

109TH CONGRESS
1ST SESSION

S. 1549

To improve the conservation and management of Pacific whiting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2005

Mr. SMITH introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To improve the conservation and management of Pacific whiting, 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 “Cooperative Hake Im-
5 provement and Conservation Act”.

6 **SEC. 2. FINDINGS, SENSE OF CONGRESS, PURPOSES, AND**
7 **POLICY.**

8 (a) FINDINGS.—Congress makes the following find-
9 ings:

1 (1) The United States has an obligation to en-
2 sure that, to the extent practicable in accordance
3 with applicable law, stocks of Pacific whiting are
4 conserved and managed in a sustainable manner so
5 as to prevent overfishing while providing economic
6 opportunities for the United States fishing industry,
7 including commercial fishermen and seafood proc-
8 essors, and coastal communities.

9 (2) The Pacific whiting fishery is uniquely suit-
10 ed to the establishment of a distinct market-based
11 program due to the relatively small and easily identi-
12 fiable numbers of fishermen and processors involved,
13 and to the existence of a management system that
14 clearly allocates harvest among discrete sectors of
15 the fishery.

16 (b) SENSE OF CONGRESS.—It is the sense of Con-
17 gress that—

18 (1) a regional program of market-based incen-
19 tives for management and conservation should be es-
20 tablished in order to meet the obligation described in
21 subsection (a)(1); and

22 (2) as actions taken to reduce excess capacity
23 in fisheries may result in adverse impacts on fisher-
24 men, processors, and local coastal communities, any

1 such program should be designed, to the extent
2 practicable, to avoid such impacts.

3 (c) PURPOSE.—The purpose of this Act is to facili-
4 tate the continued economic viability of the Pacific whiting
5 fishery for the benefit of the United States through the
6 establishment of a market-based cooperative system for
7 the harvesting and processing of Pacific whiting.

8 (d) POLICY.—It is the policy of the United States to
9 demonstrate the conservation and economic benefits of a
10 market-based cooperative system by using the shore-based
11 vessels and processors of the Pacific whiting in a fishery
12 management program without disrupting other sectors of
13 the whiting fishery or other fisheries.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) AGGREGATE CATCH.—The term “aggregate
17 catch” means the total amount of Pacific whiting
18 harvested and delivered on shore in California, Or-
19 egon, and Washington without further processing
20 during the benchmark period during a year from
21 1994 through 2004, excluding any such Pacific whit-
22 ing harvested pursuant to a treaty between the
23 United States and a treaty tribe.

24 (2) AGGREGATE LANDED CATCH.—The term
25 “aggregate landed catch” means the total amount of

1 Pacific whiting processed on shore in California, Or-
2 egon, and Washington during the benchmark period
3 during a year from 1999 through 2004.

4 (3) BENCHMARK PERIOD.—The term “bench-
5 mark period” means for a year, the period from
6 April 1 through September 30 of such year.

7 (4) CATCH.—The term “catch” means all fish-
8 ery removals from the offshore whiting resource, in-
9 cluding landings, discards, and bycatch in fisheries
10 other than the Pacific whiting fishery.

11 (5) COOPERATIVE SHARE.—The term “coopera-
12 tive share” means the percentage of allowable Pa-
13 cific whiting harvest assigned to each qualified fish-
14 erman or qualified processor based on the formula
15 established in section 4.

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

20 (7) MAGNUSON-STEVENS ACT.—The term
21 “Magnuson-Stevens Act” means the Magnuson-St-
22 evens Fishery Conservation and Management Act (16
23 U.S.C. 1801 et seq.).

24 (8) OFFSHORE WHITING RESOURCE.—The term
25 “offshore whiting resource” means the

1 transboundary stock of fish of the species *Merluccius*
2 *productus* that—

3 (A) is located in the offshore waters of the
4 United States and Canada; and

5 (B) does not include any fish of that spe-
6 cies located in Puget Sound or the Strait of
7 Georgia.

8 (9) ON-SHORE ALLOCATION.—The term “on-
9 shore allocation” means that amount of the United
10 States catch level required under a Plan to be deliv-
11 ered to processors located on shore in the States of
12 California, Oregon, or Washington.

