

Calendar No. 678

**106th Congress }
2d Session }**

SENATE

**{ REPORT
{ 106-339**

**ATLANTIC HIGHLY MIGRATORY SPECIES
CONSERVATION ACT**

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

on

S. 1911



JULY 12, 2000.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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ATLANTIC HIGHLY MIGRATORY SPECIES CONSERVATION ACT

JULY 12, 2000.—Ordered to be printed

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

REPORT

[To accompany S. 1911]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1911) “A bill to conserve Atlantic highly migratory species of fish, and for other purposes”, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purposes of S. 1911, the Atlantic Highly Migratory Species Conservation Act of 1999, are: to establish a program to reduce the bycatch of billfish and juvenile and undersized swordfish by United States pelagic longline fishing vessels within the United States Exclusive Economic Zone through time-area closures for such fishing in the Gulf of Mexico and South Atlantic Ocean based on an analysis of bycatch data; to minimize the adverse economic impacts on United States commercial fishermen and fishing communities; to prevent, to the extent practicable, displacement of fishing effort resulting from the conservation measures; and to establish a comprehensive research program on fishing methods to reduce bycatch in the United States pelagic longline fisheries.

BACKGROUND AND NEEDS

In 1967, the United States ratified the International Convention for the Conservation of Atlantic Tunas. Pursuant to the treaty, the United States entered into obligations to conduct scientific research on Atlantic highly migratory species of fish (HMS) including,

among others, North Atlantic swordfish and Atlantic species of billfish such as blue marlin, white marlin and spearfish, and to implement the conservation recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) with respect to these species. ICCAT is responsible for the conservation of tunas and other HMS in the Atlantic Ocean and adjacent seas. ICCAT's objective is to maintain populations of these species of fish at levels that will permit the maximum sustainable catch. Atlantic HMS are domestically managed, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), directly by the Secretary of Commerce rather than the regional fishery management councils primarily because the range of these species extends over five council management areas.

Atlantic HMS have been generally overfished and require effective conservation and management measures. In its most recent analyses, ICCAT's scientific body, the Standing Committee on Research and Statistics (SCRS), estimated that a number of key stocks of highly migratory species have biomass levels below those needed to produce their respective maximum sustainable yields. For example, the 1999 SCRS stock assessment estimated that the North Atlantic swordfish stock was at 65 percent of the necessary biomass to produce maximum sustainable yield (MSY). The 1997 SCRS stock assessment estimated that the Atlantic blue marlin stock was at 24 percent and the Atlantic white marlin stock was at 23 percent of the biomass necessary to produce MSY. In its most recent stock assessment for Atlantic sailfish/spearfish, the SCRS estimated these stocks were at 62 percent of the necessary biomass to produce MSY.

Both Congress and ICCAT have made the rebuilding of overfished stocks of Atlantic HMS a priority. In 1996, Congress adopted the Sustainable Fisheries Act (SFA), which amended the Magnuson-Stevens Act, and set forth provisions emphasizing the need to rebuild overfished stocks of Atlantic HMS through ICCAT. Pursuant to the SFA, the National Marine Fisheries Service (NMFS) identified North Atlantic swordfish, Atlantic blue marlin, Atlantic white marlin, Atlantic sailfish/spearfish, and other highly migratory species of fish as overfished. In 1999, ICCAT adopted an internationally binding 10-year rebuilding plan for North Atlantic swordfish. Furthermore, ICCAT has confirmed that a reduction in the mortality of juvenile swordfish will contribute substantially to the rebuilding of North Atlantic swordfish. In 1998, SCRS issued a report that expressed "concern about the high catches (landings plus discards) of small swordfish" and "emphasized that gains in the yield could accrue if fishing mortality on small fish could be further reduced." In 1999, ICCAT adopted a resolution requesting SCRS to analyze and identify times and areas for possible closure in the Atlantic that would contribute to the protection of under-sized North and South Atlantic swordfish.

Similarly, reducing the bycatch mortality of species of Atlantic billfish, including Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish/spearfish, will also contribute substantially to the rebuilding of these stocks. Although domestic longline vessels have been prohibited from landing or retaining all billfish since 1988, this measure alone has not been adequate to halt the decline of billfish stocks.

