

1 (c) POWERS OF AUTHORIZED OFFICERS.—Notwith-
2 standing any other provision of law, while operating under
3 an agreement with the Secretary entered into under sec-
4 tion 101 of this Act, and conducting joint operations as
5 part of the Program for the purposes of detecting and in-
6 vestigating illegal, unreported or unregulated fishing activ-
7 ity and enforcing the provisions of this Act, authorized of-
8 ficers shall have the powers and authority provided in that
9 section.

10 (d) INFORMATION COLLECTION, MAINTENANCE AND
11 USE.—

12 (1) IN GENERAL.—The Secretary and the heads
13 of other departments and agencies providing staff
14 for the Program shall, to the maximum extent allow-
15 able by law, share all applicable information, intel-
16 ligence and data, related to the harvest, transpor-
17 tation or trade of fish and fish product in order to
18 detect and investigate illegal, unreported, or unregu-
19 lated fishing activity and to carry out the provisions
20 of this Act.

21 (2) COORDINATION OF DATA.—The Secretary,
22 through the Program, shall coordinate the collection,
23 storage, analysis, and dissemination of all applicable
24 information, intelligence, and data related to the
25 harvest, transportation, or trade of fish and fish

1 product collected or maintained by the member
2 agencies of the Program.

3 (3) CONFIDENTIALITY.—The Secretary,
4 through the Program, shall ensure the protection
5 and confidentiality required by law for information,
6 intelligence, and data related to the harvest, trans-
7 portation, or trade of fish and fish product obtained
8 by the Program.

9 (4) DATA STANDARDIZATION.—The Secretary
10 and the heads of other departments and agencies
11 providing staff for the Program shall, to the max-
12 imum extent practicable, develop data standardiza-
13 tion for fisheries related data for Program agencies
14 and with international fisheries enforcement data-
15 bases as appropriate.

16 (5) ASSISTANCE FROM INTELLIGENCE COMMU-
17 NITY.—Upon request of the Secretary, elements of
18 the intelligence community (as defined in section
19 3(4) of the National Security Act of 1947 (50
20 U.S.C. 401a(4))) shall collect information related to
21 illegal, unreported, or unregulated fishing activity
22 outside the United States about individuals who are
23 not United States persons (as defined in section
24 105A(c)(2) of such Act (50 U.S.C. 403–5a(c)(2))).
25 Such elements of the intelligence community shall

1 collect and share such information with the Sec-
2 retary through the Program for law enforcement
3 purposes in order to detect and investigate illegal,
4 unreported, or unregulated fishing activities and to
5 carry out the provisions of this Act. All collection
6 and sharing of information shall be in accordance
7 with the National Security Act of 1947 (50 U.S.C.
8 401 et seq.).

9 (6) INFORMATION SHARING.—The Secretary,
10 through the Program, shall have authority to share
11 fisheries-related data with other Federal or State
12 government agency, foreign government, the Food
13 and Agriculture Organization of the United Nations,
14 or the secretariat or equivalent of an international
15 fisheries management organization or arrangement
16 made pursuant to an international fishery agree-
17 ment, if—

18 (A) such governments, organizations, or
19 arrangements have policies and procedures to
20 safeguard such information from unintended or
21 unauthorized disclosure; and

22 (B) the exchange of information is nec-
23 essary—

1 (i) to ensure compliance with any law
2 or regulation enforced or administered by
3 the Secretary;

4 (ii) to administer or enforce treaties
5 to which the United States is a party;

6 (iii) to administer or enforce binding
7 conservation measures adopted by any
8 international organization or arrangement
9 to which the United States is a party;

10 (iv) to assist in investigative, judicial,
11 or administrative enforcement proceedings
12 in the United States; or

13 (v) to assist in any fisheries or living
14 marine resource related law enforcement
15 action undertaken by a law enforcement
16 agency of a foreign government, or in rela-
17 tion to a legal proceeding undertaken by a
18 foreign government.

19 (e) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated \$30,000,000 to the Sec-
21 retary for each of fiscal years 2010 through 2015 to carry
22 out this section.

1 **SEC. 202. INTERNATIONAL COOPERATION AND ASSISTANCE**
2 **PROGRAM.**

3 (a) INTERNATIONAL COOPERATION AND ASSISTANCE
4 PROGRAM.—The Secretary may establish an international
5 cooperation and assistance program, including grants, to
6 provide assistance for international capacity building ef-
7 forts.

8 (b) AUTHORIZED ACTIVITIES.—In carrying out the
9 program, the Secretary may—

10 (1) provide funding and technical expertise to
11 other nations to assist them in addressing illegal,
12 unreported, or unregulated fishing activities;

13 (2) provide funding and technical expertise to
14 other nations to assist them in reducing the loss and
15 environmental impacts of derelict fishing gears, re-
16 ducing the bycatch of living marine resources, and
17 promoting international marine resource conserva-
18 tion;

19 (3) provide funding, technical expertise, and
20 training, in cooperation with the International Fish-
21 eries Enforcement Program under section 201 of
22 this Act, to other nations to aid them in building ca-
23 pacity for enhanced fisheries management, fisheries
24 monitoring, catch and trade tracking activities, en-
25 forcement, and international marine resource con-
26 servation;

1 (4) establish partnerships with other Federal
2 agencies, as appropriate, to ensure that fisheries de-
3 velopment assistance to other nations is directed to-
4 ward projects that promote sustainable fisheries; and

5 (5) conduct outreach and education efforts in
6 order to promote public and private sector awareness
7 of international fisheries sustainability issues, in-
8 cluding the need to combat illegal, unreported, or
9 unregulated fishing activity and to promote inter-
10 national marine resource conservation.

11 (c) GUIDELINES.—The Secretary may establish
12 guidelines necessary to implement the program.

13 (d) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the Secretary
15 \$5,000,000 for each of fiscal years 2010 through 2015
16 to carry out this section.

17 **TITLE III—MISCELLANEOUS**
18 **AMENDMENTS**

19 **SEC. 301. ATLANTIC TUNAS CONVENTION ACT OF 1975.**

20 (a) ELIMINATION OF ANNUAL REPORT.—Section 11
21 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C.
22 971j) is repealed.

23 (b) CERTAIN REGULATIONS.—Section 971d(c)(2) of
24 the Atlantic Tunas Convention Act of 1975 (16 U.S.C.
25 971d(c)(2)) is amended—

1 (1) by inserting “(A)” after “(2)”;

2 (2) by striking “(A) submission” and inserting
3 “the presentation”;

4 (3) by striking “arguments, and (B) oral pres-
5 entation at a public hearing. Such” and inserting
6 “written or oral statements at a public hearing.
7 After consideration of such presentations, the ”; and

8 (4) by adding at the end thereof the following:

9 “(B) The Secretary may issue final regulations to im-
10 plement Commission recommendations referred to in para-
11 graph (1) of this subsection concerning trade restrictive
12 measures against nations or fishing entities without re-
13 gard to the requirements of subparagraph (A) of this
14 paragraph and subsections (b) and (c) of section 553 of
15 title 5, United States Code.”.

16 **SEC. 302. DATA SHARING.**

17 (a) HIGH SEAS DRIFTNET FISHING MORATORIUM
18 PROTECTION ACT.—Section 608 of the High Seas
19 Driftnet Fishing Moratorium Protection Act (16 U.S.C.
20 1826i) is amended—

21 (1) by inserting “(a) IN GENERAL.—” before
22 “The Secretary,”;

23 (2) by striking “organizations” the first place it
24 appears and inserting, “organizations, or arrange-
25 ments made pursuant to an international fishery

1 agreement (as defined in section 3(24) of the Mag-
2 nuson-Stevens Fishery Conservation and Manage-
3 ment Act),”;

4 (3) by striking “and” after the semicolon in
5 paragraph (2)(C);

6 (4) by striking “territories.” in paragraph (3)
7 and inserting “territories; and”;

8 (5) by adding at the end thereof the following:

9 “(4) urging other nations, through the regional
10 fishery management organizations of which the
11 United States is a member, bilaterally and otherwise
12 to seek and foster the sharing of accurate, relevant,
13 and timely information—

14 “(A) to improve the scientific under-
15 standing of marine ecosystems;

16 “(B) to improve fisheries management de-
17 cisions;

18 “(C) to promote the conservation of pro-
19 tected living marine resources;

20 “(D) to combat illegal, unreported, and un-
21 regulated fishing; and

22 “(E) to improve compliance with conserva-
23 tion and management measures in international
24 waters.