13 (10) PACIFIC COAST GROUND FISH FISHERY
14 MANAGEMENT PLAN.—The term “Pacific Coast
15 Groundfish Fishery Management Plan” means the
16 Pacific Coast Groundfish Fishery Management Plan
17 and Environmental Impact Statement for the Cali-
18 fornia, Oregon, and Washington groundfish fishery
19 approved by the Secretary on January 4, 1982, and
20 all subsequent approved amendments to that plan.

21 (11) PACIFIC GROUND FISH.—The term “Pacific
22 groundfish” means all species of fish included in the
23 Pacific Coast Groundfish Fishery Management Plan.

24 (12) PACIFIC WHITING.—The term “Pacific
25 whiting” means that portion of the harvest of the

1 offshore whiting resource that is under the jurisdic-
2 tion of the United States.

3 (13) PLAN.—The term “Plan” means a fishery
4 management plan prepared by the Council and ap-
5 proved by the Secretary under the Magnuson-Ste-
6 vens Act.

7 (14) PERSON.—The term “person” means any
8 individual (whether or not a citizen or national of
9 the United States), any corporation, partnership, as-
10 sociation, or other entity (whether or not organized
11 or existing under the laws of any State).

12 (15) PROCESSING.—The term “processing”
13 means the preparation or packaging of Pacific whit-
14 ing to render it suitable for human consumption, re-
15 tail sale, industrial uses, or long-term storage by
16 cooking, filleting, freezing, conversion to fish protein
17 compounds, mincing, or heading and gutting.

18 (16) PROCESSOR.—The term “processor”
19 means a person that engages in processing of Pacific
20 whiting harvested as part of an on-shore allocation.

21 (17) QUALIFIED FISHERMAN.—The term
22 “qualified fisherman” means the current owner of a
23 trawl-endorsed Pacific groundfish limited entry per-
24 mit issued under regulations implementing the Pa-
25 cific Coast Groundfish Fishery Management Plan

1 which during any two years from 1994 through
2 2004 delivered not less than of 500 metric tons of
3 Pacific whiting during each such year to a processor
4 during the benchmark period.

5 (18) QUALIFIED PROCESSOR.—The term
6 “qualified processor” means—

7 (A) a processor that operated in any year
8 from 1999 through 2004, and processed at
9 least 1,000,000 pounds of whiting during such
10 year; or

11 (B) a successor in ownership of a processor
12 described in subparagraph (A).

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

15 (20) SHARE-HOLDER.—The term “share-hold-
16 er” means the current owner of cooperative shares.

17 (21) TREATY TRIBE.—The term “treaty tribe”
18 means any Indian tribe determined by the United
19 States courts to have rights to harvest Pacific whit-
20 ing within specified areas.

21 (22) UNITED STATES CATCH LEVEL.—The term
22 “United States catch level” means that portion of
23 the offshore whiting resource which may be har-
24 vested by persons subject to the jurisdiction of the
25 United States.

1 **SEC. 4. RATIONALIZATION OF THE PACIFIC WHITING FISH-**
2 **ERY.**

3 (a) IDENTIFICATION OF QUALIFIED PARTICI-
4 PANTS.—

5 (1) REQUIREMENT FOR PERMITS.—The Sec-
6 retary shall issue a permit to—

7 (A) any person who demonstrates by ap-
8 propriate records that such person is a qualified
9 fisherman; and

10 (B) any person who demonstrates by ap-
11 propriate records that such person is a qualified
12 processor.

13 (2) LIMITATIONS.—Permits issued under this
14 subsection will be clearly designated as qualified
15 fisherman or qualified processor permits, are not
16 interchangeable, and shall not confer ownership in
17 any stock of fish over which the United States exer-
18 cises sovereign jurisdiction.

19 (3) TRANSFER OF PERMITS.—Permits may be
20 transferred through sale, lease, barter, gift, inherit-
21 ance, or any other legal means. A permit which is
22 transferred may not be redesignated and may only
23 be used in accordance with this Act and any regula-
24 tions issued pursuant to this Act.

25 (4) FEE.—The Secretary may charge a fee to
26 issue a permit under this subsection which shall not

1 exceed the administrative costs incurred in issuing
2 the permit.

3 (5) ENDORSEMENT.—For the purposes of para-
4 graph (1)(A), the permit issued by the Secretary
5 shall be an appropriate permanent endorsement of a
6 Pacific groundfish trawl limited entry permit issued
7 under the Pacific Coast Groundfish Fishery Manage-
8 ment Plan.

