

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

July 11, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x5-8331)

Markup: H.R. 4576 (Rep. Amata Coleman Radewagen, R-AS at large), 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.
July 12-13, 2016; 1324 Longworth HOB

H.R. 4576, “Ensuring Access to Pacific Fisheries Act”

Summary of the Bill:

H.R. 4576 implements U.S. participation in two international fishery management agreements to which the United States helped negotiate: the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean and the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean.

The bill also amends the Western and Central Pacific Fisheries Convention Implementation Act (P.L. 109-479) to help ensure that U.S. Commissioners to the Western and Central Pacific Fisheries Convention (Convention) advocate positions that minimize disadvantages to U.S. fishermen in relation to other foreign entities party to the Convention.

Cosponsors:

Rep. Don Young (R-AK)

Background:

The coordinated management of shared fishery stocks in international waters (201 or more miles from U.S. shore) is accomplished by nations participating in Regional Fisheries Management Organizations (RFMOs). These international commissions guide and coordinate the fisheries management activities of multiple nations in a specific region.¹ There are a number of RFMOs that the U.S. is party to, with the five major RFMOs being the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Inter-American Tropical Tuna

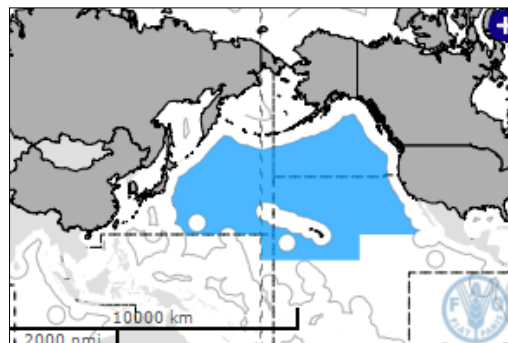
¹ <http://www.state.gov/e/oes/ocns/fish/regionalorganizations/>

Commission (IATTC), the International Commission for the Conservation of Atlantic Tuna (ICCAT), the Indian Ocean Tuna Commission (IOTC), and the Western and Central Pacific Fisheries Commission (WCPFC).²

In each case, an RFMO – comprised of designees from each participating country and territory – fosters cooperative management of these shared resources.³ Cooperation under such a convention allows the U.S. to address fisheries resources not covered under preexisting fisheries management instruments and helps to prevent destructive fishing practices by other participating nations that may hurt domestic fisheries.⁴

H.R. 4576 implements U.S. participation in two international fisheries treaties that the country helped negotiate: the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, and the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean.⁵ While the U.S. agreed to both the North and South Pacific Conventions, implementing legislation is needed to authorize the authority of the U.S. to participate and enforce regulations set forth by the RMFOs.⁶

In 2006, delegations from the U.S., Japan, South Korea, and Russia met to begin negotiations on an agreement to address deep sea fishing practices occurring outside areas of national jurisdiction.⁷ The U.S. was a primary participant in these negotiations and was the first country to sign the North Pacific Convention.⁸ The Convention, adopted in February 2012, established the North Pacific Fisheries Commission (NPFC). Through the NPFC, participating nations will cooperate to facilitate fisheries management.⁹ The NPFC officially entered into force in July 2015¹⁰ and is comprised of Canada, China, Japan, Republic of Korea, Russia, Taiwan, and the U.S.¹¹ The Convention also establishes a Scientific Committee and a Technical Compliance Committee to aid the NPFC in their decision making.¹² These “subsidiary bodies” shall provide a report on the work of the NPFC after each meeting and advise and recommend actions as appropriate.¹³



Picture 2: The North Pacific Fisheries Commission Convention area.
Source: <http://www.fao.org/fishery/rfb/npfc/en>

² <http://www.fao.org/fishery/topic/12270/en>

³ *Id.* at 2.

⁴ Kelly Welsh letter to Chairman Rob Bishop, September 15, 2015.

⁵ *Id.* at 4.

⁶ *Id.* at 4.

⁷ Senate Report 113-314, North Pacific Fisheries Convention Implementation Act, December 12, 2014.