1 “(b) INFORMATION SHARING.—In carrying out this
2 section, the Secretary may disclose, as necessary and ap-
3 propriate, information to the Food and Agriculture Orga-
4 nization of the United Nations, international fishery man-
5 agement organizations (as so defined), or arrangements
6 made pursuant to an international fishery agreement, if
7 such organizations or arrangements have policies and pro-
8 cedures to safeguard such information from unintended or
9 unauthorized disclosure.”.

10 (b) CONFORMING AMENDMENT.—Section 402(b)(1)
11 of the Magnuson-Stevens Fishery Conservation and Man-
12 agement Act (16 U.S.C. 1881a(b)(1)) is amended—

13 (1) by striking “or” after the semicolon in sub-
14 paragraph (G);

15 (2) by redesignating subparagraph (H) as sub-
16 paragraph (J); and

17 (3) by inserting after subparagraph (G) the fol-
18 lowing:

19 “(H) to the Food and Agriculture Organization
20 of the United Nations, international fishery manage-
21 ment organizations, or arrangements made pursuant
22 to an international fishery agreement as provided for
23 in the High Seas Driftnet Fishing Moratorium Pro-
24 tection Act (16 U.S.C. 1826i(b));

1 “(I) to any other Federal or State government
2 agency, foreign government, the Food and Agri-
3 culture Organization of the United Nations, or the
4 secretariat or equivalent of an international fisheries
5 management organization or arrangement made pur-
6 suant to an international fishery agreement, as pro-
7 vided in section 201(d)(6) of the International Fish-
8 eries Stewardship and Enforcement Act; or”.

9 **SEC. 303. PERMITS UNDER THE HIGH SEAS FISHING COM-**
10 **PLIANCE ACT OF 1995.**

11 Section 104(f) of the High Seas Fishing Compliance
12 Act (16 U.S.C. 5503(f)) is amended to read as follows:

13 “(f) VALIDITY.—A permit issued under this section
14 is void if—

15 “(1) 1 or more permits or authorizations re-
16 quired for a vessel to fish, in addition to a permit
17 issued under this section, expire, are revoked, or are
18 suspended; or

19 “(2) the vessel is no longer eligible for United
20 States documentation, such documentation is re-
21 voked or denied, or the vessel is deleted from such
22 documentation.”.

1 **SEC. 304. TECHNICAL CORRECTIONS TO THE WESTERN AND**
2 **CENTRAL PACIFIC FISHERIES CONVENTION**
3 **IMPLEMENTATION ACT.**

4 Section 503 of the Western and Central Pacific Fish-
5 eries Convention Implementation Act (16 U.S.C. 6902) is
6 amended—

7 (1) by striking “Management Council and” in
8 subsection (a) and inserting “Management Council,
9 and one of whom shall be the chairman or a member
10 of”;

11 (2) by striking subsection (c)(1) and inserting
12 the following:

13 “(1) EMPLOYMENT STATUS.—Individuals serv-
14 ing as such Commissioners, other than officers or
15 employees of the United States Government, shall
16 not be considered Federal employees except for the
17 purposes of injury compensation or tort claims liabil-
18 ity as provided in chapter 81 of title 5, United
19 States Code, and chapter 171 of title 28, United
20 States Code.”; and

21 (3) by striking subsection (d)(2)(B)(ii) and in-
22 serting the following:

23 “(ii) shall not be considered Federal
24 employees except for the purposes of injury
25 compensation or tort claims liability as
26 provided in chapter 81 of title 5, United

1 States Code, and chapter 171 of title 28,
2 United States Code.”.

3 **SEC. 305. PACIFIC WHITING ACT OF 2006.**

4 (a) **SCIENTIFIC EXPERTS.**—Section 605(a)(1) of the
5 Pacific Whiting Act of 2006 (16 U.S.C. 7004(a)(1)) is
6 amended by striking “at least 6 but not more than 12”
7 inserting “no more than 2”.

8 (b) **EMPLOYMENT STATUS.**—Section 609(a) of the
9 Pacific Whiting Act of 2006 (16 U.S.C. 7008(a)) is
10 amended to read as follows:

11 “(a) **EMPLOYMENT STATUS.**—Individuals appointed
12 under section 603, 604, 605, or 606 of this title, other
13 than officers or employees of the United States Govern-
14 ment, shall not be considered to be Federal employees
15 while performing such service, except for purposes of in-
16 jury compensation or tort claims liability as provided in
17 chapter 81 of title 5, United States Code, and chapter 171
18 of title 28, United States Code.”.

19 **SEC. 306. COMMITTEE ON SCIENTIFIC COOPERATION FOR**
20 **PACIFIC SALMON AGREEMENT.**

21 Section 11 of the Pacific Salmon Treaty Act of 1985
22 (16 U.S.C. 3640) is amended by redesignating subsections
23 (c) and (d) as subsections (d) and (e), respectively, and
24 inserting after subsection (b) the following:

1 “(c) SCIENTIFIC COOPERATION COMMITTEE.—Mem-
2 bers of the Committee on Scientific Cooperation who are
3 not State or Federal employees shall receive compensation
4 at a rate equivalent to the rate payable for level IV of
5 the Executive Schedule under section 5315 of title 5,
6 United States Code, when engaged in actual performance
7 of duties for the Commission.”.

8 **SEC. 307. REAUTHORIZATIONS.**

9 (a) INTERNATIONAL DOLPHIN CONSERVATION PRO-
10 GRAM.—Section 304(c)(1) of the Marine Mammal Protec-
11 tion Act (16 U.S.C. 1414a(c)(1)) is amended by adding
12 at the end thereof the following:

13 “(5) \$1,000,000 for each of fiscal years
14 2009 through 2013.”.

15 (b) PACIFIC SALMON TREATY ACT OF 1985.—Sec-
16 tion 16(d)(2)(A) of the Pacific Salmon Treaty Act of 1985
17 (16 3645(d)(2)(A)) is amended by striking “and 2009,”
18 and inserting “2009, 2010, 2011, 2012, and 2013,”.

19 (c) SOUTH PACIFIC TUNA ACT OF 1988.—Section
20 20(a) of the South Pacific Tuna Act of 1988 (16 U.S.C.
21 973r(a)) is amended by striking “1992, 1993, 1994, 1995,
22 1996, 1997, 1998, 1999, 2000, 2001, and 2002,” each
23 place it appears and inserting “2009 through 2013”.

1 **TITLE IV—IMPLEMENTATION OF**
2 **THE ANTIGUA CONVENTION**

3 **SEC. 401. SHORT TITLE.**

4 This title may be cited as the “Antigua Convention
5 Implementing Act of 2009”.

6 **SEC. 402. AMENDMENT OF THE TUNA CONVENTIONS ACT**
7 **OF 1950.**

8 Except as otherwise expressly provided, whenever in
9 this title an amendment or repeal is expressed in terms
10 of an amendment to, or repeal of, a section or other provi-
11 sion, the reference shall be considered to be made to a
12 section or other provision of the Tuna Conventions Act
13 of 1950 (16 U.S.C. 951 et seq.).

14 **SEC. 403. DEFINITIONS.**

15 Section 2 (16 U.S.C. 951) is amended to read as fol-
16 lows:

17 **“SEC. 2. DEFINITIONS.**

18 “In this Act:

19 “(1) ANTIGUA CONVENTION.—The term ‘Anti-
20 gua Convention’ means the Convention for the
21 Strengthening of the Inter-American Tropical Tuna
22 Commission Established by the 1949 Convention
23 Between the United States of America and the Re-
24 public of Costa Rica, signed at Washington, Novem-
25 ber 14, 2003.

1 “(2) COMMISSION.—The term ‘Commission’
2 means the Inter-American Tropical Tuna Commis-
3 sion provided for by the Convention.

4 “(3) CONVENTION.—The term ‘Convention’
5 means—

6 “(A) the Convention for the Establishment
7 of an Inter-American Tropical Tuna Commis-
8 sion, signed at Washington, May 31, 1949, by
9 the United States of America and the Republic
10 of Costa Rica;

11 “(B) the Antigua Convention, upon its
12 entry into force for the United States, and any
13 amendments thereto that are in force for the
14 United States; or

15 “(C) both such Conventions, as the context
16 requires.

