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.


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 Mike Burner
b. Legislative Committee Report Dave Hanson
c. Reports and Comments of Management Entities and Advisory Bodies
d. Public Comment
e. Council Action: Consider Legislative Committee Recommendations

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.


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 soured 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.

  (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
To establish a regulatory system and research program for sustainable offshore 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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
SEC. 2. PURPOSES.

The purposes of this Act are the following:

(1) To establish a regulatory system for sustainable offshore aquaculture in the United States exclusive economic zone.

(2) To authorize the Secretary of Commerce to determine appropriate locations for, permit, regulate, monitor, and enforce offshore aquaculture in the exclusive economic zone.

(3) To require the Secretary of Commerce to issue regulations for permitting of offshore aquaculture in the exclusive economic zone that prevent impacts on the marine ecosystem and fisheries or minimize such impacts to the extent they cannot be avoided.

(4) To establish a research program to guide the precautionary development of offshore aquaculture in the exclusive economic zone that ensures...
ecological sustainability and compatibility with
healthy, functional ecosystems.

SEC. 3. NOAA OFFICE; ADVISORY BOARD.

(a) NOAA Office.—

(1) In General.—The Secretary shall establish
an Office of Sustainable Offshore Aquaculture with-
in the National Marine Fisheries Service at National
Oceanic and Atmospheric Administration head-
quarters, and satellite offices of such office in each
of the National Oceanic and Atmospheric Adminis-
tration’s regional fisheries offices.

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

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

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

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

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

(E) perform outreach, education, and
training;
(F) provide opportunities for consultation among owners and operators of offshore aquaculture facilities, Regional Fishery Management Councils, nonprofit conservation organizations, and other interested stakeholders;

(G) organize through each regional office a network of regional experts, in coordination with relevant organizations such as the National Sea Grant College program and other academic institutions, to provide technical expertise on aquaculture;

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

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

(3) DATABASE.—The Secretary shall establish and maintain within the Office an aquaculture database, which shall include information on research, technologies, monitoring techniques, best management practices, and recommendations of the Sustainable Offshore Aquaculture Advisory Board established under subsection (b). The Secretary shall make the database available to the general public in a manner that protects proprietary information of...
owners and operators of offshore aquaculture facilities.

(b) ADVISORY BOARD.—

(1) IN GENERAL.—The Office shall establish a Sustainable Offshore Aquaculture Advisory Board, the members of which shall be appointed by the Secretary.

(2) STRUCTURE.—The membership of the Advisory Board shall include, at a minimum, representatives from the National Marine Fisheries Service, the commercial and recreational fishing industries, State or local governments, the Coast Guard, non-profit conservation organizations, members of academia with scientific or technical expertise in ocean and coastal matters, and representatives of the aquaculture industry.

(3) APPOINTMENT AND TERMS.—

(A) IN GENERAL.—Members of the Advisory Board shall be appointed by the Secretary for a term of 2 years.

(B) VACANCIES.—Whenever a vacancy occurs, the Secretary shall appoint an individual representing the same interests or affiliation represented by the individual’s predecessor to
fill that vacancy for the remainder of the applicable term.

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

(5) DUTIES.—The Advisory Board shall—

(A) meet at least once every six months;

and

(B) provide advice to the Secretary on all aspects of offshore aquaculture, including developing technologies, emerging risks, issues unique to each region, and priorities for research authorized under section 7.

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

SEC. 4. REGIONAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENTS.

(a) IN GENERAL.—The Secretary shall issue for each region described in subsection (b) a regional programmatic environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) regarding permitting of offshore aquaculture under this Act.
(b) Regions Described.—The regions referred to in subsection (a) are each of the geographic regions for which a Regional Fishery Management Council is established under section 302(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)).

(c) Identification of Areas.—The Secretary shall include in the statement under subsection (a) for a region identification of—

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

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

(d) Matters To Be Considered.—Each regional programmatic environmental impact statement shall include consideration of the following:

(1) Appropriate areas for siting offshore aquaculture facilities and operations to avoid adverse impacts, and to minimize any unavoidable impacts on user groups, public trust values, and the marine environment, including effects on commercial and recreational fishing and other important ocean uses.
(2) Impacts on marine ecosystems, sensitive ocean and coastal habitats, and other plant and animal species, including—

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

(B) the impacts of interactions with marine mammals, marine wildlife, and birds;

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

(D) effects of removal of forage fish for feed, fishmeal, and fish oil on marine ecosystems.

(3) Cumulative effects of a number of offshore aquaculture facilities on the ability of the marine environment to maintain preexisting flora and fauna.

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

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

(1) reviewing and revising, as appropriate, identifications of areas under subsection (c); and
(2) reassessing the analysis of each such identification, taking into account changes in environmental conditions and information that has become available since the date of such identification.

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

(g) ENVIRONMENTAL REVIEW.—In addition to the requirement to issue regional programmatic environmental impact statements under this section, a separate environmental review under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) shall be conducted for issuing permits under this Act.

SEC. 5. OFFSHORE AQUACULTURE PERMITTING.

(a) PERMITTING REQUIREMENT.—

(1) IN GENERAL.—No person may engage in offshore aquaculture except as authorized by a permit issued under this Act.

(2) PERMITTING AUTHORITY.—The Secretary may issue permits in accordance with this Act authorizing a person to engage in offshore aquaculture.

(3) EXISTING AUTHORIZATIONS NOT EFFECTIVE.—No permit or other authorization issued under any other Federal law before the date of the
enactment of this Act shall be construed as author-
izing activity for which a permit is required by this
Act.

(b) Regulations.—

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

(2) Priority of method.—The regulations
shall—

(A) to the extent feasible, establish numer-
ic standards for environmental performance
under such permits;

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

(C) to the extent such numerical standards
and narrative standards are not feasible, re-
quire management practices, including imple-
mentation of best management practices for
such performance.
(3) **Best scientific information available.**—The regulations shall be based on the best scientific information available.

(4) **Review of regulations.**—The Secretary shall review and revise the regulations under this section at the same time the Secretary conducts reviews of regional programmatic environmental impact statements under section 4(e).

(e) **Application.**—The applicant for a permit under this section shall submit to the Secretary an application—

(1) specifying—

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

(i) size;

(ii) depth;

(iii) water conditions, including currents;

(iv) substrate;

(v) preliminary habitat and ecological community assessment data;

(vi) distribution and composition of species;

(vii) proximity to other offshore aquaculture facilities; and

(viii) proximity to other uses;
(B) the proposed operation to be developed under the permit;

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

(D) design, construction, and operational information as may be specified in the regulations under this section;

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

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

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

(e) Public Notice and Comment.—The Secretary shall—

(1) promptly publish public notice of each application received by the Secretary for a permit under this section;

(2) determine whether a permit application is complete within 30 days of receipt; and
(3) provide a period of at least 90 days after determining that the application is complete for the submission of public comment on the application.

(f) Consideration by Secretary.—

(1) In general.—Within 180 days after determining that a permit application under this section is complete and the applicant has satisfied all applicable statutory and regulatory requirements, the Secretary shall issue or deny the permit. If the Secretary is unable to issue or deny a permit within this time period, the Secretary shall provide written notice to the applicant indicating the reasons for the delay and establishing a reasonable timeline for issuing or denying the permit.

(2) Consultation not affected.—Paragraph (1) shall not be construed to affect the application of any requirement under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) or any other Federal law.

(g) Permit terms.—

(1) Effective period; renewal.—A permit under this section—

(A) shall be effective for an initial period of 10 years; and
(B) may be renewed by the Secretary for subsequent 10-year periods.

(2) Permittee’s Right of First Refusal.—The Secretary may not issue a permit under this section to a person for an area that is subject to another permit under this section held by another person, unless—

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

(B) the other permit expires or is terminated by its terms.

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

(h) Prioritization of Permits.—The Secretary—

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

(2) shall give priority to issuance of permits for activities to be conducted using technologies and practices that will substantially exceed compliance with the permit terms and conditions required under subsection (j); and
(3) may waive some or all of the requirements to pay a fee under section 6 with respect to a permit required to be given priority under paragraph (1) or (2).

(i) ANNUAL REVIEW AND REPORTING.—

(1) IN GENERAL.—The Secretary shall conduct—

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

(B) announced and unannounced site inspections at locations of offshore aquaculture facilities operated under such permits.

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

(A) comprehensive data regarding escape events, including estimates of stocked and harvested fish and mortalities;

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

(C) prevalence and extent of disease and parasites;
(D) the use and amounts of antibiotics, pesticides, prescription drugs and nonprescription drugs, and other chemical treatments;

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

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

(3) AVAILABILITY OF INFORMATION.—The Secretary shall make all data reported by permittees publically available, subject to reasonable restrictions to protect proprietary information of owners and operators of offshore aquaculture facilities.