⁸ Kelly Welsh letter to Chairman Rob Bishop, September 15, 2015.

⁹ *Id.* at 8.

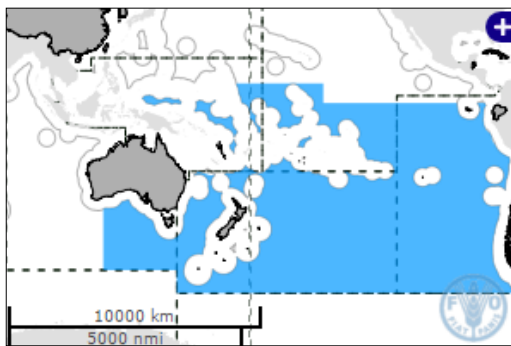
¹⁰ <http://www.fao.org/fishery/rfb/npfc/en>

¹¹ <http://nwpbfo.nomaki.jp/>

¹² Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific, February 24, 2012.

¹³ *Id.* at 12.

In 2006, delegations from Australia, Chile, and New Zealand began negotiations on an agreement to address fishing practices occurring outside areas of national jurisdiction.¹⁴ The United States, Belize, China, Denmark, Ecuador, the European Union, Korea, Russia, Peru, several Pacific Island States, and Taiwan soon joined the negotiations. These negotiations resulted in a series of international meetings that ultimately led to the South Pacific Fisheries Convention, which was formally adopted by the negotiating parties on November 14, 2009. The Convention established the South Pacific Regional Fisheries Management Organization (SPRFMO).¹⁵ The Convention also established a number of committees under the purview of the SPRFMO that are tasked with helping carry out the objectives set forth by the Convention: a Scientific Committee, a Compliance and Technical Committee, an Eastern Sub-regional Management Committee, a Western Sub-regional Management Committee and a Finance and Administration Committee.¹⁶



Picture 3: The South Pacific Fishery Commission Convention area
Source: <http://www.fao.org/fishery/rfb/SPRFMO/en>

The U.S. will be able to advance its interests in management of high seas fisheries as well as ensuring that management measures taken by the commissions are consistent with those taken neighboring international conventions or in U.S. domestic waters through these Conventions.¹⁷

On April 22, 2013, the Administration transmitted both the North and South Pacific Conventions to the U.S. Senate for ratification.¹⁸ Following the Senate's ratification on April 3, 2014¹⁹, the Administration determined that both agreements were not self-executing, and that legislation was necessary to implement both conventions.²⁰ According to the Administration, implementing these Conventions "will advance U.S. interests in the effective management of high seas fisheries."²¹

H.R. 4576 implements both Conventions with a few changes proposed by some regional councils.²² These changes to the Administration's proposal are necessary to ensure the councils' participation in the North and South Pacific Commissions while also assuring that any regulations adopted by the Commissions cannot supersede those of domestic federal fisheries managers. H.R. 4576 also ensures participation in these Commissions by the applicable U.S. Territories.

The bill also amends the Western and Central Pacific Fisheries Convention Implementation Act to help ensure access and equal treatment of United States boats fishing in

¹⁴ [Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific, 2015.](#)

¹⁵ [Id at 14.](#)

¹⁶ [Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific, February 24, 2012.](#)

¹⁷ [Kelly Welsh letter to Chairman Rob Bishop, September 15, 2015.](#)

¹⁸ [Id at 17.](#)

¹⁹ <https://www.congress.gov/treaty-document/113th-congress/2>

²⁰ [Kelly Welsh letter to Chairman Rob Bishop, September 15, 2015.](#)

²¹ [Id at 20.](#)

²² [Eric Olson, Chairman of the North Pacific Fishery Management Council, letter to U.S. Senator Mark Begich, July 3, 2014.](#)

the convention waters. During the March 1, 2016, legislative hearing on H.R. 4576, industry²³ and regional fishery managers²⁴ expressed serious concerns over the negotiation tactics and stances taken by the U.S. Commissioners of another RMFO: the Western and Central Pacific Fisheries Convention (WCPFC). Specifically, witnesses testified that the U.S. government agreed to regulations resulting in decreased access for U.S. fishermen that were not based on science,²⁵ and further suggested that such agreements are results of “back room political negotiations.”²⁶ Title III of H.R. 4576 rectifies this by requiring that, in WCPFC negotiations, U.S. Commissioners advocate positions that minimize disadvantage to U.S. fishermen in relation to those of other participating nations while also requiring that the advisory committee to the U.S. Commissioners provide formal comments related to the formal agenda of a WCPFC meeting. Title III is important to American Samoa and other U.S. territories and U.S. tuna fishermen in the Pacific.

