Section-by-Section Analysis

Following is a section-by-section analysis of this implementing legislation —

> to implement the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, to implement the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, and for other purposes.

The short title for this legislation is the "North Pacific Fisheries Resources Convention and South Pacific Fishery Resources Convention Implementation Act."

Title I. IMPLEMENTATION OF THE CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGH SEAS FISHERIES RESOURCES IN THE NORTH PACIFIC OCEAN

Section 101. Short Title.

Section 101 designates Title I of the Act as the "North Pacific Fisheries Resources Convention Implementation Act."

Section 102. Definitions.

Section 102 defines terms used in the bill, including terms that are reflected in the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, such as:

- "Convention Area," is defined as the waters of the high seas area of the North Pacific Ocean, excluding the high seas areas of the Bering Sea and other high seas areas that are surrounded by the Exclusive Economic Zone of a single State, bounded to the South by a continuous line beginning at the seaward limit of waters under the jurisdiction of the United States of America around the Commonwealth of the Northern Mariana Islands at twenty (20) degrees North latitude, then proceeding East and connecting the following coordinates:
  20°00'00"N, 180°00'00"E/W;
  10°00'00"N, 180°00'00"E/W;
  10°00'00"N, 140°00'00"W;
  20°00'00"N, 140°00'00"W; and
  Thence East to the seaward limit of waters under the fisheries jurisdiction of Mexico.

- "Fisheries Resources," is defined as all fish, mollusks, crustaceans and other marine species, as well as any products thereof, caught by fishing vessels within the Convention Area, excluding:

(a) sedentary species insofar as they are subject to the sovereign rights of coastal States consistent with Article 77, paragraph 4 of the United Nations Convention on the Law of the Sea of 10 December 1982 and indicator species of vulnerable marine ecosystems as listed in, or adopted pursuant to, Article 13, paragraph 5 of the Convention;
(b) catadromous species;
(c) marine mammals, marine reptiles and seabirds; and
(d) other marine species already covered by pre-existing international fisheries management instruments within the area of competence of such instruments.

- "Fishing Activities," is defined as
  (a) the actual or attempted searching for, catching, taking or harvesting of fisheries resources;
  (b) engaging in any activity that can reasonably be expected to result in locating, catching, taking or harvesting of these resources for any purpose;
  (c) the processing of these resources at sea and the transshipping of these resources at sea or in port; and
  (d) any operation at sea in direct support of, or in preparation for, any activity described in subparagraphs (a) to (c) above, except for any operation related to emergencies involving the health and safety of crew members or the safety of fishing vessels.

- "Fishing Vessel," is defined as any vessel used or intended for use for the purpose of engaging in fishing activities, including fish processing vessels, support ships, carrier vessels and any other vessel directly engaged in such fishing activities.

- "Person," is defined as any individual (whether or not a citizen or national of the United States); any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State); and any Federal, State, local, or foreign government or any entity of any such government.

- "Secretary," is defined as the Secretary of Commerce.

Section 103. Appointment or Designation of United States Commissioners.

Subsection (a) provides one United States Commissioner shall be appointed by the President and shall be an employee of the Department of Commerce.

Subsection (b) authorizes the Secretary of State to also designate an Alternate United States Commissioner from time to time in consultation with the Secretary of Commerce (Secretary) that shall also be an employee of the Department of Commerce. In the absence of the Commissioner the Alternate Commissioner may exercise all powers and duties of the Commissioner.

Subsection (c) states that the Commissioner and Alternate Commissioner shall not receive additional compensation for their services.

Section 104. Authority and Responsibility of the Secretary of State.

Subsection (a) authorizes the Secretary of State to receive and transmit all reports, requests, recommendations, proposals, decisions, and other communications of and to the Commission.

Subsection (b) authorizes the Secretary of State to consult with the Secretary and to act upon, or refer to other appropriate authority the communications outlined in subsection (a).

Subsection (c) authorizes the Secretary of State, with the concurrence of the Secretary, to object to the decisions of the Commission.

