

House Committee on Natural Resources

Rob Bishop, Chairman
Markup Memo

April 27, 2015

To: House Committee on Natural Resources Members

From: Water, Power and Oceans Subcommittee Republican staff

Hearing: April 29-30, 2015 Markup of H.R. 774 (Bordallo, Guam), *“Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015.”*

To strengthen enforcement mechanisms to stop illegal, unreported, and unregulated fishing, to amend the Tuna Conventions Act of 1950 to implement the Antigua Convention, and for other purposes.

“Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015”

Bill Summary

H.R. 774 amends implementing statutes for eight existing international fishery agreements to combat illegal, unreported and unregulated fishing operations. The bill is an incremental continuation of prior congressional legislation and reflects bipartisan discussions to help ensure that our domestic fishing industry is not harmed by these provisions. As a result, the bipartisan bill has widespread support throughout the fishing community and the domestic seafood industry.

Cosponsors

Reps. Lois Capps (D-CA), Carlos Curbelo (R-FL), Peter DeFazio (D-OR), Blake Farenthold (R-TX), John Garamendi (D-CA), Jared Huffman (D-CA), Duncan Hunter (R-CA), David Jolly (R-FL), William Keating (D-MA), Alan Lowenthal, (D-CA), Grace Napolitano (D-CA), Pedro Pierluisi (D-PR), Aumua Amata Radewagen (R-AS), Edward Royce (R-CA), Gregorio Kilili Camacho Sablan (D-CNMI), Mike Thompson (D-CA), Randy Weber, Sr. (R-TX), Roger Williams (R-TX), Rob Wittman (R-VA) and Don Young (R-AK).

Background

Illegal, Unregulated and Unreported (IUU) fishing, sometimes referred to as “pirate fishing,” is a wide-range of fishing activities that fail to comply with national, regional, or global fisheries conservation and management requirements. These unlawful practices impact various sectors of the U.S. seafood industry, including seafood harvesters and processors operating on and off our nation’s coasts and seafood retailers around the country. One of this bill’s goals is to help ensure that the seafood found in American restaurants and grocery stores was legally harvested with no adverse effects to the price consumers pay for these products.

On January 12, 2011, the National Oceanic and Atmospheric Administration (NOAA) published a final rule¹ implementing the provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA or P.L. 109-479)² that defined “illegal, unreported, and unregulated fishing” to include:

1. Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;
2. Overfishing of fish stocks shared by the United States; and
3. Fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

By nature of being illegal and unreported, the economic cost of IUU fishing is difficult to quantify since these are clandestine activities. Some estimates suggest that IUU fishing results in economic losses between \$10 to \$23.5 billion dollars worldwide annually.³ These practices place legitimate fisherman at a disadvantage in the domestic and global markets by evading overhead costs and flooding the seafood market with illegally harvested fish products. IUU fishing threatens to devastate shared fish stocks by routinely targeting fish species with the most stringent regional fisheries management organization (RFMO) restrictions. These species, which are short in supply and high in demand, are the most attractive since they have the most value at market.

As one of the world’s largest importers of seafood, the United States has a variety of domestic enforcement measures at its disposal to combat illegal fishing and help ensure that U.S. fishermen are on an equal playing field with the seafood industry as a whole. The High Seas Driftnet Fishing Moratorium Protection Act authorizes the Secretary of Commerce (through NOAA) to issue a report biennially to Congress listing which fish-exporting countries have engaged in IUU fishing and/or bycatch of protected resources,⁴ and to consult with those countries on improving their fisheries management and enforcement practices.⁵ In addition, the Lacey Act⁶ prohibits interstate and foreign trafficking of fish or wildlife taken in violation of domestic or foreign law. For Fiscal Year (FY) 2015, NOAA has been appropriated \$66 million for “Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud,” and 217 full-

¹ <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title16-section1826j&num=0&edition=prelim>

² <http://www.gpo.gov/fdsys/pkg/PLAW-109publ479/pdf/PLAW-109publ479.pdf>

³ David J. Agnew et al., Estimating Worldwide Extent of Illegal Fishing, PLoS ONE, Feb. 2009 at 4.

⁴ <http://www.gpo.gov/fdsys/pkg/PLAW-109publ479/pdf/PLAW-109publ479.pdf>, Section 401

⁵ Id., at p.52

⁶ <http://www.fws.gov/le/pdf/Lacey.pdf>

time employees.⁷ NOAA requested an additional \$3 million and 15 full-time employees in its FY 2016 budget proposal.⁸

Although the U.S. has laws in effect to help combat illegal fishing, international cooperation is necessary to ensure that global enforcement and penalties are in place to close the world's ports to illegally harvested fish and to certify that these products never make it onto the global seafood market. Without international enforcement, illegal fishermen are operating in an environment where the monetary reward of IUU fishing far outweighs the risk of being caught. H.R. 774's goal is to further international cooperation.

