

In the Senate of the United States,

December 20, 2010.

Resolved, That the bill from the House of Representatives (H.R. 81) entitled “An Act to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.”, do pass with the following

AMENDMENT:

Strike all after the enacting clause and insert the following:

1 SECTION 1. TABLE OF CONTENTS.

2 *The table of contents for this Act is as follows:*

Sec. 1. Table of contents.

TITLE I—SHARK CONSERVATION ACT OF 2010

Sec. 101. Short title.

Sec. 102. Amendment of the High Seas Driftnet Fishing Moratorium Protection Act.

Sec. 103. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.

Sec. 104. Offset of implementation cost.

TITLE II—INTERNATIONAL FISHERIES AGREEMENT

Sec. 201. Short title.

Sec. 202. International Fishery Agreement.

Sec. 203. Application with other laws.

Sec. 204. Effective date.

TITLE III—MISCELLANEOUS

Sec. 301. Technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act.

Sec. 302. Pacific Whiting Act of 2006.

Sec. 303. Replacement vessel.

1 ***TITLE I—SHARK CONSERVATION***
2 ***ACT OF 2010***

3 ***SEC. 101. SHORT TITLE.***

4 *This title may be cited as the “Shark Conservation Act*
5 *of 2010”.*

6 ***SEC. 102. AMENDMENT OF HIGH SEAS DRIFTNET FISHING***
7 ***MORATORIUM PROTECTION ACT.***

8 *(a) ACTIONS TO STRENGTHEN INTERNATIONAL FISH-*
9 *ERY MANAGEMENT ORGANIZATIONS.—Section 608 of the*
10 *High Seas Driftnet Fishing Moratorium Protection Act (16*
11 *U.S.C. 1826i) is amended—*

12 *(1) in paragraph (1)—*

13 *(A) in subparagraph (D), by striking “and”*
14 *at the end;*

15 *(B) in subparagraph (E), by inserting*
16 *“and” after the semicolon; and*

17 *(C) by adding at the end the following:*

18 *“(F) to adopt shark conservation measures,*
19 *including measures to prohibit removal of any of*
20 *the fins of a shark (including the tail) and dis-*
21 *carding the carcass of the shark at sea;”;*

22 *(2) in paragraph (2), by striking “and” at the*
23 *end;*

24 *(3) by redesignating paragraph (3) as para-*
25 *graph (4); and*

1 (4) *by inserting after paragraph (2) the fol-*
 2 *lowing:*

3 “(3) *seeking to enter into international agree-*
 4 *ments that require measures for the conservation of*
 5 *sharks, including measures to prohibit removal of any*
 6 *of the fins of a shark (including the tail) and dis-*
 7 *carding the carcass of the shark at sea, that are com-*
 8 *parable to those of the United States, taking into ac-*
 9 *count different conditions; and”.*

10 (b) *ILLEGAL, UNREPORTED, OR UNREGULATED FISH-*
 11 *ING.—Subparagraph (A) of section 609(e)(3) of the High*
 12 *Seas Driftnet Fishing Moratorium Protection Act (16*
 13 *U.S.C. 1826j(e)(3)) is amended—*

14 (1) *by striking the “and” before “bycatch reduc-*
 15 *tion requirements”; and*

16 (2) *by striking the semicolon at the end and in-*
 17 *serting “, and shark conservation measures;”.*

18 (c) *EQUIVALENT CONSERVATION MEASURES.—*

19 (1) *IDENTIFICATION.—Subsection (a) of section*
 20 *610 of the High Seas Driftnet Fishing Moratorium*
 21 *Protection Act (16 U.S.C. 1826k) is amended—*

22 (A) *in the matter preceding paragraph (1),*
 23 *by striking “607, a nation if—” and inserting*
 24 *“607—”;*

25 (B) *in paragraph (1)—*

1 (i) by redesignating subparagraphs (A)
2 and (B) as clauses (i) and (ii), respectively;
3 and

