

107TH CONGRESS
1ST SESSION

S. 973

To expedite relief provided under the Magnuson-Stevens Fishery Conservation and Management Act for the commercial fishery failure in the Pacific Coast Groundfish Fishery, to improve fishery management and enforcement in that fishery, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2001

Mr. WYDEN (for himself and Mr. SMITH of Oregon) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To expedite relief provided under the Magnuson-Stevens Fishery Conservation and Management Act for the commercial fishery failure in the Pacific Coast Groundfish Fishery, to improve fishery management and enforcement in that fishery, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pacific Coast Ground-
5 fish Fishery Preservation Act”.

1 **SEC. 2. PILOT PROJECT FOR CHARITABLE DONATION OF**
2 **BYCATCH.**

3 (a) IN GENERAL.—The Secretary of Commerce shall
4 initiate a pilot project under which fishermen in a com-
5 mercial fishery covered by the West Coast groundfish fish-
6 ery are permitted to donate bycatch, or regulatory dis-
7 cards, of fish to charitable organizations rather than dis-
8 card them. The pilot program shall incorporate a means,
9 through the requirement of on-vessel observers or other
10 safeguards, of ensuring that the opportunity to donate
11 such fish does not encourage or permit the evasion of per-
12 vessel trip limits, total allowable catch limits, or other fish-
13 ery management plan measures.

14 (b) REPORTS.—

15 (1) INITIATION.—The Secretary shall notify the
16 Senate Committee on Commerce, Science, and
17 Transportation, within 90 days after the date of en-
18 actment of this Act and before the pilot project is
19 implemented, of—

20 (A) the fishing season in which the pilot
21 project will be conducted; and

22 (B) the period during which the pilot
23 project will be conducted.

24 (2) FOLLOW-UP.—Within 90 days after the
25 pilot project terminates the Secretary shall submit to
26 the Committee a report containing findings with re-

1 spect to the pilot project and the Secretary's anal-
2 ysis of the ramifications of the pilot project based on
3 those findings.

4 **SEC. 3. REPORT ON DISASTER ASSISTANCE FOR PACIFIC**
5 **COAST GROUNDFISH FISHERY.**

6 The Secretary shall report to the Senate Committee
7 on Commerce, Science, and Transportation no later than
8 45 days after the date of enactment of this Act the action
9 or actions taken under section 312(a) of the Magnuson-
10 Stevens Fishery Conservation and Management Act (16
11 U.S.C. 1861a(a)) to provide disaster relief to fishing com-
12 munities affected by the commercial fishery failure in the
13 Pacific Coast groundfish fishery. The Secretary shall in-
14 clude in the report any recommendations the Secretary
15 deems appropriate for additional legislation or changes in
16 existing law that would enable the Department of Com-
17 merce to respond more expeditiously in the future to fish-
18 eries disasters resulting from commercial fishery failures.

19 **SEC. 4. CAPACITY REDUCTION IN THE PACIFIC COAST**
20 **GROUNDFISH FISHERY.**

21 (a) IN GENERAL.—The Secretary of Commerce shall,
22 after notice and an opportunity for public comment, adopt
23 regulations to implement a fishing capacity reduction plan
24 for the Pacific Coast groundfish fishery under section

1 312(b) of the Magnuson-Stevens Fishery Conservation
2 and Management Act (16 U.S.C. 1861a(b)) that—

3 (1) has been developed in consultation with af-
4 fected parties whose participation in the plan is re-
5 quired for its successful implementation;

6 (2) will obtain the maximum sustained reduc-
7 tion in fishing capacity at the least cost through the
8 use of a reverse auction process in which vessels and
9 permits are purchased;

10 (3) will not expand the size or scope of the com-
11 mercial fishery failure in that fishery or into other
12 fisheries or other geographic regions;

13 (4) except as otherwise specifically provided in
14 this section, meets the requirements of that section;
15 and

16 (5) incorporates the components described in
17 subsection (c) of this section.