Major Provisions/Analysis of H.R. 4576:

TITLE I

Section 102 defines the process to which the U.S. will be represented in the North Pacific Fisheries Commission. Under this section, the U.S. will be represented on the Commission by five Commissioners, two of which shall be appointed by the President. The President’s two appointments must be officers or employees of either the Department of Commerce, Department of State, or the Coast Guard and must be “knowledgeable or experienced” in North Pacific fishery resources. The remaining three U.S. Commissioners shall be the chairmen or their designees from the North Pacific Fishery Management Council, the Pacific Fishery Management Council, and the Western Pacific Fishery Management Council.

This section also specifies that no U.S. Commissioner shall receive compensation for time served. However, the Department of State is responsible for travel expenses incurred while participating in Commission meetings. These expenses shall be reimbursed by the Secretary of Commerce. Section 102 also establishes a formal Advisory Committee to provide comment and analysis on any programs, investigations, reports, or recommendations proposed by the Commission. The Advisory Committee would consist of eleven members appointed by the Secretary of Commerce. These members shall be representatives of the affected states as well as stakeholders.

Section 103 specifies the Secretary of State’s authority and responsibility under the North Pacific Fishery Convention. As this is an international convention, the Secretary of State is responsible for transmitting, on behalf of the U.S., all reports, requests, proposals, and decisions of the Commission. The Secretary of State may also, in consultation with the Secretary of Commerce, approve or object to any laws, rules, or amendments adopted by the Commission.

²³ [Submitted testimony of Brian Hallman, Executive Director of the American Tunaboat Association, before the House Water, Power and Oceans Subcommittee, March 1, 2016.](#)

²⁴ [Submitted testimony of Kitty Simonds, Executive Director of the Western Pacific Regional Fishery Management Council, before the House Water, Power and Oceans Subcommittee, March 1, 2016.](#)

²⁵ [Id at 24, page 7.](#)

²⁶ [Submitted testimony of Brian Hallman, Executive Director of the American Tunaboat Association, before the House Water, Power and Oceans Subcommittee, March 1, 2016, page 4.](#)

Section 104 specifies the Secretary of Commerce's authority and responsibility under the North Pacific Fishery Convention while also setting multiple safeguards to help ensure U.S. fishermen are not adversely impacted by regulations set forth by the Commission. The main responsibility of the Secretary of Commerce under the Convention is to promulgate fishery regulations as necessary to meet U.S. obligations under the Convention. To ensure that the Commission does not set regulations that would supersede domestic federal fishery policy, any regulation set forth by the Secretary that would govern a fish stock that migrates between the Convention Area and the U.S. Exclusive Economic Zone (EEZ) would have to be approved by the applicable Fishery Management Council prior to taking effect. There are also additional safeguards in this section requiring the Secretary to remain consistent with other established fishery laws, such as the Magnuson-Stevens Act, as well as setting up a formal judicial review process for any action taken by the Secretary in relation to the Commission. This section allows the Secretary to issue permits to U.S. vessels to fish in the defined convention area.

Section 105 creates a partnership between the Department of Commerce and the Coast Guard to enforce any regulations administered under this act under the same jurisdictional power set forth by sections 308-311 of the Magnuson-Stevens Act.

Section 106 sets forth a list of prohibited acts under Title I of the bill. Most of these prohibited acts are defined to prevent illegal, unreported, and unregulated (IUU) fishing efforts. The prohibited acts specifically include, among other things: violation of any regulation set forth by the authority under this title; fishing without the applicable permit; or knowingly or willingly transport, buy, or sell illegally retained fish, or submit false information to the Secretary.