17 “(4) IMPORT.—The term ‘import’ means to
18 land on, bring into, or introduce into, or attempt to
19 land on, bring into, or introduce into, any place sub-
20 ject to the jurisdiction of the United States, whether
21 or not such landing, bringing, or introduction con-
22 stitutes an importation within the meaning of the
23 customs laws of the United States.

1 “(5) PERSON.—The term ‘person’ means an in-
2 dividual, partnership, corporation, or association
3 subject to the jurisdiction of the United States.

4 “(6) UNITED STATES.—The term ‘United
5 States’ includes all areas under the sovereignty of
6 the United States.

7 “(7) U.S. COMMISSIONERS.—The term ‘U.S.
8 commissioners’ means the members of the commis-
9 sion.

10 “(8) U.S. SECTION.—The term ‘U.S. section’
11 means the U.S. Commissioners to the Commission
12 and a designee of the Secretary of State.”.

13 **SEC. 404. COMMISSIONERS; NUMBER, APPOINTMENT, AND**
14 **QUALIFICATIONS.**

15 Section 3 (16 U.S.C. 952) is amended to read as fol-
16 lows:

17 **“SEC. 3. COMMISSIONERS.**

18 “(a) COMMISSIONERS.—The United States shall be
19 represented on the Commission by 5 United States Com-
20 missioners. The President shall appoint individuals to
21 serve on the Commission at the pleasure of the President.
22 In making the appointments, the President shall select
23 Commissioners from among individuals who are knowl-
24 edgeable or experienced concerning highly migratory fish
25 stocks in the eastern tropical Pacific Ocean, one of whom

1 shall be an officer or employee of the Department of Com-
2 merce, one of whom shall be the chairman or a member
3 of the Western Pacific Fishery Management Council, and
4 one of whom shall be the chairman or a member of the
5 Pacific Fishery Management Council. Not more than 2
6 Commissioners may be appointed who reside in a State
7 other than a State whose vessels maintain a substantial
8 fishery in the area of the Convention.

9 “(b) ALTERNATE COMMISSIONERS.—The Secretary
10 of State, in consultation with the Secretary, may designate
11 from time to time and for periods of time deemed appro-
12 priate Alternate United States Commissioners to the Com-
13 mission. Any Alternate United States Commissioner may
14 exercise, at any meeting of the Commission or of the Gen-
15 eral Advisory Committee or Scientific Advisory Sub-
16 committee established pursuant to section 4(b), all powers
17 and duties of a United States Commissioner in the ab-
18 sence of any Commissioner appointed pursuant to sub-
19 section (a) of this section for whatever reason. The num-
20 ber of such Alternate United States Commissioners that
21 may be designated for any such meeting shall be limited
22 to the number of United States Commissioners appointed
23 pursuant to subsection (a) of this section who will not be
24 present at such meeting.

25 “(c) ADMINISTRATIVE MATTERS.—

1 “(1) EMPLOYMENT STATUS.—Individuals serv-
2 ing as such Commissioners, other than officers or
3 employees of the United States Government, shall
4 not be considered Federal employees except for the
5 purposes of injury compensation or tort claims liabil-
6 ity as provided in chapter 81 of title 5, United
7 States Code, and chapter 171 of title 28, United
8 States Code.

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

14 “(3) TRAVEL EXPENSES.—

15 “(A) The Secretary of State shall pay the
16 necessary travel expenses of United States
17 Commissioners and Alternate United States
18 Commissioners to meetings of the IATTC and
19 other meetings the Secretary deems necessary
20 to fulfill their duties, in accordance with the
21 Federal Travel Regulations and sections 5701,
22 5702, 5704 through 5708, and 5731 of title 5,
23 United States Code.

1 “(B) The Secretary may reimburse the
2 Secretary of State for amounts expended by the
3 Secretary of State under this subsection.”.

4 **SEC. 405. GENERAL ADVISORY COMMITTEE AND SCI-**
5 **ENTIFIC ADVISORY SUBCOMMITTEE.**

6 Section 4 (16 U.S.C. 953) is amended—

7 (1) by striking subsection (a) and inserting the
8 following:

9 “(a) GENERAL ADVISORY COMMITTEE.—

10 “(1) APPOINTMENTS; PUBLIC PARTICIPATION;
11 COMPENSATION.—

12 “(A) The Secretary, in consultation with
13 the Secretary of State, shall appoint a General
14 Advisory Committee which shall consist of not
15 more than 25 individuals who shall be rep-
16 resentative of the various groups concerned
17 with the fisheries covered by the Convention, in-
18 cluding nongovernmental conservation organiza-
19 tions, providing to the maximum extent prac-
20 ticable an equitable balance among such groups.
21 Members of the General Advisory Committee
22 will be eligible to participate as members of the
23 U.S. delegation to the Commission and its
24 working groups to the extent the Commission
25 rules and space for delegations allow.

1 “(B) The chair of the Pacific Fishery
2 Management Council’s Advisory Subpanel for
3 Highly Migratory Fisheries and the chair of the
4 Western Pacific Fishery Management Council’s
5 Advisory Committee shall be members of the
6 General Advisory Committee by virtue of their
7 positions in those Councils;

8 “(C) Each member of the General Advi-
9 sory Committee appointed under subparagraph
10 (A) shall serve for a term of 3 years and is eli-
11 gible for reappointment.

12 “(D) The General Advisory Committee
13 shall be invited to attend all non-executive
14 meetings of the United States Section and at
15 such meetings shall be given opportunity to ex-
16 amine and to be heard on all proposed pro-
17 grams of investigation, reports, recommenda-
18 tions, and regulations of the Commission.

19 “(E) The General Advisory Committee
20 shall determine its organization, and prescribe
21 its practices and procedures for carrying out its
22 functions under this chapter, the Magnuson-
23 Stevens Fishery Conservation and Management
24 Act (16 U.S.C. 1801 et seq.), and the Conven-
25 tion. The General Advisory Committee shall

1 publish and make available to the public a
2 statement of its organization, practices and pro-
3 cedures. Meetings of the General Advisory Com-
4 mittee, except when in executive session, shall
5 be open to the public, and prior notice of meet-
6 ings shall be made public in timely fashion. The
7 General Advisory Committee shall not be sub-
8 ject to the Federal Advisory Committee Act (5
9 U.S.C. App.).

10 “(2) INFORMATION SHARING.—The Secretary
11 and the Secretary of State shall furnish the General
12 Advisory Committee with relevant information con-
13 cerning fisheries and international fishery agree-
14 ments.

15 “(3) ADMINISTRATIVE MATTERS.—

16 “(A) The Secretary shall provide to the
17 General Advisory Committee in a timely man-
18 ner such administrative and technical support
19 services as are necessary for its effective func-
20 tioning.

21 “(B) Individuals appointed to serve as a
22 member of the General Advisory Committee—

23 “(i) shall serve without pay, but while
24 away from their homes or regular places of
25 business to attend meetings of the General

1 Advisory Committee shall be allowed travel
2 expenses, including per diem in lieu of sub-
3 sistence, in the same manner as persons
4 employed intermittently in the Government
5 service are allowed expenses under section
6 5703 of title 5, United States Code; and

7 “(ii) shall not be considered Federal
8 employees except for the purposes of injury
9 compensation or tort claims liability as
10 provided in chapter 81 of title 5, United
11 States Code, and chapter 171 of title 28,
12 United States Code.”; and

13 (2) by striking so much of subsection (b) as
14 precedes paragraph (2) and inserting the following:

15 “(b) SCIENTIFIC ADVISORY COMMITTEE.—(1) The
16 Secretary, in consultation with the Secretary of State,
17 shall appoint a Scientific Advisory Subcommittee of not
18 less than 5 nor more than 15 qualified scientists with bal-
19 anced representation from the public and private sectors,
20 including nongovernmental conservation organizations.”.