9 (b) ALLOCATION OF RESOURCE.—Prior to March 1
10 of the calendar year following the issuance of final regula-
11 tions as required by section 6, the Secretary shall make
12 an initial allocation of cooperative shares as follows:

13 (1) Each qualified fisherman who currently
14 owns a Pacific groundfish trawl limited entry permit
15 issued under the Pacific Coast Groundfish Fishery
16 Management Plan that has been endorsed under
17 subsection (a) shall be assigned a percentage of co-
18 operative share using the following formula:

19 (A) For each permit, the amount of Pacific
20 whiting harvested by any vessel to which the
21 permit was assigned during the benchmark pe-
22 riod in each of the years from 1994 through
23 2004 shall be divided by the aggregate catch for
24 each of those years.

1 (B) The 9 highest percentages shall be
2 averaged and the result shall be considered the
3 permit's catch history.

4 (C) Each permit's catch history shall be di-
5 vided by the sum of all catch histories to deter-
6 mine the qualified fisherman's cooperative
7 share.

8 (2) Each qualified processor who has been
9 issued a permit under subsection (a) shall be as-
10 signed a percentage of cooperative share using the
11 following formula:

12 (A) For each qualified processor, the
13 amount of Pacific whiting purchased by that
14 processor during the benchmark period in each
15 of the years from 1999 through 2004 shall be
16 divided by the aggregate landed catch for each
17 of those years.

18 (B) The 4 highest percentages shall be
19 averaged and the result shall be considered the
20 qualified processor's processing history.

21 (C) Each qualified processor's processing
22 history shall be divided by the sum of all proc-
23 essing histories to determine the qualified proc-
24 essor's cooperative share.

1 (3) The percentages assigned to qualifying fish-
2 ermen shall be designated fishermen's cooperative
3 share and the percentages assigned to qualifying
4 processors shall be designated processors' coopera-
5 tive share. Except as provided in subsection (d), co-
6 operative shares may be transferred, in whole or in
7 part, through sale, lease, barter, gift, inheritance or
8 any other legal means but will retain their original
9 designation.

10 (c) COOPERATIVE HARVEST OF PACIFIC WHITING.—

11 (1) In each calendar year, the on-shore alloca-
12 tion shall be divided so that—

13 (A) an amount sufficient to account for the
14 incidental commercial or recreational catch of
15 Pacific whiting in fisheries other than the Pa-
16 cific whiting fishery, but not to exceed 1 per-
17 cent of the on-shore allocation, shall be avail-
18 able for harvest by any person legally eligible to
19 harvest Pacific whiting; and

20 (B) after subtracting the amounts de-
21 scribed in subparagraph (A), 50 percent of the
22 remainder shall be available for harvest using
23 fishermen's cooperative shares and 50 percent
24 of the remainder shall be available for harvest
25 using processors' cooperative shares.

1 (2) At any time during a calendar year, a hold-
 2 er of fisherman's cooperative shares may enter into
 3 one or more agreements with holders of processor's
 4 cooperative shares to use all or a portion of those
 5 processors' cooperative shares. No Pacific whiting
 6 may be harvested using fishermen's cooperative
 7 shares or processors' cooperative shares without a
 8 registered agreement. Such an agreement shall not
 9 be valid if—

10 (A) it does not require the use of an equal
 11 amount of fishermen's cooperative shares and
 12 processors' cooperative shares; or

13 (B) it is not registered with the Secretary
 14 prior to the time the cooperative shares covered
 15 by the agreement are used to harvest Pacific
 16 whiting.

17 (d) RESTRICTIONS ON TRANSFER.—Fishermen's co-
 18 operative shares may only be transferred to a person hold-
 19 ing a Pacific groundfish trawl limited entry permit issued
 20 under the Pacific Coast Groundfish Fishery Management
 21 Plan.

22 (e) CONTRIBUTION TO RESEARCH AND MANAGE-
 23 MENT.—

24 (1) FEE.—In addition to any fee which may be
 25 collected under subsection (a), the Secretary is au-

1 thorized and shall collect a fee equally from share-
 2 holders to recover the costs of carrying out this sec-
 3 tion (including costs associated with carrying out ac-
 4 tivities under section 5) and of conducting scientific
 5 research on the offshore whiting resource.