Section 107 establishes agreements with federal and state agencies as well as private organizations to carry out U.S. obligations under the Convention. The section also preserves state jurisdiction over their resources under this act.

Section 108 ensures territorial participation in the Commission by American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Section 109 requires that captains of any fishing vessel from a country participating in the Convention to notify the Coast Guard if the fishing vessel enters the U.S. EEZ for any reason. Any such vessel must have all fishing gear stowed below deck while within U.S. waters.

TITLE II

Section 202 defines the process to which the U.S. will be represented in the South Pacific Fisheries Commission, as created under this act. Under this section, the U.S. will be represented on the Commission by three Commissioners, two of which shall be appointed by the President. At least one of the President's appointments must be officers or employees of either the Department of Commerce, Department of State, or the Coast Guard and must be "knowledgeable or experienced" in South Pacific fishery resources. The remaining U.S. Commissioner shall be the chairmen or their designees from the Western Pacific Fishery Management Council.

This section also specifies that no U.S. Commissioner shall receive compensation for time served. However, the Department of State is responsible for travel expenses incurred while participating in Commission meetings. These expenses shall be reimbursed by the Secretary of Commerce. Section 202 also establishes a formal Advisory Committee to provide comment and analysis on any programs, investigations, reports, or recommendations proposed by the Commission. The Advisory Committee would consist of seven members appointed by the Secretary of Commerce. These members shall be representatives of the affected states as well as stakeholders. Finally, this section requires the Secretary of Commerce to develop a memorandum of understanding with the Western Pacific Fishery Management Council to ensure regulations set forth by this Convention to not conflict with domestic federal fishery management.

Section 203 specifies the Secretary of State's authority and responsibility under the South Pacific Fishery Convention. As this is an international convention, the Secretary of State is responsible for transmitting, on behalf of the U.S., all reports, requests, proposals, and decisions of the Commission. The Secretary of State may also, in consultation with the Secretary of Commerce, approve or object to any laws, rules, or amendments adopted by the Commission.

Section 204 specifies the Secretary of Commerce's authority and responsibility under the South Pacific Fishery Convention while also setting multiple safeguards to ensure U.S. fishermen are not adversely impacted by regulations set forth by the Commission. The main responsibility of the Secretary of Commerce under the convention is to promulgate fishery regulations as necessary to meet U.S. obligations under the Convention. There are also additional safeguards in this section requiring the Secretary to remain consistent with other established fishery laws, such as the Magnuson-Stevens Act, as well as setting up a formal judicial review process for any action taken by the Secretary in relation to the Commission. Finally, this section allows the Secretary to issue permits to U.S. vessels to fish in the defined convention area.

Section 205 creates a partnership between the Department of Commerce and the Coast Guard to enforce any regulations administered under this act under the same jurisdictional power set forth by sections 308-311 of the Magnuson-Stevens Act.

Section 206 sets forth a list of prohibited acts under Title II of the bill. Most of these prohibited acts are defined to prevent illegal, unreported, and unregulated (IUU) fishing efforts. The prohibited acts include, among other things: violation of any regulation set forth by the authority under this title; fishing without the applicable permit; or knowingly or willingly transport, buy, or sell illegally retained fish, or submit false information to the Secretary.

Section 207 establishes agreements with federal and state agencies as well as private organizations to carry out U.S. obligations under the Convention.

Section 208 ensures territorial participation in the Commission by American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Section 209 requires that captains of any fishing vessel from a country participating in the Convention must notify the Coast Guard if that vessel enters the U.S. EEZ for any reason. Any

non-U.S. vessel that does enter the U.S. EEZ must have all fishing gear stowed below deck while within U.S. waters.

TITLE III

Section 301 amends the Western and Central Pacific Fisheries Convention Implementation Act (P.L. 109-479). This section requires that in WCPFC negotiations, the Secretaries of Commerce and State advocate for U.S. positions that minimize – to the extent practicable – disadvantage to U.S. fishermen in relation to those of other participating nations. This section also requires that, no later than fifteen days prior to the annual meeting of the WCPFC, the advisory committee can provide formal comments to the U.S. Commissioners related to the formal agenda of the meeting. Currently, the advisory committee for the WCPFC meets annually, but does not have to provide any formal comment or advice to the Commission.