Subsection (d) authorizes the Secretary of State to request, and use, among other things, the services, personnel, and equipment of other Federal agencies, foreign governments or agencies, or international intergovernmental organizations in the conduct of scientific, research and other programs under this title.

Section 105. Responsibility of the Secretary and Rulemaking Authority.

Subsection (a) authorizes the Secretary to administer the North Pacific Fisheries Resources Convention Implementation Act and associated regulations, and issue fishing permits to U.S. vessels to fish in the Convention Area.

Subsection (b) authorizes the Secretary, in consultation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating, to promulgate regulations necessary to carry out international obligations of the United States which may be applicable to all vessels and persons subject to the jurisdiction of the United States, including vessels flagged to the United States wherever they may be operating.

Subsection (c) states that regulations promulgated by the Secretary are subject to judicial review. The language in Subsection (c) is similar to Magnuson-Stevens Act section 305(f).

Section 106. Enforcement.

Subsection (a) states that enforcement of this title will be carried out by the Secretary and the Secretary of the Department in which the Coast Guard is operating.

Subsection (b) incorporates sections 308 to 311 of the Magnuson-Stevens Act by reference and states that the Secretary may enforce this title in the same manner, by the same means, and with the same jurisdiction, powers and duties as though those provisions were incorporated into this title. The subsection further provides that any person who violates this title is subject to the same

penalties, and entitled to the same privileges and immunities as those provided in the Magnuson-Stevens Act.

Subsection (c) establishes the jurisdiction of the U.S. district courts over any actions arising under this title. This subsection also establishes the appropriate U.S district court for areas of the United States in the Pacific Ocean, addressing a long-standing problem in vessel forfeiture cases where seized vessels have had to be escorted longer distances than would otherwise be necessary due to the venue provisions in the Magnuson-Stevens Fishery Conservation and Management Act. This has created an unnecessary increased burden on the resources of the U.S. Coast Guard and the National Marine Fisheries Service's Office of Law Enforcement. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law.

Section 107. Prohibited Acts.

Section 107 lists the acts prohibited by this title, which include:

- violation of any provision of this title or any regulation promulgated or permit issued thereunder;
- fishing without a valid permit, or during the period of suspension or revocation of an applicable permit;
- refusing to permit an authorized officer to board, search, or inspect a vessel, conveyance, or shoreside facility for purposes of conducting any search, investigation, or inspection in connection with enforcement of this title;
- to assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search, investigation, or inspection described above;
- resisting arrest;
- to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fishery resource taken or retained in violation of this title;
- interference with the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this title;
- submission to the Secretary of false information regarding any matter that the Secretary is considering in the course of carrying out this title;
- to assault, resist, oppose, impede intimidate, sexually harass, bribe or interfere with, observers, or data collectors carrying out responsibilities under this title;
- to ship, transport, purchase, sell, offer for sale, import, export, transport or have custody, possession, or control of any fishery resource taken or retained in violation of a binding conservation measure adopted pursuant to an international agreement or organization to which the United States is a party;
- failure to make, keep, or furnish any catch returns, statistical records or other reports, as required;

- failure to stop a vessel upon being hailed and instructed to stop by a duly authorized official of the United States;
- to import, in violation of any regulation promulgated under this title, any fishery resource in any form of those species subject of regulation pursuant to a decision of the Commission;
- creation or submission of false records, accounts, or labels for, or any false identification of, any fishery resource which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce; or
- to refuse to accept boarding and inspection by a duly authorized inspector pursuant to procedures adopted by the Commission for the boarding and inspection of fishing vessels in the Convention Area.

Section 108. Cooperation in Carrying Out the Convention.

Section 108 describes various ways in which cooperation in carrying out the Convention may be accomplished. Subsection (a) authorizes the Secretary to cooperate with agencies of the United States Government, any public or private institutions or organizations within the United States or abroad, and, through the Secretary of State, the duly authorized officials of the government of any party to the Convention.

Subsection (b) states all federal agencies are authorized, upon the request of the Secretary, to cooperate in the conduct of scientific and other programs and to furnish facilities and personnel for the purpose of assisting the Commission.