21 **SEC. 406. RULEMAKING.**

22 Section 6 (16 U.S.C. 955) is amended—

23 (1) by striking the section caption and inserting
24 the following:

1 **“SEC. 6. RULEMAKING.”;**

2 and

3 (2) by striking subsections (a) and (b) and in-
4 serting the following:

5 “(a) REGULATIONS.—The Secretary, in consultation
6 with the Secretary of State and, with respect to enforce-
7 ment measures, the Secretary of the Department in which
8 the Coast Guard is operating, may promulgate such regu-
9 lations as may be necessary to carry out the United States
10 international obligations under the Convention and this
11 Act, including recommendations and decisions adopted by
12 the Commission. In cases where the Secretary has discre-
13 tion in the implementation of one or more measures adopt-
14 ed by the Commission that would govern fisheries under
15 the authority of a Regional Fishery Management Council,
16 the Secretary may, to the extent practicable within the im-
17 plementation schedule of the Convention and any rec-
18 ommendations and decisions adopted by the Commission,
19 promulgate such regulations in accordance with the proce-
20 dures established by the Magnuson-Stevens Fishery Con-
21 servation and Management Act (16 U.S.C. 1801 et seq.).

22 “(b) JURISDICTION.—The Secretary may promulgate
23 regulations applicable to all vessels and persons subject
24 to the jurisdiction of the United States, including United
25 States flag vessels wherever they may be operating, on
26 such date as the Secretary shall prescribe.”.

1 **SEC. 407. PROHIBITED ACTS.**

2 Section 8 (16 U.S.C. 957) is amended to read as fol-
3 lows:

4 **“SEC. 8. PROHIBITED ACTS.**

5 “It is unlawful for any person—

6 “(1) to violate any provision of this chapter or
7 any regulation or permit issued pursuant to this Act;

8 “(2) to use any fishing vessel to engage in fish-
9 ing after the revocation, or during the period of sus-
10 pension, of an applicable permit issued pursuant to
11 this Act;

12 “(3) to refuse to permit any officer authorized
13 to enforce the provisions of this Act (as provided for
14 in section 10) to board a fishing vessel subject to
15 such person’s control for the purposes of conducting
16 any search, investigation or inspection in connection
17 with the enforcement of this Act or any regulation,
18 permit, or the Convention;

19 “(4) to forcibly assault, resist, oppose, impede,
20 intimidate, sexually harass, bribe, or interfere with
21 any such authorized officer in the conduct of any
22 search, investigations or inspection in connection
23 with the enforcement of this Act or any regulation,
24 permit, or the Convention;

25 “(5) to resist a lawful arrest for any act prohib-
26 ited by this Act;

1 “(6) to ship, transport, offer for sale, sell, pur-
2 chase, import, export, or have custody, control, or
3 possession of, any fish taken or retained in violation
4 of this Act or any regulation, permit, or agreement
5 referred to in paragraph (1) or (2);

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

10 “(8) to knowingly and willfully submit to the
11 Secretary false information regarding any matter
12 that the Secretary is considering in the course of
13 carrying out this Act;

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

20 “(10) to engage in fishing in violation of any
21 regulation adopted pursuant to section 6(e) of this
22 Act;

23 “(11) to ship, transport, purchase, sell, offer for
24 sale, import, export, or have in custody, possession,

1 or control any fish taken or retained in violation of
2 such regulations;

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

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

10 “(14) to import, in violation of any regulation
11 adopted pursuant to section 6(c) of this Act, any
12 fish in any form of those species subject to regula-
13 tion pursuant to a recommendation, resolution, or
14 decision of the Commission, or any tuna in any form
15 not under regulation but under investigation by the
16 Commission, during the period such fish have been
17 denied entry in accordance with the provisions of
18 section 6(c) of this Act, unless such person provides
19 such proof as the Secretary of Commerce may re-
20 quire that a fish described in this paragraph offered
21 for entry into the United States is not ineligible for
22 such entry under the terms of section 6(c) of this
23 Act.”.

1 **SEC. 408. ENFORCEMENT.**

2 Section 10 (16 U.S.C. 959) is amended to read as
3 follows:

4 **“SEC. 10. ENFORCEMENT.**

5 “This Act shall be enforced under section 101 of the
6 International Fisheries Stewardship and Enforcement
7 Act.”.

8 **SEC. 409. REDUCTION OF BYCATCH.**

9 Section 15 (16 U.S.C. 962) is amended by striking
10 “vessel” and inserting “vessels”.

11 **SEC. 410. REPEAL OF EASTERN PACIFIC TUNA LICENSING**
12 **ACT OF 1984.**

13 The Eastern Pacific Tuna Licensing Act of 1984 (16
14 U.S.C. 972 et seq.) is repealed.

○

LEGISLATIVE COMMITTEE REPORT ON LEGISLATIVE MATTERS

The Legislative Committee (Committee) convened at 1:00 p.m. on Friday, April 9, 2010. In attendance were Committee members Mr. Rod Moore (Vice Chair), Pacific Fishery Management Council (Council) Vice Chair Mr. Dan Wolford, Ms. Dorothy Lowman, Mr. Dale Myer, and Mr. Gordy Williams. Also present were Council Executive Director Dr. Don McIsaac, Council Deputy Director Dr. John Coon, Council Assistant to the Executive Director Mr. Don Hansen, and Council Staff Officer Mr. Mike Burner. Additionally, the following members of the Council's Highly Migratory Species Advisory Subpanel (HMSAS) attended the session; Mr. Doug Fricke (HMSAS Chair), Mr. August Felando, Mr. Peter Flournoy (HMSAS Alternate), Ms. Linda Buell, Mr. Steve Foltz, and Mr. Bill Sutton.

The Committee noted that there has not been a recent Congressional request for Council input on legislative matters, including the two bills the Committee focused on for this meeting, *S. 2870 - International Fisheries Stewardship and Enforcement Act*, and *H.R. 4363 - National Sustainable Offshore Aquaculture Act of 2009*. Therefore, the Committee has prepared the following comments for the purpose of updating the Council on these matters and to provide recommendations that could be submitted in response to future Congressional inquiries at the discretion of the Council or the Council's Executive Director.

S. 2870 - International Fisheries Stewardship and Enforcement Act

This bill would establish uniform administrative and enforcement procedures and penalties for the enforcement of a variety of fishery related statutes (the High Seas Driftnet Fishing Moratorium Protection Act, the Pacific Salmon Treaty Act of 1985, the Dolphin Protection Consumer Information Act, the Tuna Conventions Act of 1950, the North Pacific Anadromous Stocks Act of 1992, the South Pacific Tuna Act of 1988, the Antarctic Marine Living Resources Convention Act of 1984, the Atlantic Tunas Convention Act of 1975, the Northwest Atlantic Fisheries Convention Act of 1995, the Western and Central Pacific Fisheries Convention Implementation Act, and the Northern Pacific Halibut Act of 1982).

The bill would also amend existing legislation by implementing the technical corrections regarding U.S. representation to the Western and Central Pacific Fisheries Commission (WCPFC) and the appropriate criteria specified under the U.S./Canada agreement on Pacific Whiting, implement the Antigua Convention, and reauthorize certain statutes.

The Committee noted that the technical corrections on implementation of the WCPFC and the U.S./Canada agreement on Pacific Whiting under Title III are non-controversial, overdue, and the sole purpose of related legislation (S.2871). Also, implementation of the Antigua Convention will take place in August 2010 and, although the U.S. is signatory to this agreement, legislation similar to that under Title IV is needed to invoke the required instruments of U.S. ratification for full U.S. participation. The Committee agreed that S.2870 addresses too broad a range of issues and recommends that Title III and Title IV under S.2870 be removed and treated expeditiously under separate legislation.

Title I - Administration and Enforcement of Certain Fishery and Related Statutes

Penalties proposed under S. 2870 are considerable and are substantially increased from the penalties in existing statutes. Maximum monetary fines can reach \$250,000 per day and forfeiture provisions could include the confiscation of property other than vessels, gear, and cargo. The Committee believes that these penalties are severe and do not necessarily fit the violations. The Committee notes that penalties under existing acts have been adjusted for inflation over the years and are not in need of revision.

S.2870 establishes uniform enforcement provisions across several fishery statutes. The Committee noted that enforcement and economics vary by fisheries. Therefore, any enforcement program for fisheries under international statute should provide flexibility to ensure that penalties and forfeitures are appropriate for each fishery and its potential violations.