S. 1911, as amended, would close certain areas of the Atlantic Ocean and Gulf of Mexico in the United States Exclusive Economic Zone (EEZ) to pelagic longline fishing. The design and implementation of discrete, scientifically-based time-area closures for pelagic longline fishing within the United States EEZ can achieve several important fishery conservation and management objectives. Consistent with ICCAT findings, such time-area closures can significantly reduce the mortality caused by the bycatch of juvenile swordfish, Atlantic billfish, Atlantic large coastal sharks, and other HMS. In addition, such time-area closures can substantially reduce existing conflicts between the commercial pelagic longline fishery and the recreational fishery for highly migratory species in certain areas of the United States EEZ. Finally, establishing time-area closures in United States waters can provide a model and basis for the United States to pursue the same conservation concept more broadly in international waters at ICCAT.

The bill establishes three time-area closures, or conservation zones, which will close over 160,000 square nautical miles of ocean to pelagic longline fishing. According to NMFS data, closure of these areas, many of which are bycatch hot spots, will significantly reduce the bycatch mortality of billfish and undersized swordfish. A reduction in bycatch would dramatically increase the chance of rebuilding these valuable fish stocks to sustainable levels.

The establishment of such time-area closures in the Gulf and South Atlantic will necessarily impose substantial adverse economic impacts on certain United States commercial pelagic longline fishermen, as well as their families and communities. The Magnuson-Stevens Act addressed the need to minimize adverse economic impacts of fishery conservation measures, most notably in section 301(a)(8) (National Standard 8) and section 312(b) (Fishing Capacity Reduction Program). Consistent with these provisions, Congress has authorized and appropriated funds for vessel buy back programs in both the North Pacific and New England regions in order to mitigate the socio-economic impacts of certain fishery conservation and management objectives.

The anticipated adverse economic impacts of time-area closures on vessel owners and operators could be minimized by a fair and equitable buyout of certain pelagic longline fishing permits and licenses. In particular, those pelagic longline fishermen who sustain substantial adverse economic impacts from such time-area closures should be eligible to participate in such a buyout.

The establishment of these time-area closures may also have the effect of causing significant displacement of pelagic longline fishing vessels into areas remaining open to pelagic longline fishing as well as into other fisheries. Such displacement could undermine the conservation objectives of the time-area closures and cause additional fishery conservation problems and user-group conflicts. Such displacement-associated problems could also be minimized by the development of a permit buy back program that both permanently retires from use a substantial portion of pelagic longline permit packages issued to qualifying vessels and prohibits the transfer of such vessels to other United States and foreign commercial fisheries.

Large-scale time-area closures for reducing bycatch in pelagic longline fisheries are not well studied, nor are alternative uses and configurations of pelagic longline fishing gear. There is a need for

NMFS to conduct additional scientific research, in cooperation with pelagic longline fishing vessels and in consultation with the recreational fishing and conservation communities, to evaluate time-area closures and alternative fishing gear and methods in order to identify the most efficient manner to reduce bycatch within the US EEZ.

LEGISLATIVE HISTORY

S. 1911 was introduced on November 10, 1999, by Senator Breaux, with Senators Snowe, Hollings, Kerry, Sessions, Shelby and Landrieu as original cosponsors. On December 14, 1999, the Subcommittee on Oceans and Fisheries held a field hearing in New Orleans on reauthorization of the Magnuson-Stevens Act and on S. 1911, including conservation of highly migratory species. Testimony on the bill was provided by the Assistant Administrator of the National Marine Fisheries Service and representatives of commercial and recreational fishing industries.

On April 13, 2000, S. 1911 was considered by the Committee in an open executive session. Senator Breaux offered an amendment in the nature of a substitute and the Committee, without objection, ordered S. 1911 reported with amendment.

SUMMARY OF MAJOR PROVISIONS

Conservation Zones.—The reported bill would establish three conservation zones, or time-area closures, designated by specific navigational positions. The Atlantic Conservation Zone for Highly Migratory Species (Atlantic Zone) covers an 80,000 square nautical mile area from the North/South Carolina border south through the Florida Straits to the area surrounding Key West, Florida, and extends approximately 50 to 150 miles offshore, depending on the location. This area is permanently closed year-round to pelagic longline fishing.

The Gulf of Mexico Conservation Zone for Swordfish (Gulf Swordfish Zone) covers a 5,400 square nautical mile area of the northeastern Gulf of Mexico off the coasts of Louisiana, Mississippi, Alabama and Florida. This area is permanently closed to pelagic longline fishing during the period of January 1 to Memorial Day of each year.

