

**November 15, 2005**  
**Section By Section Analysis**  
**S. \_\_\_\_, The Magnuson-Stevens Fishery Conservation and**  
**Management Reauthorization Act of 2005**

**SUMMARY**

**S. \_\_\_\_** would reauthorize and amend the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for Fiscal Years 2006 - 2012. The current draft is divided into four titles:

- I. Conservation and Management (Sections 101-115);**
- II. Information and Research (Sections 201-209);**
- III. Other Fisheries Statutes (Sections 301-302);**
- IV. International (Sections 401-406);**
- V. Implementation of Western and Central Pacific Fisheries Convention (Sections 501-510); and**
- VI. Pacific Whiting (Sections 601-611)**

**Section 1. Short Title and Table of Contents**

This section sets forth the short title of the bill, the “Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005,” and the table of contents of the bill.

**Section 2. Amendment of Magnuson-Stevens Fishery Conservation and Management Act**

This section provides that any amendments or repeals set forth in the bill are to the Magnuson-Stevens Fishery Conservation and Management Act (MSA, 16 U.S.C. 1801 et seq.), unless otherwise indicated.

**Section 3. Changes in Definitions**

This section makes a number changes to the definitions set forth in Section 3 of the MSA, as well as technical and conforming changes to reflect the use of the term “limited access privilege” in place of “individual fishing quota” in various sections of the MSA, as revised by the draft. The section:

- **Defines the term “confidential information” as it applies to this bill to mean any information submitted to the Secretary that could cause competitive harm if disclosed.**

- Defines the term “regional fishery association” as association formed for mutual benefit by persons engaged in fish harvesting or processing in a given region.
- Defines the term “limited access privilege” as a permit issued for the harvesting in a limited access system authorized under section 107 of the draft. The definition mirrors the existing definition of individual fishing quota, but does not include language from that definition specifying that the quantity of fish involved must be expressed as a percentage of the allowable catch. The provision specifies that Individual Fishing Quota (IFQ) is included in the definition but that Community Development Quotas (CDQ) are not.
- Defines the term “observer information” to cover the broad range of information that may be collected by a fishery observer, electronic monitoring system, or as part of a cooperative research program.

#### **Section 4. Highly Migratory Species**

This section amends section 102 of the MSA to ensure that any Regional Fishery Management Council or Secretarial action pursuant to an international fishery agreement must reflect the traditional level of U.S. participation in the fishery. The amendment would also stipulate that the provisions of the MSA relating to the rebuilding of an overfished stock shall be promoted in the event that an international fishery organization does not have process for developing a formal plan in the event a stock is, or is approaching, being overfished.

#### **Section 5. Total Allowable Foreign Fishing**

This section contains technical amendments to section 201 of the MSA to clarify that allocations of the total allowable level of foreign fishing (TALFF) are discretionary and that any TALFF allocation shall be set at zero for fisheries with adequate or excess capacity.

#### **Section 6. Western Pacific Sustainable Fisheries Fund**

This section amends section 204(e) of the MSA which governs the establishment of Pacific Insular Area fishing agreements with foreign nations. The amendment would include funds or contributions, given to support a marine conservation plan in a Pacific Insular Area, among the types of funds to be deposited in the Western Pacific Sustainable Fisheries Fund. Currently, the Fund can only receive money through foreign fishing agreements that allow fishing in the EEZ around the Pacific Remote Island Areas. There are no foreign fishing agreements at this time, creating a shortage of funds.

Subsection 204(e)(8) currently stipulates that all fines and penalties, minus enforcement costs, imposed under the MSA in the EEZ adjacent to American Samoa, Guam, and the Northern Mariana Islands, should be deposited in the treasury of the

relevant Pacific Insular Area. The proposed amendment would remove the requirement to subtract enforcement costs from these funds and require that such funds collected in the EEZ adjacent to Midway Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis, Howland, and Wake Islands be deposited in the Western Pacific Sustainable Fisheries Fund.

#### **Section 7. Authorization of Appropriations**

This section would authorize appropriations for activities under the MSA, as amended, for \$328,004,000 in FY 2006 and such sums as necessary for FY 2007-2012.

### **TITLE I. CONSERVATION AND MANAGEMENT**

#### **Section 101. Cumulative Impacts**

This section amends National Standard 8 (S. 301(a)(8) in the MSA) to stipulate that the importance of fishery resources to fishing communities must be evaluated using the best data and methodology available. The provision would also amend section 303(a)(9) to include the cumulative economic and social impacts of conservation and management measures in any fishery impact assessment submitted as part of a Fishery Management Plan.

#### **Section 102. Caribbean Council Jurisdiction**

This section amends section 302 of the MSA to clarify that the jurisdictional boundaries of the Caribbean Fishery Management Council include the U.S. territorial waters surrounding all U.S. territories in the Caribbean Sea.

#### **Section 103. Regional Fishery Management Councils**

This section would make a number of changes and amendments to Section 302 of the MSA, which defines and authorizes the activities of the Regional Fishery Management Councils (RFMCs). Under this broad heading, the bill includes provisions covering the following topics:

**Tribal Alternate on Pacific Council.** Subsection 103(a) of the bill amends Section 302(b)(5), which establishes the voting membership of RFMCs. The amendment would allow the tribal representative on the Pacific RFMC to appoint an alternate who is knowledgeable in the regional fishery resources and tribal rights and law.

**Scientific and Statistical Committees (SSCs).** Subsection 102(b) of the bill amends section 302(g) to more fully set forth the role of the SSCs in the RFMC process. The amendment adds new sections 302(g)(1)(B)-(E), and reclassifies the existing text of section 302(g)(1) into subsection (1)(A) with modifications.

Subsection 302(g)(1)(A), as amended, would stipulate that each council shall establish a Science and Statistical Committee (SSC) to assist in the development, collection, evaluation, and peer review of such scientific and socio-economic data as would be relevant to the development of any Fishery Management Plan (FMP) or FMP amendment.

New subsection 302(g)(1)(B) provides that each SSC shall provide its RFMC with ongoing scientific advice as needed for management decisions. This advice shall include recommendations for acceptable biological catch or optimum yield; as well as reports on socio-economic impacts, stock status and health, bycatch, habitat status, socio-economic impacts of management measures, and the sustainability of fishery practices.