Title II – Law Enforcement and International Operations

Subject to appropriations, S.2870 would authorize \$30 million a year over five years for the purpose of establishing an International Fisheries Enforcement Program within the Office of Law Enforcement of the National Marine Fisheries Service to enhance international fishery enforcement. The Committee does not have any specific comments on Title II other than to recommend that this level of authorization should be accompanied by further explanation of the intent for the funds.

Title III – Miscellaneous Amendments

The Committee continues to support rapid passage of the technical corrections regarding U.S. representation to the Western and Central Pacific Fisheries Commission and the appropriate criteria specified under the U.S./Canada agreement on Pacific Whiting that are included in Title III of S.2870. The Committee notes that a related bill, S.2871 deals solely with these corrections and represents a concise and perhaps more expedient way of achieving their implementation.

Title IV – Implementation of Antigua Convention

S.2870, Title IV, Section 404 would amend the Tuna Convention Act of 1950 to specify that there will be five U.S. Commissioners appointed to the Inter-American Tropical Tuna Commission (IATTC) while the Antigua Convention, Article 6, paragraph 2 specifies that there will be four U.S. IATTC Commissioners. Neither the Committee nor the HMSAS could identify the rationale for this discrepancy and the Committee recommends that this discrepancy be corrected or justified.

S.2870, Title IV, Section 406 would amend language in the Tuna Convention Act of 1950 pertaining to rulemaking provisions and the promulgation of regulations. However, the Tuna Convention Act of 1950 under Section 6 (16 U.S.C. 955) has three subsections [(a)-(c)] pertaining to rulemaking authority and S.2870 only amends subsections (a) and (b) leaving the existing and potentially antiquated language in subsection (c). The Committee recommends that S.2870 be revised to include amendments to subsection (c) per Article VII(c) of the Antigua

Convention to recognize that IATTC recommendations will be made pursuant to the following paragraph under Article VII(c):

“adopt measures that are based on the best scientific evidence available to ensure the long-term conservation and sustainable use of the fish stocks covered by [the Antigua Convention] and to maintain or restore the populations of harvested species at levels of abundance which can produce the maximum sustainable yield, *inter alia*, through the setting of the total allowable catch of such fish stocks as the [IATTC] may decide and/or the total allowable level of fishing capacity and/or level of fishing effort for the [Antigua]Convention Area as a whole”

S.2870, Title IV, Section 408 would amend the tuna Conventions Act of 1950 to include Title I of S.2870 pertaining to enforcement provisions. For the reasons stated above under Title I, the Committee recommends that Section 408 be removed from S.2870.

H.R. 4363 - National Sustainable Offshore Aquaculture Act of 2009.

The Committee reviewed the legislation and provides the following comments by section.

Section 3, NOAA Office; Advisory Board - The Committee recommends the bill be amended to include tribal representation on the Advisory Board.

Section 4, Regional Programmatic Environmental Impact Statements - Subsection (f) prevents the Secretary of Commerce from issuing any permit before all Regional Programmatic Environmental Impact Statements have been issued. The Committee recommends easing this restriction so that permits within a given region cannot be issued until that region's Environmental Impact Statement is issued.

Section 5, Offshore Aquaculture Permitting – Subsection (j)(1)(D) states that “Stocked fish shall be no further than two generations from the relevant wild stock, and shall not have been exposed to intentional selective breeding.” The Committee appreciates the merits of preserving the genetic integrity of native stocks, but requests additional rationale and scientific justification for this restriction and recommends that the bill’s language be amended to clarify which aquaculture facility operations would be subject to this restriction.

Subsection (j)(1)(G) prevents wild-caught fish from being grown out to market size at a facility permitted under the Act. The Committee could not identify a reasonable justification for prohibiting the practice of growing out of fish that are sustainably and legally harvested and recommends the prohibition be removed.

Subsection (j)(5)(A)(i) prohibits the use of wild fish as feed unless they are “sourced from populations with ecosystem-based management measures in place.” The Committee noted that ecosystem-based management principles around the country vary by degree and practice. The Committee recommends that this term be explicitly defined because it is not clear to the Committee which populations would and would not qualify for use as feed as currently described.

Subsection (j)(5)(C) expresses a desire to maximize the utilization of alternatives to fishmeal, fish oil and fish byproducts when sourcing aquaculture feeds. The Committee noted that the term “fish byproducts” is defined in Section 14 to not include bycatch. Overall, the Committee agreed with the bills apparent precautionary approach regarding the use of wild-caught species as feed, but noted that unavoidable bycatch and offal from well-managed fisheries could serve as a responsible source of fishmeal. The Committee recommends that the bill be amended to both maximize the use of alternate feeds while minimizing the waste of fish byproducts and unavoidable bycatch.

Subsection (j)(7)(C) prohibits siting an offshore aquaculture facility on or attached to an oil or gas platform. The Committee described this provision as overly prohibitive and recognized potential efficiencies in siting aquaculture facilities in areas already occupied by such platforms. The Committee recommends that the bill be amended to include provisions for using these existing structures in an environmentally and economically sensible manner.

Section 8, Compatibility with Other Uses; State Input - Subsection (a) describes the entities the Secretary shall consult with when assessing the compatibility of aquaculture facilities with other activities within the Exclusive Economic Zone, but does not specifically mention tribal entities. The Committee recommends that the bill be amended to require tribal consultation regarding the compatibility of aquaculture facilities with tribal activities and tribal usual and accustomed areas.

Subsection (e)(2)(A) allows coastal States to opt-out of aquaculture activities either by location, by species category, or both. The Committee continues to prefer that these provisions be specified as a requirement for a State to out-in rather than opt-out. Like the existing opt-out provisions, the Committee recommends that States have the ability to opt-in to aquaculture activities by location and/or by species category.

Section 11, Enforcement – Subsection (f) allows any person to commence a civil suit regarding permitted aquaculture activities. This provision creates an unnecessary disincentive to participate in aquaculture and would likely generate a litigious atmosphere. The Committee recommends that provisions for civil suits be removed.

Section 14, Definitions – As noted above, the Committee recommends that H.R.4363 be amended to include explicit definitions of the terms “ecosystem-based management measures” and “native fish” relative to their use in the bill.

Emergency Temporary Water Supply Amendment

At its March meeting, the Committee reviewed a February 18, 2010 letter to U.S. Senator Feinstein (CA) signed by 11 members of Congress (March 2010, Agenda Item D.3.a, Supplemental Attachment 4) regarding legislation proposed by Senator Feinstein that may override protection for threatened and endangered fish stocks and fisheries of the San Francisco Bay-Delta system for the purpose of easing the effects of an ongoing drought in the region. The Committee recommended the Council Executive Director send a letter to Senator Feinstein requesting the specific language of the proposed legislation and clarification on whether or not the amendment would address potential disaster relief for salmon fishermen.

Since the March Council meeting Council staff have been in contact with Senator Feinstein and have learned that Senator Feinstein and others, working with the U.S. Department of the Interior and stakeholders, has addressed the drought concerns through other means such as delaying scheduled diversions to municipalities in lieu of irrigation needs. At this time, Senator Feinstein does not have plans to introduce legislation. Council staff will continue to track this matter, including the potential for legislation pertaining to salmon disaster relief, and will report back to the Committee.

Future Meeting Plans

The Committee did not identify an urgent need to meet at the June 2010 Council meeting and recommends that the Council balance the need for a June Committee meeting with the heavy proposed workload of the June Council meeting under Agenda Item K.3.

The Committee adjourned at 3:30 p.m.

Legislative Committee Recommendations

- 1. Review and approve Committee recommendations on S.2870 and H.R.4363 with the expectation that these recommendations could be submitted in response to future Congressional inquiries at the discretion of the Council or the Council's Executive Director.**
- 2. Balance the need for a June Legislative Committee meeting with the heavy proposed workload of the June Council meeting under Agenda Item K.3.**

PFMC
04/14/10

MEMBERSHIP APPOINTMENTS AND COUNCIL OPERATING PROCEDURES

During this agenda item, the Council has the opportunity to consider changes in the Council Membership Roster, including Council Members, advisory body membership, and appointments to other forums, and also any relevant changes in Council Operating Procedures (COP).

Council Members and Designees

No appointments or other changes were identified by the Briefing Book deadline.