The House Natural Resources Committee passed similar legislation (H.R. 69)⁹ in the last Congress, but no action was taken by the full House. Some domestic commercial fishing industry voiced concerns over H.R. 69 that their fleets would be burdened with increased enforcement by NOAA and other federal and state law enforcement entities.¹⁰ H.R. 774 remedies those concerns and now has the support of the domestic seafood industry.

Major Provisions/Analysis of H.R. 774

Title I: Strengthening Fisheries Enforcement Mechanisms

Amends and standardizes the implementing statutes for eight existing international fishery agreements to impose the sanctions of the High Seas Driftnet Fishing Moratorium Protection Act, while also applying civil penalties, criminal offenses, and civil forfeitures against persons who violate new enforcement provisions.¹¹ Those agreements include: the Pacific Salmon Treaty Act of 1985; the Dolphin Protection Consumer Information Act; the Tuna Conventions Act of 1950; the North Pacific Anadromous Stocks Act of 1992; the Atlantic Tunas Convention Act of 1975; the Northwest Atlantic Fisheries Convention Act of 1995; the Western and Central Pacific Fisheries Convention Implementation Act; and the Antigua Convention Implementing Act of 2015.

Authorizes the Secretary of Commerce to participate in and provide assistance to international efforts that address IUU fishing activities, bycatch concerns, fisheries monitoring, and other actions aimed at helping nations achieve sustainable fisheries.¹² The bill grants additional enforcement authority related to illegally harvested or imported fish products, while also allowing the Secretary to share that information with specified others who implement

⁷ Department of Commerce FY16 Budget Justification at NMFS 88

⁸ Id.

⁹ <http://www.gpo.gov/fdsys/pkg/BILLS-113hr69rh/pdf/BILLS-113hr69rh.pdf>

¹⁰ Testimony of Mr. James P. Walsh, before the House Fisheries, Wildlife, Oceans and Insular Affairs Subcommittee, April 3, 2014, p. 8

¹¹ <http://www.gpo.gov/fdsys/pkg/BILLS-114hr774ih/pdf/BILLS-114hr774ih.pdf>, Section 101

¹² Id.

international fishing agreements. This is achieved through a provision that overrides existing data confidentiality standards contained in the Magnuson-Stevens Act.¹³

The bill requires the Secretary to notify the President and any nation whose vessel has been identified engaging in IUU fishing activities or practices within the past three years and authorizes the Secretary to take actions against nations who have failed to address or regulate the illegal activity.¹⁴ The High Seas Fishing Compliance Act of 1965 is amended so that a permit issued to a vessel is void if any other permit or authorization required for the vessel to fish is expired, revoked, suspended, or does not meet certain other criteria.¹⁵

Title II: Implementation of the Antigua Convention

This title implements the Convention for the Strengthening of the Inter-American Tropical Tuna Commission (IAATC) established by the 1949 Convention between the United States and the Republic of Costa Rica, also known as the “Antigua Convention.” The Antigua Convention is an international agreement responsible for the management of tunas and other migratory species in the eastern Pacific Ocean. This provision would amend the Tunas Conventions Act of 1950 to establish new procedures for appointing the Commissioners, Alternate Commissioners, and compensation and expenses for these Commissioners.¹⁶ A General Advisory Committee is created along with a Science Advisory Subcommittee.¹⁷ The Secretary of Commerce is authorized to promulgate regulations with respect to enforcement matters related to the Convention,¹⁸ the High Seas Driftnet Fishing Moratorium Protection Act is amended to provide for prohibited acts and enforcement of the agreement,¹⁹ and the Eastern Pacific Tuna Licensing Act of 1984 is repealed.²⁰

Title III: Agreement of Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

This title implements the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement), which is an international treaty adopted by the United Nations in 2009 to prevent illegally caught fish from entering the world ports and global seafood market. The United States ratified this treaty with bipartisan support in April 2014, but the Agreement will not take effect until the treaty is ratified by 25 countries (the U.S. is the 11th party to ratify the Agreement).²¹

The Commerce Secretary is authorized, but not required, to designate and publicize ports of entry for foreign vessels, persons, private entities or governments seeking entry to a port under

¹³ <http://www.gpo.gov/fdsys/pkg/BILLS-114hr774ih/pdf/BILLS-114hr774ih.pdf>, Section 101

¹⁴ Id.