New subsection 302(g)(1)(C) would require all SSC appointees to be Federal, State, academic, or independent experts with strong scientific or technical credentials and experience.

New subsection 302(g)(1)(D) authorizes the Secretary of Commerce (Secretary), with each RFMC, and in consultation with the Council Coordinating Committee, to develop a peer review process for scientific information developed for use by the Council. The provision states that such peer review process shall satisfy the requirements of the Data Quality Act.

New subsection 302(g)(1)(E) would authorize the Secretary to pay members of a SSC or advisory panel a stipend so long as they are not Federal or State employees.

**Council Functions: Annual Catch Limits.** Subsection 103(c) of the bill amends Section 302(h) of the MSA to require RFMCs to set annual catch limits for each managed fishery after considering the recommendations of their SSC or another appropriate scientific body.

**Meeting Notification.** Subsections (d) and (e) of section 103 of the bill would alter existing notification requirements for RFMC meetings by amending 302(i)(2)(C) and 302(i)(3)(B) of the MSA to eliminate the requirement to notice meetings in newspapers, and allowing the RFMCs the flexibility to provide notice of meetings by “any means that will result in wide publicity”.

**Council Training Program.** Subsection 103(f) of the bill would amend section 302 of the MSA by adding a new subsection (k), which would establish an RFMC training program. New section 302(k) would require the Secretary, in consultation with the Councils and the National Sea Grant College Program, to develop a training course for new RFMC members to provide them with a background in a variety of topics relevant to fishery management. Topics may include fishery science, management, conflict of interest requirements, economics, tribal rights and customs, and legal requirements. The course would be open to both new and existing RFMC members, and would also be available to members of committees or advisory panels as resources allow.

**Council Coordinating Committee.** Subsection 103(g) would authorize the establishment of a Council Coordinating Committee comprised of Council Chairs, Vice Chairs, and Executive Directors as a forum to discuss issues relevant to all RFMCs. This

Coordinating Committee would be subject to the same procedural and notice requirements as the RFMCs and advisory bodies under section 302(i) of the MSA.

**Conflicts of Interest.** Subsection 103(h) of the bill would amend section 302(j) of the MSA to improve transparency of the process for disclosure of financial interests and recusal by Council members. Under current law, RFMC members are required to disclose any financial arrangements they may have in any harvesting, processing, or marketing activity undertaken within a fishery over which the RFMC has jurisdiction. This subsection would amend that provision to ensure that the member also discloses: 1) any financial interests held by a fishing, processing, or marketing association that is compensating the member in any way; and 2) any entity or individual that is providing financial compensation to the member in any way. In addition, the provision would require that all such disclosure information, which is currently publicly available at RFMC offices during business hours, also be made available over the internet. Finally, this subsection requires the Secretary to report to Congress annually, beginning in 2008, on action taken to implement the requirements of section 302(j), as amended.

#### **Section 104. Fishery Management Plan Requirements**

This section would amend Section 303(a) of the MSA, which contains the required provisions of a fishery management plan. The amendments include a modification of the types of data collection required and a new requirement for the setting of a hard ceiling on fish mortality. In the first instance, this section would amend S. 303(a)(5) to include fish processors among the sectors of a fishery from which data may be collected and to include economic data among the types of data required to be submitted to the Secretary as part of a Fishery Management Plan. In the second instance, this section would create a new subsection S. 303(a)(15) that would require an FMP to contain an annual catch limit that would be set at or below the Optimum Yield of the fishery as based on the best available scientific information. Any harvest in excess of the annual catch limit, including for a sector, would be required to be deducted from the limit for the following year, including for that sector. This provision would go into effect two years after enactment.

#### **Section 105. Fishery Management Plans Discretionary Provisions**

This section would make three changes to section 303(b) of the MSA, which governs the discretionary provisions that may be included in a FMP. First, the section would amend S. 303(b)(6) to require that, in addition to the current criteria, a RMFC must consider the conservation requirements of the MSA and the fair and equitable distribution of access privileges before implementing a limited access system. Second, this section would make technical changes throughout S. 303(b) to allow for the collection of economic data from fish processors. Finally, this section would add a new subsection, designated, S. 303(b)(12), that would allow FMPs to contain a process for compliance with NEPA.

#### **Section 106. Limited Access Privilege Programs**

**This section would create a new MSA Section 303A to authorize RFMCs to create a Limited Access Privilege Program (LAPP, formerly Individual Fishing Quota) for the harvesting of fish within a given fishery. All LAPPs would be subject to Secretarial approval and could only be developed for a fishery already being run under a limited access system for at least a year. The new S. 303A would also establish the following additional stipulations:**

**No Creation of Right, Title, or Interest. The new Section 303A(b) would establish that a limited access harvest or processor privilege is to be classified as a permit that may be revoked or limited at any time without right to compensation. This permit would be considered a grant of permission to participate in the fishery and, as such, would not grant the holder any right to a fish before it was harvested or bought. As a permit, the privilege could also be revoked or modified for any failure in compliance with the program or if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen.**

**Criteria for Establishing Limited Access Harvest Privileges. In order to establish a LAPP for harvest privileges in a fishery, a RMFC must first receive a petition signed by more than 50% of the permit holders, or permit holders representing 50% of the allocation, in that fishery. This petition must be submitted to the Secretary, who certifies its authenticity, before passing it to the appropriate RFMC (new Section 303A(c)(4)). In New England and the Gulf of Mexico, such a referendum would require a two-thirds majority to be deemed successful (new Section 303A(c)(1)(D)). The exception to this provision is the Gulf of Mexico Red Snapper fishery which would adhere to procedures already stipulated in Section 407(c) of the MSA. New Sections 303A(c)(1) 303A(c)(5), and 303A(c)(6) list the criteria that a LAPP for harvesters would have to meet. These requirements stipulate that any limited access privilege program for harvesters must:**

- **Assist in rebuilding an overfished fishery.**
- **Reduce capacity in a fishery that is overcapacity.**
- **Promote the safety of human life at sea.**
- **Promote conservation and management.**
- **Prohibit any person other than a U.S. citizen; corporation, partnership, or other entity established under the laws of the U.S. or a State; resident alien; fishing community; or regional fishery association to hold a harvesting privilege.**
- **Require that all fish processing under an LAPP be done in U.S. territory or in U.S. waters by vessels of the U.S.**
- **Specify the goals of the program.**
- **Be subject to review every 5 years.**
- **Include a system for monitoring, management, and enforcement.**
- **Include an appeals process for administrative review of Secretarial determinations.**

- Provide for a separate review process, established by the Secretary in consultation with Department of Justice and Federal Trade Commission, to determine if any acts of illegal collusion, anti-competition, anti-trust, or price fixing activity occurs among fishery associations receiving harvest privileges under the program. Provide for the revocation of privilege held by anyone who violates U.S. antitrust laws.