Council Member Committee Appointments

No appointments or other changes were identified by the Briefing Book deadline.

Council Advisory Body Appointments

Scientific and Statistical Committee (SSC)

The California Department of Fish and Game (CDFG) have nominated Ms. Meisha Key to replace Mr. Tom Barnes on the SSC (Closed Session A.1.a, Attachment 1).

Management and Technical Teams

No appointments or other changes were identified by the Briefing Book deadline.

Advisory Subpanels

No appointments or other changes were identified by the Briefing Book deadline.

Enforcement Consultants (EC)

The U.S. Coast Guard has appointed LT Steve Arnwine to replace LT Brittany Steward in the 11th Coast Guard District position on the EC (Closed Session A.1.a, Attachment 2).

Habitat Committee (HC)

No appointments or other changes were identified by the Briefing Book deadline.

Ad Hoc Council Committees

No appointments or other changes to current ad hoc committees were identified by the Briefing Book deadline.

Staff suggests the Council consider creating an ad hoc Groundfish Amendment Regulatory Deeming (GARD) Committee to help review the proposed regulations for Amendments 20 and

21. Depending on the timing and status of the implementation effort, such a committee could help expedite the deeming process.

Unfilled Vacancies

Ecosystem Plan Development Team (EPDT)

The Idaho Department of Fish and Game (IDFG) have indicated they plan to provide a nominee for their position on the EPDT.

As of the Briefing Book deadline, the tribes have not yet identified a nominee for the Tribal position on the EPDT.

Ecosystem Advisory Subpanel (EAS)

The Idaho and Tribal at-large positions remain vacant (staff has posted the vacancies on our website). Given the timing of meetings and apparent lack of interest or capability, staff recommends the Council consider dropping the Idaho and Tribal at-large positions on the EAS.

Highly Migratory Species Management Team (HMSMT)

The Southwest Fisheries Science Center has indicated they intend to provide a nominee to fill their vacant position on the HMSMT by the June 2010 Council meeting. In the interim they will provide a temporary alternate.

Highly Migratory Species Advisory Subpanel (HMSAS)

The conservation seat on the HMSAS remains vacant (staff has posted the vacancy on our website).

Model Evaluation Workgroup (MEW)

The Washington Department of Fisheries and Wildlife (WDFW) position on the MEW remains vacant.

Appointments to Other Forums

No appointments or other changes were identified by the Briefing Book deadline.

Changes to Council Operating Procedures (COP)

No changes were identified or requested by the Briefing Book deadline.

Council Action:

- 1. Consider general issues with regard to appointments and potential COP changes.**
- 2. Approve the nomination of Ms. Meisha Key to the CDFG position on the SSC.**
- 3. Confirm LT Steve Arnwine to the 11th Coast Guard District position on the EC.**

4. **Provide advice for the following extended vacancies on advisory bodies:**
 - a. **IDFG and Tribal positions on the EPDT;**
 - b. **Idaho and Tribal at-large positions on the EAS;**
 - c. **WDFW position on the MEW; and**
 - d. **Conservation position on the HMSAS.**
5. **Consider the need for an ad hoc GARD Committee to help deem regulations for Amendments 20 and 21.**

Reference Materials:

1. Closed Session A.1.a, Attachment 1: Nomination of Ms. Meisha Key to the CDFG position on the SSC.
2. Closed Session A.1.a, Attachment 2: Coast Guard Personnel Change for the EC.

Agenda Order:

- a. Agenda Item Overview
 - b. Reports and Comments of Advisory Bodies and Management Entities
 - c. Public Comment
 - d. **Council Action:** Consider Changes to Council Operating Procedures and Advisory Body Appointments as Needed
- John Coon**

PFMC
03/25/10

PROPOSED NEW AD HOC COMMITTEES

Council Operating Procedure 8 establishes procedures for creating, operating, and terminating ad hoc committees. Ad hoc committees are created to address specific (or short-term) issues and are intended to be in place for a limited duration. Ad hoc committees are created and terminated by vote of the Council and their objectives, duties, and expected duration are specified at the time the committee is created. Committee members are appointed by the Council Chair based on the advice of Council members and advisory committees.

Council staff proposes two new ad hoc committees for Council consideration.

The first proposed ad hoc committee could be called the Groundfish Regulatory Workgroup (or something similar). Proposed regulations to implement Groundfish Amendments 20 (Catch Shares) and 21 (Trawl Allocation) have been before the Council since March 2010 and the deeming of these regulations is scheduled to be completed at the June 2010 Council meeting. Because of the voluminous and complex nature of these implementing regulations, an ad hoc committee with special expertise in regulatory issues associated with the groundfish trawl Catch Shares program could be of great assistance to expediting the Council’s deeming process and ensuring a timely and successful implementation of the Catch Shares Program.

The second proposed ad hoc committee could be called the Tule Chinook Abundance-Based Management Workgroup (or something similar). Its purpose would be to take the lead in a focused effort to explore abundance-based approaches to setting allowable fishing rates in the long-term to protect Lower Columbia River tule Chinook. Its recommendations would be reported to the Council which could adopt specific recommendations to provide National Marine Fisheries Service (NMFS) for their consideration in the development of future biological opinions.

Criteria for the committees are described below.

Ad Hoc Groundfish Regulatory Workgroup (GRW)

Objective:	Assist the Council and NMFS in the process of reviewing and deeming regulations implementing Groundfish Amendment 20 (Catch Shares) and, if necessary, Amendment 21 (Trawl Allocation).
Duties and Process:	Develop recommendations to the Council on the consistency of proposed regulations implementing Amendment 20 (and, if necessary, Amendment 21) with the Council’s final action. Specifically, the committee would review Agenda Item I.1.b, Supplemental NMFS Report 7, April 2010; and any other pertinent documents to identify consistency or implementation issues. The committee would provide a statement for the June Council meeting advance Briefing Book, due May 26, 2010. The Committee might also meet at the June Council meeting if new or revised regulatory language materials are made available by NMFS.
Members:	Ten or so members representing a cross-section of expertise and experience in the Council action and regulatory issues for the fisheries that would be managed under Amendments 20 and 21.
Duration:	Terminate when the Council submits a letter to NMFS deeming a set of regulations as accurate and consistent with the Council’s final action.

Ad Hoc Tule Chinook Abundance-Based Management Workgroup (TCAMW)

Objective:	Assist the Council in exploring the development of abundance-based management approaches to allow fishing on abundant salmon stocks while protecting the recovery of Lower Columbia River tule Chinook (LCRT).
Duties and Process:	Examine various models currently in use for abundance-based management approaches with the charge to develop a usable approach, if possible, for LCRT. Committee work would be integrated with the Council's annual salmon methodology review process that produces recommendations in November of each year. Any fishing mortality rate ceilings developed and approved by the Council would be submitted to NMFS for possible use in the next LCRT biological opinion for ocean salmon seasons in 2012 and beyond. The process would include establishing the committee in the near term, a review of intermediate results via a progress report in the fall of 2010, and final recommendations to be made in the fall of 2011 through the salmon methodology review process. In the event a usable approach emerges from this process, the Council might consider a possible FMP amendment process beginning after November 2011.
Members:	Approximately a dozen members with technical expertise in salmon harvest modeling and management representing those entities involved with management of Columbia River salmon stocks. Expertise could include members of the salmon Model Evaluation Workgroup.
Duration:	Meet in the near term and as necessary to complete the work and final recommendations to the Council by no later than the November 2011 Council meeting. Terminate the committee no later than April 30, 2012.

PFMC
04/14/10

FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

This agenda item is intended to refine general planning for future Council meetings, especially in regard to the details of the proposed agenda for the June 2010 Council Meeting. The following attachments are intended to help the Council in this process:

1. An abbreviated display of potential agenda items for the next full year (Attachment 1).
2. A preliminary proposed June 2010 Council meeting Agenda (Attachment 2).

The Executive Director will assist the Council in reviewing the items listed above and discuss any other matters relevant to Council meeting agendas and workload. After considering supplemental material provided at the Council meeting, and any reports and comments from advisory bodies and public, the Council will provide guidance for future agenda development and workload priorities. The Council may also identify priorities for advisory body consideration at the June 2010 Council Meeting.