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

(j) PERMIT TERMS AND CONDITIONS.—The Secretary shall include in the terms and conditions of each permit under this Act the following:

(1) BROODSTOCK MANAGEMENT AND FISH ESCAPES.—

(A) Offshore aquaculture under such permit shall be limited to species of a genotype na-
tive to the geographic region of the offshore aquaculture facility or operations authorized by the permit.

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

(C) Genetically modified species shall not be cultured.

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

(E) All cultured fish shall be marked, tagged, or otherwise identified as belonging to the permittee in a manner determined appropriate by the Secretary, unless the Secretary determines that identifying cultured fish is unnecessary for protecting wild fish stocks, the marine environment, or other ocean uses.

(F) All facilities and operations shall be designed, operated, and shown to be effective at preventing the escape of cultured fish into the
marine environment and withstanding severe
weather conditions and marine accidents. The
permittee shall maintain records on all escapes.
In the event of escapement, the number of es-
caped fish and the circumstances surrounding
the incident shall be reported immediately to
the Secretary.

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

(2) DISEASE AND PATHOGEN PREVENTION.—
The Secretary shall—

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

(B) prohibit the use, including the prophy-
lactic use, of antibiotics, pesticides, prescription
and nonprescription drugs, or other chemical
treatments; except that—
(i) such use may be allowed as necessary to treat a diagnosed disease; and

(ii) the use of vaccines may be allowed;

(C) require that if use of antibiotics, pesticides, prescription or nonprescription drugs, or other chemical treatments is necessary to treat a diagnosed disease and multiple options for treatment of such disease exist—

(i) the option with the least environmental impact shall be used; and

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

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

(E) prohibit the use of any antibiotic, pesticide, prescription or nonprescription drug, or other chemical treatment for marine aquaculture except after consultation with the Commissioner of the Food and Drug Administration.

(3) HABITAT AND ECOSYSTEM IMPACTS.—The Secretary—
(A) shall establish appropriate numerical limitations of nutrient inputs into the marine environment from offshore aquaculture facilities—

(i) in consultation with the Administrator of the Environmental Protection Agency;

(ii) at a local or regional level as necessary to protect the environment; and

(iii) taking into account cumulative and secondary impacts of such inputs at the local and regional level from the expansion of offshore aquaculture; and

(B) shall require each permittee under this Act to prevent discharges of pollutants into ocean waters to the maximum extent practicable.

(4) INTERACTIONS WITH AND IMPACTS ON MARINE WILDLIFE.—The Secretary shall—

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

(i) employs nonlethal deterrents as a primary course of action; and
(ii) contains measures to prevent entanglement, migration disruption, and change in predator behavior, so as to not unreasonably disrupt wildlife or their use of critical marine habitat; and

(B) prohibit permittees under this Act—

(i) from using underwater acoustic deterrent devices of any kind; and

(ii) from intentionally killing or seriously injuring marine mammals and other predators of cultured fish, except if human safety is immediately threatened.

(5) USE OF MARINE RESOURCES FOR FEEDS.—

The Secretary shall—

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

(i) they are sourced from populations with ecosystem-based management measures in place; and

(ii) they are sourced from populations whose biomass is at or above maximum sustainable yield;
(B) require that use under such permits of fishmeal and fish oil derived from forage fisheries be minimized;

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

(D) issue guidance that incorporates the results of the joint NOAA–USDA Alternative Feeds Initiative and other research efforts investigating alternative feed ingredients.

(6) INTERACTIONS WITH FISHERIES.—The Secretary shall minimize displacement of commercial and recreational fisherman and economic harm to fishing communities resulting from activities under permits under this Act.

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

(A) in sensitive habitat, including any marine protected area, marine reserve, Habitat Area of Particular Concern, Special Management Zone, or National Marine Sanctuary;

(B) in an area that is identified in a regional programmatic environmental impact
statement under section 4(c)(1) as an area that is not an appropriate location for the conduct of offshore aquaculture; or

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

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

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

SEC. 6. FEES.

(a) Permit Fees.—

(1) IN GENERAL.—The Secretary shall establish, assess, and collect application fees and annual fees with respect to permits under this Act that are sufficient to pay the costs of issuance, monitoring, and enforcement of such permits.

(2) DEPOSIT AND USE.—Such fees shall be deposited as offsetting collections in the Operations,
Research, and Facilities account of the Department of Commerce.

(b) Resource Rental Fees.—

(1) In general.—The Secretary shall establish, assess, and collect resource rental fees to recover from permittees under this Act a reasonable portion of the value of the use under the permits of ocean resources held in public trust.

(2) Deposit and use.—Amounts received by the United States as fees under this subsection—

(A) shall be deposited into a separate account in the Treasury, which shall be known as the Offshore Aquaculture Development and Resource Trust Fund; and

(B) shall be available to the Secretary, subject to the availability of appropriations and review by the Offshore Aquaculture Advisory Board established under section 3(b), to enhance the research program under section 7.

(c) Financial Guarantee.—The Secretary shall require each permittee under this Act to post a bond or other form of financial guarantee, in an amount to be determined by the Secretary to be sufficient to cover any unpaid fees, the cost of removing an offshore aquaculture facility at the expiration or termination of offshore aqua-
culture operations, and other financial risks as identified by the Secretary.

SEC. 7. SUSTAINABLE OFFSHORE AQUACULTURE RESEARCH PROGRAM.

(a) PURPOSE.—The purpose of this section is to establish a research program to—

(1) inform how offshore aquaculture permitting and regulation can adopt a precautionary approach to industry expansion to ensure ecological sustainability and compatibility with healthy, functional ecosystems and fisheries; and

(2) develop cost-effective solutions to environmental and socioeconomic impacts of offshore aquaculture.

(b) ESTABLISHMENT OF PROGRAM.—The Secretary, in consultation with other Federal agencies, coastal States, Regional Fishery Management Councils, academic institutions, and other interested stakeholders, shall establish and conduct a research program to guide the sustainable development of offshore aquaculture.

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

(1) identify environmental factors, aquaculture technologies, and practices that address the permit terms and conditions required under section 5(j);
(2) assess and mitigate the cumulative impacts of multiple offshore aquaculture facilities;

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

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

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

(d) Grant Program.—

(1) In General.—The Secretary, subject to the availability of appropriations, shall establish a competitive, peer-reviewed grant program to support research related to the topics of the program under subsection (c).

(2) Eligibility.—The Secretary, in consultation with the Offshore Aquaculture Advisory Board established under section 3, shall establish criteria for determining persons who are eligible for grants under this section.

(e) Transparency; Use of Results.—The Secretary, in consultation with the Advisory Board, shall—
(1) issue rules for the grant program under subsection (d) that enable the public to understand the administration of the grant program, including the process for application, submission of materials, and awarding of grants;

(2) utilize and regularly incorporate the information gathered from the research program to guide Federal permitting and rulemaking decisions relating to offshore aquaculture, with an adaptive management approach; and

(3) make the findings of the research and development program available to the public.

(f) COORDINATION WITH OTHER FEDERAL PROGRAMS.—The Secretary shall coordinate the research program with other Federal programs that provide grant funding for purposes similar to that described in this section, such as grants administered by the National Institute of Science and Technology and its Advanced Technology Program.

(g) PERMIT MODIFICATION.—The Secretary shall revise permits to accommodate research conducted on or near offshore aquaculture facilities permitted under section 5.
SEC. 8. COMPATIBILITY WITH OTHER USES; STATE INPUT.

(a) Consultation.—The Secretary shall consult, as appropriate, with other Federal agencies and coastal States to ensure that offshore aquaculture for which permits are issued under this Act is compatible with the use of the exclusive economic zone for navigation, resource protection, recreation, fisheries, national defense (including military readiness), mineral exploration and development, and other activities.

(b) Permits for Regulated Species and Areas.—

(1) In general.—The Secretary may not issue a permit under this Act authorizing a person to propagate or rear a species of a fishery for which there is in effect a fishery management plan under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), or to propagate or rear any species in an area that is within the jurisdiction of a Regional Fishery Management Council, unless all Regional Fishery Management Councils that have authority under such Act to issue such a plan for that fishery or that have jurisdiction over that area, respectively, have recommended approval of issuance of the permit.

(2) Ensuring Fishing Access.—The Secretary, in consultation with Regional Fishery Man-
agement Councils, shall ensure that offshore aquaculture permits under this Act do not interfere with access to commercial and recreational fish stocks.

(c) State Input.—

(1) Notice to State.—The Secretary—

(A) shall promptly provide to a coastal State notice of the receipt by the Secretary of any application for a permit under this Act for any new offshore aquaculture facility to be located within 12 miles of the coastline of that coastal State; and

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

(2) State Opt-out.—

(A) Submission of list.—A coastal State may submit to the Secretary a list of locations, species, or categories of species (such as finfish or shellfish) for which the coastal State opposes the conduct of offshore aquaculture, by no later than 180 days after the regional programmatic environmental impact statements under section 4 are published.