**Criteria for Fishing Community Participation in a Harvest LAPP.** New Section 303A(c)(2) would establish that fishing communities may be deemed eligible to hold harvest privileges if they meet participation criteria developed by the relevant RFMC. These criteria must be based on the traditional socio-economic framework of the fishing community. They must also consider economic barriers to access to the fishery and the severity of projected socio-economic impacts associated with an LAPP on participants in the fishery and its related businesses. The interested community must also

- Be located within the management area of the relevant RMFC.
- Consist of residents who conduct commercial or recreational fishing, processing, or fishery dependent support businesses within the relevant RFMC's jurisdiction.
- Develop and submit a community sustainability plan to the council and Secretary.

**Allocation of Harvest Privileges.** New Section 303A(c)(3) would stipulate that a RFMC's limited access privilege program must provide for a fair and equitable distribution of the initial allocation of catch in a way that:

- Considers catch history, employment, investment, and dependence on the fishery.
- Considers historic participation of fishing communities.
- Considers the basic social and cultural framework of the fishery.
- Promotes the sustained participation of small, owner operated, fishing vessels and communities that depend on the fisheries; this may include regional landing requirements.
- Assists entry level and small scale members of the fishing community.
- Limits the maximum share of the access privileges held by a qualified entity.
- Minimizes geographic consolidation of the fishery.
- Authorizes all those who substantially participate in the fishery to hold a limited access privilege.

**Transferability.** New Subsection 303A(c)(6) would require a RFMC to establish a policy on the transferability of privilege shares and a program to monitor such transfers,

that are consistent with the policies of the council established during the allocation process.

**Preparation and Implementation of Secretarial Plans.** New Subsection 303A(c)(7) stipulates that any Fishery Management Plan prepared by the Secretary for Atlantic Highly Migratory Species would be subject to the same requirements for any potential LAPPs.

**No Waiver.** New Subsection 303A(c)(8) provides a savings clause which stipulates that nothing in the act shall waive any U.S. antitrust laws.

**Auction.** New Section 303A(d) would authorize a RFMC to use an auction or other system to collect royalties from the initial distribution of privilege in a limited access program if: 1) the system or program is conducted in a manner consistent with the requirements described above; and 2) revenues from the distribution system are deposited in the Limited Access System Fund (established in Section 305(h)(5)(b) of the MSA). Funds from the Limited Access System Fund would be made available through annual appropriations.

**Cost Recovery.** New Section 303A(e) would require a RMFC that develops a limited access program to establish a methodology for assessing the management, science, data collection, enforcement, and observer programs associated with the program and provide for a program of fees to support these activities. New Section 303A(i) contains the requisite technical amendments to allow the collection of fees for this purpose.

**Limited Access Privilege Assisted Purchase Program.** New Section 303A(g) would authorize RFMCs to establish a Limited Access Privilege Assisted Purchase Program. This program would allow 25% of fees collected from a fishery to be used to aid entry level and small boat fishermen in purchasing shares.

Development of a Limited Access Program would be performed under a RFMC's standard rules and procedures and be subject to public comment. The Secretary would be forbidden from approving a plan that has not met all the requirements listed above. None of the guidelines described above are deemed to require the reapportionment of shares in any limited access program established prior to enactment of this bill.

**Effect on Certain Existing Shares and Programs.** New Section 303A(h) would ensure that Section 303A would not require a reallocation of quota share from any limited access system, including sector allocations, extant prior to enactment of this bill.

#### **Section 107. Environmental Review Process**

This section would require the Secretary, with public participation and in consultation with the Council on Environmental Quality (CEQ) and the RMFCs, to develop a process that would bring all RMFC plans into compliance with the requirements

of the National Environmental Policy Act (NEPA). This process would then be established as the sole environmental impact assessment process for fishery management plans. It would, however, have to meet a number of criteria including: 1) conformity to timelines for review and approval of Fishery Management Plans (FMPs); and 2) integration of the environmental analysis processes and public input timelines with FMP preparation and dissemination. The Secretary would be given 12 months to propose the revised procedures and, including 90 days for public comment, promulgate final procedures 18 months after enactment of this bill.

#### **Section 108. Emergency Regulations**

This section amends Section 305(c)(3)(B) of the MSA to extend the period an emergency amendment to a fishery management plan may remain in effect from 180 to 186 days. Together with a potential extension period of the same length, this change provides that an emergency regulation may remain in effect for a full year.

#### **Section 109. Western Pacific Community Development.**

This provision would create a new Subsection 305(j) entitled Western Pacific Regional Marine Education and Training. The new Sec. 305(j) directs the Secretary to create a pilot program for regionally based marine education programs in the Western Pacific with the goal of increasing communication, education, and training with regard to marine resource issues throughout the region but especially among, indigenous Pacific Islanders, Native Hawaiians, and other underrepresented groups. The program is required to have five components, including:

- Marine science and technology training education focused on preparing residents for employment in related fields.
- Fishing, fishery management, and seafood related training programs.
- Outreach programs and materials designed to inform residents about the quality and sustainability of wild caught and cultured fish and fish products.
- Programs to identify methods and technologies that will improve data collection and quality and increase the sustainability of fishing practices and that may be shared with other communities and nations in the Western and Central Pacific.
- Develop ways to enhance science-based management with local and traditional knowledge.
- Develop partnerships with other Western Pacific Island agencies, academic institutions, and other entities to meet the purposes of the section.