The Gulf of Mexico Conservation Zone for Highly Migratory Species (Gulf HMS Zone) covers more than 80,000 square nautical miles extending from the Texas-Mexico border eastward to the Florida panhandle and extending offshore to approximately the 500 to 600 fathom (3,000 to 3,600 feet) depth contour. This area is closed for a period of five years during the period from Memorial Day to Labor Day each year. This larger area includes the entire Gulf Swordfish Zone and therefore, extends the closure for that area to approximately nine months.

Analysis of logbook catch data reported to NMFS between 1987 and 1997 demonstrates that the Atlantic Zone has experienced a high incidence of bycatch of juvenile swordfish and billfish. This zone also contains the primary area for longline fishing for mahi mahi off the coast of South Carolina. These data indicate that the Gulf Swordfish Zone is an area of high bycatch of undersized swordfish, while the Gulf HMS Zone has been a high billfish by-

catch area. In sum, historical catch data indicate that approximately 52 percent of the total small swordfish bycatch reported by United States pelagic longline fishermen in the United States EEZ occurs in the three conservation zones contained in the reported bill. Similarly, approximately 31 percent of the total billfish bycatch reported by United States pelagic longline fishermen in the United States EEZ occurs in these three areas combined. The closed areas, in conjunction with the permit buyback provisions of the reported bill are projected (based on past catch data) to reduce bycatch as follows: blue marlin by 35 percent; white marlin by 16 percent; sailfish by 49 percent; spearfish by 27 percent; and swordfish by 52 percent.

Fishing Permit Buyback.—The reported bill authorizes the Secretary of Commerce to conduct a voluntary capacity reduction program that would “buy back” commercial fishing permits from qualifying pelagic longline permit holders who are likely to sustain adverse economic impacts as a result of the time-area closures and, as a result, might consider transferring fishing effort to other areas. In addition, the reported bill prohibits the vessels to which these permits were issued from participating in any other commercial fishery in the United States and from reflagging to another country. Based on an analysis of historical catch data maintained by NMFS, approximately 68 United States boats would be eligible for this program. Eligibility for the voluntary permit buy back was based on vessel catch history and possession of the directed swordfish limited access permit issued to that vessel. Vessels were identified as eligible based on an evaluation of data that established a vessel—

- (1) reported that at least 35 percent of its annual fishing sets were conducted in the proposed closed areas in any one year from 1992 through 1997;

- (2) reported that it conducted at least 25 pelagic longline gear sets during its qualifying year;

- (3) reported that at least 50 percent of its landings for the 1995–1997 period were comprised of pelagic longline target species, including swordfish, tunas, mahi-mahi, escolar, and oceanic sharks; and

- (4) qualified for a Directed Swordfish Initial Limited Access Permit. In addition, only those persons currently in possession of a Directed Swordfish Initial Limited Access Permit are eligible to receive payment under the bill.

The program would provide up to two payments to eligible permit holders. Each eligible permit holder would receive a payment of \$125,000 for the surrender of the eligible vessel’s permit package, consisting of all Federal and state commercial fishing permits, including the full longline permit package (directed swordfish permit, shark permit, and tuna longline permit). In addition, for eligible vessels that landed highly migratory species in 1999, the permit holder would be eligible for an additional payment equal to the highest value of all fish landed by such vessel in one year, between 1992 and 1998. However, this landing payment shall not exceed \$325,000. S. 1911, as amended, prohibits the use of the vessel for which a payment is received in any United States commercial fishery and the reflagging of the vessel in a foreign country. The bill also contains provisions to prevent the receipt of windfall profits

through this program by those who no longer use the eligible vessels to conduct fishing operations, and thus have no expectation of future income from the vessel's operations. First, the reported bill makes ineligible for the buyout those vessels that were sold after November 11, 1999, the date S. 1911 was introduced. Further, the reported bill provides that vessels that reported no landings in 1999 are not eligible to receive any more than the initial payment for the permit package, and thus would not receive payment based on landings.

The reported bill authorizes \$15 million in Federal funding to partially pay for the buy back program. Of this amount, the reported bill requires repayment of \$10 million, equally divided, by certain participants in both recreational and commercial fisheries sectors. The commercial and recreational share initially will be provided through a guaranteed loan under the Federal Ship Financing Program. The commercial share of the loan will be repaid by the pelagic longline fleet through a per-pound fee, not to exceed five cents per pound, on all sales of swordfish of Atlantic origin. The reported bill provides alternative repayment approaches for the recreational share.