(B) Subsequent Submission or Revision.—A coastal State may submit a list under
subparagraph (A), or revise or revoke such a
list previously submitted, within 90 days after
the review of a regional environmental impact
statement under section 4(e) is published.

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

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

SEC. 9. RELATIONSHIP TO OTHER LAWS.

(a) MAGNUSON-STEVENS FISHERY CONSERVATION
AND MANAGEMENT ACT.—Notwithstanding the definition
of “fishing” in section 3(16) of the Magnuson-Stevens
Fishery Conservation and Management Act (16 U.S.C.
1802(16)), the conduct of offshore aquaculture in accord-
ance with permits issued under this Act shall not be con-
sidered fishing for purposes of that Act, and no Regional
Fishery Management Council may issue any permit authorizing offshore aquaculture. The Secretary shall ensure that offshore aquaculture does not interfere with conservation and management measures promulgated under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(b) Actions Affecting the Outer Continental Shelf.—

(1) Concurrence of Secretary of the Interior Required.—The Secretary must obtain the concurrence of the Secretary of the Interior before issuing any permit under this Act for offshore aquaculture facilities located—

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

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

(2) Prior Consent Required.—The Secretary may not issue any permit under this Act authorizing offshore aquaculture on any lease, right-of-use and easements, or right-of-way referred to in paragraph (1)(A) without the prior consent of the...
lessee, its designated operator, and the owner of the facility concerned.

(3) Review of lease, etc., compliance.—
The Secretary of the Interior shall review and approve any agreement between a lessee, designated operator, and owner of a facility described in paragraph (1) and a prospective offshore aquaculture facility operator to ensure that it is consistent with the Federal lease terms, Department of the Interior regulations, and the Secretary of the Interior’s role in the protection of the marine environment, property, or human life or health. An agreement under this subsection shall be part of the information reviewed pursuant to the Coastal Zone Management Act of 1972 review process described in paragraph (4) and shall not be subject to a separate review under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(4) Coordinated coastal zone management act of 1972 review.—

(A) Review if consistency determination required for permit applications.—

If the applicant for a permit under this Act for an offshore aquaculture facility that will utilize a facility described in paragraph (1) is required
to submit for its offshore aquaculture permit application under this Act a consistency certification under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(A)) to a coastal State, the coastal State’s review under such Act and corresponding Federal regulations shall also include any modification to a lessee’s approved plan or other document for which a consistency certification would otherwise be required under applicable Federal regulations, including changes to its plan for decommissioning any facilities, resulting from or necessary for the issuance of the permit under this Act, if information related to such modifications or changes is received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant’s consistency certification. If the information related to such modifications or changes is received by the coastal State at the time the coastal State receives the offshore aquaculture permit applicant’s consistency certification, a lessee is not required to submit a separate consistency certification for any such modification or change under section
307(c)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)) and the coastal State’s concurrence or objection, or presumed concurrence, under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(A)) in a consistency determination for the offshore aquaculture permit, shall apply to both the offshore aquaculture permit and to any related modifications or changes to a lessee’s plan approved under the Outer Continental Shelf Lands Act.

(B) REVIEW IF STATE IS NOT AUTHORIZED TO REVIEW PERMIT APPLICATION.—If a coastal State is not authorized by section 307(c)(3)(A) of the Coastal Zone Management Act (16 U.S.C. 1456(c)(3)(A)) and corresponding Federal regulations to review an offshore aquaculture permit application submitted under this Act, then any modifications or changes to a lessee’s approved plan or other document requiring approval from the Department of the Interior, shall be subject to coastal State review pursuant to the requirements of section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)), if a
consistency certification for those modifications or changes is required under applicable Federal regulations.

(c) Coastal Zone Management Act of 1972.—

(1) In general.—This Act shall not affect the application of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), and regulations promulgated thereunder, with respect to offshore aquaculture.

(2) Assistance to States.—The Secretary shall provide technical and, subject to the availability of appropriations, financial assistance to States to review and, if necessary, revise their management plans under that Act to address offshore aquaculture in State and Federal marine waters.

(d) Reservation of Authorities, etc.—Nothing in this Act shall be construed to displace, supersede, or limit the jurisdiction, responsibilities, or authorities of any Federal or State agency, or Indian tribe or Alaska Native organization, under any Federal law or treaty.

SEC. 10. UNLAWFUL ACTIVITIES.

It is unlawful for any person—

(1) to engage in offshore aquaculture, except in accordance with this Act and valid permits issued under this Act;
(2) to falsify any information required to be re-
ported, communicated, or recorded pursuant to this
Act or any regulation or permit issued under this
Act, or to fail to submit in a timely fashion any re-
quired information, or to fail to report to the Sec-
retary immediately any change in circumstances that
has the effect of rendering any such information
false, incomplete, or misleading;

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

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

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

(6) to interfere with, delay, or prevent, by any
means, the apprehension, arrest, or detection of an-
other person, knowing that such person has com-
mitted any act prohibited by this section;
(7) upon the expiration or termination of any offshore aquaculture permit under this Act for any reason, to fail to remove all structures, gear, and other property from the site, or take other measures, as prescribed by the Secretary, to restore the site;

(8) to violate any provision of this Act, any regulation promulgated under this Act, or any term or condition of any permit issued under this Act; or

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

SEC. 11. ENFORCEMENT.

(a) DUTIES OF SECRETARIES.—This Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating.

(b) POWERS OF ENFORCEMENT.—

(1) IN GENERAL.—Any officer who is authorized pursuant to subsection (a) by the Secretary or the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this Act may—

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

(i) arrest any person, if the officer has reasonable cause to believe that such per-
son has committed or is committing an act prohibited by section 10;

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

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

(iv) seize any marine species (where-
ever found) retained, in any manner, in
connection with or as a result of the com-
misson of any act prohibited by section
10; and

(v) seize any evidence related to any
violation of any provision of this Act or
any regulation or permit issued under this
Act;
(B) execute any warrant or other process
issued by any court of competent jurisdiction;
and
(C) exercise any other lawful authority.

(2) ARRESTS, SUBPOENAS, AND WARRANTS.—

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

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

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

(B) SUBPOENAS AND WARRANTS.—Any
such authorized officer may execute and serve
a subpoena, arrest warrant, or search warrant
issued in accordance with rule 41 of the Fed-
eral Rules of Criminal Procedure, or other war-
rant of civil or criminal process issued by any
officer or court of competent jurisdiction for enforcement of the Act, or any regulation or permit issued under this Act.

(c) Issuance of Citations.—If any officer referred to in subsection (b)(2)(A) finds that a person who is the holder of a permit under this Act is engaging in or has engaged in offshore aquaculture in violation of any provision of this Act, such officer may issue a citation to that person for purposes of subsection (d)(1).

(d) Permit Suspension, Modification, or Revocation.—

(1) Repeated Citation.—If the Secretary finds that a person is repeatedly cited under subsection (c) with respect to offshore aquaculture under a permit, the Secretary shall immediately suspend or revoke the permit for which the citations were issued.

(2) Emergency.—If the Secretary determines that an emergency exists with respect to offshore aquaculture under a permit under this Act that poses a risk to the safety of humans, to the marine environment or marine species, or to the security of the United States, the Secretary shall immediately suspend, modify, or revoke the permit for such time
as the Secretary may determine necessary to address
the emergency.

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

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

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

(f) CITIZEN SUITS.—

(1) IN GENERAL.—
(A) ACTIONS AUTHORIZED.—Except as provided in paragraph (2), any person may commence a civil suit on his or her own behalf—

(i) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the Eleventh Amendment to the Constitution), who is alleged to be in violation of any provision of this Act, permit, or regulation issued under the authority thereof; or

(ii) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act that is not discretionary with the Secretary.

(B) JURISDICTION.—The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation or to order the Secretary to perform such act or duty, as the case may be.

(2) LIMITATIONS.—

(A) ACTION TO ENJOIN.—No action may be commenced under paragraph (1)(A)(i)—
(i) prior to 60 days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision, permit, or regulation;

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

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision, permit, or regulation.

(B) ACTION AGAINST SECRETARY.—No action may be commenced under paragraph (1)(A)(ii) prior to 60 days after written notice has been given to the Secretary.

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

(4) INTERVENTION BY ATTORNEY GENERAL.—In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.
(5) AWARD OF COSTS.—The court, in issuing any final order in any suit brought pursuant to paragraph (1), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(6) OTHER RIGHTS NOT AFFECTED.—The injunctive relief provided by this subsection shall not restrict any right that any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

SEC. 12. NATURAL RESOURCES DAMAGES ASSESSMENT AND LIABILITY.

(a) Natural Resources Damages Assessment.—The Secretary shall—

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

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

(b) Liability for Damages.—
(1) IN GENERAL.—Except as provided in paragraph (2), any person who conducts offshore aquaculture other than as authorized under Federal or State law shall be strictly liable to the United States for natural resources damages resulting from such offshore aquaculture that are assessed by the Secretary under subsection (a).