#### **Section 110. Western Alaska Community Development Quota Program**

This section amends Section 305(i)(1) of the MSA to authorize all Community

**Development Quota (CDQ) Programs in existence on January 1, 2004 or approved on April 19, 1999. This measure is designed as grandfather clause for programs that might otherwise be found to have been in violation of some of the requirements for CDQ programs.**

### **Section 111. Secretarial Action on State Groundfish Fishing**

**This section amends Section 305 of the MSA to create a new Subsection (k) entitled “Multispecies Groundfish”. This provision would direct the Secretary, within 60 days of enactment to make a determination as to whether fishing in State waters on regulated species in the New England multispecies complex without a New England multispecies groundfish fishery permit is consistent with the relevant Federal fishery management plan. If the Secretary finds that such fishing activity in State waters is not consistent with the Federal plan, the Secretary would be directed to notify the State and develop measures to establish consistency in consultation with the New England RFMC.**

### **Section 112. Joint Enforcement Agreements**

**This section amends Section 311 of the MSA to clarify that enforcement authority for any marine resource law administered by the Secretary, is given to the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. This enforcement authority is also broadened to allow any officer of the Secretaries to access any data required to be submitted under this title. The provision specifically mentions information from, Global Maritime Distress and Safety Systems (GMDSS), Vessel Monitoring Systems, or other similar systems. Data collected from these systems would be subject to all the confidentiality requirements of Section 402 in the MSA.**

**This section would also add two new provisions to Section 311 of the MSA designated S. 311(h) and S. 311(i). These provisions would authorize the establishment of Joint Enforcement Agreements (JEAs) between the States and the Secretaries for the enforcement of MSA provisions. S. 311(h) lays out guidelines and requirements for the enactment of a JEA and S. 311(i) outlines requirements for data sharing agreements between States and Federal government.**

**Joint Enforcement Agreement Requirements. New Subsection 311(h) would authorize State governors to apply to the Secretary for the purpose of entering into a Joint Enforcement Agreement. Such an agreement would deputize, and provide federal funding for, state law enforcement officials to carry out any of the Secretary’s marine law enforcement responsibilities, including those contained within the MSA. All coastal states are eligible to enter into a JEA with the Secretary, including those bordering the Great Lakes. Each JEA is required to:**

- **Be consistent with the purposes of this section.**
- **Contain an allocation of funds that will be based on an equitable distribution of monies between participating States. This**

distribution shall be based on: 1) consideration of Federal enforcement needs; 2) State enforcement needs; and 3) State enforcement capacity.

- Provide for the confidentiality of data and information to States pursuant to S. 402 of the MSA.

**Improved Data Sharing.** This provision is designed to ensure that States which enter into a JEA under this section, or a confidentiality agreement under Section 402(b)(1)(B) of the MSA, gain access to data gathered by the Secretary from Global Maritime Distress and Safety Systems. This section would also require the National Marine Fisheries Service and the Coast Guard to submit a report to Congress on:

- A cost-benefit analysis of using the GMDSS or similar system in fishery management and enforcement if the Federal government were to bear the primary capital investment costs.
- The commutative impact of existing requirements for commercial vessels.
- Whether the GMDSS requirements would overlap with existing requirements.
- How to address data integration from such systems.
- How to maximize data sharing between Federal and State governments while considering appropriate levels of confidentiality.
- How to distribute GMDSS or similar systems to regulated vessels.

### **Section 113. Transition to Sustainable Fisheries**

This section makes a number of changes to Section 312 of the MSA. Most of the changes relate to Subsections 312(b)-(e), which establish the Fishing Capacity Reduction Program, but, two technical changes are made to Subsection 312(a). The changes to 312(a), Fisheries Disaster Relief, include harvest restrictions among the causes of a fishery failure that could qualify a community for disaster relief. The changes to 312(a) would also reauthorize the program for FY 2006-20012. Amendments to Subsection 312(b)-(d) include technical changes that would:

- Allow a majority of permit holders, or individuals holding a majority of the allocation, in a fishery to conduct a voluntary Fishing Capacity Reduction Program, currently only a RFMC or State Governor may request the Secretary to initiate a program.
- Includes achieving stability, safety, or organizational effectiveness in qualified reasons for initiating a capacity reduction program.
- Allows a program involving industry fee systems to have the prospective of paying off its debts rather than a certainty.
- Require that if a vessel is scrapped under a under a capacity reduction program, the owner must also relinquish any claim to a permit associated with the vessel.

- **Include harvester proponents of a capacity reduction program in consultations between the Secretary and the relevant RFMC.**
- **Allow the Secretary to conduct a referendum on establishing an industry fee system to fund a capacity reduction program without consulting with the RFMCs.**
- **Reduce the requirements for a successful referendum on an industry fee system to a simple majority from a two-thirds majority.**
- **Allow industry fees to be collected from the seller rather than the first ex vessel fish purchaser.**

**Subsection 312(e) of the MSA, which establishes the Implementation Plan for a capacity reduction program, is completely rewritten. New Subsections 312(e)(1)-(2) direct the Secretary to propose and adopt Framework Regulations for all capacity reduction programs and implement all such programs through the adoption and promulgation of Program Regulations. New Subsection 312(e)(3) would also establish a Harvester Proponents Implementation Plan for those capacity reduction programs funded through an industry fee system. Under this plan, the Secretary would not be able to propose implementing regulations until the harvester proponents of the plan provide a proposal that: 1) proposes the type and number of vessels or permits eligible to participate taking into account various considerations; and 2) proposes procedures for program participation. New Subsection 312(e)(4) directs the Secretary to enter into a contract with any person participating in a program. Such a contract would be required to be consistent with the framework and implementing regulations. New Subsection 312(e)(5)-(6) establish the procedures for reduction auctions which are to take place if a capacity reduction program does not involve a fair market assessment. Section 115(b) contains technical and conforming amendments.**