¹⁵ Id., Section 108

¹⁶ Id., Section 204

¹⁷ Id., Section 205

¹⁸ Id., Section 206

¹⁹ Id., Section 208

²⁰ Id., Section 210

²¹ <https://www.congress.gov/treaty-document/112th-congress/4/resolution-text>

U.S. jurisdiction. The bill requires these vessels and entities to submit to the Secretary prior to arriving in a port the information requested in Article 8, Annex A of the Port States Measures Agreement.²²

Section 305 of the bill authorizes the Secretary, based on the information supplied by the aforementioned parties, to authorize or deny port entry and communicate this decision to the foreign vessel or its representative. A vessel may be denied entry if it is listed as an IUU vessel; the Secretary has reasonable grounds to believe has engaged in IUU fishing or fishing related activities; or the Secretary has reasonable grounds to believe has violated this Act. In addition, a notice of denial of port entry decision must be sent to the flag nation of the vessel and, as appropriate, each relevant coastal nation, RFMO, and international organization. Despite the authority to deny port privileges, the Secretary is authorized to permit entry to a vessel for scrapping, inspection, enforcement, or to assist a vessel or person in danger or distress.²³

If the vessel is in a port or is allowed entry to a U.S. port, the Secretary is required to deny the use of the port for landing, transshipping, packing or processing of fish, refueling, resupplying, performing maintenance, or the use of dry dock facilities to that vessel if the vessel entered the port without authorization, is a listed IUU vessel, or meets certain other criteria.²⁴

The bill requires the Secretary and the Coast Guard to conduct vessel inspections.²⁵ The bill allows an authorized officer to make arrests; board, search or inspect vessels; seize gear; execute and serve subpoenas; inspect facilities and records; and perform other activities if there is probable cause that prohibited acts under this legislation have been violated. If, following an inspection, the Secretary has reasonable grounds to believe that a foreign vessel has engaged in IUU fishing or activities in support of IUU fishing, the Secretary may take enforcement action and must deny the vessel the use of port services outlined in Section 305.²⁶ Provisions have been added that make it unlawful for any person subject to the jurisdiction of the U.S. to impede or refuse to permit boarding to an authorized officer conducting an investigation or enforcement activities; resist lawful arrest; submit false information; and various other activities,²⁷ and imposes fines and criminal penalties for any person found violating these prohibited acts.²⁸

Cost:

H.R. 774 authorizes appropriations of \$450,000 for each of Fiscal Years 2016 through 2020 to implement the amendments made by Title I, Section 101, subsections (b) and (g) that require the Secretary to identify nations whose vessels have engaged in IUU fishing activities in the past three years, and to transmit that data to other international fishery management organizations.

²² http://www.fao.org/fileadmin/user_upload/legal/docs/2_037t-e.pdf, at 7 and 24

²³ Id., Section 305

²⁴ Id.

²⁵ Id., Section 306

²⁶ Id., Section 308

²⁷ Id., Section 307

²⁸ Id., Section 308

Administration Position:

The Administration has signaled its support for H.R. 774.

Potential Amendments:

Congresswoman Bordallo is expected to offer an amendment making technical changes.

Effect on Current Law (Ramseyer)

http://naturalresources.house.gov/UploadedFiles/H774_Mini_Ram_xml.pdf

EXISTING LAW AMENDMENTS

Disclaimer: This document is intended for drafting purposes only by House Office of the Legislative Counsel's attorneys. The following text reflects amendments made to existing law which have not been reviewed.

Brackets surrounding text indicate text being struck and new matter is shown in italic type face. Also, some laws amended may not be shown here because the amended statute is not maintained by HOLC staff; in those cases, any new levels added by the bill will appear under the heading of the amended Act.

HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT

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TITLE VI—DRIFTNET MORATORIUM

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SEC. 606. ENFORCEMENT.

(a) *IN GENERAL.*—*The Secretary and the Secretary of the department in which the Coast Guard is operating shall enforce this Act, and the Acts to which this section applies, in accordance with this section. Each such Secretary may, by agreement, on a reimbursable basis or otherwise, utilize the personnel services, equipment (including aircraft and vessels), and facilities of any other Federal agency, and of any State agency, in the performance of such duties.*

(b) *ACTS TO WHICH SECTION APPLIES.*—*This section applies to—*

(1) *the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 et seq.);*

(2) *the Dolphin Protection Consumer Information Act (16 U.S.C. 1385);*

(3) *the Tuna Conventions Act of 1950 (16 U.S.C. 951 et seq.);*

(4) *the North Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5001 et seq.);*

(5) *the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.);*

(6) *the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.);*

(7) *the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.); and*

(8) *the Antigua Convention Implementing Act of 2015.* (c) *ADMINISTRATION AND ENFORCEMENT.*—

(1) *IN GENERAL.*—*The Secretary shall prevent any person from violating this Act, or any Act to which this section applies, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though sections 308 through 311 of the Magnuson-Stevens Fishery Conservation and Man-*

agement Act (16 U.S.C. 1858 through 1861) were incorporated into and made a part of and applicable to this Act and each such Act.