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

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

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

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

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

The Secretary shall—
(1) urge United Nations Food and Agriculture Organization to adopt a protocol to the Code of Conduct for Responsible Fisheries elaborating the need for, and ways to achieve, net seafood production from aquaculture;

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

(A) forage fish in marine ecosystem dynamics; and

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

(3) use bilateral economic and scientific relationships to encourage countries to manage their domestic stocks of forage fish on an ecosystem basis; and

(4) lead an international effort for the development of a traceability system for distinguishing, identifying, and sourcing fishmeal and fish oil so that ecologically sustainable feeds are available and distinguishable to aquaculture.

SEC. 14. DEFINITIONS.

In this Act:

(1) ADVISORY BOARD.—The term “advisory board” means the Sustainable Offshore Aquaculture Advisory Board established under section 3(b).
(2) **Antifouling Paint.**—The term “antifouling paint” has the meaning that term has in section 3 of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2402).

(3) **Coastal State.**—The term “coastal State” means—

(A) a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, or Long Island Sound; and

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

(4) **Coastline.**—The term “coastline” means the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters.

(5) **Damages.**—The term “damages” includes—

(A) compensation for—

(i) the cost of replacing, restoring, or acquiring natural resources that are equiv-
alent to natural resources that are de-
stroyed, lost, or injured; or

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

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

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

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

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

(7) FISH BYPRODUCTS.—The term “fish by-
products”—
(A) except as provided in subparagraph (B), means fish parts, including skin, head, viscera, and bone that result from the processing of either fish produced by aquaculture or wild-caught fish; and

(B) does not include bycatch.

(8) **GENETICALLY MODIFIED SPECIES.**—The term “genetically modified species” means an organism with genetic material that has been deliberately altered using genetic engineering technologies.

(9) **HABITAT AREAS OF PARTICULAR CONCERN.**—The term “habitat area of particular concern” means a habitat area that is ecologically vulnerable based on one or more of the following considerations:

(A) The importance of the ecological function provided by the habitat.

(B) The extent to which the habitat is sensitive to human-induced environmental degradation.

(C) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

(D) The rarity of the habitat type.
(10) MARINE PROTECTED AREA.—The term “marine protected area” means any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.

(11) MARINE RESERVE.—The term “marine reserve” means a type of marine protected area where extractive uses are prohibited.

(12) MARINE SPECIES.—The term “marine species” means finfish, mollusks, crustaceans, marine algae, and all other forms of marine life, excluding marine mammals and birds.

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

(14) NATURAL RESOURCE.—The term “natural resource” means land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State or local government, or any Indian tribe.
(15) **OFFICE.**—The term “Office” means the Office of Sustainable Offshore Aquaculture established under section 3(a).

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

(A) the placement of any installation, facility, or structure in the exclusive economic zone for the purposes of propagation and rearing, or attempted propagation and rearing, of marine species; and

(B) the operation of any installation, facility, or structure in the exclusive economic zone for the purposes of propagation and rearing, or attempted propagation and rearing, of marine species.

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

(A) a structure, installation, or other complex placed, in whole or in part, for the purposes of propagation and rearing, or attempted propagation and rearing of marine species in the exclusive economic zone; and

(B) an area of the seabed or the subsoil used for such placement.
(18) OVERFISHING AND OVERFISHED.—Each of
the terms “overfishing” and “overfished” has the
meaning that term has in the Magnuson-Stevens
Fishery Conservation and Management Act (16
U.S.C. 1801 et seq.).

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

(20) SPECIAL MANAGEMENT ZONE.—The term
“special management zone” means an area managed
by a State under a special area management plan,
as that term is defined in section 304 of the Coastal
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. INOUYE (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.

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

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

1 2 3 4 5 6
(b) Table of Contents.—The table of contents for 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. 304. Technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act.
   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.

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

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

9 (a) In General.—
(1) **ENFORCEMENT OF STATUTES.**—The Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating shall enforce the statutes to which this section applies in accordance with the provisions of this section.

(2) **UTILIZATION OF NONDEPARTMENTAL RESOURCES.**—The Secretary may, by agreement, on a reimbursable basis or otherwise, utilize the personnel services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in carrying out this section.

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

(A) the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826d et seq.);

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

(C) the Dolphin Protection Consumer Information Act (16 U.S.C. 1385);

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

(E) the North Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5001 et seq.);
(F) the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.);

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

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

(I) the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.);

(J) the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.);

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

(L) any other Act in pari materia, so designated by the Secretary after notice and an opportunity for a hearing; and

(M) the Antigua Convention Implementing Act of 2009.

(b) Administration and Enforcement.—The Secretary shall prevent any person from violating any Act to which this section applies in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though sections 307 through 311 of the Magnuson-Stevens Fishery Conservation and Management Act
(16 U.S.C. 1857 through 1861) were incorporated into and made a part of each such Act. Except as provided in subsection (c), any person that violates any Act to which this section applies is subject to the penalties, and entitled to the privileges and immunities, provided in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) in the same manner and by the same means as though sections 307 through 311 of that Act were incorporated into and made a part of each such Act.

(c) SPECIAL RULES.—

(1) IN GENERAL.—Notwithstanding the incorporation by reference of certain sections of the Magnuson-Stevens Fishery Conservation and Management Act under subsection (b), if there is a conflict between a provision of this subsection and the corresponding provision of any section of the Magnuson-Stevens Fishery Conservation and Management Act so incorporated, the provision of this subsection shall apply.

(2) CIVIL ADMINISTRATIVE ENFORCEMENT.—The amount of the civil penalty for a violation of any Act to which this section applies shall not exceed $250,000 for each violation. Each day of a continuing violation shall constitute a separate violation.
(3) CIVIL JUDICIAL ENFORCEMENT.—The Attorney General, upon the request of the Secretary, may commence a civil action in an appropriate district court of the United States to enforce this Act and any Act to which this section applies, and such court shall have jurisdiction to award civil penalties or such other relief as justice may require, including a permanent or temporary injunction. The amount of the civil penalty for a violation of any Act to which this section applies shall not exceed $250,000 for each violation. Each day of a continuing violation shall constitute a separate violation. In determining the amount of a civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations and such other matters as justice may require. In imposing such penalty, the district court may also consider information related to the ability of the violator to pay.

(4) CRIMINAL FINES AND PENALTIES.—

(A) INDIVIDUALS.—In the case of an individual, any offense described in subsection (e)(2), (3), (4), (5), or (6) is punishable by a fine of not more than $500,000, imprisonment...
for not more than 5 years, or both. If, in the commission of such offense, an individual uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury, the maximum term of imprisonment is 10 years.

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

(5) OTHER CRIMINAL VIOLATIONS.—Any person (other than a foreign government or any entity of such government) who knowingly violates any provision of subsection (e) of this section, or any provision of any regulation promulgated pursuant to this Act, is guilty of a criminal offense punishable—

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

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

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

(i) any property, real or personal, constituting or traceable to the gross proceeds obtained, or retained, as a result of the offense including any marine species (or the fair market value thereof) taken or retained in connection with or as a result of the offense; and

(ii) any property, real or personal, used or intended to be used to commit or to facilitate the commission of the offense, including any shoreside facility, including its conveyances, structure, equipment, furniture, appurtenances, stores, and cargo.

(B) PROCEDURE.—Pursuant to section 2461(c) of title 28, United States Code, the provisions of section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) thereof, shall apply to criminal forfeitures under this section.
(7) ADDITIONAL ENFORCEMENT AUTHORITY.—

In addition to the powers of officers authorized pursuant to subsection (b), any officer who is authorized by the Secretary, or the head of any Federal or State agency that has entered into an agreement with the Secretary under subsection (a) to enforce the provisions of any Act to which this section applies may, with the same jurisdiction, powers, and duties as though section 311 of the Magnuson-Stevens fishery Conservation and Management Act (16 U.S.C. 1861) were incorporated into and made a part of each such Act—

(A) search or inspect any facility or conveyance used or employed in, or which reasonably appears to be used or employed in, the storage, processing, transport, or trade of fish or fish products;

(B) inspect records pertaining to the storage, processing, transport, or trade of fish or fish products;

(C) detain, for a period of up to 14 days, any shipment of fish or fish product imported into, landed on, introduced into, exported from, or transported within the jurisdiction of the United States, or, if such fish or fish product
is deemed to be perishable, sell and retain the
proceeds therefrom for a period of up to 14
days; and

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

(8) SUBPOENAS.—In addition to any subpoena
authority pursuant to subsection (b), the Secretary
may, for the purposes of conducting any investiga-
tion under this section, or any other statute adminis-
tered by the Secretary, issue subpoenas for the pro-
duction of relevant papers, photographs, records, books, and documents in any form, including those in electronic, electrical, or magnetic form.

(d) **DISTRICT COURT JURISDICTION.**—The several district courts of the United States shall have jurisdiction over any actions arising under this section. For the purpose of this section, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law. Any offenses not committed in any district are subject to the venue provisions of section 3238 of title 18, United States Code.