#### **Section 114. Regional Coastal Disaster Assistance, Transition, and Recovery Program**

**This section would create a new Section 315 in the MSA to establish a Regional Coastal Disaster Assistance, Transition, and Recovery Program. This program would authorize the Secretary, in consultation with the relevant Governors, to provide immediate relief to the fishery sector of a region afflicted by a catastrophic fishery disaster. Economic assistance would be made available for: 1) meeting immediate shoreside infrastructure needs; 2) financial assistance and job training for fishermen in a fishery that may be temporarily closed; 3) funding for a capacity reduction program under Section 312(b); and 4) any other activities authorized by Section 312(a) of the MSA (Fisheries Disaster Relief), or Section 308(d) of the Interjurisdictional Fisheries Act of 1986. Any fisherman who opts to scrap a fishing vessel would be eligible for job training. No matching State or local funds would be required for participation in this program or that covered under Section 308(d)(3) of the Interjurisdictional Fisheries Act. However, a State would be required to meet the requirements of Section 312(b), the Fisheries Disaster Relief provision of the MSA. The Secretary is also directed to provide the Governor of each State participating in a program under this section with a comprehensive socio-economic evaluation of the**

affected fisheries to aid in the assessment of their future viability. A catastrophic fishery disaster is defined as a natural disaster or judicial or regulatory fishery closure to protect human health that: 1) results in economic loss to coastal or fishing communities; 2) affects more than one State or Federally managed fishery; and 3) is determined to be a fishery failure under Section 312(a) of the MSA or a resource disaster under Section 308(d) of the Interjurisdictional Fisheries Act of 1986.

### **Section 115. Bycatch Reduction Engineering Program**

This section creates a new Section 316 under Title III of the MSA. This new section would direct the Secretary, in cooperation with the RFMCs and other interests, to create a Bycatch Reduction Engineering Program within one year of enactment of this bill. The new program would be tasked with developing technological devices and engineering techniques for minimizing bycatch, bycatch mortality, and post-release mortality. The provision stipulates that the program: 1) be regionally based; 2) coordinate with projects under the MSA's cooperative research and management program; 3) use information and outreach to encourage the adoption of new technologies; and 4) provide for consultation with RFMCs so that the councils may incorporate new developments in FMPs.

This section would also authorize a FMP to contain various incentives to encourage the reduction of bycatch, bycatch rates, and post release mortality. These incentives could include the use of bycatch quota, measures to promote the use of low bycatch gear, or measures to promote other techniques that reduce bycatch as determined by the best scientific information available.

## **TITLE II. INFORMATION AND RESEARCH**

### **Section 201. Recreational Fisheries Information**

This section would amend Section 401 of the MSA by inserting a new Subsection (g) entitled Recreational Fisheries. This subsection would direct the Secretary to establish a new national program for the registration of marine recreational fishermen. The new registry would not require a fee and include all individuals who fish recreationally 1) in the EEZ; 2) for anadromous species; or 3) for continental shelf fishery resources beyond the exclusive economic zone. The Secretary would be required to exempt any individuals or charter fishing vessels from the Federal registry if they are already registered in a State which uses that information to assist in completing Marine Recreational Fisheries Statistical Surveys or for evaluating the effects of proposed conservation and management measures. Finally, the Secretary would be directed to establish a program for improving the Marine Recreational Fisheries Statistical Survey that includes to the extent practicable: 1) dockside interviews; 2) surveys to target anglers registered at the State or local level; 3) collection of trip data from charter fishing vessels; and 4) development of a weather

corrective factor to be applied to catch estimates. The Secretary would report to Congress on the programs progress two years after its establishment.

#### **Section 202. Collection of Information**

This section makes a number of technical changes to Section 402(a) of the MSA to allow RFMCs to request the Secretary to gather economic data regarding fish or fish processing operations. It would also authorize the Secretary to initiate an additional information collection program if it is deemed necessary.

#### **Section 203. Access to Certain Information**

This section makes technical changes to Section 402(b) which governs the handling of confidential information pursuant to the Act. These changes would clarify in S. 402(b)(1) that confidential information, as defined in this bill, would be kept confidential and be exempt from disclosure under the Freedom of Information Act, except to various parties under certain circumstances. These exemptions include: 1) Federal or RFMC employees responsible for fishery management; 2) State or Marine Fishery Commission employees; 3) State employees charged with fishery management in a state party to a JEA; 4) use to verify catch in a LAPP; 5) with written authorization from the appropriate parties; 6) use in Secretarial determinations in a LAPP; and 7) use in support of homeland security activities.

This section would also make the requisite technical changes and inset a new S. 402(b)(2) to govern the confidentiality of observer information. This information would be deemed confidential given the exceptions described above and three additional exceptions including: 1) use of the information by the North Pacific RFMC to allow disclosure of bycatch information; 2) when the information is necessary to adjudicate observer certifications; and, by agreement, 3) for the training and assessment of observers.

#### **Section 204. Cooperative Research and Management Program**

This section creates a new Section 317 in Title III of the MSA. This new section would create a new Cooperative Research and Management Program to fund partnerships between Federal and State entities in research and management activities that are consistent with the goals of the MSA. The program would be implemented on a regional basis and be developed and conducted through partnerships between Federal, State managers and scientists and commercial and recreational fishing industry participants. Project eligibility would be based on a determination of critical need by the Secretary, as made in consultation with the RFMCs. Funding would be awarded on a competitive basis and based on regional needs with priority given to projects designed to: 1) enhance data collection; 2) improve stock assessments; 3) assess bycatch or post release mortality; 4) reduce bycatch or post release mortality; 5) identify or conserve habitat areas of particular concern; and 6) collect and compile socio-economic data. Six months after enactment, the Secretary would be directed to establish a uniform, but regionally based, expedited

permitting process for projects under this section.

#### **Section 205. Herring Study**

This section creates a new Section 318 in the MSA that would authorize the Secretary to conduct a study on herring in the Northwest Atlantic to examine its abundance, distribution, and role as a forage fish for other commercially important stocks. An interim report on the study would be due at the end of FY 2008 and a final report would be due within three months of the study's completion. The section authorizes \$2,000,000 for FY 2007 through FY 2009 to complete the study.