Subsection (c) states that nothing prevents the Secretary or the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation or discharging any other duties prescribed by the Convention.

Section 109. Collection of Information.

Section 109 authorizes the Secretary and the Secretary of State to collect, utilize, or disclose information as may be necessary to implement the Convention, including information pertaining to fishing activities that occurred prior to the adoption of this title.

Section 110. Authorization of Appropriations.

Section 110 authorizes appropriations to the Secretary and the Secretary of State to carry out this Act. The estimated annual cost to NOAA of implementing this legislation is $174,000.

Subsection (b) authorizes the Secretary and the Secretary of State to provide funds for appropriate international cooperation and assistance to developing nations and international organizations of which such nations are members to assist those nations in meeting their obligations under the Convention and to transfer funds, subject to the limits of available

appropriations and consistent with other applicable law, to any foreign government, international, non-governmental, or intergovernmental organization for purposes related to carrying out U.S. international responsibilities under the Convention. This shall include the transfer of funds to the Commission.

Subsection (c) authorizes the Secretary, the Secretary of State and the Secretary of the Department in which the Coast Guard is operating to use the land, services, equipment (including aircraft and vessels), personnel and facilities of any department, agency or instrumentality of the United States, or any State, local government, Indian tribal government, territory or possession, or of any political subdivision thereof, or any foreign government or agency thereof or international intergovernmental organization for purposes related to carrying out the responsibilities of this title or other statutes administered by the Secretary that further the objectives of the North Pacific Fisheries Resources Convention.

Title II. IMPLEMENTATION OF THE CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGH SEAS FISHERY RESOURCES IN THE SOUTH PACIFIC OCEAN

Section 201. Short Title.

Section 201 designates Title II of the Act as the "South Pacific Fishery Resources Convention Implementation Act."

Section 202. Definitions.

Section 202 defines terms used in the bill, including terms that are reflected in the Convention on the Conservation and Management of High Seas Fisheries Resources in the South Pacific Ocean, such as:

- "Convention Area," is defined as the waters of the Pacific Ocean beyond areas of national jurisdiction in accordance with international law, as recognized by the United States:

(A) east of a line extending south along the 120° meridian of east longitude from the outer limit of the national jurisdiction of the Commonwealth of Australia off the south coast of Western Australia to the intersection with the 55° parallel of south latitude; then due east along the 55° parallel of south latitude to the intersection with the 150° meridian of east longitude; then due south along the 150° meridian of east longitude to the intersection with the 60° parallel of south latitude;

(B) north of a line extending east along the 60° parallel of south latitude from the 150° meridian of east longitude to the intersection with the 67° 16' meridian of west longitude;

(C) west of a line extending north along the 67° 16' meridian of west longitude from the 60° parallel of south latitude to its intersection with the outer limit of the national jurisdiction of the Republic of Chile then along the outer limits of the national jurisdictions of the Republic of Chile, the Republic of Peru, the Republic of Ecuador and the Republic of Colombia to the intersection with the 2° parallel of north latitude;

(D) south of a line extending west along the 2° parallel of north latitude (but not including the national jurisdiction of the Republic of Ecuador (Galapagos Islands)) to the intersection with the 150° meridian of west longitude; then due north along the 150° meridian of west longitude to its intersection with 10° parallel of north latitude, then west along the 10° parallel of north latitude to its intersection with the outer limits of the national jurisdiction of the Republic of the Marshall Islands, and then generally south and around the outer limits of the national jurisdictions of Pacific States and territories, New Zealand and the Commonwealth of Australia until it connects to the commencement of the line described pursuant to paragraph (3)(A) of this section; and

(E) waters of the Pacific Ocean beyond areas of national jurisdiction bounded by the 10° parallel of north latitude and the 20° parallel of south latitude and by the 135° meridian of east longitude and the 150° meridian of west longitude.