(e) **PROHIBITED ACTS.**—It is unlawful for any person—

(1) to violate any provision of this section or any Act to which this section applies or any regulation promulgated thereunder;

(2) to refuse to permit any authorized enforcement officer to board, search, or inspect a vessel, conveyance, or shoreside facility that is subject to the person's control for purposes of conducting any search, investigation, or inspection in connection
with the enforcement of this section or any Act to which this section applies or any regulation promulgated thereunder;

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

(4) to resist a lawful arrest for any act prohibited by this section or any Act to which this section applies;

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

(6) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this section or any Act to which this section applies, or any data collector employed by or under contract to the National Marine Fisheries Service to carry out responsibilities under this section or any Act to which this section applies;

(7) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign com-
merce any fish or fish product taken, possessed, transported, or sold in violation of any treaty or binding conservation measure adopted pursuant to an international agreement or organization to which the United States is a party; or

(8) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.

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

SEC. 102. CONFORMING, MINOR, AND TECHNICAL AMENDMENTS.

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

(1) Section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g) is amended—
(A) by inserting “(a) DETECTING, MONITORING, AND PREVENTING VIOLATIONS.—” before “The President”; and

(B) by adding at the end thereof the following:

“(b) ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.

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

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

“(a) IDENTIFICATION.—

“(1) IN GENERAL.—The Secretary shall identify, and list in the report under section 607, a nation if that nation is engaged, or has been engaged at any time during the preceding 3 years, in illegal, unreported, or unregulated fishing and—

“(A) such fishing undermines the effectiveness of measures required under the relevant international fishery management organization;
“(B) the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by vessels of that nation, or the nation is not a party to, or does not maintain cooperating status with, such organization; or

“(C) there is no international fishery management organization with a mandate to regulate the fishing activity in question.

“(2) Other Identifying Activities.—The Secretary shall also identify, and list in the report under section 607, a nation if—

“(A) it is violating, or has violated at any time during the preceding 3 years, conservation and management measures required under an international fishery management agreement to which the United States is a party and the violations undermine the effectiveness of such measures, taking into account the factors described in paragraph (1); or

“(B) it is failing, or has failed at any time during the preceding 3 years, to effectively address or regulate illegal, unreported, or unregu-
lated fishing in areas described in paragraph (1)(C).

“(3) Treatment of certain entities as if they were nations.—Where the provisions of this Act apply to the act, or failure to act, of a nation, they shall also be applicable, as appropriate, to any other entity that is competent to enter into an international fishery management agreement.”.

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

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

(A) by striking “procedure for certification,” and inserting “procedure,”;

(B) by striking “basis of fish” and inserting “basis, for allowing importation of fish”; and

(C) by striking “harvesting nation not certified under paragraph (1)” and inserting “nation issued a negative certification under paragraph (1)”.

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

(A) by striking “calendar year” and inserting “3 years”; and

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

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

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

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

and

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

“(e) ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.
(c) TUNA CONVENTIONS ACT OF 1950.—Section 8 of the Tuna Conventions Act of 1950 (16 U.S.C. 957) is amended—

(1) by striking “regulations.” in subsection (a) and inserting “regulation or for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including the false identification of species, harvesting vessel or nation or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.”;

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

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

“(1) to refuse to permit any officer authorized to enforce the provisions of this Act to board a fishing vessel subject to such person's control for purposes of conducting any search, investigation, or inspection in connection with the enforcement of this Act or any regulation promulgation or permit issued under this Act;

“(2) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized of—
ficer in the conduct of any search, investigation or inspection described in paragraph (1);

“(3) to resist a lawful arrest for any act prohibited by this section; or

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

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

(4) by inserting after subsection (d) the following:

“(e) ENFORCEMENT.—This section shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.

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

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

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

(B) by striking “search or inspection” in paragraph (5) and inserting “search, investigation, or inspection”;
(C) by striking “search or inspection” in paragraph (6) and inserting “search, investigation, or inspection”;

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

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

(F) by adding at the end thereof the following:

“(10) for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.”.

(2) ADMINISTRATION AND ENFORCEMENT.—

Section 811 of the Northern Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5010) is amended to read as follows:

“SEC. 811. ADMINISTRATION AND ENFORCEMENT.

“This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.
(e) **Pacific Salmon Treaty Act of 1985.**—Section 8 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3637) is amended—

(1) by striking “search or inspection” in subsection (a)(2) and inserting “search, investigation, or inspection”;

(2) by striking “search or inspection” in subsection (a)(3) and inserting “search, investigation, or inspection”;

(3) by striking “or” after the semicolon in subsection (a)(5);

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

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

“(7) for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.”; and

(6) by striking subsections (b) through (f) and inserting the following:
“(b) Administration and Enforcement.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.

(f) South Pacific Tuna Act of 1988.—

(1) Prohibited Acts.—Section 5(a) of the South Pacific Tuna Act of 1988 (16 U.S.C. 973c(a)) is amended—

(A) by striking “search or inspection” in paragraph (8) and inserting “search, investigation, or inspection”;

(B) by striking “search or inspection” in paragraph (10)(A) and inserting “search, investigation, or inspection”;

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

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

(E) by adding at the end thereof the following:

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

(2) ADMINISTRATION AND ENFORCEMENT.—
The South Pacific Tuna Act of 1988 (16 U.S.C. 973
et seq.) is amended by striking sections 7 and 8 (16
U.S.C. 973e and 973f) and inserting the following:

“SEC. 7. ADMINISTRATION AND ENFORCEMENT.

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

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

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

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

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

(C) by striking “search or inspection” in
paragraph (5) and inserting “search, investiga-
tion, or inspection”;
(D) by striking “or” after the semicolon in paragraph (6);

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

(F) by adding at the end thereof the following:

“(8) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.”.

(2) REGULATIONS.—Section 307 of the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2436) is amended by inserting after “title.” the following: “Notwithstanding the provisions of subsections (b), (c), and (d) of section 553 of title 5, United States Code, the Secretary of Commerce may publish in the Federal Register a final rule to implement conservation measures, described in section 305(a) of this Act, that are in effect for 12 months or less, adopted by the Commission, and not objected to by the United States within the time pe-
period allotted under Article IX of the Convention. Upon publication in the Federal Register, such conservation measures shall be in force with respect to the United States.”.

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

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

(B) by striking subsection (b), (c), and (d) of section 310 (16 U.S.C. 2439) and redesignating subsection (e) as subsection (c); and

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

“(b) ADMINISTRATION AND ENFORCEMENT.—This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.

(h) ATLANTIC TUNAS CONVENTION ACT OF 1975.—

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

(A) by striking subsections (e) and (f) and redesignating subsection (g) as subsection (f); and
(B) by inserting after subsection (d) the following:

“(e) MISLABELING.—It shall be unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including the false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be, imported, exported, transported, sold, offered for sale, purchased or received in interstate or foreign commerce.”.

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

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

(B) by striking “(b) INTERNATIONAL ENFORCEMENT.—” in subsection (b) and inserting “This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”; and

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

(i) NORTHWEST ATLANTIC FISHERIES CONVENTION ACT OF 1995.—Section 207 of the Northwest Atlantic
Fisheries Convention Act of 1995 (16 U.S.C. 5606) is amended—

(1) by striking “AND PENALTIES.” in the section caption and inserting “AND ENFORCEMENT.”;

(2) by striking “search or inspection” in subsection (a)(2) and inserting “search, investigation, or inspection”;

(3) by striking “search or inspection” in subsection (a)(3) and inserting “search, investigation, or inspection”;

(4) by striking “or” after the semicolon in subsection (a)(5);

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

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

“(7) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.”; and
(7) by striking subsection (b) through (f) and inserting the following:

“(b) Administration and Enforcement.—This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.

(j) Western and Central Pacific Fisheries Convention Implementation Act.—

(1) Administration and Enforcement.—

Section 506(c) of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6905(c)) is amended to read as follows:

“(c) Administration and Enforcement.—This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.

(2) Prohibited Acts.—Section 507(a) of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6906(a)) is amended—

(A) by striking “suspension, on” in paragraph (2) and inserting “suspension of”; 

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

(C) by adding at the end thereof the following:
“(15) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.”.

(k) NORTHERN PACIFIC HALIBUT ACT OF 1982.—

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

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

(B) by striking “search or inspection” in paragraph (1)(B), as redesignated, and inserting “search, investigation, or inspection”;

(C) by striking “search or inspection” in paragraph (1)(C), as redesignated, and inserting “search, investigation, or inspection”;

(D) by striking “or” after the semicolon in paragraph (1)(E), as redesignated;
(E) by striking “section.” in paragraph (1)(F), as redesignated, and inserting “section;”; and

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

“(G) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.”.

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

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

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

“(b) ADMINISTRATION AND ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.
SEC. 103. ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.