The recreational share of the payment could come from either of two sources. The reported bill authorizes the seven states with time-area closures off of their shores (South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas) to voluntarily pay up to 94 percent of the recreational share. The allocation of such a payment would be based on the percentage of the time-area closures adjacent to the coastline and the number of recreational fishermen in each state. If a state agrees to make such a payment, the recreational fishermen would be provided a highly migratory species (HMS) conservation permit at no cost. In the alternative, the recreational share would be collected by NMFS through the sale of a \$25 Federal HMS conservation permit to recreational fishermen in each of the affected states. The reported bill prohibits any recreational fishing vessel longer than 18 feet from fishing for highly migratory species within any of the conservation zones unless the vessel has been issued an HMS conservation permit.

Bycatch Reduction Research.—The reported bill authorizes NMFS to establish a research program to study methods to reduce HMS bycatch mortality in the pelagic longline fisheries in the Gulf of Mexico and Atlantic Ocean. The research program will also evaluate the impact of gear changes on protected species. The reported bill directs the program to be conducted with knowledgeable members of the pelagic longline and recreational industries and members of the conservation community. The reported bill authorizes \$3.4 million for this program.

The reported bill also requires the Secretary to monitor waters in the Mid-Atlantic and Northeast to determine if there has been a substantial net increase in the number of vessels or fishing effort from the remaining pelagic longline fleet into these areas and whether any increase has caused a significant negative impact on the recreational billfish catch. The Secretary of Commerce must report any such increase to Congress for further action.

Interim Regulations.—The reported bill prohibits the Secretary from expanding the conservation zones established under the bill or from proposing, approving, or implementing any other time-area

closures for pelagic longline fishing in the Atlantic Ocean and Gulf of Mexico for at least four years. This requirement is intended to prevent multiple and unwarranted regulatory changes to the existing time-area closures before the benefits of such closures and the results of the bycatch reduction research program established in the reported bill have been evaluated.

However, the reported bill contains several limited exceptions to this provision. For instance, the conservation zones established under the reported bill may be amended within that time frame if there is an emergency situation with respect to the conservation of Atlantic HMS which will not be addressed in a timely manner by ICCAT, the international body responsible for managing HMS. In addition, the reported bill authorizes changes to the time-area closures to implement future recommendations of ICCAT, or any technical and conforming changes necessary to ensure public safety and enforcement of the Act. The reported bill also clarifies that this provision does not alter the Secretary's existing authority under the Marine Mammal Protection Act or the Endangered Species Act.

Vessel Monitoring System.—The reported bill requires pelagic longline fishing vessels that do not participate in the voluntary buy back program to install vessel monitoring systems (VMS). These electronic devices allow NMFS to locate fishing vessels at anytime to ensure compliance with the time-area closures. The bill authorizes \$2.25 million for installation and monitoring of the VMS.

Nullification.—If Congress fails to appropriate adequate funds to complete the buy back program and initiate the research program, then none of the provisions in the reported bill will be effective, including the reported bill's requirement for longlining vessels to install and use VMS.

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 29, 2000.

Hon. JOHN MCCAIN,
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. 1911, the Atlantic Highly Migratory Species Conservation Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), Victoria Heid Hall (for the state and local impact), and Natalie Tawil (for the private-sector impact).

Sincerely,

STEVEN LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

S. 1911—Atlantic Highly Migratory Species Conservation Act of 1999

Summary: S. 1911 would limit longline fishing in over 160,000 square miles of U.S. ocean waters and would establish civil and criminal penalties for violations of this limitation. The bill also would direct the Secretary of Commerce to buy out the owners of 68 specified fishing vessels. The Secretary would offer between \$125,000 and \$450,000 to purchase the fishing permits or licenses associated with each vessel. The bill would require the remaining longline fishing vessels to carry monitoring devices when fishing in restricted areas.

S. 1911 would authorize buyouts totaling up to \$25 million—\$15 million of this sum would be subject to appropriation, and \$10 million would come from direct spending authority provided by the bill. The bill would establish fees on recreational fishing vessels and on swordfish dealers to recover \$10 million in buyout costs plus interest. Finally, the bill would authorize the appropriation of about \$6 million to purchase monitoring devices, and for research on reducing the bycatch mortality of migrating fish.