- "Fishery Resources," is defined as all fish and any products derived from fishery resources within the Convention Area, including: mollusks, crustaceans, and other living marine resources as may be decided by the Commission, but excluding:

(a) sedentary species insofar as they are subject to the sovereign rights of coastal States consistent with Article 77, paragraph 4 of the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) highly migratory species listed in Annex I of the 1982 Convention;

(C) anadromous and catadromous species; and

(D) marine mammals, marine reptiles and sea birds.

- "Fishing," is defined as

(a) the actual or attempted searching for, catching, taking, or harvesting of fishery resources;

(b) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose;

(c) transshipment and any operation at sea, including transport and bunkering, in support of, or in preparation for, any activity described in this definition; and

(d) the use of any vessel, vehicle, aircraft, or hovercraft in relation to any activity described in this definition.

(e) Fishing does not include any operation related to emergencies involving the health and safety of crew members or the safety of a vessel.

- "Fishing Vessel," is defined as any vessel used or intended to be used for fishing, including fish processing vessels, support ships, carrier vessels, and any other vessel directly engaged in fishing operations.

- "Person," is defined as any individual (whether or not a citizen or national of the United States); any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State); and any Federal, State, local, or foreign government or any entity of any such government.

- "Secretary," is defined as the Secretary of Commerce.

- "State," is defined as each of the several States of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

Section 203. Appointment or Designation of United States Commissioners.

Subsection (a) provides one United States Commissioner shall be appointed by the President and shall be an employee of the Department of Commerce.

Subsection (b) authorizes the Secretary of State to also designate an Alternate United States Commissioner from time to time in consultation with the Secretary of Commerce (Secretary) that shall also be an employee of the Department of Commerce. In the absence of the Commissioner, the Alternate Commissioner may exercise all powers and duties of the Commissioner.

Subsection (c) states that the Commissioner and Alternate Commissioner shall not receive additional compensation for their services.

Section 204. Authority and Responsibility of the Secretary of State.

Subsection (a) authorizes the Secretary of State to receive and transmit all reports, requests, recommendations, proposals, decisions, and other communications of and to the Commission.

Subsection (b) authorizes the Secretary of State to consult with the Secretary and to act upon, or refer to other appropriate authority, the communications outlined in subsection (a).

Subsection (c) authorizes the Secretary of State, with the concurrence of the Secretary, to object to the decisions of the Commission.

Subsection (d) authorizes the Secretary of State to request and use, among other things, the services, personnel, and equipment of other Federal agencies, foreign governments or agencies,

or international intergovernmental organizations in the conduct of scientific, research and other programs under this title.

Section 205. Responsibility of the Secretary and Rulemaking Authority.

Subsection (a) authorizes the Secretary to administer the South Pacific Fishery Resources Convention Implementation Act and associated regulations, and issue fishing permits to U.S. vessels to fish in the Convention Area.

Subsection (b) authorizes the Secretary, in consultation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating, to promulgate regulations necessary to carry out international obligations of the United States which may be applicable to all vessels and persons subject to the jurisdiction of the United States, including vessels flagged to the United States wherever they may be operating.

Subsection (c) states that regulations promulgated by the Secretary are subject to judicial review. The language in Subsection (c) is similar to Magnuson-Stevens Act section 305(f).

Section 206. Enforcement.

Subsection (a) states that enforcement of this title will be carried out by the Secretary and the Secretary of the Department in which the Coast Guard is operating.

Subsection (b) incorporates sections 308 to 311 of the Magnuson-Stevens Act by reference and states that the Secretary may enforce this title in the same manner, by the same means, and with the same jurisdiction, powers and duties as though those provisions were incorporated into this title. The subsection further provides that any person who violates this title is subject to the same penalties, and entitled to the same privileges and immunities as those provided in the Magnuson-Stevens Act.

Subsection (c) establishes the jurisdiction of the U.S. district courts over any actions arising under this title. This subsection also establishes the appropriate U.S district court for areas of the United States in the Pacific Ocean, addressing a long-standing problem in vessel forfeiture cases where seized vessels have had to be escorted longer distances than would otherwise be necessary due to the venue provisions in the Magnuson-Stevens Fishery Conservation and Management Act. This has created an unnecessary increased burden on the resources of the U.S. Coast Guard and the National Marine Fisheries Service's Office of Law Enforcement. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law.