(a) In general.—Section 608 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i), as amended by section 302(a) of this Act, is further amended by adding at the end thereof the following: "(c) VESSELS AND VESSEL OWNERS ENGAGED IN ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.—The Secretary may—

“(1) develop, maintain, and make public a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing, including vessels or vessel owners identified by an international fishery management organization or arrangement made pursuant to an international fishery agreement, whether or not the United States is a party to such organization or arrangement;

“(2) take appropriate action against listed vessels and vessel owners, including action against fish, fish parts, or fish products from such vessels, in accordance with applicable United States law and consistent with applicable international law, including principles, rights, and obligations established in applicable international fishery management and trade agreements; and
“(3) provide notification to the public of vessels and vessel owners identified by international fishery management organizations or arrangements made pursuant to an international fishery agreement as having been engaged in illegal, unreported, or unregulated fishing, as well as any measures adopted by such organizations or arrangements to address illegal, unreported, or unregulated fishing.

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

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

(b) ADDITIONAL MEASURES.—

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

(A) Section 609(d)(3) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d)(3)) is amended by striking “that has not been certified by the Secretary under this subsection, or” in subparagraph (A)(i).
(B) Section 610(c)(5) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826k(c)(5)) is amended by striking “that has not been certified by the Secretary under this subsection, or”.

(2) Amendment of the High Seas Driftnet Fisheries Enforcement Act.—

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

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

“(2) Denial of port privileges.—The Secretary of the Treasury shall, in accordance with recognized principles of international law—

“(A) withhold or revoke the clearance required by section 60105 of title 46, United States Code, for—

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

“(ii) any fishing vessel of a nation that receives a negative certification under section 609(d) or 610(c) of the High Seas
Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d) or 1826k(e)); and

“(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States, except for the purpose of inspecting the vessel, conducting an investigation, or taking other appropriate enforcement action.”;

(ii) by striking “or illegal, unreported, or unregulated fishing” each place it appears in subsection (b)(1) and (2);

(iii) by striking “or” after the semicolon in subsection (b)(3)(A)(i);

(iv) by striking “nation.” in subsection (b)(3)(A)(ii) and inserting “nation; or”;

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

“(iii) upon receipt of notification of a negative certification under section 609(d)(1) or 610(e)(1) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d)(1) or 1826k(e)(1)).”;

(vi) by inserting “or after issuing a negative certification under section 609(d)(1) or 610(e)(1) of the High Seas
Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d)(1) or 1826k(c)(1),” after “paragraph (1),” in subsection (b)(4)(A); and

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

“(i) any prohibition established under paragraph (3) is insufficient to cause that nation—

“(I) to terminate large-scale driftnet fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation;

“(II) to address illegal, unreported, or unregulated fishing activities for which a nation has been identified under section 609 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j); or

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

(B) Section 102 of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826b) is amended by striking “such nation has terminated large-scale driftnet fishing or illegal, unreported, or unregulated fishing by its nationals...
and vessels beyond the exclusive economic zone of any nation.” and inserting “such nation has—

“(1) terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation;

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

“(3) addressed bycatch of a protected living marine resource for which a nation has been identified under section 610 of that Act (16 U.S.C. 1826k).”.

SEC. 104. LIABILITY.

Any claims arising from the actions of any officer, authorized by the Secretary to enforce the provisions of this Act or any Act to which this Act applies, taken pursuant to any scheme for at-sea boarding and inspection authorized under any international agreement to which the United States is a party may be pursued under chapter 171 of title 28, United States Code, or such other legal authority as may be pertinent.
TITLE II—LAW ENFORCEMENT AND INTERNATIONAL OPERATIONS.

SEC. 201. INTERNATIONAL FISHERIES ENFORCEMENT PROGRAM.

(a) Establishment.—

(1) In general.—Within 12 months after the date of the enactment of this Act, the Secretary shall, subject to the availability of appropriations, establish an International Fisheries Enforcement Program within the Office of Law Enforcement of the National Marine Fisheries Service.

(2) Purpose.—The Program shall be an interagency program established and administered by the Secretary in coordination with the heads of other departments and agencies for the purpose of detecting and investigating illegal, unreported, or unregulated fishing activity and enforcing the provisions of this Act.

(3) Staff.—The Program shall be staffed with representation from the U.S. Coast Guard, U.S. Customs and Border Protection, U.S. Food and Drug Administration, and any other department or agency determined by the Secretary to be appropriate and necessary to detect and investigate illegal,
unreported, or unregulated fishing activity and enforce the provisions of this Act.

(b) Program Actions.—

(1) Staffing and other resources.—At the request of the Secretary, the heads of other departments and agencies providing staff for the Program shall—

(A) by agreement, on a reimbursable basis or otherwise, participate in staffing the Program;

(B) by agreement, on a reimbursable basis or otherwise, share personnel, services, equipment (including aircraft and vessels), and facilities with the Program; and

(C) to the extent possible, and consistent with other applicable law, extend the enforcement authorities provided by their enabling legislation to the other departments and agencies participating in the Program for the purposes of conducting joint operations to detect and investigate illegal, unreported or unregulated fishing activity and enforcing the provisions of this Act.

(2) Budget.—The Secretary and the heads of other departments and agencies providing staff for
the Program, may, at their discretion, develop inter-
agency plans and budgets and engage in interagency
financing for such purposes.

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

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

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

(B) enter into agreements with other Fed-
eral, State, or local governments as well as with
the governments of other nations, on a reim-
bursable basis or otherwise, for such purposes.
(c) Powers of Authorized Officers.—Notwithstanding any other provision of law, while operating under an agreement with the Secretary entered into under section 101 of this Act, and conducting joint operations as part of the Program for the purposes of detecting and investigating illegal, unreported or unregulated fishing activity and enforcing the provisions of this Act, authorized officers shall have the powers and authority provided in that section.

(d) Information Collection, Maintenance and Use.—

(1) In General.—The Secretary and the heads of other departments and agencies providing staff for the Program shall, to the maximum extent allowable by law, share all applicable information, intelligence and data, related to the harvest, transportation or trade of fish and fish product in order to detect and investigate illegal, unreported, or unregulated fishing activity and to carry out the provisions of this Act.

(2) Coordination of Data.—The Secretary, through the Program, shall coordinate the collection, storage, analysis, and dissemination of all applicable information, intelligence, and data related to the harvest, transportation, or trade of fish and fish
product collected or maintained by the member agencies of the Program.

(3) **CONFIDENTIALITY.**—The Secretary, through the Program, shall ensure the protection and confidentiality required by law for information, intelligence, and data related to the harvest, transportation, or trade of fish and fish product obtained by the Program.

(4) **DATA STANDARDIZATION.**—The Secretary and the heads of other departments and agencies providing staff for the Program shall, to the maximum extent practicable, develop data standardization for fisheries related data for Program agencies and with international fisheries enforcement databases as appropriate.

(5) **ASSISTANCE FROM INTELLIGENCE COMMUNITY.**—Upon request of the Secretary, elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall collect information related to illegal, unreported, or unregulated fishing activity outside the United States about individuals who are not United States persons (as defined in section 105A(c)(2) of such Act (50 U.S.C. 403–5a(c)(2))). Such elements of the intelligence community shall
collect and share such information with the Secretary through the Program for law enforcement purposes in order to detect and investigate illegal, unreported, or unregulated fishing activities and to carry out the provisions of this Act. All collection and sharing of information shall be in accordance with the National Security Act of 1947 (50 U.S.C. 401 et seq.).

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

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

(B) the exchange of information is necessary—
(i) to ensure compliance with any law or regulation enforced or administered by the Secretary;

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

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

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

(v) to assist in any fisheries or living marine resource related law enforcement action undertaken by a law enforcement agency of a foreign government, or in relation to a legal proceeding undertaken by a foreign government.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 to the Secretary for each of fiscal years 2010 through 2015 to carry out this section.
SEC. 202. INTERNATIONAL COOPERATION AND ASSISTANCE PROGRAM.

(a) INTERNATIONAL COOPERATION AND ASSISTANCE PROGRAM.—The Secretary may establish an international cooperation and assistance program, including grants, to provide assistance for international capacity building efforts.

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

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

(2) provide funding and technical expertise to other nations to assist them in reducing the loss and environmental impacts of derelict fishing gears, reducing the bycatch of living marine resources, and promoting international marine resource conservation;

(3) provide funding, technical expertise, and training, in cooperation with the International Fisheries Enforcement Program under section 201 of this Act, to other nations to aid them in building capacity for enhanced fisheries management, fisheries monitoring, catch and trade tracking activities, enforcement, and international marine resource conservation;
(4) establish partnerships with other Federal agencies, as appropriate, to ensure that fisheries development assistance to other nations is directed toward projects that promote sustainable fisheries; and

(5) conduct outreach and education efforts in order to promote public and private sector awareness of international fisheries sustainability issues, including the need to combat illegal, unreported, or unregulated fishing activity and to promote international marine resource conservation.