(2) *INTERNATIONAL COOPERATION.*—The Secretary may, subject to appropriations and in the course of carrying out the Secretary's responsibilities under the Acts to which this section applies, engage in international cooperation to help other nations combat illegal, unreported, and unregulated fishing and achieve sustainable fisheries. (d) *SPECIAL RULES.*—

(1) *ADDITIONAL ENFORCEMENT AUTHORITY.*—In addition to the powers of officers authorized pursuant to subsection (c), any officer who is authorized by the Secretary, or the head of any Federal or State agency that has entered into an agreement with the Secretary under subsection (a), may enforce the provisions of any Act to which this section applies, with the same jurisdiction, powers, and duties as though section 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861) were incorporated into and made a part of each such Act.

(2) *DISCLOSURE OF ENFORCEMENT INFORMATION.*—

(A) *IN GENERAL.*—The Secretary, subject to the data confidentiality provisions in section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a), may disclose, as necessary and appropriate, information, including information collected under joint authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 71 et seq.) or the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.) or other statutes implementing international fishery agreements, to any other Federal or State government agency, the Food and Agriculture Organization of the United Nations, the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement, or a foreign government, if—

(i) such government, organization, or arrangement has policies and procedures to protect such information from unintended or unauthorized disclosure; and

(ii) such disclosure is necessary—

(I) to ensure compliance with any law or regulation enforced or administered by the Secretary;

(II) to administer or enforce any international fishery agreement to which the United States is a party;

(III) to administer or enforce a binding conservation measure adopted by any international organization or arrangement to which the United States is a party;

(IV) to assist in any investigative, judicial, or administrative enforcement proceeding in the United States; or

(V) to assist in any law enforcement action undertaken by a law enforcement agency of a foreign government, or in relation to a legal proceeding undertaken by a foreign government to the extent the enforcement action is consistent with rules and regulations of a regional fisheries management organization (as that term is defined by the United Nation's Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) of which the United States is a member, or the Secretary has determined that the enforcement action is consistent with the requirements under Federal law for enforcement actions with respect to illegal, unreported, and unregulated fishing.

(B) DATA CONFIDENTIALITY PROVISIONS NOT APPLICABLE.—The data confidentiality provisions of section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a) shall not apply with respect to this Act with respect to—

(i) any obligation of the United States to share information under a regional fisheries management organization (as that term is defined by the United Nation's Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) of which the United States is a member; or

(ii) any information collected by the Secretary regarding foreign vessels. (e) PROHIBITED ACTS.—It is unlawful for any person—

(1) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(2) to refuse to permit any officer authorized to enforce the provisions of this Act to board, search, or inspect a vessel, subject to such person's control for the purposes of conducting any search, investigation, or inspection in connection with the enforcement of this Act, any regulation promulgated under this Act, or any Act to which this section applies;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection described in paragraph (2);

(4) to resist a lawful arrest for any act prohibited by this section or any Act to which this section applies;

(5) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of an other person, knowing that such person has committed any act prohibited by this section or any Act to which this section applies; or

(6) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with—

(A) any observer on a vessel under this Act or any Act to which this section applies; or

(B) any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act or any Act to which this section applies. (f) *CIVIL PENALTY.*—Any person who commits any act that is unlawful under subsection (e) shall be liable to the United States for a civil penalty, and may be subject to a permit sanction, under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858). (g) *CRIMINAL PENALTY.*—Any person who commits an act that is unlawful under subsection (e)(2), (e)(3), (e)(4), (e)(5), or (e)(6) is deemed to be guilty of an offense punishable under section 309(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859(b)). (h) *UTILIZATION OF FEDERAL AGENCY ASSETS.*—The President shall utilize appropriate assets of the Department of Defense, the United States Coast Guard, and other Federal agencies to detect, monitor, and prevent violations of the United Nations moratorium on large-scale driftnet fishing on the high seas for all fisheries under the jurisdiction of the United States and, in the case of fisheries not under the jurisdiction of the United States, to the fullest extent permitted under international law.

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ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

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TITLE III—ANTARCTIC MARINE LIVING RESOURCES CONVENTION

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SEC. 306. UNLAWFUL ACTIVITIES.

It is unlawful for any person—

(1) to engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States pursuant to article IX of the Convention;

(2) to violate any regulation promulgated under this title;

(3) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control or possession of, any Antarctic marine living resource (or part or product thereof) [which he knows, or reasonably should have known, was] harvested in violation of a conservation measure in force with respect to the United States pursuant to article IX of the Convention or in violation of any regulation promulgated under this title, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the Antarctic marine living resource (or part or product thereof);

(4) to refuse to permit any authorized officer or employee of the United States to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for purposes of conducting any search, *investigation*, or inspection in connection with the enforcement of the Convention, this title, or any regulations promulgated under this title;

(5) to assault, resist, oppose, impede, intimidate, or interfere with any authorized officer or employee of the United States in the conduct of any search, *investigation*, or inspection described in paragraph (4);

(6) to resist a lawful arrest or detention for any act prohibited by this section; or

(7) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such other person has committed any act prohibited by this section.