CBO estimates that implementing S. 1911 would cost \$21 million over the 2001–2004 period, assuming appropriation of the necessary amounts. We also estimate that enacting the bill would increase direct spending by \$10 million in 2001; but that starting in 2001, this direct spending cost would be partially offset by fees paid by owners of recreational fishing vessels. We estimate those fees would total about \$5 million over the 2001–2005 period and additional amounts in subsequent years. The bill would increase revenues by imposing charges on swordfish dealers totaling \$2 million over the 2001–2005 period and additional amounts in subsequent years. Finally, S. 1911 would affect direct spending and receipts by establishing new criminal and civil penalties, but those changes would probably be insignificant. Because S. 1911 would affect direct spending and receipts, pay-as-you-go procedures would apply.

S. 1911 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The states affected by the bill could spend a total of about \$5 million over the 2001–2005 period if they elect to cover a share of the federal government's costs for buyouts. Any state contributions would be voluntary. The bill would impose private-sector mandates, but CBO estimates that the total direct costs of those mandates would not exceed the annual threshold established in UMRA (\$109 million in 2000, adjusted annually for inflation) for any of the first five years that the mandates are in effect.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1911 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	0	21	0	0	0	0
Estimated Outlays	0	19	1	(¹)	(¹)	0

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	0	9	-1	-1	-1	-1
Estimated Outlays	0	9	-1	-1	-1	-1
CHANGES IN REVENUES						
Estimated Revenues	0	(¹)	(¹)	(¹)	(¹)	(¹)

¹ Less than \$500,000 a year.

Basis of estimate: Implementing S. 1911 would cost about \$21 million in discretionary spending over the 2001–2004 period, primarily for buyouts. CBO estimates that enacting S. 1911 would lead to a net increase in direct spending of about \$5 million over the 2001–2005 period, and would increase revenues by about \$2 million over the same period.

Spending subject to appropriation

S. 1911 would authorize additional discretionary spending for buyouts, monitoring devices for fishing vessels, and fish research.

Buyouts. S. 1911 would authorize \$15 million to be appropriated to the Secretary of Commerce to make buyout offers to owners of certain fishing vessels that would be adversely affected by the fishing restrictions in the bill. CBO estimates that \$25 million would be necessary to complete all such buyouts. (Section 7 would make \$10 million available for this purpose without further appropriation—see Direct Spending discussion below.)

Monitoring devices and research. S. 1911 would authorize the appropriation of \$6 million to purchase fishing vessel monitoring devices and to conduct research on reducing the bycatch mortality of migrating fish. Based on the historical spending pattern of similar programs at the National Oceanic and Atmospheric Administration (NOAA), CBO estimates that implementing these provisions would cost about \$4 million in 2001 and a total of \$6 million over the 2001–2004 period.

Direct spending and revenues

S. 1911 would increase direct spending and revenues by directing the Secretary of Commerce to make buyouts without further appropriation, by imposing new fees and charges, and by establishing new civil and criminal penalties.

Buyouts. S. 1911 would direct the Secretary to use up to \$10 million for buyouts in addition to any appropriations provided for this purpose. Based on the number of vessels likely to accept such offers, CBO estimates this provision would increase direct spending by \$10 million in 2001.

The bill would authorize the appropriation of \$100,000 for buyout assistance that is characterized as a loan subject to the Federal Credit Reform Act. Under Credit Reform, a direct loan is defined as disbursement of funds to a nonfederal borrower under a contract that requires the repayment. A disbursement cannot be considered a direct loan, however, if the duty to repay the government arises from an exercise of sovereign power, tort liability, or some other noncontract obligation. S. 1911 would require swordfish dealers and owners of recreational fishing vessels to repay these buyout funds, but it would do so through an exercise of sovereign power,

not through loan repayment contracts. Therefore, we do not believe that the buyout assistance in this provision would constitute a loan program.

Fees on recreational fishing vessels. S. 1911 would establish a \$25 fee on owners of vessels more than 18 feet in length who wish to engage in recreational fishing in an area that would be restricted under the bill. This fee would remain in place until NOAA collects \$5 million plus interest. The bill would give states the option to eliminate the fee on recreational fishing vessels in that state by paying the state's share of the \$5 million as specified in the bill. Based on information from states that would be affected by this bill, CBO expects no state would choose this option. Based on the number of vessels that would be affected by the bill, CBO estimates this provision would increase offsetting receipts, and thereby lower direct spending, by about \$1 million a year.