4 (ii) by moving clauses (i) and (ii) (as
5 so redesignated) 2 ems to the right;

6 (C) by redesignating paragraphs (1)
7 through (3) as subparagraphs (A) through (C),
8 respectively;

9 (D) by moving subparagraphs (A) through
10 (C) (as so redesignated) 2 ems to the right;

11 (E) by inserting before subparagraph (A)
12 (as so redesignated) the following:

13 “(1) a nation if—”;

14 (F) in subparagraph (C) (as so redesign-
15 ated) by striking the period at the end and in-
16 serting “; and”; and

17 (G) by adding at the end the following:

18 “(2) a nation if—

19 “(A) fishing vessels of that nation are en-
20 gaged, or have been engaged during the preceding
21 calendar year, in fishing activities or practices
22 in waters beyond any national jurisdiction that
23 target or incidentally catch sharks; and

24 “(B) the nation has not adopted a regu-
25 latory program to provide for the conservation of

1 *sharks, including measures to prohibit removal*
2 *of any of the fins of a shark (including the tail)*
3 *and discarding the carcass of the shark at sea,*
4 *that is comparable to that of the United States,*
5 *taking into account different conditions.”.*

6 (2) *INITIAL IDENTIFICATIONS.—The Secretary of*
7 *Commerce shall begin making identifications under*
8 *paragraph (2) of section 610(a) of the High Seas*
9 *Driftnet Fishing Moratorium Protection Act (16*
10 *U.S.C. 1826k(a)), as added by paragraph (1)(G), not*
11 *later than 1 year after the date of the enactment of*
12 *this Act.*

13 **SEC. 103. AMENDMENT OF MAGNUSON-STEVEN'S FISHERY**
14 **CONSERVATION AND MANAGEMENT ACT.**

15 (a) *IN GENERAL.—Paragraph (1) of section 307 of*
16 *Magnuson-Stevens Fishery Conservation and Management*
17 *Act (16 U.S.C. 1857) is amended—*

18 (1) *by amending subparagraph (P) to read as*
19 *follows:*

20 *“(P)(i) to remove any of the fins of a shark*
21 *(including the tail) at sea;*

22 *“(ii) to have custody, control, or possession*
23 *of any such fin aboard a fishing vessel unless it*
24 *is naturally attached to the corresponding car-*
25 *cass;*

“(iii) to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

“(iv) to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached;”; and

(2) by striking the matter following subparagraph (R) and inserting the following:

“For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term ‘naturally attached’, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.”.

(b) SAVINGS CLAUSE.—

1 “(1) *IN GENERAL.*—*The amendments made by*
 2 *subsection (a) do not apply to an individual engaged*
 3 *in commercial fishing for smooth dogfish (*Mustelus**
 4 *canis) in that area of the waters of the United States*
 5 *located shoreward of a line drawn in such a manner*
 6 *that each point on it is 50 nautical miles from the*
 7 *baseline of a State from which the territorial sea is*
 8 *measured, if the individual holds a valid State com-*
 9 *mercial fishing license, unless the total weight of*
 10 *smooth dogfish fins landed or found on board a vessel*
 11 *to which this subsection applies exceeds 12 percent of*
 12 *the total weight of smooth dogfish carcasses landed or*
 13 *found on board.*

14 (2) *DEFINITIONS.*—*In this subsection:*

15 (A) *COMMERCIAL FISHING.*—*The term*
 16 *“commercial fishing” has the meaning given that*
 17 *term in section 3 of the Magnuson-Stevens Fish-*
 18 *ery Conservation and Management Act (16*
 19 *U.S.C. 1802).*

20 (B) *STATE.*—*The term “State” has the*
 21 *meaning given that term in section 803 of Public*
 22 *Law 103–206 (16 U.S.C. 5102).*

23 **SEC. 104. OFFSET OF IMPLEMENTATION COST.**

24 *Section 308(a) of the Interjurisdictional Fisheries Act*
 25 *of 1986 (16 U.S.C. 4107(a)) is amended by striking “2012.”*