Council Action:

- 1. Review pertinent information and provide guidance on potential agenda topics for future Council meetings.**
- 2. Provide more detailed guidance on a Proposed Agenda for the June Council meeting.**
- 3. Identify priorities for advisory body considerations at the next Council meeting.**

Reference Materials:

1. Agenda Item K.3.a, Attachment 1: Pacific Council Workload Planning: "Preliminary Year at a Glance Summary."
2. Agenda Item K.3.a, Attachment 2: Preliminary Proposed Council Meeting Agenda, June 10-17, 2010, Foster City, California.

Agenda Order:

- a. Agenda Item Overview **Don McIsaac**
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. Council Discussion and Guidance on Future Council Meeting Agenda and Workload Planning

PFMC
03/26/10

Pacific Council Workload Planning: Preliminary Year at a Glance Summary

(Numbers in parentheses indicate multiple items per topic; placeholders or matters suggested for possible rescheduling are shaded)

	<u>June 2010</u> (Foster City)	<u>September 2010</u> (Boise)	<u>November 2010</u> (Costa Mesa)	<u>March 2011</u> (Vancouver)	<u>April 2011</u> (San Mateo)
CPS	NMFS Rpt Mackerel HG & Meas. ACL Amd.-Adopt Final		NMFS Rpt Sardine Asmnt & Mgmt Meas.	EFPs: for Pub Rev STAR Panel TOR for Pub	EFPs: Final Recom.
Groundfish	NMFS Report Inseason Mgmt (2) Stk Assmnt Pln--2013-14 & TOR--Adopt Final A-23 (ACL) Adopt Final 2011-12 Biennial Mgmt, & 16-5 (Rbldg Plan) Final Prelim EFPs A-20 (TRAT) Reg Deem'g	NMFS Report Inseason Mgmt (2) GF EFH: Plan 2011 Effort CFA Trailing Amd.: Scoping A-20 Update	NMFS Report Inseason Mgmt (2) Final EFPs CFA Amd: Further Dev A-20 Update	NMFS Report Inseason Mgmt (2) Pac Whiting Spx & Meas.	NMFS Report Inseason Mgmt (2)
HMS	Changes to Routine Mgmt 2011-12 Input to WCPFC N. Com ACL Amd.-Adopt Final	NMFS Report Routine Mgmt Changes for 2011-12 for Pub Rev Sword Fish White Paper	NMFS Report Routine Mgmt Changes Albacore Mgmt Input to WCPFC		NMFS Report
Salmon	EFH Review Doc for Pub Mitchell Act EIS Comnts A-16 (ACLs)--Pub Rev	NMFS Rpt Overfish'g Rpt Update 2011 Preseas'n Mgmt Schd 2010 Methodology Rev. A-16 (ACLs)--Final Action	NMFS Rpt EFH Rev: Adopt Final 2011 Preseas'n Mgmt Schd 2011 Method Rev.--Final	NMFS Rpt 2011 Season Setting (6) Cons. Obj. Report Sacramento OF Rec.	NMFS Rpt 2011 Season Setting (3) 2011 Methodology Rev.
Other	Habitat Issues National Mar. Registry Ecosystem Scoping Rpt Halibut Bycatch & Catch Shr Routine Admin (8)	Habitat Issues Pacific Halibut (2) NMFS Nat Habitat Improve- ment Assmnt Plan Halibut Bycatch & Catch Shr State Enforcement Rpt Routine Admin (8)	Habitat Issues Pacific Halibut (2) Ecosystem FMP Dev Plan Halibut Bycatch & Catch Shr-Final Routine Admin (8)	Habitat Issues Pacific Halibut (2) USCG Ann. Enf. Rpt. Routine Admin (6)	Habitat Issues Halibut-Incidntl Regs OCNMS Mgmt Pln Update Routine Admin (7)
Apx. Floor Time	7.2 days	4.6 days	5.4 days	4 days	3 days

Shaded = 12.5 hrs.

Agenda Item K.3.a
Attachment 1
April 2010

PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, JUNE 10-17, 2010 FOSTER CITY, CALIFORNIA

(Matters suggested for possible rescheduling are shaded)

Thu, Jun 10	Sat, Jun 12	Sun, June 13	Mon, Jun 14	Tue, Jun 15	Wed, Jun 16	Thu, Jun 17
8:00 am HMSMT 1:00 pm HMSAS	CLOSED SESSION 8:00 AM OPEN SESSION 9:00 AM 1-4. Opening Remarks & Approve Agenda (30 min) OPEN COMMENT 1. Comments on Non-Agenda Items (45 min) HIGHLY MIGRATORY MGMT 1. Changes to Routine Mgmt for 2011-12: Initial Selection of Proposed Changes (1 hr 30 min) 2. Approve Recommendat'ns to N. Cmte of WCPFC. (1 hr) 3. A-2 (ACLs & AMs): Adopt Final (2 hr) MARINE PROTECTED AREAS 1. National Marine Registry Recommendations (2 hr) HABITAT 1. Current Issues (45 min)	GROUND FISH 1. A-20 (Trawl Catch Shares): Regulatory Deeming (8 hr) 2. Stock Assmnt Planning for 2013-14 Mgmt Measures: Adopt Final TOR, List of Stocks, & Sched. (2 hr)	GROUND FISH 3. EFPs: Preliminary Adoption for Public Review (2 hr) 4. A-23 (ACLs): Adopt Final (3 hr) 5. Harvest Specs., Mgmt Measures & Rebuilding Plans for 2011-12: Tentative Adoption (5 hr)	COASTAL PELAGIC SPECIES 1. NMFS Rpt (30 min) 2. Pac Mackerel HG & Mgmt Measures: Adopt Final (2 hr) 3. A-13 (ACLs): Adopt Final (3 hr) Ecosystem Based Mgmt 1. Ecosystem-based FMP Scoping (2 hr 30 min) PACIFIC HALIBUT 1. Reallocation of Catch & Bycatch (2 hr 30 min)	GROUND FISH 6. NMFS Report (1 hr) 7. Inseason Adjustments (2 hr) SALMON 1. Mitchell Act Hatchery EIS: Provide Comments (2 hr) 2. EFH Review: Approve Document for Public Review (1 hr 30 min) 3. A-16 (ACLs): Adopt Preferred Alt for Public Review (3 hr)	ADMINISTRATIVE 1. Legislative Matters (30 min) GROUND FISH 8. Harvest Specs., Mgmt Measures & Rebuilding Plans for 2011-12: Adopt Final (4 hr) 9. Final Inseason Adjustments (2 hr) ADMINISTRATIVE 2. Approve Council Minutes (15 min) 3. Fiscal Matters (15 min) 4. Membership Appointments (15 min) 5. Future Meeting Agenda & Workload Planning (30 min)
Fri, Jun 11						
8:00 am HMSAS 8:00 am HMSMT 8:30 am HC 1:00 pm LC 3:30 pm ChB	9 hr 30 min	10 hr	10 hr	10 hr 30 min	9 hr 30 min	7 hr 45 min
	8:00 am GAP & GMT 8:00 am SSC	8:00 am GAP & GMT 8:00 am SSC 4:30 pm EC	8:00 am EC 8:00 am GAP & GMT 8:00 am SAS & STT	8:00 am EC 8:00 am GAP & GMT 8:00 am SAS & STT	8:00 am EC 8:00 am GAP & GMT 8:00 am SAS & STT	8:00 am EC

Council-sponsored evening sessions: Sunday 6 pm – Chairman’s Reception

Agenda Item K 3.a
Attachment 2
April 2010

Pacific Council Workload Planning: Year at a Glance Summary

(Parenthetical numbers indicate multiple items per topic; placeholders or items for possible rescheduling are shaded; deletions in strike-out)

