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111TH CONGRESS }
2d Session }

SENATE

{ REPORT
111-297 }

TECHNICAL CORRECTIONS TO THE WEST-
ERN AND CENTRAL PACIFIC FISHERIES
CONVENTION IMPLEMENTATION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2871



SEPTEMBER 20, 2010.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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TECHNICAL CORRECTIONS TO THE WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT

SEPTEMBER 20, 2010.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2871]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2871) to make technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 2871 is to make technical corrections to the implementing statutes for the Western and Central Pacific Fisheries Commission and the Pacific Hake/Whiting Agreement.

BACKGROUND AND NEEDS

The Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) implements the Convention on the Conservation and Management of Highly Migratory Stocks in the Western and Central Pacific Ocean (Convention), adopted on September 5, 2000, in Honolulu, Hawaii. The Convention, which the United States signed in 2000, became effective on June 19, 2004, prior to U.S. ratification. The President transmitted the Convention to the Senate on May 16, 2005, and the Senate provided its advice and consent on November 17, 2005. The objective of the Convention is to ensure the long-term conservation and sustainable use of tuna and other highly migratory stocks in the West-

ern and Central Pacific Ocean. Additionally, the Convention is intended to help to reduce the impact of fishing for such stocks 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 by-catch of non-target species.

The WCPFC Implementation Act calls for the appointment of United States Commissioners and the establishment of a permanent Advisory Committee to be composed of individuals with experience in or knowledge of the fisheries covered by the Convention. However, the statute also applies Federal conflict of interest laws to both the Commissioners and the members of the Advisory Committee. Industry members serving as Commissioners or Advisory Committee members, chosen based on their direct knowledge and experience in Western and Central Pacific Fisheries Commission matters, are considered to have a conflict of interest as defined by Federal conflict of interest laws, and therefore, cannot provide the expertise for which they were appointed without violating Federal conflict of interest laws.

A separate statute, the Pacific Whiting Act, implements the Agreement between the Government of the United States and the Government of Canada on Pacific Hake/Whiting. It was negotiated in 2003 to end the disagreement between the United States and Canada over conservation and management of Pacific whiting. It specifies joint committees and management protocols to ensure the long-term health of the whiting stock and sustainability of these critically important U.S. fisheries.

The Pacific Whiting Act calls for the appointment of a Joint Management Committee, Joint Scientific Review Group, Joint Technical Committee, and Advisory Panel. The Joint Management Committee and Advisory Panel are to include individuals from the commercial sector of the whiting fishing industry. However, the statute also applies Federal conflict of interest laws to the members of the Advisory Panel and Joint Management Committee. As a result, industry members chosen to serve in either of these capacities will, based on their direct knowledge and experience in Pacific Whiting matters, be disqualified from serving. In other words, they cannot serve on the bodies and provide the expertise for which they were appointed without violating Federal conflict of interest laws.

Most implementing legislation for international fish commissions does not include language that treats Commissioners and Advisory Committee members as Federal employees except, in certain cases, for the purposes of injury compensations and tort claims. The WCPFC Implementation Act and Pacific Whiting Act, in contrast, expanded the Federal employee status of Commissioners and Joint Committee and Advisory Panel members to include: (1) requirements concerning ethics, conflicts of interest, and corruption; and (2) other criminal or civil statutes or regulations governing the conduct of Federal employees. This expanded language is unlike other implementing legislation for international commissions and has the unintended consequence of precluding some of the individuals who should be appointed as Commissioners or advisory panel members because they could potentially benefit economically from carrying out the functions for which they were appointed. In other words, the industry committee representatives and Advisory Panel mem-

bers required under the two Acts cannot serve because they are part of the industry.

To fulfill the congressional intent for the appointment of industry members, amendments to the two Acts are necessary to remove the expansion language. This will make the WCPFC Implementation Act and Pacific Whiting Act consistent with other international fishery commissions to allow for full participation of members. The bill would strike the conflict of interest language included in the WCPFC Implementation Act and the Pacific Whiting Act. Until there is a resolution of the current conflict of interest issue for the members of the Advisory Panel and joint committees, the United States cannot fully implement the Acts.