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

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

TITLE III—MISCELLANEOUS AMENDMENTS

SEC. 301. ATLANTIC TUNAS CONVENTION ACT OF 1975.

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

(b) CERTAIN REGULATIONS.—Section 971d(c)(2) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(2)) is amended—
(1) by inserting “(A)” after “(2)”;  

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

(3) by striking “arguments, and (B) oral presentation at a public hearing. Such” and inserting “written or oral statements at a public hearing. After consideration of such presentations, the”; and  

(4) by adding at the end thereof the following: “(B) The Secretary may issue final regulations to implement Commission recommendations referred to in paragraph (1) of this subsection concerning trade restrictive measures against nations or fishing entities without regard to the requirements of subparagraph (A) of this paragraph and subsections (b) and (c) of section 553 of title 5, United States Code.”.

 SEC. 302. DATA SHARING.  

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

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

(2) by striking “organizations” the first place it appears and inserting, “organizations, or arrangements made pursuant to an international fishery
agreement (as defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act),’’;

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

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

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

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

“(A) to improve the scientific understanding of marine ecosystems;

“(B) to improve fisheries management decisions;

“(C) to promote the conservation of protected living marine resources;

“(D) to combat illegal, unreported, and unregulated fishing; and

“(E) to improve compliance with conservation and management measures in international waters.
“(b) INFORMATION SHARING.—In carrying out this section, the Secretary may disclose, as necessary and appropriate, information to the Food and Agriculture Organization of the United Nations, international fishery management organizations (as so defined), or arrangements made pursuant to an international fishery agreement, if such organizations or arrangements have policies and procedures to safeguard such information from unintended or unauthorized disclosure.”.

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

(1) by striking “or” after the semicolon in subparagraph (G);

(2) by redesignating subparagraph (H) as subparagraph (J); and

(3) by inserting after subparagraph (G) the following:

“(H) to the Food and Agriculture Organization of the United Nations, international fishery management organizations, or arrangements made pursuant to an international fishery agreement as provided for in the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i(b));
“(I) to any other Federal or State government agency, foreign government, the Food and Agriculture Organization of the United Nations, or the secretariat or equivalent of an international fisheries management organization or arrangement made pursuant to an international fishery agreement, as provided in section 201(d)(6) of the International Fisheries Stewardship and Enforcement Act; or”.


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

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

“(1) 1 or more permits or authorizations required for a vessel to fish, in addition to a permit issued under this section, expire, are revoked, or are suspended; or

“(2) the vessel is no longer eligible for United States documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.”.
SEC. 304. TECHNICAL CORRECTIONS TO THE WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT.

Section 503 of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6902) is amended—

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

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

“(1) Employment status.—Individuals serving as such Commissioners, other than officers or employees of the United States Government, shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.”; and

(3) by striking subsection (d)(2)(B)(ii) and inserting the following:

“(ii) shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code.”; and
SEC. 305. PACIFIC WHITING ACT OF 2006.

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

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

“(a) EMPLOYMENT STATUS.—Individuals appointed under section 603, 604, 605, or 606 of this title, other than officers or employees of the United States Government, shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.”.

SEC. 306. COMMITTEE ON SCIENTIFIC COOPERATION FOR PACIFIC SALMON AGREEMENT.

Section 11 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3640) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following:
“(c) SCIENTIFIC COOPERATION COMMITTEE.—Members of the Committee on Scientific Cooperation who are
not State or Federal employees shall receive compensation
at a rate equivalent to the rate payable for level IV of
the Executive Schedule under section 5315 of title 5,
United States Code, when engaged in actual performance
of duties for the Commission.”.

SEC. 307. REAUTHORIZATIONS.

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

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

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

(c) SOUTH PACIFIC TUNA ACT OF 1988.—Section
20(a) of the South Pacific Tuna Act of 1988 (16 U.S.C.
973r(a)) is amended by striking “1992, 1993, 1994, 1995,
place it appears and inserting “2009 through 2013”.
TITLE IV—IMPLEMENTATION OF
THE ANTIGUA CONVENTION

SEC. 401. SHORT TITLE.
This title may be cited as the “Antigua Convention
Implementing Act of 2009”.

SEC. 402. AMENDMENT OF THE TUNA CONVENTIONS ACT
OF 1950.
Except as otherwise expressly provided, whenever in
this title an amendment or repeal is expressed in terms
of an amendment to, or repeal of, a section or other provi-
sion, the reference shall be considered to be made to a
section or other provision of the Tuna Conventions Act
of 1950 (16 U.S.C. 951 et seq.).

SEC. 403. DEFINITIONS.
Section 2 (16 U.S.C. 951) is amended to read as fol-
lows:

“SEC. 2. DEFINITIONS.

“In this Act:

“(1) ANTIGUA CONVENTION.—The term ‘Anti-
gua Convention’ means the Convention for the
Strengthening of the Inter-American Tropical Tuna
Commission Established by the 1949 Convention
Between the United States of America and the Re-
public of Costa Rica, signed at Washington, Novem-
“(2) COMMISSION.—The term ‘Commission’ means the Inter-American Tropical Tuna Commission provided for by the Convention.

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

“(A) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica;

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

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

“(4) IMPORT.—The term ‘import’ means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.
“(5) PERSON.—The term ‘person’ means an individual, partnership, corporation, or association subject to the jurisdiction of the United States.

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

“(7) U.S. COMMISSIONERS.—The term ‘U.S. commissioners’ means the members of the commission.

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

SEC. 404. COMMISSIONERS; NUMBER, APPOINTMENT, AND QUALIFICATIONS.

Section 3 (16 U.S.C. 952) is amended to read as follows:

“SEC. 3. COMMISSIONERS.

“(a) COMMISSIONERS.—The United States shall be represented on the Commission by 5 United States Commissioners. The President shall appoint individuals to serve on the Commission at the pleasure of the President. In making the appointments, the President shall select Commissioners from 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.

“(b) Alternate Commissioners.—The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise, at any meeting of the Commission or of the General Advisory Committee or Scientific Advisory Sub-committee established pursuant to section 4(b), all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

“(c) Administrative Matters.—
“(1) Employment status.—Individuals serving as such Commissioners, other than officers or employees of the United States Government, shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

“(2) Compensation.—The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

“(3) Travel expenses.—

“(A) The Secretary of State shall pay the necessary travel expenses of United States Commissioners and Alternate United States Commissioners to meetings of the IATTC and other meetings the Secretary deems necessary to fulfill their duties, in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.
“(B) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.”

SEC. 405. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

Section 4 (16 U.S.C. 953) is amended—

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

“(a) GENERAL ADVISORY COMMITTEE.—

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

“(A) The Secretary, in consultation with the Secretary of State, shall appoint a General Advisory Committee which shall consist of not more than 25 individuals who shall be representative of the various groups concerned with the fisheries covered by the Convention, including nongovernmental conservation organizations, providing to the maximum extent practicable an equitable balance among such groups.

Members of the General Advisory Committee will be eligible to participate as members of the U.S. delegation to the Commission and its working groups to the extent the Commission rules and space for delegations allow.
“(B) The chair of the Pacific Fishery Management Council’s Advisory Subpanel for Highly Migratory Fisheries and the chair of the Western Pacific Fishery Management Council’s Advisory Committee shall be members of the General Advisory Committee by virtue of their positions in those Councils;

“(C) Each member of the General Advisory Committee appointed under subparagraph (A) shall serve for a term of 3 years and is eligible for reappointment.

“(D) The General Advisory Committee shall be invited to attend all non-executive meetings of the United States Section and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

“(E) The General Advisory Committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The General Advisory Committee shall
publish and make available to the public a statement of its organization, practices and procedures. Meetings of the General Advisory Committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in timely fashion. The General Advisory Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

“(2) INFORMATION SHARING.—The Secretary and the Secretary of State shall furnish the General Advisory Committee with relevant information concerning fisheries and international fishery agreements.

“(3) ADMINISTRATIVE MATTERS.—

“(A) The Secretary shall provide to the General Advisory Committee in a timely manner such administrative and technical support services as are necessary for its effective functioning.

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

“(i) shall serve without pay, but while away from their homes or regular places of business to attend meetings of the General
Advisory Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code; and

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

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

“(b) SCIENTIFIC ADVISORY COMMITTEE.—(1) The Secretary, 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.”.

SEC. 406. RULEMAKING.

Section 6 (16 U.S.C. 955) is amended—

(1) by striking the section caption and inserting the following:
“SEC. 6. RULEMAKING.”;

and

(2) by striking subsections (a) and (b) and inserting the following:

“(a) REGULATIONS.—The Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department in which the Coast Guard is operating, may promulgate such regulations as may be necessary to carry out the United States international obligations under the Convention and this Act, including recommendations and decisions adopted by the Commission. In cases where the Secretary has discretion in the implementation of one or more measures adopted by the Commission that would govern fisheries under the authority of a Regional Fishery Management Council, the Secretary may, to the extent practicable within the implementation schedule of the Convention and any recommendations and decisions adopted by the Commission, promulgate such regulations in accordance with the procedures established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

“(b) JURISDICTION.—The Secretary may promulgate regulations applicable to all vessels and persons subject to the jurisdiction of the United States, including United States flag vessels wherever they may be operating, on such date as the Secretary shall prescribe.”.
SEC. 407. PROHIBITED ACTS.