Charges on swordfish dealers. S. 1911 would require the Secretary of Commerce to charge swordfish dealers up to 5 cents per pound of Atlantic swordfish sold. Based on the annual catch of Atlantic swordfish and the number of vessel owners that are likely to accept a buyout offer, CBO estimates that such charges would increase governmental receipts (revenues) by less than \$500,000 each year, or about \$2 million over the 2001–2005 period. This charge would continue until the Secretary of Commerce collects \$5 million plus interest.

Criminal fines and seizure of assets. S. 1911 would create new criminal fines for violations of longline fishing laws. Because those prosecuted and convicted under S. 1911 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional receipts and direct spending would not be significant.

Persons prosecuted and convicted under the bill also could be subject to the seizure of certain assets (including vessels, gear, and cargo) by the federal government. Proceeds from the sale of such assets would be deposited into the Assets Forfeiture Fund and spent from that fund, mostly in the same year. Thus, enacting S. 1911 could increase both revenues deposited into the fund and direct spending from the fund. However, CBO estimates that any increased revenues or spending would be negligible.

Civil fines. The bill also would provide for civil penalties against anyone who uses a commercial fishing vessel in violation of the bill's provision. Payments of these civil penalties would be recorded as governmental receipts to the Treasury. CBO expects that any increase in civil fines as a result of this provision would not be significant.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	9	-1	-1	-1	-1	0	0	0	0	0
Changes in receipts	0	0	0	0	0	0	0	0	0	0	0

Estimated impact on state, local, and tribal governments: S. 1911 contains no intergovernmental mandates as defined in UMRA. Under this bill, the affected states (Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas) may elect to cover a share of the federal government's payments to certain permit holders as compensation for longline fishing limitations. Total state costs (called the "recreational share") could be as much as \$5 million. The bill specifies each state's share of the total based on the state's percentage of the coastline adjacent to areas closed to fishing and the number of marine anglers in the state. If a state chooses not pay the recreational share of the federal compensation program, the bill would direct the Secretary of Commerce to charge vessels registered in that state that wish to engage in certain recreational fishing a fee for an annual fishery conservation permit.

Estimated impact on the private sector: S. 1911 would impose private-sector mandates on owners of commercial and recreational fishing vessels and swordfish dealers that participate in the migratory species fisheries in the Atlantic and the Gulf of Mexico. CBO estimates that the total direct costs of those mandates would not exceed the annual threshold established in UMRA (\$109 million in 2000, adjusted annually for inflation) for any of the first five years that the mandates are in effect.

First, the bill would close parts of the Atlantic Ocean to longline commercial fishing. Owners of commercial vessels that operate in those fisheries would be forced to move their operations or close their businesses. According to the National Marine Fisheries Service (NMFS), about 900 commercial vessels would be affected to some degree by the fishery closures. According to NMFS, the total gross revenues of vessels in the affected fisheries was almost \$30 million in 1998. Thus, CBO estimates that the cost of complying with this mandate, measured in lost net income, would be well below the private-sector threshold.

S. 1911 also would establish a program to compensate the owners of commercial vessels that would be most affected by that mandate. The program would be set up to buy back the commercial fishing permits of 68 vessel owners identified in the bill. Vessel owners accepting such a buyout would lose eligibility for that vessel to participate in any commercial fishery or to transfer it to foreign control. According to industry sources, the owners of the vast majority of eligible vessels would participate in the buyout program.

Second, the bill would impose a mandate on swordfish dealers by requiring them to pay the federal government 5 cents per pound for Atlantic swordfish sold to fund a share of the buyout program. The fee would begin one year after enactment and remain in effect until the dealers have paid a total of about \$2 million over the 2001–2005 period.

Third, the bill would impose a mandate by requiring owners of recreational vessels exceeding 18 feet who fish in the affected fisheries to have a federal fishery conservation permit. Owners of such

vessels would be required to pay an annual permit fee of \$25; and the fee would remain in effect until a total of about \$5 million had been paid to fund the remaining share of the buyout program. CBO estimates that owners of recreational vessels would incur costs of about \$1 million each year from 2001 through 2005 to comply with this mandate. If recreational vessels are registered in a state that chooses to pay a share of the buyout program funding as designated in the bill, the annual permit for those recreational vessels would be free.

Last, the bill would require longline vessels that continue to operate in areas subject to closure under this bill to carry vessel monitoring devices. CBO estimates the direct cost of complying with this mandate would be over \$2 million in 2001. S. 1911 would make the federal government responsible for any costs attributable to the purchase and installation of those devices and would authorize appropriations to cover those costs. The bill provides that, in the event that the Congress failed to appropriate adequate funds for this program, the requirement to carry such devices would have no effect.