18 (b) EXPEDITED ADOPTION OF PLAN.—In carrying
19 out subsection (a), the Secretary—

20 (1) shall publish notice in the Federal Register
21 within 30 days after the date of enactment of this
22 Act of implementation of the fishing capacity reduc-
23 tion plan;

24 (2) provide for public comment for a period of
25 60 days after publication; and

1 (3) adopt final regulations to implement the
2 plan within 45 days after the close of the public
3 comment period under paragraph (2).

4 (c) PLAN COMPONENTS.—The fishery capacity re-
5 duction plan shall—

6 (1) provide for a significant reduction in the
7 fishing capacity in the Pacific Coast groundfish fish-
8 eries;

9 (2) permanently revoke all State and Federal
10 fishery licenses, fishery permits, area and species en-
11 dorsements, and any other fishery privileges for
12 West Coast groundfish, Pacific pink shrimp, Dunge-
13 ness crab, and Pacific salmon (troll permits only)
14 issued to a vessel or vessels (or to persons on the
15 basis of their operation or ownership of that vessel
16 or vessels) for which a Pacific Coast groundfish fish-
17 eries reduction permit is issued under section
18 600.1011(b) of title 50, Code of Federal Regula-
19 tions;

20 (3) ensure that the Secretary of Transportation
21 is notified of each vessel for which a reduction per-
22 mit is surrendered and revoked under the program,
23 with a request that such Secretary permanently re-
24 voke the fishery endorsement of each such vessel and

1 refuse permission to transfer any such vessel to a
2 foreign flag under subsection (f) of this section;

3 (4) ensure that vessels removed from the Pa-
4 cific Coast groundfish fisheries under the program
5 are made permanently ineligible to participate in any
6 fishery worldwide, and that the owners of such ves-
7 sels contractually agree that such vessels will operate
8 only under the United States flag or be scrapped as
9 a reduction vessel pursuant to section 600.1011(c)
10 of title 50, Code of Federal Regulations;

11 (5) ensure that vessels removed from the Pa-
12 cific Coast groundfish fisheries, the owners of such
13 vessels, and the holders of fishery permits for such
14 vessels forever relinquish any claim associated with
15 such vessel, permits, and any catch history associ-
16 ated with such vessel or permits that could qualify
17 such vessel, vessel owner, or permit holder for any
18 present or future limited access system fishing per-
19 mits in the United States fisheries based on such
20 vessel, permits, or catch history; and

21 (6) notwithstanding section 1111(b) of the Mer-
22 chant Marine Act, 1936 (46 U.S.C. App.
23 1279f(b)(4)), establish a repayment period for the
24 reduction loan of not less than 30 years.

1 (d) FUNDING FOR BUYBACK OF VESSELS AND PER-
 2 MITS.—

3 (1) IN GENERAL.—There shall be available to
 4 the Secretary to complete the purchase of vessels
 5 and permits under the fishery capacity reduction
 6 plan the sum of \$50,000,000, of which—

7 (A) \$25,000,000 shall be from amounts
 8 appropriated to the Secretary for this purpose
 9 (the appropriation of which is hereby authorized
 10 for fiscal year 2002, with any amounts not ex-
 11 pended in fiscal year 2002 to remain available
 12 until expended); and

13 (B) \$25,000,000 shall be from an industry
 14 fee system established under subsection (e).

15 (2) ADVANCE OF INDUSTRY FEE PORTION.—
 16 The industry fee portion under paragraph (1)(B) for
 17 fiscal year 2002 and thereafter shall be financed by
 18 a reduction loan under sections 1111 and 1112 of
 19 title XI of the Merchant Marine Act, 1936 (46
 20 U.S.C. App. 1279f and 1279g).