#### **Section 206. Restoration Study**

This section creates a new Section 319 in the MSA that would authorize the Secretary to conduct a study to update the scientific information and protocols needed to improve coastal habitat restoration. The section authorizes \$500,000 for FY 2007 to complete the study.

#### **Section 207. Western Pacific Fishery Demonstration Projects**

This section amends Section 111(b) of the Sustainable Fisheries Act to remove the Secretary of the Interior as a granting agent for Western Pacific Demonstration Projects and to remove limits on the number of projects that may exist at a given time. This section also contains a technical correction to language in Section 111(b)(6) of the Sustainable Fisheries Act.

#### **Section 208. Fisheries Conservation and Management Fund**

This section directs the Secretary to establish a Fishery Conservation and Management Fund that shall be available to the Secretary to disburse on a regional basis for purposes including: 1) efforts to improve fishery harvest data collection; 2) cooperative fishery research and analysis; 3) development of methods or technology to improve the quality, safety, and value of landed fish; 4) analysis of fishery products for health benefits and risk; 5) marketing including consumer education; and 6) financial assistance to fishermen to offset the costs of modifying gear to comply with the MSA. The Fund may receive deposits from: 1) receive deposits from criminal and civil penalties, fines, and seizures made under the authority of the MSA; 2) from the sale of quota set aside by a RFMC for that purpose; or 3) outside sources including donations from State and local authorities and private or non-profit organizations. Money in the Fund would be dispersed to the various management regions based on a consensus decision by the RFMCs except that no region would receive less than 5% of the Fund.

#### **Section 209. Use of Fishery Finance Program and Capital Construction Fund for Sustainable Purposes**

**This section would amend the Merchant Marine Act of 1936 (46 U.S.C. App. 1274(a)(7) to expand the eligibility for guarantee of principle, and interest on principle, under the Fisheries Finance Program to include: 1) activities that assist in the transition to reduced fleets; 2) technologies or upgrades designed to improve collection and reporting on fishery-dependent data to reduce bycatch, improve selectivity or reduce adverse impacts of fishing gear, or to increase vessel safety; 3) developing a sustainable fisheries labeling and marketing plan for a fishery determined by the Secretary to be in compliance with the requirements of this Act and any other marine resource law implemented by the Secretary. The section would also expand the purposes of the Capital Construction Fund by authorizing termination and withdrawal from a fund in exchange for the retirement of the related commercial fishing vessels and related commercial fishing permits. The provision allows for the person or shareholder for whose benefit such fund was established, to rollover the contribution to such person's or shareholder's individual retirement plan or payment to a person terminating a capital construction fund. Persons could also withdraw money from the Fund for investment in shoreside fishery related facilities for the purpose of promoting U.S. ownership.**

### **TITLE III. OTHER FISHERIES STATUTES**

#### **Section 301. Amendments to Northern Pacific Halibut Act**

**This section makes technical changes and would amend Section 8 of the Northern Pacific Halibut Act of 1982 (NPHA) to expand the Act's Permit Sanctions and Criminal and Civil Penalties provisions as follows:**

##### **Civil Penalties**

- **Penalty caps raised to \$200,000 from \$25,000**
- **Allows the Secretary to consider information on the ability of a violator to pay a penalty if it is provided 30 days prior to the hearing.**

**Permit Sanctions. This section would allow the Secretary, after a hearing, to deny, suspend, revoke, or impose additional conditions on any permit issued under the NPHA for the following transgressions:**

- **A vessel has been used in a prohibited act.**
- **A permit holder or vessel owner/operator has committed a violation of the Act.**
- **A permit holder or vessel owner/operator has failed to pay any portion of a fine or civil penalty associated with the violation of any marine resource law enforced by the Secretary.**

Prior to imposing any sanctions, the Secretary must consider the same mitigating factors as for assessing a civil penalty, including:

- The nature, circumstances, extent, and gravity of the violation.
- With respect to the violator, the degree of culpability, past history, and any other matters justice may require.

A permit sanction would remain in place, including through any transfer of ownership, until all fines and settlements have been paid.

**Criminal Penalties.** The cap on fines associated with criminal penalties under this Act would be raised from \$50,000 to \$100,000, except in cases involving weapons or assault on an officer, in which case the fine is raised from \$100,000 to \$200,000.

### **Section 302. Reauthorization of Other Fisheries Acts**

This section would reauthorize a number of additional fisheries acts including the:

#### **Atlantic Striped Bass Conservation Act**

- Authorizes \$1,000,000 to the Secretary of Commerce and \$250,000 to the Secretary of the Interior for each of FY 2006-2010.

#### **Yukon River Salmon Act of 2000**

- Authorizes \$4,000,000 for each of FY 2006-2010.

#### **Shark Finning Prohibition Act**

- Reauthorized at the same funding level for FY 2006-2010.

**Pacific Salmon Treaty Act.** This provision takes language related to 1999 Pacific Salmon Treaty Agreement between the U.S. and Canada, from the Commerce, Justice, and Science portion of the FY 2000 omnibus appropriations bill, and transfers it to the Pacific Salmon Treaty Act (16 U.S.C. 3631 et seq.). This language covers the authorization and management of the Northern and Southern Boundary Restoration and Enhancement Funds. This section would reauthorize the funds for FY 2006-2010.

#### **Atlantic Coastal Fisheries Cooperative Management Act.**

- Authorizes \$15,000,000 for each of FY 2006-2010.