SEC. 307. REGULATIONS.

(a) *IN GENERAL.*—The Secretary of Commerce, after consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, and the heads of other appropriate departments or agencies of the United States, shall promulgate such regulations as are necessary and appropriate to implement the provisions of this title.

(b) *REGULATIONS TO IMPLEMENT CONSERVATION MEASURES.*—

(1) *IN GENERAL.*—Notwithstanding subsections (b), (c), and (d) of section 553 of title 5, United States Code, the Secretary of Commerce may publish in the Federal Register a final regulation to implement any conservation measure for which the Secretary of State notifies the Commission under section 305(a)(1)—

(A) that has been in effect for 12 months or less;

(B) that is adopted by the Commission; and

(C) with respect to which the Secretary of State does not notify Commission in accordance with section 305(a)(1) within the time period allotted for objections under Article IX of the Convention.

(2) *ENTERING INTO FORCE.*—Upon publication of such regulation in the Federal Register, such conservation measure shall enter into force with respect to the United States.

SEC. 308. CIVIL PENALTIES.

[(a) *ASSESSMENT OF PENALTIES.*—(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for a hearing in accordance with subsection (b), to have committed any act prohibited by section 306 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$5,000 for each violation unless the prohibited act was knowingly committed, in which case the amount of the civil penalty shall not exceed \$10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this subsection. The amount of any civil penalty shall be assessed by the Secretary of Commerce by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into

account the nature, circumstances, extent, and gravity of the prohibited acts committed, and, with respect to the person committing the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require, to the extent that such information is reasonably available to the Secretary.

[(2) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section, until such time as the matter is referred to the Attorney General under subsection (c) of this section.]

(a) *IN GENERAL.*—Any person who commits an act that is unlawful under section 306 shall be liable to the United States for a civil penalty, and may be subject to a permit sanction, under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858).

(b) *HEARINGS.*—Hearings for the assessment of civil penalties under subsection (a) shall be conducted in accordance with section 554 of title 5, United States Code. For the purposes of conducting any such hearing, the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General of the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) *REVIEW OF CIVIL PENALTY.*—Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly refer the matter to the Attorney General of the United States, who shall file in such court a certified copy of the record upon which the violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The court shall set aside the findings and order of the Secretary if the findings and order are found to be unsupported by substantial evidence, as provided in section 706(2)(E) of title 5, United States Code.

(d) *RECOVERY OF CIVIL PENALTIES.*—The Attorney General of the United States may seek to recover in any appropriate district court of the United States (1) any civil penalty imposed under this section that has become a final and unappealable order and has

been referred to the Attorney General by the Secretary of Commerce or (2) any final judgment rendered under this section in favor of the United States by an appropriate Court.

(e) PENALTIES UNDER OTHER LAWS.—The assessment of a civil penalty under subsection (a) for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law.

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(b) DISCLOSURE OF INFORMATION.—

(1) *IN GENERAL.*—The Secretary, subject to the data confidentiality provisions in section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a) except as provided in paragraph (2), may disclose, as necessary and appropriate, information, including information collected under joint authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 71 et seq.), the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.), any other statute implementing an international fishery agreement, to any other Federal or State government agency, the Food and Agriculture Organization of the United Nations, or the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement, if such government, organization, or arrangement, respectively, has policies and procedures to protect such information from unintended or unauthorized disclosure.

(2) *EXCEPTIONS.*—The data confidentiality provisions in section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a) shall not apply with respect to this Act—

(A) for obligations of the United States to share information under a regional fisheries management organization (as that term is defined by the United Nation's Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) of which the United States is a member; or

(B) to any information collected by the Secretary regarding foreign vessels.

(c) IUU VESSEL LISTS.—The Secretary may—

(1) develop, maintain, and make public a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing or fishing-related activities in support of illegal, unreported, or unregulated fishing, including vessels or vessel owners identified by an international fishery management organization or arrangement made pursuant to an international fishery agreement, that—

(A) the United States is party to; or

(B) the United States is not party to, but whose procedures and criteria in developing and maintaining a list of

such vessels and vessel owners are substantially similar to such procedures and criteria adopted pursuant to an international fishery agreement to which the United States is a party; and

(2) take appropriate action against listed vessels and vessel owners, including action against fish, fish parts, or fish products from such vessels, in accordance with applicable United States law and consistent with applicable international law, including principles, rights, and obligations established in applicable international fishery management agreements and trade agreements.

(d) REGULATIONS.—The Secretary may promulgate regulations to implement this section.