Section 207. Prohibited Acts.

Section 207 lists the acts prohibited by this title, which include:

- violation of any provision of this title or of any regulation promulgated or permit issued under this title;

- the use of any fishing vessel to engage in fishing without a valid permit or after the revocation, or during the period of suspension, of an applicable permit;
- to refuse to permit any officer authorized to enforce the provisions of this title to board, search, or inspect a vessel, conveyance, or shoreside facility subject to such person's control for the purposes of conducting any investigation, or inspection in connection with the enforcement of this title, or of any regulation or permit issued under this title;
- to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection in connection with the enforcement of this title or any regulation promulgated or permit issued under this title;
- to resist a lawful arrest for any act prohibited by this title or any regulation promulgated or permit issued under this title;
- to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fishery resource taken or retained in violation of this title or any regulation promulgated or permit issued under this title;
- to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this title or any regulation promulgated or permit issued under this title;
- to submit to the Secretary false information regarding any matter that the Secretary is considering in the course of carrying out this title;
- to assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel pursuant to the requirements of this title or any regulation promulgated or permit issued under this title, or any data collector employed by the National Oceanic and Atmospheric Administration (NOAA) or under contract to any person to carry out responsibilities under this title;
- to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fishery resource taken or retained in violation of a binding conservation measure adopted pursuant to an international agreement or organization to which the United States is a party;
- to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this title to be made, kept, or furnished;
- to fail to stop a vessel upon being hailed and instructed to stop by a duly authorized official of the United States;
- to import, in violation of any regulation promulgated under this title, any fishery resource in any form of those species subject to regulation pursuant to a decision of the Commission;
- to make or submit any false record, account, or label for, or any false identification of, any fishery resource (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce; or
- to refuse to authorize and accept boarding and inspection by a duly authorized inspector pursuant to procedures adopted by the Commission for the boarding and inspection of fishing vessels in the Convention Area.

Section 208. Cooperation in Carrying Out the Convention.

Section 208 describes various ways in which cooperation in carrying out the Convention may be accomplished. Subsection (a) authorizes the Secretary to cooperate with agencies of the United States government, any public or private institutions or organizations within the United States or abroad, and, through the Secretary of State, the duly authorized officials of the government of any party to the Convention.

Subsection (b) states all federal agencies are authorized, upon the request of the Secretary, to cooperate in the conduct of scientific and other programs and to furnish facilities and personnel for the purpose of assisting the Commission.

Subsection (c) states that nothing prevents the Secretary or the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation or discharging any other duties prescribed by the Convention.

Section 209. Collection of Information.

Section 209 authorizes the Secretary and the Secretary of State to collect, utilize, or disclose information as may be necessary to implement the Convention, including information pertaining to fishing activities that occurred prior to the adoption of this title.

Section 210. Authorization of Appropriations.

Section 210 authorizes appropriations to the Secretary and the Secretary of State to carry out this Act. The estimated annual cost to NOAA of implementing this legislation is $199,000.

Subsection (b) authorizes the Secretary and the Secretary of State to provide funds for appropriate international cooperation and assistance to developing nations and international organizations of which such nations are members to assist those nations in meeting their obligations under the Convention and to transfer funds, subject to the limits of available appropriations and consistent with other applicable law, to any foreign government, international, non-governmental, or intergovernmental organization for purposes related to carrying out U.S. international responsibilities under the South Pacific Fishery Resources Convention. This shall include the transfer of funds to the Commission.

Subsection (c) authorizes the Secretary, the Secretary of State and the Secretary of the Department in which the Coast Guard is operating to use the land, services, equipment (including aircraft and vessels), personnel and facilities of any department, agency or instrumentality of the United States, or any State, local government, Indian tribal government, territory or possession, or of any political subdivision thereof, or any foreign government or agency thereof or international intergovernmental organization for purposes related to carrying out the responsibilities of this title or other statutes administered by the Secretary that further the objectives of the South Pacific Fishery Resources Convention.