#### **State Authority for Dungeness Crab Fishery Management**

**This provision makes technical amendments to PL 105-384 to extend the authority of States to manage the Dungeness Crab fishery in the EEZ adjacent to State waters through 2011. It also changes the State reporting requirements to a report on stock “status” rather than “health” and stipulates that such reports must include information on: 1) stock status and trends; 2) a description of the types of scientific information and processes used to determine the stock trends; and 3) measures implemented or planned that are designed to end overfishing in the fishery.**

#### **TITLE IV—INTERNATIONAL**

##### **Section 401. International Monitoring and Compliance.**

**This section amends Title II of the MSA by creating a new Section 207 on International Monitoring and Compliance. The new section contains provisions authorizing the Secretary to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international or regional fishery management agreements. To accomplish these goals, the provision would grant the Secretary the authority to:**

- **Share information on harvesting and processing capacity and IUU fishing on the high seas with law enforcement organizations of foreign nations and international organizations.**
- **Further develop real time information sharing capabilities, on IUU fishing.**
- **Participate in global and regional efforts to build an international network for monitoring.**
- **Support efforts to create an international database of fishing vessels.**
- **Enhance regional enforcement capabilities through the use of remote sensing technology.**
- **Provide technical assistance to developing countries to improve their monitoring, control, and surveillance capabilities;**
- **Support efforts to require all large-scale fishing vessels operating on the high seas be fitted with vessel monitoring systems by 2009.**

##### **Section 402. Finding With Respect to Illegal, Unreported, and Unregulated Fishing.**

**This section adds a new finding to Section 2(a) of the MSA, which states that international cooperation is necessary to address IUU fishing.**

##### **Section 403. Action to End Illegal, Unreported, or Unregulated Fishing and Reduce Bycatch of Protected Marine Resources**

**This section amends the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1801 note, 1826d et seq.) by creating new four new sections, 607-610, that aim to improve: 1) U.S. awareness of the status of international marine resources; and 2)**

international compliance with laws on Illegal, Unreported, Or Unregulated (IUU) Fishing and protected marine resources. This information would be summarized in a biennial report (Report) created by the Secretary.

**Biennial Report on International Compliance.** New Section 607 stipulates that the Report would contain information on: 1) the status of international living marine resources; 2) a list of nations identified under new Sections 609 and 610, that have been found to be out of compliance with laws and regulations regarding IUU fishing and protected marine resources; 3) a description of efforts taken by nations to comply with new Sections 609 and 610; 4) progress made by the U.S., pursuant to new Section 608, in strengthening international fishery management organizations with the goal of ending IUU fishing; and 5) a plan of action for implementing international measures to reduce the impacts of fishing on protected marine resources.

**Action To Strengthen Regional Fishery Management Organizations.** New Section 608 would direct the Secretary, in consultation with the Secretary of State, to improve the effectiveness of international fishery management organizations (IFMOs) by urging those organizations to which the U.S. is a party to: 1) incorporate sanctions against governments with vessels engaging in IUU fishing; 2) adopt lists of IUU vessels; 3) increase the use of observers and compliance monitoring technologies; 4) adopt greater port state controls in all nations; 5) adopt market related measures to combat IUU fishing including import prohibitions, restrictions, and catch documentation schemes; and 6) urging other nations at all levels, including CITES and the WTO, to adopt measures to restrict trade in IUU products.

**Illegal, Unreported, or Unregulated Fishing.** New Section 609 describes the process for listing a nation in the Report as party to IUU fishing. For a nation to be listed, it must be determined that vessels of that nation have engaged in IUU fishing within the past year and that the relevant IFMO has not implemented measures to end IUU fishing by that nation's vessels or that the nation is not party to an IFMO, or no relevant IFMO exists. If such a determination is made, listing a nation in the Report shall constitute an identification under Sec. 101(b)(1)(a) Of The High Seas Driftnet Enforcement Act (16 U.S.C. 1826a(b)(1)(A)). This identification requires the Secretary of the Treasury to: 1) withhold or revoke the clearance of any vessel covered by the identification and deny them entry into the navigable waters or any port of the U.S; 2) prohibit the importation of fish, fish products, or sport fishing gear from that nation; and 3) impose other economic sanctions if items 1 and 2 are not successful in stopping the violation. The Secretary would be required to notify the President and the nation in question of its status must also notify nations listed in Report and any relevant IFMOs of the requirements of this section.

The Secretary must initiate consultations with listed nations to encourage them to take corrective action and, towards that end, the Secretary must promulgate procedures for certifying that a nation is taking corrective action and provide a list of any such certifications in the Report. To become certified as taking corrective action a nation must: 1) provide documentary evidence or the relevant IFMO must implement measures that are

effective in ending IUU fishing by the listed nation. Alternatively, the Secretary may certify vessels from a listed nation on a shipment by shipment or other similar basis. If a nation becomes certified as taking corrective action it would not be subject to the sanctions described above.

The new Section 609 also directs the Secretary to promulgate a definition of IUU fishing within three months of enactment of this bill. Such a definition must include: 1) fishing activities that violate IFMO agreements to which the U.S. is a party; 2) overfishing of stocks which have no management measures or in areas not covered by an IFMO agreement; and 3) destructive fishing practices. The Secretary is authorized to receive such sums as necessary to carry out Section 609 for FY 2006-2012.

**Equivalent Conservation Measures.** New Section 610 establishes a similar listing procedure to Section 609 but for nations that fail to regulate bycatch of protected living marine resources. To be listed in the Report described in Sec. 607, but pursuant to Sec. 610, it must be determined that: 1) vessels of that nation have been engaged in fishing practices during the past year that result in bycatch of a protected marine resource; 2) the relevant international or regional organization has failed to implement measures to end or reduce the impacts; and 3) the nation in question has not adopted a regulatory program governing such practices that is comparable to those of the U.S. The notification, consultation, sanctions, and certification provisions of this section are all similar to those of Sec. 609 except that the Secretary must seek international agreements for restricting fishing practices that result in the bycatch of protected marine resources through the United Nations Food and Agriculture Organization as well as the relevant IFMO. The Secretary must also seek the amendment of any relevant international treaty to ensure that it is consistent with the requirements of this section. In certifying a nation as taking corrective action, the Secretary must ensure that the nation in question is taking measures to maximize the probability of post-release survival including the mandatory use of circle hooks in pelagic longline fishing.

This section would also require the Secretary to assist nations in achieving certification, including by undertaking cooperative research activities, facilitating the transfer of appropriate technology, and designing and implementing fish harvesting plans. New Section 610 would define a protected living marine resource as non target fish, marine mammals, or sea turtles occurring in areas beyond U.S. jurisdiction that are protected under U.S. law or international agreement. However, this definition specifically excludes sharks managed under the MSA, Atlantic Tunas Convention Act, or another IFMO. The Secretary is authorized to receive such sums as are necessary for FY 2006-2012 to carry out this section.