Cost:

The Congressional Budget Office has not provided a cost estimate of this bill at this time.

Administration Position:

The Administration testified: “Passage of implementing legislation by Congress would allow the United States to ratify the NPFC Convention and the SPRFMO Convention, become full members of the organizations, and solidify our leadership role in the organizations...We look forward to working with the Committee on implementing legislation so the United States can ratify the Conventions and participate and influence fishery management outcomes as a full member of NPFC and SPRFMO.”²⁷

Expected Amendments:

Congresswoman Radewagen (AS, At-Large) may offer an amendment that makes technical edits to Titles I and II and changes Title III of the bill to address the Administration’s concerns. The amendment also adds the North and South Pacific Fishery Conventions to Public Law 114-81, the “Illegal, Unreported, and Unregulated Fishing Enforcement Act”. The amendment also adds the Northwest Atlantic Fisheries Convention implementing legislation.

²⁷ Testimony of [Ambassador David Balton](#), Deputy Assistant Secretary for Oceans and Fisheries, U.S. Department of State, Washington, D.C. before the House Water, Power and Oceans Subcommittee Legislative Hearing on March 1, 2016, at 6-7

Effect on Current Law (Ramseyer):

Current Law as Amended by H.R. 4576

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

The Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.)

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 and commercial fishing 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 one of whom shall be the chairman or a 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 not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.

(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.

(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,¹ the Magnuson-Stevens Fishery 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.² 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.

(E) No later than 15 days before each annual meeting of the Commission, the Advisory Committee shall transmit to the United States Commissioners recommendations relating to the agenda of the annual meeting. The recommendations must be agreed to by a majority of the Advisory Committee members. The United States Commissioners shall consider such

recommendations in the formulation of the United States position for the Commission meeting and during the negotiations at that meeting.

(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; and

(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 and chapter 171 of title 28.

(f) Memorandum of understanding

For highly migratory species in the Pacific, the Secretary, in coordination with the Secretary of State, shall develop a memorandum of understanding with the Western Pacific, Pacific, and North Pacific Fishery Management Councils, that clarifies the role of the relevant Council or Councils with respect to-

(1) participation in United States delegations to international fishery organizations in the Pacific Ocean, including government-to-government consultations;

(2) providing formal recommendations to the Secretary and the Secretary of State regarding necessary measures for both domestic and foreign vessels fishing for these species;

(3) coordinating positions with the United States delegation for presentation to the appropriate international fishery organization; and

(4) recommending those domestic fishing regulations that are consistent with the actions of the international fishery organization, for approval and implementation under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)

* * * * *

SEC. 511. UNITED STATES CONSERVATION, MANAGEMENT, AND ENFORCEMENT OBJECTIVES.

The Secretary, in consultation with the Secretary of State, shall initiate and conduct negotiations pursuant to this Act for the purpose of securing agreements that--

(1) minimize any disadvantage to United States fishermen in relation to other members of the Commission;

(2) maximize the opportunities for fishing vessels of the United States to harvest fish stocks on the high seas in the Convention area, recognizing that such harvests may be restricted

if the Commission, based on an analysis by the Scientific Committee established by the Western and Central Pacific Convention, determines that limiting the access of fishing vessels of the United States to the high seas is necessary for the conservation of fish stocks subject to the Convention;

(3) prevent any requirement for the transfer to other nations or foreign entities of the fishing capacity, fishing capacity rights, or fishing vessels of the United States or its territories; and

(4) ensure that conservation and management measures take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries covered by the Western and Central Pacific Convention.

SEC. [511] 512. Authorization of appropriations.

There are authorized to be appropriated to the Secretary of Commerce such sums as may be necessary to carry out this chapter and to pay the United States' contribution to the Commission under section 5 of part III of the WCPFC Convention.

[Technical amendments to table of contents of Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 to reflect addition of new section 511 not shown]