6 (2) DETERMINATION OF FEE.—

7 (A) IN GENERAL.—Each share-holder will
 8 be liable for a fee up to 3 percent of the ex-ves-
 9 sel value of the Pacific whiting that was har-
 10 vested in a calendar year using fishermen's co-
 11 operative shares owned by that share-holder
 12 and up to 3 percent of the ex-vessel value of the
 13 Pacific whiting that was harvested in a calendar
 14 year using processors' cooperative shares owned
 15 by that share-holder.

16 (B) SCHEDULE OF PAYMENT.—The fee re-
 17 ferred to in subparagraph (A) shall be payable
 18 not later than 30 days after the end of the cal-
 19 endar year during which the Pacific whiting on
 20 which the fee is imposed was harvested.

21 (3) AVAILABILITY OF FEES.—Fees collected
 22 under this subsection shall be available to the Sec-
 23 retary without fiscal year limitation and may only be
 24 used to carry out the Secretary's obligations under
 25 this Act, except as provided in paragraph (4).

1 (4) USE BY STATES.—Upon application from
 2 the States of Washington, Oregon, or California, the
 3 Secretary may transfer up to 33 percent of the fees
 4 collected under this subsection in any calendar year
 5 to 1 or more of such States to offset costs incurred
 6 by such States in the conservation and management
 7 of Pacific whiting.

8 **SEC. 5. CONSERVATION OF PACIFIC WHITING.**

9 (a) LIMITS ON INCIDENTAL CATCH.—

10 (1) RECOMMENDATION OF INCIDENTAL CATCH
 11 LIMITATIONS.—The Council may recommend to the
 12 Secretary appropriate amounts of any species of Pa-
 13 cific groundfish, other than Pacific whiting, that
 14 may be harvested incidentally to the harvest of Pa-
 15 cific whiting under this Act and any other Act.

16 (2) SCHEDULE FOR RECOMMENDATIONS.—The
 17 Council may make recommendations annually or in
 18 such other time increment that facilitates conserva-
 19 tion and management of the Pacific groundfish fish-
 20 ery.

21 (3) RECOMMENDATIONS.—

22 (A) BASIS FOR RECOMMENDATIONS.—

23 Such recommendations shall be—

24 (i) based on the best scientific infor-
 25 mation available;

1 (ii) reasonably calculated to promote
2 conservation;

3 (iii) fair and equitable to holders of
4 cooperative shares and others who harvest
5 Pacific groundfish; and

6 (iv) to the extent practicable, designed
7 to minimize the discard of Pacific whiting
8 and other species of Pacific groundfish.

9 (4) CONSIDERATIONS.—The Council shall, in
10 making such recommendations, consider the percent-
11 age of Pacific whiting available for harvest by hold-
12 ers of cooperative shares relative to the percentage
13 of Pacific whiting available for harvest by others.

14 (5) USE OF FUNDS.—The amounts rec-
15 ommended under paragraph (1) shall include specific
16 subamounts by species or species group which shall
17 be available only to holders of cooperative shares and
18 which may be transferred among holders of coopera-
19 tive shares who are harvesting Pacific whiting under
20 a valid agreement under section 4.

21 (6) PUBLICATION.—Not later than 45 days
22 after receiving the recommendations of the Council,
23 the Secretary shall publish a proposed rule which
24 applies the aggregate limits to the Pacific whiting

1 fishery and allow 30 days for public comment before
2 publishing a final rule.

3 (b) MONITORING.—The Secretary shall issue regula-
4 tions providing for the statistically reliable monitoring of
5 harvesting and processing of Pacific whiting to determine
6 compliance with this Act and to collect necessary biological
7 samples for the conservation and management of the Pa-
8 cific whiting fishery and the offshore whiting resource.

9 (c) ACTION BY THE COUNCIL.—

10 (1) RECOMMENDATIONS OF OTHER INCIDENTAL
11 CATCH LIMITATIONS.—The Council may recommend
12 amendments to the Pacific Coast Groundfish Fish-
13 ery Management Plan which provide for limits on in-
14 cidental catch of species other than Pacific whiting,
15 monitoring of the Pacific whiting fishery, and a sys-
16 tem allowing transfer of incidental catch amounts
17 among persons harvesting Pacific whiting under a
18 valid agreement under section 4. Amendments rec-
19 ommended under this paragraph shall meet the re-
20 quirements of subsection (a)(3).