Estimate prepared by: Federal costs: Mark Hadley. Impact on state, local, and tribal governments: Victoria Heid Hall. Impact on the private sector: Natalie Tawil.

Estimate approved by: Peter H. Fontaine, 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. 1911 as reported by the Committee authorizes a program to reduce the bycatch of billfish and juvenile and undersized swordfish by United States pelagic longline fishing vessels within the United States Exclusive Economic Zone through time-area closures for such fishing in the Gulf of Mexico and South Atlantic Ocean based on an analysis of bycatch data. The reported bill also authorizes a program to minimize the adverse economic impacts on United States commercial fishermen and fishing communities and to prevent, to the extent practicable, displacement of fishing effort resulting from the conservation measures. Several sections of the reported bill would impact some individuals and businesses, and the effects of these sections can be clarified as follows:

ECONOMIC IMPACT

As noted above, sections 6 through 9 of the reported bill would have an economic impact on some individuals and businesses.

Section 6 of the reported bill would close more than 160,000 square nautical miles to pelagic longline fishing. This provision would prohibit a number of commercial fishing operations from longline fishing in certain historic areas. However, the conservation benefit resulting from such closures should result in healthier stocks of important highly migratory species of fish.

Section 7 of the reported bill would establish a voluntary capacity reduction program to buy back commercial fishing permits for certain eligible vessels that sustain substantial adverse economic impacts as a result of the time-area closures for bycatch required by section 6.

Section 8 of the reported bill would establish certain restrictions on the vessels of permit holders who accept payment under section 7.

Section 9 of the reported bill would establish a fee system for servicing the debt on the commercial and recreational share of the Federal loan associated with payment under section 7.

PRIVACY

The reported bill would have little, if any, impact on the personal privacy of United States citizens.

PAPERWORK

S. 1911 as reported should not significantly increase paperwork requirements for individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section of the reported bill cites the short title of the bill as the “Highly Migratory Species Conservation Act of 1999.”

Sec. 2. Findings

This section of the reported bill sets forth the scientific, legal and policy bases for the legislation.

Sec. 3. Purposes

This section of the reported bill sets forth the purposes and objectives of the legislation including the conservation and rebuilding of overfished stocks of highly migratory species through the reduction in bycatch mortality of such species and the protection of nursery and spawning areas within the United States EEZ. The bill is also intended to minimize adverse economic consequences of such conservation measures on United States fishermen consistent with the Magnuson-Stevens Act.

Sec. 4. Policy

This section of the reported bill sets forth the policy of Congress that all United States fishermen shall be treated fairly and equitably in achieving national and international fishery conservation and management objectives for highly migratory species in the Atlantic Ocean and Gulf of Mexico.

Sec. 5. Definitions

This section of the reported bill sets forth the definitions of certain terms used in the reported bill. With a few necessary exceptions, terms used in the reported bill are identical to those used in the Magnuson-Stevens Act.

Sec. 6. Highly migratory species conservation zones

Subsection (a) requires certain geographical areas along the Atlantic coast defined by specific navigational coordinates, referred to as the Highly Migratory Species Conservation Zone, to be permanently closed to pelagic longline fishing.

Subsection (b) requires certain geographical areas in the Gulf of Mexico defined by specific navigational coordinates, referred to as the Gulf of Mexico Conservation Zone for Swordfish, to be permanently closed to pelagic longline fishing from January 1 through Memorial Day.

Subsection (c) requires certain geographical areas in the Gulf of Mexico defined by specific navigational coordinates, referred to as the Gulf of Mexico Conservation Zone for Highly Migratory Species, to be closed to pelagic longline fishing for five years, from Memorial Day through Labor Day.

Subsection (d) authorizes NMFS to allow certain pelagic longline fishing and research in the conservation zones. This section prohibits the sale of any such catch, unless authorized by NMFS.

Sec. 7. Pelagic Longline Fishing Vessel Permit Holder Compensation Program

Subsection (a) establishes a voluntary capacity reduction program to buy back commercial fishing permits of certain eligible vessels that are projected to sustain substantial adverse economic impacts as a result of the time-area closures for bycatch reduction required by the reported bill. Further, it identifies 68 vessels as those eligible to participate in the program.

Subsection (b) makes any vessel ineligible for such program if the vessel or permits are transferred after November 10, 1999.