Section 8 (16 U.S.C. 957) is amended to read as follows:

"SEC. 8. PROHIBITED ACTS.

"It is unlawful for any person—

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

"(2) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

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

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

"(5) to resist a lawful arrest for any act prohibited by this Act;
“(6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in paragraph (1) or (2);

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

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

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

“(10) to engage in fishing in violation of any regulation adopted pursuant to section 6(c) of this Act;

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

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

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

“(14) to import, in violation of any regulation
adopted pursuant to section 6(c) of this Act, any
fish in any form of those species subject to regula-
tion pursuant to a recommendation, resolution, or
decision of the Commission, or any tuna in any form
not under regulation but under investigation by the
Commission, during the period such fish have been
denied entry in accordance with the provisions of
section 6(c) of this Act, unless such person provides
such proof as the Secretary of Commerce may re-
quire that a fish described in this paragraph offered
for entry into the United States is not ineligible for
such entry under the terms of section 6(c) of this
Act.”."
SEC. 408. ENFORCEMENT.

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

“SEC. 10. ENFORCEMENT.

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

SEC. 409. REDUCTION OF BYCATCH.

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


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 statues. 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.


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 opt-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

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)**

<table>
<thead>
<tr>
<th>Objective:</th>
<th>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).</th>
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<tbody>
<tr>
<td>Duties and Process:</td>
<td>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.</td>
</tr>
<tr>
<td>Members:</td>
<td>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.</td>
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<tr>
<td>Duration:</td>
<td>Terminate when the Council submits a letter to NMFS deeming a set of regulations as accurate and consistent with the Council’s final action.</td>
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### Ad Hoc Tule Chinook Abundance-Based Management Workgroup (TCAMW)

<table>
<thead>
<tr>
<th><strong>Objective:</strong></th>
<th>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).</th>
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<tbody>
<tr>
<td><strong>Duties and Process:</strong></td>
<td>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.</td>
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<tr>
<td><strong>Members:</strong></td>
<td>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.</td>
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<td><strong>Duration:</strong></td>
<td>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.</td>
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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:


Agenda Order:

a. Agenda Item Overview
b. Reports and Comments of Advisory Bodies and Management Entities
c. Public Comment

PFMC
03/26/10
<table>
<thead>
<tr>
<th>Month</th>
<th>June 2010 (Foster City)</th>
<th>September 2010 (Boise)</th>
<th>November 2010 (Costa Mesa)</th>
<th>March 2011 (Vancouver)</th>
<th>April 2011 (San Mateo)</th>
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<tbody>
<tr>
<td><strong>Groundfish</strong></td>
<td>NMFS Report Inseason Mgmt (2)</td>
<td>NMFS Report Inseason Mgmt (2)</td>
<td>NMFS Report Inseason Mgmt (2)</td>
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<tr>
<td>Prelim EFPs</td>
<td>CFA Trailing Amd.: Scoping</td>
<td>Final EFPS</td>
<td>Preliminary EFPs</td>
<td>Preliminary EFPs</td>
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<td>A-20 (TRAT) Reg Deem'g</td>
<td>A-20 Update</td>
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<td><strong>Apx. Floor Time</strong></td>
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<td>5.4 days</td>
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Shaded = 12.5 hrs.
# Preliminary Proposed Council Meeting Agenda, June 10-17, 2010 Foster City, California

(Matters suggested for possible rescheduling are shaded)

<table>
<thead>
<tr>
<th>Thu, Jun 10</th>
<th>Sat, Jun 12</th>
<th>Sun, June 13</th>
<th>Mon, Jun 14</th>
<th>Tue, Jun 15</th>
<th>Wed, Jun 16</th>
<th>Thu, Jun 17</th>
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<tr>
<td>8:00 am HMSMT</td>
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### Closed Session 8:00 AM
- Opening Session 9:00 AM
- Comments on Non-Agenda Items (45 min)

### Groundfish
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)

### 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)

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<th>Fri, Jun 11</th>
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<tr>
<td>8:00 am HMSAS</td>
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<tr>
<td>8:30 am HC</td>
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<td>1:00 pm LC</td>
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<td>3:30 pm ChB</td>
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### Groundfish
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)

### Pacific Halibut
1. Reallocation of Catch & Bycatch (2 hr 30 min)

### Council-sponsored evening sessions:
- Sunday 6 pm – Chairman’s Reception

### Salmon
1. Mitchell Act Hatchery EIS: Provide Comments (2 hr)
2. EFH Review: Approve Document for Public Review (2 hr 30 min)
3. A-16 (ACLs): Adopt Preferred Alt for Public Review (3 hr)

### Ecosystem Based Mgmt
1. Ecosytem-based FMP Scoping (2 hr 30 min)

### Administrative
1. Legislative Matters (30 min)
2. Approve Council Minutes (15 min)
3. Fiscal Matters (15 min)
4. Membership Appointments (15 min)
5. Future Meeting Agenda & Workload Planning (30 min)
<table>
<thead>
<tr>
<th>Pacific Council Workload Planning: Year at a Glance Summary</th>
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<tbody>
<tr>
<td>(Parenthetical numbers indicate multiple items per topic; placeholders or items for possible rescheduling are shaded; deletions in strike-out)</td>
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<tr>
<td><strong>June 2010</strong> (Foster City)</td>
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<td><strong>CPS</strong></td>
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<td>ACL Amd.-Adopt Final</td>
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<td><strong>Groundfish</strong></td>
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<td>NMFS Report Inseason Mgmt (2) Stk Assmnt Pln--2013-14 &amp; TOR--Adopt Final A-23 (ACL) Adopt Final 2011-12 Biennial Mgmt, &amp; 16-5 (Rbldg Plan) Final</td>
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<td>Prelim EFPs Prelim EFP Adoption Final EFPs</td>
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<td>A-20 (TRAT) Reg Deem'g CFA Trailing Amd.: Scoping</td>
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<td>CFA Trailing Amd.: Scoping</td>
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<td>Habitat Issues National Mar. Registry National Mar. Registry</td>
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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)

<table>
<thead>
<tr>
<th>Thu, Jun 10</th>
<th>Sat, Jun 12</th>
<th>Sun, June 13</th>
<th>Mon, Jun 14</th>
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<tr>
<td>8:00 am HMSMT</td>
<td>8:00 am STT</td>
<td>8:00 am HC</td>
<td>CLOSED SESSION 8:00 AM</td>
<td>OPEN SESSION 9:00 AM</td>
<td>1-4. Opening Remarks &amp; Approve Agenda (30 min)</td>
<td>HIGHLY MIGRATORY MGMT</td>
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<td>2. A-2 (ACLs &amp; AMs): Adopt Final (3 hr)</td>
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<td>3. Recommendat’ns to N. Cmte of WCPFC &amp; IATTC (1 hr 30 min)</td>
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<td>GROUNDFISH</td>
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<td>4. Harvest Specs., Mgmt Measures &amp; Rebuilding Plans for 2011-12: Tentative Adoption (6 hr)</td>
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<td>5. Stock Assmnt Planning for 2013-14 Mgmt Measures: Adopt Final TOR, List of Stocks, &amp; Sched. (3 hr)</td>
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<td>COASTAL PELAGIC SPECIES</td>
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<td>1. NMFS Rpt (30 min)</td>
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<td>CS Mgmt: Adopt Final Pac Mackerel HG &amp; Mgmt Measures &amp; Approve Draft SAFE Rpt (1 hr 30 min)</td>
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<td>2. A-13 (ACLs): Adopt Final (3 hr)</td>
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<td>1. Preliminary Scoping for Reallocation of Catch &amp; Bycatch (2 hr)</td>
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<td>1. Ecosystem-based Mgmt for Groundfish/ECOSYSTEM BASED MGMT</td>
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<td>1. Ecosystem-based FMP Scoping (2 hr)</td>
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<td>2. EFPs: Preliminary Adoption for Public Review (2 hr)</td>
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<td>3. Inseason Adjustments (3 hr 30 min)</td>
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<td>4. Continue A-20 (Trawl Catch Shares) &amp; A-21: Regulatory Deeming (3 hr)</td>
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<td>1. Approve Council Minutes (15 min)</td>
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<td>2. Fiscal Matters (15 min)</td>
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<td>4. Future Meeting Agenda &amp; Workload Planning (30 min)</td>
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Council-sponsored evening sessions: Sunday 6 pm – Chairman’s Reception

4/15/2010 3:35 PM
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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