SUMMARY OF PROVISIONS

S. 2871 would amend section 503 of the WCPFC Implementation Act to consider non-Federal individuals serving as Commissioners on the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean or advisory committee members to be Federal employees only for purposes of injury compensation or tort claims liability.

The bill would also amend the Pacific Whiting Act of 2006 to: (1) reduce to two the number of individuals appointed by the Secretary of Commerce to serve as scientific experts on the joint technical committee; and (2) consider non-Federal individuals serving on the joint management committee, the scientific review group, the joint technical committee, or the advisory panel, to be Federal employees only for purposes of injury compensation or tort claims liability.

LEGISLATIVE HISTORY

S. 2871 was introduced by Senator Inouye on December 10, 2009, and was cosponsored by Senators Cantwell, Wyden, and Murray. The bill was referred to the Committee on Commerce, Science, and Transportation. On March 24, 2010, the Committee met in open executive session and, by voice vote, ordered S. 2871 reported without amendment.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

APRIL 6, 2010.

Hon. JOHN D. ROCKEFELLER IV,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2871, a bill to make technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2871—A bill to make technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act, and for other purposes

S. 2871 would amend existing laws related to certain international fishing agreements. Based on information from the National Oceanic and Atmospheric Administration (NOAA), CBO estimates that implementing the legislation would have no significant cost. Enacting S. 2871 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

Under current law, individuals appointed to serve on commissions and advisory bodies under certain international fishing agreements are subject to various eligibility requirements. Under the bill, some of those eligibility requirements would be changed. Because those changes would not affect the number of individuals appointed to serve on those bodies, CBO estimates that implementing this provision would not affect the federal budget.

S. 2871 also would reduce the number of scientific experts appointed to the joint technical committee under the Pacific Whiting Act of 2006. Although members of that committee do not receive compensation, implementing S. 2871 could reduce the cost of reimbursable expenses paid to committee members. Based on information from NOAA, CBO estimates that any savings from a reduction in those expenses would be negligible.

S. 2871 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2871 would not authorize any new regulations, and therefore would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

S. 2871 is not expected to have an adverse impact on the nation's economy.

PRIVACY

The reported bill would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

S. 2871 would not increase paperwork requirements for the private sector.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Technical Corrections to the Western and Central Pacific Fisheries Convention and Implementation Act.

This section would amend section 503 of the WCPFC Implementation Act (16 U.S.C. 6902) to clarify that the Commissioners appointed to the Western and Central Pacific Fisheries Management Commission should include the chairman or a member of the Western Pacific Fishery Management Council and the chairman or a member of the Pacific Fishery Management Council. This section would clarify the employment status of Commissioners and remove conflict of interest language that prevents U.S. industry members from participating in the substantive discussions on international management of fisheries in this area.

Section 2. Pacific Whiting Act of 2006.

This section would amend section 605(a)(1) of the Pacific Whiting Act of 2006 (16 U.S.C. 7004(a)(1)) to reduce to two the number of individuals appointed by the Secretary of Commerce to serve as scientific experts on the joint technical committee. This section would also amend section 609(a) of the Act (16 U.S.C. 7008(a)) to clarify the employment status of committee and advisory panel members and remove conflict of interest language that prevents U.S. industry members from participating in the substantive discussions on international management of fisheries in this area.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT

[16 U.S.C. 6902]

SEC. 503. APPOINTMENT OF UNITED STATES COMMISSIONERS.

(a) **IN GENERAL.**—The United States shall be represented on the Commission by 5 United States Commissioners. The President shall appoint individuals to serve on the Commission at the pleasure of the President. In making the appointments, the President shall select Commissioners from among individuals who are knowledgeable or experienced concerning highly migratory fish stocks in the Western and Central Pacific Ocean, one of whom shall be an officer or employee of the Department of Commerce, and one of whom shall be the chairman or a member of the Western Pacific Fishery **[Management Council and]** *Management Council*, and one of whom shall be the chairman or member of the Pacific Fishery Management Council. The Commissioners shall be entitled to adopt such rules of procedures as they find necessary and to select a chairman from among members who are officers or employees of the United States Government.