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(1) IDENTIFICATION FOR ACTIONS OF FISHING VESSELS.—

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(2) IDENTIFICATION FOR ACTIONS OF NATION.—Taking into account the factors described under section 609(a)(1), the Secretary shall also identify, and list in such report, a nation—

(A) if it is violating, or has violated at any point during the preceding three years, conservation and management measures required under an international fishery management agreement to which the United States is a party and the violations undermine the effectiveness of such measures; or

(B) if it is failing, or has failed in the preceding 3-year period, to effectively address or regulate illegal, unreported, or unregulated fishing in areas described under paragraph (1)(B).

(3) APPLICATION TO OTHER ENTITIES.—Where the provisions of this Act are applicable to nations, they shall also be applicable, as appropriate, to other entities that have competency to enter into international fishery management agreements.

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(b) NOTIFICATION.—The Secretary shall notify the President and that nation of such an identification.

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(1) notify, as soon as possible, the President and nations that have been identified under subsection (a), and also notify other nations whose vessels engage in fishing activities or practices described in subsection (a), about the provisions of this section and this Act;

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(4) *ALTERNATIVE PROCEDURE.*—*The Secretary may establish a procedure to authorize, on a shipment-by-shipment, shipper-by-shipper, or other basis the importation of fish or fish products from a vessel of a nation issued a negative certification under paragraph (1) if the Secretary determines that such imports were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that—*

(A) are comparable to those of the United States, taking into account different conditions; and

HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT ACT

* * * * *

TITLE I—HIGH SEAS LARGE-SCALE DRIFTNET FISHING

SEC. 101. DENIAL OF PORT PRIVILEGES AND SANCTIONS FOR HIGH SEAS LARGE-SCALE DRIFTNET FISHING.

(a) DENIAL OF PORT PRIVILEGES.—

(1) *PUBLICATION OF LIST.*—Not later than 30 days after the date of enactment of this Act and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.

(2) *DENIAL OF PORT PRIVILEGES.*—The Secretary of the Treasury shall, in accordance with [recognized principles of] international law—

(A) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1) *or, as appropriate, for fishing vessels of a nation that receives a negative certification under section 609(d) or section 610(c) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826); and*

(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States, *except for the purposes of inspecting such vessel, conducting an investigation, or taking other appropriate enforcement action.*

(3) *NOTIFICATION OF NATION.*—Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding—

(A) the effect of that publication on port privileges of vessels of that nation under paragraph (1); and

(B) any sanctions or requirements, under this Act or any other law, that may be imposed on that nation if nationals or vessels of that nation continue to conduct large-

scale driftnet fishing beyond the exclusive economic zone of any nation after December 31, 1992.

(b) SANCTIONS.—

(1) IDENTIFICATIONS.—

(A) INITIAL IDENTIFICATIONS.—Not later than January 10, 1993, the Secretary of Commerce shall—

(i) identify each nation whose nationals or vessels are conducting large-scale driftnet fishing [or illegal, unreported, or unregulated fishing] beyond the exclusive economic zone of any nation; and

(ii) notify the President and that nation of the identification under clause (i).

(B) ADDITIONAL IDENTIFICATIONS.—At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing [or illegal, unreported, or unregulated fishing] beyond the exclusive economic zone of any nation, the Secretary of Commerce shall—

(i) identify that nation; and

(ii) notify the President and that nation of the identification under clause (i).

(2) CONSULTATIONS.—Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter into consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing or illegal, unreported, or unregulated fishing by the nationals or vessels of that nation beyond the exclusive economic zone of any nation.

(3) PROHIBITION ON IMPORTS OF FISH AND FISH PRODUCTS AND SPORT FISHING EQUIPMENT.—

(A) PROHIBITION.—The President—

(i) upon receipt of notification of the identification of a nation under paragraph (1)(A) or a *negative certification under section 609(d) or section 610(c) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d), 1826k(c))*; or

(ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within ninety days, shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined in section 4162 of the Internal Revenue Code of 1986 (26 U.S.C. 4162)) from that nation.

(B) IMPLEMENTATION OF PROHIBITION.—With respect to an import prohibition directed under subparagraph (A), the Secretary of the Treasury shall implement such prohibition not later than the date that is forty-five days after the date on which the Secretary has received the direction from the President.

(C) PUBLIC NOTICE OF PROHIBITION.—Before the effective date of any import prohibition under this paragraph,

the Secretary of the Treasury shall provide public notice of the impending prohibition.