#### **Sec. 404. Monitoring of Pacific Insular Area Fisheries.**

This section amends Section 201(h)(2)(B) of the MSA to give the Secretary more robust authority in determining monitoring programs for harvest, bycatch and legal compliance with the laws of the United States by vessels fishing under the agreement. The Marine Conservation Plans Section, 204(e)(4)(A)(i), is also amended to add Pacific Insular

Area observer or monitoring programs. The Secretary determines adequate monitoring methods for harvest, bycatch, and compliance with United States Law by foreign vessels that fish in the Pacific Insular Area.

#### **Section 405. Reauthorization of the Atlantic Tunas Convention Act**

This section reauthorizes the Atlantic Tunas Convention Act (ATCA) for \$5,495,000 in FY 2006, \$5,770,000 for each of FY 2007 and 2008, \$6,058,000 for each of FY 2009 and 2010; and \$6, 631,000 for each of FY 2011 and 2012. These funding levels represent a 5% increase per year. Of the total authorization, \$160,000 per year would be allocated to the advisory committee established under the Act and \$4,500,000 per year would be allocated to research activities. This section would also establish a cooperative research program on Atlantic Billfish based on the Atlantic Billfish Research Plan of 2002. This program would be established at the Southeast Fisheries Science Center.

#### **Section 406. International Fishing and Domestic Equity**

Section 406(a) amends Section 304(e) of the MSA which addresses rebuilding in overfished fisheries. The amendment would add a new Subsection 304(e)(8) to address a situation in which a fishery is overfished due to international fishing pressure and for which no international agreement or measures exist to end overfishing. In this event, the provision would direct the Secretary to seek international action to end overfishing and the relevant RFMC would also be directed to recommend regulations for U.S. fishermen relative to their impact on the fishery and to provide recommendations for international action.

Section 406(b) amends Section 304(g)(2) of the MSA which stipulates that any highly migratory species managed by the Secretary or the pursuant to the ATCA, that are caught and released as part of a tagging study, shall not be considered bycatch. The amendment would expand this exemption to highly migratory species managed by a RFMC or pursuant to the Western and Central Pacific Fisheries Convention Implementation Act described in Title V.

### **TITLE V. IMPLEMENTATION OF WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION**

This Title contains implementing language for the Convention on the Conservation and Management of Highly Migratory Stocks in the Western and Central Pacific Ocean (Convention). The title shall be known as the Western and Central Pacific Fisheries Conservation Implementation Act. The objective of the Convention is to ensure the long-term conservation and sustainable use of tuna and other highly migratory stocks in the Western and Central Pacific, and to lessen the impact of fishing effort on non-target species. The Convention adopts provisions that implement key aspects of the 1995 United Nations Fish Stocks Agreement, including provisions on compliance and enforcement, and

bycatch of non-target species. The U.S. signed the treaty in 2000 and the treaty became effective on June 19, 2004 prior to U.S. ratification. Title V would implement the Convention by:

- Providing for the status and appointment by the President of U.S. members of the Convention's governing Commission and their alternates.
- Authorizing the U.S. Commission members to appoint an Advisory Committee and establishing the status, terms, and stipulations of such a Committee.
- Requiring a Memorandum of Understanding (MOU) between the Secretary, the Secretary of State, the Western Pacific RFMC, and the North Pacific RFMC; this MOU would provide for: 1) the Councils' participation in U.S. delegations to international fishery organizations in the Pacific; 2) coordinate positions with the U.S. delegation to such organizations; and 3) allow the Councils to make formal recommendations to the Secretary and the Secretary of State with regard to implementing relevant fishery regulations
- Authorizing the Secretary of State to receive, transmit and act upon communications to the Commission on behalf of the U.S., and, in consultation with the Secretary, establish the U.S. position on the annual program of the Commission.
- Authorizing the Secretary to carry out all relevant research, rulemaking, and enforcement pursuant to the procedures stipulated in the MSA.
- Stipulating that all violations shall be prosecuted under the authority of the MSA.
- Authorizing the Commissioners to cooperate with Federal, State, and private institutions and organizations to carry out its duties under the Convention.
- Authorizing such sums as may be necessary.

## **TITLE VI. PACIFIC WHITING**

This title implements the terms of the Agreement on Pacific Hake/Whiting as signed by the U.S. and Canada in November, 2003 (Agreement). It shall be known as the Pacific Whiting Act of 2005. Title VI would implement the Agreement by:

- Providing for the status and appointment, by the Secretary, of U.S. representatives and their alternates on the Joint Management Committee.
- Providing for the status and appointment by the Secretary of scientific experts to serve as U.S. representatives to the Scientific Review Group.
- Providing for the status and appointment by the Secretary of scientific experts to serve as U.S. representatives to the Joint Technical Committee.
- Providing for the appointment by the Secretary of individuals knowledgeable in the Pacific Whiting fishery to serve as U.S. representatives to the Advisory Panel.

- **Authorizing the Secretary to carry out the Agreement including granting the authority, in consultation with the Secretary of State, to accept or reject on behalf of the U.S., the recommendations of the Joint Management Committee.**
- **Authorizing the Secretary to cooperate with Canadian officials in carrying out the requirements of the Agreement.**
- **Requiring the Secretary to establish a catch level for Pacific Whiting according to the standards of the agreement but, otherwise, to manage the Pacific Whiting Fishery according to the standards set forth in the MSA. The agreement stipulates that the Secretary shall set the annual catch level in accordance with the recommendations of the Joint Management Committee in years when both Canadian and U.S. members of the Committee agree on the appropriate level. In years when no agreement is reached, the Secretary shall set a catch level such that it: 1) takes into account the recommendations of the Pacific RFMC; 2) uses the best scientific information available; and 3) is based on the default total allowable catch and allocation rules set forth in the Agreement.**
- **Authorizing the Secretary to enforce the provisions of this Title.**
- **Stipulating that all violations shall be prosecuted under the authority of the MSA.**
- **Authorizing such sums as may be necessary.**