1 *and inserting “2010, and \$2,500,000 for each of fiscal years*
 2 *2011 and 2012.”.*

3 ***TITLE II—INTERNATIONAL*** 4 ***FISHERIES AGREEMENT***

5 ***SEC. 201. SHORT TITLE.***

6 *This title may be cited as the “International Fisheries*
 7 *Agreement Clarification Act”.*

8 ***SEC. 202. INTERNATIONAL FISHERY AGREEMENT.***

9 *Consistent with the intent of provisions of the Magnu-*
 10 *son-Stevens Fishery and Conservation and Management*
 11 *Act relating to international agreements, the Secretary of*
 12 *Commerce and the New England Fishery Management*
 13 *Council may, for the purpose of rebuilding those portions*
 14 *of fish stocks covered by the United States-Canada Trans-*
 15 *boundary Resource Sharing Understanding on the date of*
 16 *enactment of this Act—*

17 *(1) take into account the Understanding and de-*
 18 *cisions made under that Understanding in the appli-*
 19 *cation of section 304(e)(4)(A)(i) of the Act (16 U.S.C.*
 20 *1854(e)(4)(A)(i));*

21 *(2) consider decisions made under that Under-*
 22 *standing as “management measures under an inter-*
 23 *national agreement” that “dictate otherwise” for pur-*
 24 *poses of section 304(e)(4)(A)(ii) of the Act (16 U.S.C.*
 25 *1854(e)(4)(A)(ii); and*

(3) *establish catch levels for those portions of fish stocks within their respective geographic areas covered by the Understanding on the date of enactment of this Act that exceed the catch levels otherwise required under the Northeast Multispecies Fishery Management Plan if—*

(A) overfishing is ended immediately;

(B) the fishing mortality level ensures rebuilding within a time period for rebuilding specified taking into account the Understanding pursuant to paragraphs (1) and (2) of this subsection; and

(C) such catch levels are consistent with that Understanding.

SEC. 203. APPLICATION WITH OTHER LAWS.

Nothing in this title shall be construed to amend the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) or to limit or otherwise alter the authority of the Secretary of Commerce under that Act concerning other species.

SEC. 204. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), section 202 shall apply with respect to fishing years beginning after April 30, 2010.

1 (b) *SPECIAL RULE.*—Section 202(3)(B) shall only
 2 apply with respect to fishing years beginning after April
 3 30, 2012.

4 ***TITLE III—MISCELLANEOUS***

5 ***SEC. 301. TECHNICAL CORRECTIONS TO THE WESTERN AND*** 6 ***CENTRAL PACIFIC FISHERIES CONVENTION*** 7 ***IMPLEMENTATION ACT.***

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

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

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

17 “(1) *EMPLOYMENT STATUS.*—Individuals serving
 18 as such Commissioners, other than officers or employ-
 19 ees of the United States Government, shall not be con-
 20 sidered Federal employees except for the purposes of
 21 injury compensation or tort claims liability as pro-
 22 vided in chapter 81 of title 5, United States Code,
 23 and chapter 171 of title 28, United States Code.”; and

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

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

7 **SEC. 302. PACIFIC WHITING ACT OF 2006.**

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

12 (b) *EMPLOYMENT STATUS*.—Section 609(a) of the *Pa-*
13 *cific Whiting Act of 2006* (16 U.S.C. 7008(a)) is amended
14 to read as follows:

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

23 **SEC. 303. REPLACEMENT VESSEL.**

24 Notwithstanding any other provision of law, the Sec-
25 retary of Commerce may promulgate regulations that allow

1 *for the replacement or rebuilding of a vessel qualified under*
2 *subsections (a)(7) and (g)(1)(A) of section 219 of the De-*
3 *partment of Commerce and Related Agencies Appropria-*
4 *tions Act, 2005 (Public Law 108–447; 188 Stat. 886–891).*

Attest:

Secretary.

11TH CONGRESS
2^D Session

H. R. 81

AMENDMENT