Subsection (c) requires the Secretary to notify each eligible pelagic longline permit holder of the voluntary capacity reduction program established under this section.

Subsection (d) establishes a permit package compensation amount of \$125,000 for each eligible permit holder.

Subsection (e) authorizes the Secretary to establish a landings payment determination, not to exceed \$325,000, for each eligible permit holder.

Subsection (f) authorizes the Secretary to offer each eligible permit holder who participates in the voluntary program a payment amount determined in accordance with this section.

Subsection (g) authorizes a detailed procedure and time frame for the permit holders of eligible vessels to accept and receive a payment from the Secretary. It requires any permit holder that accepts payment for an eligible vessel to surrender to the Federal government all commercial fishing permits applicable to such vessel.

Subsection (h) authorizes the Secretary to make such payments in accordance with this section.

Subsection (i) authorizes a \$10 million loan to be financed through the Federal Ship Financing Fund to partially pay for the voluntary buy back program. Repayment of the loan will be equally divided between a commercial share and a recreational share.

Subsection (j) authorizes \$15 million to pay for the remainder of the voluntary buy back program.

Subsection (k) requires that 40 percent of the payment authorized under this section is derived from the commercial and rec-

reational shares and that 60 percent of the payment is derived from funds appropriated for payment under this section.

Sec. 8. Restrictions on vessels

Subsection (a) revokes all commercial fishing permits of any permit holder who accepts payment under section 7.

Subsection (b) revokes the fisheries endorsement of any vessel whose owner accepts payment under section 7.

Subsection (c) prohibits the transfer of any vessel to foreign ownership or control whose owner accepts payment under section 7.

Subsection (d) establishes civil and criminal penalties for violations of the reported bill.

Subsection (e) requires the Secretary of Transportation to ensure that each vessel whose commercial fishing permits and licenses have been revoked, information is maintained in the vessel identification system under chapter 125 of title 46, United States Code, to state that such vessel is prohibited from engaging in commercial fishing anywhere in the world.

Sec. 9. Repayment of direct loan

This section of the reported bill establishes a fee system for servicing the debt on the commercial and recreation shares of the Federal Ship Financing Program loan for the respective costs of the permit buy back program.

Sec. 10. Prohibited act under Magnuson-Stevens Act

This section of the reported bill provides that any violation of this Act shall be deemed to be a prohibited act under section 307(1)(A) of the Magnuson-Stevens Act and subject to the penalties therein.

Sec. 11. Billfish Bycatch Mortality Reduction Research Program

Subsection (a) authorizes NMFS to establish a research program to study methods to reduce HMS bycatch mortality in the pelagic longline fisheries in the Gulf of Mexico and Atlantic Ocean. The research program will also evaluate the impact of gear changes on protected species.

Subsection (b) requires the program to be designed and conducted with knowledgeable members of the pelagic longline and recreational industries and members of the conservation community.

Subsection (c) requires the Secretary to monitor waters in the Mid-Atlantic and Northeast to determine if there has been a substantial net increase in the number of vessels or fishing effort from the remaining pelagic longline fleet and whether any increase has caused a significant negative impact on the recreational billfish catch. Any such increase must be reported by the Secretary of Commerce to Congress.

Sec. 12. Interim regulations

Subsection (a) provides a minimum amount of time for Congress to act on the results of the Highly Migratory Species Bycatch Mortality Reduction Research Program before the Secretary may implement any time-area closures for pelagic longline fishing that are in addition to or otherwise expand those required in this Act.

Subsection (b) authorizes the Secretary to take additional action to protect highly migratory species in emergency situations and to meet the requirements of the Marine Mammal Protection Act and the Endangered Species Act.

Sec. 13. Vessel monitoring device

Subsection (a) requires all United States pelagic longline vessels fishing for highly migratory species to carry a vessel monitoring device approved by NMFS.

Subsection (b) provides that vessels that accept the buy-back program under section 7 are not required to carry a vessel monitoring device.

Subsection (c) authorizes the Secretary to fund the purchase and installation of such vessel monitoring devices on pelagic longline vessel fishing in the Atlantic HMS fishery.

Sec. 14. Nullification

This section of the reported bill provides that the provisions of this bill are not effective if adequate funds are not appropriated by Congress.

Sec. 15. Authorization of appropriations

This section of the reported bill authorizes \$2.25 million for the vessel monitoring system required by this bill. This section also authorizes \$3 million for the Highly Migratory Species Bycatch Mortality Reduction Research program authorized by this bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