21 (e) INDUSTRY FEES.—

22 (1) IN GENERAL.—As part of the fishery capac-
 23 ity reduction plan, the Secretary shall establish an
 24 industry fee system under section 312(d) of the
 25 Magnuson-Stevens Fishery Conservation and Man-

agement Act (16 U.S.C. 1861a(d)) to generate revenue to repay the loan provided under subsection (d)(2).

(2) ALLOCATION OF FEES.—The Secretary shall allocate the fees payable under the industry fee system among—

(A) holders of Pacific Coast groundfish permits,

(B) holders of Washington, Oregon, and California pink shrimp fishing permits,

(C) holders of Washington, Oregon, and California salmon trolling permits, and

(D) holders of Washington, Oregon, and California Dungeness crab fishing permits,

so that the percentage of the revenue generated by the fee system from holders of each kind of permit will correspond to the percentage of the total amount paid under buyback program for that kind of permit.

(f) DUTIES OF SECRETARY OF TRANSPORTATION.—

(1) The Secretary of Transportation shall, upon notification and request by the Secretary, for each vessel identified in such notification and request—

1 (A) permanently revoke any fishery en-
2 dorsement issued to such vessel under section
3 12108 of title 46, United States Code; and

4 (B) refuse to grant the approval required
5 under section 9(c)(2) of the Shipping Act, 1916
6 (46 U.S.C. App. 808(c)(2)) for the placement
7 of such vessel under foreign registry or the op-
8 eration of such vessel under the authority of a
9 foreign country.

10 (2) The Secretary shall, after notice and oppor-
11 tunity for public comment, adopt final regulations
12 not later than 6 months after the date of enactment
13 of this Act, to prohibit any vessel for which a reduc-
14 tion permit is surrendered and revoked under the
15 fishing capacity reduction program required by this
16 section from engaging in fishing activities on the
17 high seas or under the jurisdiction of any foreign
18 country while operating under the United States
19 flag.

20 (g) REGULATORY FLEXIBILITY.—Any requirements
21 of the Paperwork Reduction Act, the Regulatory Flexi-
22 bility Act, or any Executive order that would, in the opin-
23 ion of the Secretary, prevent the Secretary from meeting
24 the deadlines set forth in this section shall not apply to
25 the fishing capacity reduction program or the promulga-

1 tion of regulations to implement such program required
 2 by this section.

3 **SEC. 5. COLLECTION OF INDUSTRY FEES.**

4 (a) IN GENERAL.—The Secretary shall enter into an
 5 agreement with the States of California, Oregon, and
 6 Washington to collect program fees paid under the system
 7 established under section 4(e).

8 (b) WITHHOLDING FEE FROM PURCHASE PRICE.—
 9 The fee for each vessel required to pay a program fee
 10 under that system shall be deducted by the first ex-vessel
 11 fish purchaser from the proceeds otherwise payable to the
 12 seller and forwarded to the appropriate State at the same
 13 time and in the same manner as other fees or taxes are
 14 forwarded to that State.

15 (c) STATE TO COLLECT AND FORWARD FEES.—
 16 Upon receipt of program fees forwarded by fish purchasers
 17 under subsection (b), the State shall forward the fees to
 18 the Secretary in the manner provided for in the agreement
 19 established under subsection (a).

20 (d) FISH-PROCESSING VESSELS TREATED AS PUR-
 21 CHASERS.—A vessel which—

- 22 (1) both harvests and processes fish; or
- 23 (2) receives fish from a harvesting vessel and
- 24 processes that fish on board,

1 shall be considered to be the first ex-vessel fish purchaser
 2 with respect to the fish processed on the vessel and shall
 3 forward the appropriate fees to the appropriate State at
 4 the same time and in the same manner as other fees or
 5 taxes are forwarded to that State.