	<u>June 2010</u> (Foster City)	<u>September 2010</u> (Boise)	<u>November 2010</u> (Costa Mesa)	<u>March 2011</u> (Vancouver)	<u>April 2011</u> (San Mateo)
CPS	NMFS Rpt Mackerel HG & Meas. ACL Amd.-Adopt Final		NMFS Rpt Sardine Asmnt & Mgmt Meas.	EFPs: for Pub Rev STAR Panel TOR for Pub	EFPs: Final Recom.
Groundfish	NMFS Report Inseason Mgmt (2) Stk Assmnt Pln--2013-14 & TOR--Adopt Final A-23 (ACL) Adopt Final 2011-12 Biennial Mgmt, & 16-5 (Rbldg Plan) Final Prelim EFPs A-20 (TRAT) Reg Deem'g	NMFS Report Inseason Mgmt (2) GF EFH: Plan 2011 Effort Prelim EFP Adoption CFA Trailing Amd.: Scoping A-20 Update	NMFS Report Inseason Mgmt (2) Final EFPs CFA Amd: Further Dev A-20 Update	NMFS Report Inseason Mgmt (2) Pac Whiting Spx & Meas.	NMFS Report Inseason Mgmt (2)
HMS	Changes to Routine Mgmt 2011-12 Input to WCPFC N. Com ACL Amd.-Adopt Final	NMFS Report Routine Mgmt Changes for 2011-12 for Pub Rev Sword Fish White Paper	NMFS Report Routine Mgmt Changes Albacore Mgmt Input to WCPFC		NMFS Report
Salmon	EFH Review Doc for Pub Mitchell Act EIS Comnts A-16 (ACLs)--Pub Rev	NMFS Rpt Overfish'g Rpt Update 2011 Preseas'n Mgmt Schd EFH Review Doc for Pub Rev Mitchell Act EIS Comnts 2010 Methodology Rev. A-16 (ACLs)--Final Action	NMFS Rpt EFH Rev: Adopt Final 2011 Preseas'n Mgmt Schd 2011 Method Rev.--Final	NMFS Rpt 2011 Season Setting (6) Cons. Obj. Report Sacramento OF Rec.	NMFS Rpt 2011 Season Setting (3) 2011 Methodology Rev.
Other	Habitat Issues National Mar. Registry Ecosystem Scoping Rpt Halibut Bycatch & Catch Shr Routine Admin (8)	Habitat Issues Pacific Halibut (2) National Mar. Registry NMFS Nat Hab Assmnt Pln Ecosystem Scoping Rpt Halibut Bycatch & Catch Shr State Enforcement Rpt Routine Admin (8)	Habitat Issues Pacific Halibut (2) Ecosystem FMP Dev Plan Halibut Bycatch & Catch Shr Routine Admin (8)	Habitat Issues Pacific Halibut (2) USCG Ann. Enf. Rpt. Routine Admin (6)	Habitat Issues Halibut-Incidntl Regs OCNMS Mgmt Pln Update Hal.Bycatch & Catch Shr Routine Admin (7)
Apx. Floor Time	6.0 days	6.0 days	5.4 days	4 days	4 days

Agenda Item K.3.a
Supplemental Attachment 3
April 2010

COUNCIL REVIEW DRAFT OF PROPOSED COUNCIL MEETING AGENDA, JUNE 10-17, 2010 FOSTER CITY, CALIFORNIA

(Shaded Items suggested for rescheduling. Items struck-out, whether shaded or not, are considered eliminated from the June Agenda)

Thu, Jun 10	Sat, Jun 12	Sun, June 13	Mon, Jun 14	Tue, Jun 15	Wed, Jun 16	Thu, Jun 17
<p>8:00 am HMSMT 8:00 am STT 8:30 am HC</p>	<p>CLOSED SESSION 8:00 AM</p> <hr/> <p>OPEN SESSION 9:00 AM 1-4. Opening Remarks & Approve Agenda (30 min)</p> <hr/> <p>OPEN COMMENT 1. Comments on Non-Agenda Items (45 min)</p> <p>GROUNDFISH 1. NMFS Report (30 min)</p> <hr/> <p>SALMON 1. A-16 (ACLs): Adopt Preferred Alt for Public Review (3 hr 45 min)</p> <hr/> <p>HABITAT 1. Current Issues (45 min)</p> <hr/> <p>HIGHLY MIGRATORY MGMT 1. Changes to Routine Mgmt for 2011-12: Initial Selection of Proposed Changes (1 hr 30 min)</p>	<p>HIGHLY MIGRATORY MGMT 2. A-2 (ACLs & AMs): Adopt Final (3 hr) 3. Recommendation's to N. Cmte of WCPFC & IATTC (1 hr 30 min)</p> <hr/> <p>GROUNDFISH 2. A-23 (ACLs): Adopt Final (3 hr 30 min)</p> <hr/> <p>SALMON 1. Mitchell Act Hatchery EIS: Provide Comments (2 hr) 2. EFH Review: Approve Document for Public Review (1 hr 30 min)</p> <hr/> <p>MARINE PROTECTED AREAS 1. National Marine Registry Recommendations (2 hr)</p>	<p>GROUNDFISH 3. Harvest Specs., Mgmt Measures & Rebuilding Plans for 2011-12: Tentative Adoption (6 hr) 4. Stock Assmnt Planning for 2013-14 Mgmt Measures: Adopt Final TOR, List of Stocks, & Sched. (2 hr)</p> <hr/> <p>ECOSYSTEM Based Mgmt 1. Ecosystem-based FMP Scoping (2 hr)</p>	<p>COASTAL PELAGIC SPECIES 1. NMFS Rpt (30 min) 1. CPS Mgmt: Adopt Final Pac Mackerel HG & Mgmt Measures & Approve Draft SAFE Rpt (1 hr 30 min) 2. A-13 (ACLs): Adopt Final (3 hr)</p> <hr/> <p>PACIFIC HALIBUT 1. Preliminary Scoping for Reallocation of Catch & Bycatch (2 hr 30 min)</p> <hr/> <p>GROUNDFISH 5. Inseason Adjustments (3 hr 30 min)</p>	<p>GROUNDFISH 6. Final Inseason Adjustments (2 hr) 6. A-20 (Trawl Catch Shares) & A-21: Regulatory Deeming (8 hr) [continues on Thu as necessary] 2. EFPs: Preliminary Adoption for Public Review (2 hr)</p> <hr/> <p>ADMINISTRATIVE 1. Approve Council Minutes (15 min) 2. Fiscal Matters (15 min) 3. Membership Appointments (15 min) 4. Future Meeting Agenda & Workload Planning (30 min)</p>	<p>GROUNDFISH 7. Harvest Specs., Mgmt Measures & Rebuilding Plans for 2011-12: Adopt Final (4 hr) 6. Continue A-20 (Trawl Catch Shares) & A-21: Regulatory Deeming (3 hr)</p> <hr/> <p>ADMINISTRATIVE 1. Approve Council Minutes (15 min) 2. Fiscal Matters (15 min) 3. Membership Appointments (15 min) 4. Future Meeting Agenda & Workload Planning (30 min)</p>
<p>Fri, Jun 11</p> <p>8:00 am GMT 8:00-noon HC 8:00 am HMSMT 8:00 am SSC 8:00 am STT & SAS 1:00 pm LC 1:00 pm HMSAS 1:15 pm BC 3:30 pm ChB</p>	<p>8 hr</p> <p>8:00 am GAP & GMT 8:00 am EC 8:00-noon HMSAS & MT 8:00 am STT 8:00 am SSC 1:00 pm CPSAS & MT</p>	<p>8 hr</p> <p>8:00 am CPSAS & MT 8:00 am GAP & GMT 4:30 pm EC</p>	<p>8 hr</p> <p>8:00 am CPSAS & MT 8:00 am EC 8:00 am GAP & GMT</p>	<p>8 hr</p> <p>8:00 am EC 8:00 am GAP & GMT</p>	<p>8 hr</p> <p>8:00 am EC 8:00 am GAP & GMT</p>	<p>8 hr 15 min</p> <p>8:00 am EC 8:00 am GAP & GMT</p>

Council-sponsored evening sessions: Sunday 6 pm – Chairman's Reception

Agenda Item K 3.a
Sup. Attachment 4
April 2010

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT
ON FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

The Highly Migratory Species Advisory Subpanel (HMSAS) suggests that the Council consider issues that need to go before the Northern Committee (NC) of the Western and Central Pacific Fishery Commission at the June meeting and for an Ad Hoc Committee composed of Council members to meet with the HMSAS in August to further refine the recommendations to the delegations to the NC and the Inter-American Tropical Tuna Commission (IATTC) at a time when more information comes available. This should include preparation for definitions that will be favorable to the U.S. fisheries in negotiations with other countries on a definition of current effort that is currently scheduled for October in conjunction with the IATTC meeting.

PFMC
04/11/10