21 (2) ADDITIONAL REGULATIONS.—Regulations
22 issued by the Secretary under subsections (a) or (b)
23 shall be superseded by any regulations issued by the
24 Secretary to implement Plan amendments rec-
25 ommended under paragraph (1).

1 (d) COMPLIANCE WITH ENVIRONMENTAL STAND-
2 ARDS.—Amendments to the Pacific Coast Groundfish
3 Fishery Management Plan and regulations implementing
4 those amendments which are prepared in accordance with
5 applicable provisions of the Magnuson-Stevens Act and
6 regulations implementing this Act are deemed to have
7 been prepared in compliance with the requirements of sec-
8 tion 102(2)(C) of the National Environmental Policy Act
9 of 1969 (42 U.S.C. 4332(2)(C)).

10 **SEC. 6. PROGRAM IMPLEMENTATION.**

11 (a) REQUIREMENT.—Not later than 6 months after
12 the date of enactment of this Act, the Secretary shall issue
13 final regulations to implement the program for Pacific
14 whiting conservation and management described in this
15 Act. In developing such regulations, the Secretary shall
16 allow the Council the opportunity to propose draft regula-
17 tions.

18 (b) PLAN AMENDMENT.—The Council may amend
19 the appropriate Plan to conform with this Act or regula-
20 tions issued under this Act. Failure of the Council to
21 amend a Plan shall not delay the obligations of the Sec-
22 retary under subsection (a).

1 **SEC. 7. ENFORCEMENT AND PENALTIES.**

2 (a) IN GENERAL.—It is unlawful for any person to
3 violate any provision of this Act or any regulation issued
4 under this Act.

5 (b) UNLAWFUL HARVEST.—It is unlawful for any
6 person to harvest Pacific whiting using cooperative shares
7 without having a valid agreement registered with the Sec-
8 retary under section 4(c)(2).

9 (c) PENALTY.—Any person who commits an action
10 that is unlawful under subsection (a) or (b) may be liable
11 for a civil penalty under subsection (a) of section 308 of
12 the Magnuson-Stevens Act (16 U.S.C. 1858) or permit
13 sanction imposed by subsection (g) of such section 308,
14 as if such person had committed an act prohibited by sec-
15 tion 307 of such Act (16 U.S.C. 1857).

16 (d) REVIEW.—Any person against whom a civil pen-
17 alty is assessed or against whom a permit sanction is im-
18 posed as described in subsection (c) may obtain review
19 thereof as described in subsection (b) of section 308 of
20 the Magnuson-Stevens Act.

21 (e) SHERMAN ACT.—No person may own or control
22 cooperative shares in an amount or manner that violates
23 the Sherman Act (15 U.S.C. 1 et seq.).

24 **SEC. 8. REPORTS TO CONGRESS.**

25 (a) REQUIREMENT.—Not later than 5 years after the
26 issuance of final regulations under section 6(a), and dur-

1 ing each 5-year period thereafter, the Secretary, after con-
2 sultation with the Council, shall submit to Congress a re-
3 port on the implementation of this Act.

4 (b) CONTENTS.—Such reports shall include—

5 (1) a description of the conservation and man-
6 agement actions carried out for the Pacific whiting
7 fishery, including the extent to which bycatch (in-
8 cluding discard) of Pacific groundfish has been mini-
9 mized;

10 (2) the number of active fishing vessels and
11 processing facilities remaining in such fishery;

12 (3) the economic impact of such fishery on local
13 coastal communities;

14 (4) whether the amounts specified in section
15 4(c)(1)(A) continue to be appropriate; and

16 (5) any recommendations of the Secretary for
17 changes to this Act, along with a justification for
18 such recommendations.

19 **SEC. 9. CONSTRUCTION.**

20 The provisions of this Act shall be deemed not to vio-
21 late section 804 of the Departments of Commerce, Justice,
22 and State, the Judiciary, and Related Agencies Appropria-
23 tions Act, 2004 (division B of Public Law 108–199; 118
24 Stat. 111) or any provision of the Magnuson-Stevens Act

1 and may not be construed to have any effect on the appli-
2 cation of such section 804.

3 **SEC. 10. AUTHORIZATIONS.**

4 There is authorized to be appropriated to the Sec-
5 retary \$750,000 for each of fiscal years 2006 and 2007
6 to carry out the provisions of this Act, of which \$250,000
7 may be made available to the Council each fiscal year.

○