(4) ADDITIONAL ECONOMIC SANCTIONS.—

(A) DETERMINATION OF EFFECTIVENESS OF SANCTIONS.—Not later than six months after the date the Secretary of Commerce identifies a nation under paragraph (1) *or issues a negative certification under section 609(d) or section 610(c) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d), 1826k(c))*, the Secretary shall determine whether—

(i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing [or illegal, unreported, or unregulated fishing] conducted by its nationals and vessels beyond the exclusive economic zone of any nation, *or to address the offending activities for which a nation received a negative certification under section 609(d) or 610(c) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d), 1826k(c))*; or

(ii) that nation has retaliated against the United States as a result of that prohibition.

(B) CERTIFICATION.—The Secretary of Commerce shall certify to the President each affirmative determination under subparagraph (A) with respect to a nation.

(C) EFFECT OF CERTIFICATION.—Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)), as amended by this Act.

SEC. 102. DURATION OF DENIAL OF PORT PRIVILEGES AND SANCTIONS.

Any denial of port privileges or sanction under section 101 with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing or illegal, unreported, or unregulated fishing by its nationals and vessels beyond the exclusive economic zone of any nation *or effectively addressed the offending activities for which the nation received a negative certification under 609(d) or 610(c) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d), 1826k(c))*.

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NORTH PACIFIC ANADROMOUS STOCKS ACT OF 1992

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TITLE VIII—NORTH PACIFIC ANADROMOUS STOCKS CONVENTION

* * * * *

SEC. 810. UNLAWFUL ACTIVITIES.

It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States—

- (1) to fish for any anadromous fish in the Convention area;
- (2) to retain on board any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;
- (3) to fail to return immediately to the sea any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;
- (4) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any anadromous fish taken or retained in violation of the Convention, this title, or any regulation issued under this title;
- (5) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search, *investigation*, or inspection in connection with the enforcement of the Convention, this title, or any regulation issued under this title;
- (6) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any enforcement officer in the conduct of any search, *investigation*, or inspection described in paragraph (5);
- (7) to resist a lawful arrest or detection for any act prohibited by this section;
- (8) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section; or
- (9) to violate any provision of the Convention, this title, or any regulation issued under this title.

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NORTHERN PACIFIC ANADROMOUS STOCKS ACT OF 1992

PACIFIC SALMON TREATY ACT OF 1985

* * * * *

SEC. 8. PROHIBITED ACTS AND PENALTIES.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States—

- (1) to violate any provision of this title, or of any regulation adopted hereunder, or of any Fraser River Panel regulation approved by the United States under the Treaty;

(2) to refuse to permit any officer authorized to enforce the provisions of this title to board a fishing vessel subject to such person's control for purposes of conducting any search, *investigation*, or inspection in connection with the enforcement of **[this title;] this Act;**

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, *investigation*, or inspection described in **[subparagraph (2);] paragraph (2);**

(4) to resist a lawful arrest for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of **[this title; or] this Act;**

(6) 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 section.

[(b) Any person who commits any act that is unlawful under subsection (a) of this section shall be liable to the United States for a civil penalty as provided by section 308 of the Magnuson Act (16 U.S.C. 1858).

[(c) Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (6) of subsection (a) of this section shall be guilty of an offense punishable as provided by section 309(b) of the Magnuson Act (16 U.S.C. 1859(b)).]

[(d)(1) Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act which is prohibited under subsection (a) of this section, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act which is prohibited by subsection (a) of this section, shall be subject to forfeiture as provided by section 310 of the Magnuson Act (16 U.S.C. 1860).

[(2) Any fish seized pursuant to this title may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulation of the Secretary.

[(e) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall enforce the provisions of this title and shall have the authority provided by subsections 311 (a), (b)(1), and (c) of the Magnuson Act (16 U.S.C. 1861 (a), (b)(1), and (c)).]

[(f) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this section and may, at any time—

[(1) enter restraining orders or prohibitions;

[(2) issue warrants, process in rem, or other process;

[(3) prescribe and accept satisfactory bonds or other security; and

[(4) take such other actions as are in the interest of justice.]

(b) ADDITIONAL PROHIBITIONS AND ENFORCEMENT.—For additional prohibitions relating to this Act and enforcement of this Act,

see section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g).

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WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT

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TITLE V—IMPLEMENTATION OF WEST- ERN AND CENTRAL PACIFIC FISH- ERIES CONVENTION

* * * * *

SEC. 506. ENFORCEMENT.

(a) IN GENERAL.—The Secretary may—

(1) administer and enforce this title and any regulations issued under this title, except to the extent otherwise provided for in this Act;

(2) request and utilize on a reimbursed or non-reimbursed basis the assistance, services, personnel, equipment, and facilities of other Federal departments and agencies in—

(A) the administration and enforcement of this title; and

(B) the conduct of scientific, research, and other programs under this title;

(3) conduct fishing operations and biological experiments for purposes of scientific investigation or other purposes necessary to implement the WCPFC Convention;

(4) collect, utilize, and disclose such information as may be necessary to implement the WCPFC Convention, subject to sections 552 and 552a of title 5, United States Code, and section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a(b));

(5) if recommended by the United States Commissioners or proposed by a Council with authority over the relevant fishery, assess and collect fees, not to exceed three percent of the ex-vessel value of fish harvested by vessels of the United States in fisheries managed pursuant to this title, to recover the actual costs to the United States of management and enforcement under this title, which shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Secretary under this title; and

(6) issue permits to owners and operators of United States vessels to fish in the convention area seaward of the United States Exclusive Economic Zone, under such terms and conditions as the Secretary may prescribe, and shall remain valid for a period to be determined by the Secretary.