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

(c) **ADMINISTRATIVE MATTERS.**—

[(1) EMPLOYMENT STATUS.—Individuals serving as such Commissioners, other than officers or employees of the United States Government, shall be considered to be Federal employees while performing such service, only for purposes of—

[(A) injury compensation under chapter 81 of title 5, United States Code;

[(B) requirements concerning ethics, conflicts of interest, and corruption as provided under title 18, United States Code; and

[(C) any other criminal or civil statute or regulation governing the conduct of Federal employees.]

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

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

(3) *TRAVEL EXPENSES.*—

(A) The Secretary of State shall pay the necessary travel expenses of United States Commissioners and Alternate United States Commissioners in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(B) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

(d) *ADVISORY COMMITTEES.*—

(1) *ESTABLISHMENT OF PERMANENT ADVISORY COMMITTEE.*—

(A) *MEMBERSHIP.*—There is established an advisory committee which shall be composed of—

(i) not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce in consultation with the United States Commissioners, who shall select such individuals from the various groups concerned with the fisheries covered by the WCPFC Convention, providing, to the maximum extent practicable, an equitable balance among such groups;

(ii) the chair of the Western Pacific Fishery Management Council's Advisory Committee or the chair's designee; and

(iii) officials of the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees).

(B) *TERMS AND PRIVILEGES.*—Each member of the advisory committee appointed under subparagraph (A) shall serve for a term of 2 years and shall be eligible for reappointment. The advisory committee shall be invited to attend all non-executive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

(C) *PROCEDURES.*—The advisory committee established by subparagraph (A) shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fish-

ery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the WCPFC Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures. A majority of the members of the advisory committee shall constitute a quorum. Meetings of the advisory committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in a timely fashion, and the advisory committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(D) PROVISION OF INFORMATION.—The Secretary and the Secretary of State shall furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

(2) ADMINISTRATIVE MATTERS.—

(A) SUPPORT SERVICES.—The Secretary shall provide to advisory committees in a timely manner such administrative and technical support services as are necessary for their effective functioning.

(B) COMPENSATION; STATUS; EXPENSES.—Individuals appointed to serve as a member of an advisory committee—

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

[(ii) shall be considered Federal employees while performing service as members of an advisory committee only for purposes of—

[(I) injury compensation under chapter 81 of title 5, United States Code;

[(II) requirements concerning ethics, conflicts-of-interest, and corruption, as provided by title 18, United States Code; and

[(III) any other criminal or civil statute or regulation governing the conduct of Federal employees in their capacity as Federal employees.]

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

* * * * *

PACIFIC WHITING ACT OF 2006

SEC. 605. UNITED STATES REPRESENTATION ON JOINT TECHNICAL COMMITTEE.

[16 U.S.C. 7004]

(a) SCIENTIFIC EXPERTS.—

(1) **IN GENERAL.**—The Secretary, in consultation with the Secretary of State, shall appoint **[at least 6 but not more than 12]** *no more than 2* individuals to serve as scientific experts on the joint technical committee, at least 1 of whom shall be an official of the National Oceanic and Atmospheric Administration.

(2) **TERM OF OFFICE.**—An individual appointed under paragraph (1) shall be appointed for a term of not to exceed 4 years, but shall be eligible for reappointment. An individual appointed to fill a vacancy occurring prior to the expiration of the term of office of that individual's predecessor shall be appointed for the remainder of that term.

(b) **INDEPENDENT MEMBER.**—In addition to individuals appointed under subsection (a), the Secretary, jointly with the Government of Canada, shall appoint 1 independent member to the joint technical committee selected from a list of names provided by the advisory panel.

SEC. 609. ADMINISTRATIVE MATTERS.

[16 U.S.C. 7008]

[(a) EMPLOYMENT STATUS.—Individuals appointed under section 603, 604, 605, or 606 of this title who are serving as such Commissioners, other than officers or employees of the United States Government, shall be considered to be Federal employees while performing such service, only for purposes of—

[(1) injury compensation under chapter 81 of title 5, United States Code;

[(2) requirements concerning ethics, conflicts of interest, and corruption as provided under title 18, United States Code; and

[(3) any other criminal or civil statute or regulation governing the conduct of Federal employees.]

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