6 **SEC. 6. AMENDMENT OF THE MERCHANT MARINE ACT, 1936,**
 7 **TO EXPAND PURPOSES OF CAPITAL CON-**
 8 **STRUCTION FUND.**

9 (a) IN GENERAL.—Section 607(a) of the Merchant
 10 Marine Act, 1936 (46 U.S.C. App. 1177(a)) is amended
 11 by striking “of this section.” and inserting “of this sec-
 12 tion. Any agreement entered into under this section may
 13 be modified for the purpose of encouraging the sustain-
 14 ability of the fisheries of the United States by making the
 15 termination and withdrawal of a capital construction fund
 16 a qualified withdrawal if done in exchange for the retire-
 17 ment of the related commercial fishing vessels and related
 18 commercial fishing permits.”.

19 (b) NEW QUALIFIED WITHDRAWALS.—

20 (1) AMENDMENTS TO MERCHANT MARINE ACT,
 21 1936.—Section 607(f)(1) of the Merchant Marine
 22 Act, 1936 (46 U.S.C. App. 1177(f)(1)) is
 23 amended—

24 (A) by striking “for:” and inserting
 25 “for—”;

1 (B) by striking “vessel” in subparagraph
2 (A) and inserting “vessel;”;

3 (C) by striking “vessel, or” in subpara-
4 graph (B) and inserting “vessel;”;

5 (D) by striking “vessel.” in subparagraph
6 (C) and inserting “vessel;”; and

7 (E) by inserting after subparagraph (C)
8 the following:

9 “(D) the payment of an industry fee au-
10 thorized by the fishing capacity reduction pro-
11 gram under section 312(b) of the Magnuson-
12 Stevens Fishery Conservation and Management
13 Act (16 U.S.C. 1861a(b));

14 “(E) in the case of any such person or
15 shareholder for whose benefit such fund was es-
16 tablished or any shareholder of such person, a
17 rollover contribution (within the meaning of
18 section 408(d)(3) of the Internal Revenue Code
19 of 1986) to such person’s or shareholder’s indi-
20 vidual retirement plan (as defined in section
21 7701(a)(37) of such Code); or

22 “(F) the payment to a person or corpora-
23 tion terminating a capital construction fund for
24 whose benefit the fund was established and re-

1 tiring related commercial fishing vessels and
2 permits.”; and

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

4 “(ii) The Secretary by regulation shall establish pro-
5 cedures to ensure that any person making a qualified with-
6 drawal authorized under subparagraph (F) retires the re-
7 lated commercial use of fishing vessels and commercial
8 fishery permits.”.

9 (2) AMENDMENTS TO INTERNAL REVENUE
10 CODE OF 1986.—Section 7518(e)(1) of the Internal
11 Revenue Code of 1986 (relating to purposes of quali-
12 fied withdrawals) is amended—

13 (A) by striking “for:” and inserting
14 “for—”;

15 (B) by striking “vessel, or” in subpara-
16 graph (B) and inserting “vessel;”;

17 (C) by striking “vessel.” in subparagraph
18 (C) and inserting “vessel;”;

19 (D) by inserting after subparagraph (C)
20 the following:

21 “(D) the payment of an industry fee au-
22 thorized by the fishing capacity reduction pro-
23 gram under section 312 of the Magnuson-Ste-
24 vens Fishery Conservation and Management
25 Act (16 U.S.C. 1861a);

1 “(E) in the case of any person or share-
 2 holder for whose benefit such fund was estab-
 3 lished or any shareholder of such person, a roll-
 4 over contribution (within the meaning of section
 5 408(d)(3)) to such person’s or shareholder’s in-
 6 dividual retirement plan (as defined in section
 7 7701(a)(37)); or

8 “(F) the payment to a person terminating
 9 a capital construction fund for whose benefit
 10 the fund was established and retiring related
 11 commercial fishing vessels and permits.”; and

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

13 “The Secretary by regulation shall establish proce-
 14 dures to ensure that any person making a qualified
 15 withdrawal authorized by subparagraph (F) retires
 16 the related commercial use of fishing vessels and
 17 commercial fishing permits.”.

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to withdrawals made after the date
 20 of enactment of this Act.