(b) **CONSISTENCY WITH OTHER LAWS.**—The Secretary shall ensure the consistency, to the extent practicable, of fishery management programs administered under this Act, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Tuna Conventions Act (16 U.S.C. 951 et seq.), the South Pacific Tuna Act (16 U.S.C. 973 et seq.), section 401 of Public Law 108-219 (16 U.S.C. 1821 note) (relating to Pacific albacore tuna), and the Atlantic Tunas Convention Act (16 U.S.C. 971).

[(c) **ACTIONS BY THE SECRETARY.**—The Secretary shall prevent any person from violating this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857) were incorporated into and made a part of this title. Any person that violates any provision of this title is subject to the penalties and entitled to the privileges and immunities provided in the Magnuson-Stevens Fishery Conservation and Management Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of that Act were incorporated into and made a part of this title.]

(c) **ADDITIONAL PROHIBITIONS AND ENFORCEMENT.**—*For additional prohibitions relating to this Act and enforcement of this Act, see section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g).*

(d) **CONFIDENTIALITY.**—

(1) **IN GENERAL.**—Any information submitted to the Secretary in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—

(A) to Federal employees who are responsible for administering, implementing, and enforcing this Act;

(B) to the Commission, in accordance with requirements in the Convention and decisions of the Commission, and, insofar as possible, in accordance with an agreement with the Commission that prevents public disclosure of the identity or business of any person;

(C) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(D) when required by court order; or

(E) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.

(2) **USE OF INFORMATION.**—The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form that does not directly or indirectly disclose the identity or business of any person. Nothing in this subsection shall be interpreted or con-

strued to prevent the use for conservation and management purposes by the Secretary of any information submitted in compliance with any requirement or regulation under this Act.

SEC. 507. PROHIBITED ACTS.

(a) IN GENERAL.—It is unlawful for any person—

(1) to violate any provision of this title or any regulation or permit issued pursuant to this title;

(2) to use any fishing vessel to engage in fishing after the revocation, or during the period of [suspension, on] *suspension*, of an applicable permit issued pursuant to this title;

(3) to refuse to permit any officer authorized to enforce the provisions of this title to board a fishing vessel subject to such person's control for the purposes of conducting any search, investigation, or inspection in connection with the enforcement of this title or any regulation, permit, or the Convention;

(4) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigations, or inspection in connection with the enforcement of this title or any regulation, permit, or the Convention;

(5) to resist a lawful arrest for any act prohibited by this title;

(6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this title or any regulation, permit, or agreement referred to in paragraph (1) or (2);

(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any chapter prohibited by this section;

(8) to knowingly and willfully submit to the Secretary false information (including false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishery vessels of the United States), regarding any matter that the Secretary is considering in the course of carrying out this title;

(9) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this title, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this title;

(10) to engage in fishing in violation of any regulation adopted pursuant to section 506(a) of this title;

(11) to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations;

(12) 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;

(13) to fail to stop a vessel upon being hailed and instructed to stop by a duly authorized official of the United States;

(14) to import, in violation of any regulation adopted pursuant to section 506(a) of this title, any fish in any form of those species subject to regulation pursuant to a recommendation, resolution, or decision of the Commission, or any tuna in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 506(a) of this title.

(b) ENTRY CERTIFICATION.—In the case of any fish described in subsection (a) offered for entry into the United States, the Secretary of Commerce shall require proof satisfactory to the Secretary that such fish is not ineligible for such entry under the terms of section 506(a) of this title.

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ATLANTIC TUNAS CONVENTION ACT OF 1975

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ADMINISTRATION

SEC. 6. (a) The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this Act, and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the fisheries zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(b) Enforcement activities at sea under the provisions of this Act for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation

with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

(c)(1)(A) Upon favorable action by the Secretary of State under section 5(a) of this Act on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

(C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) (A) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through [(A)] (i) submission of written data, views, or arguments, and [(B)] (ii) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(B) *Notwithstanding the requirements of subparagraph (A) and subsections (b) and (c) of section 553 of title 5, United States Code, the Secretary may issue final regulations to implement Commission recommendations referred to in paragraph (1) concerning trade restrictive measures against nations or fishing entities.*

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

(A) select for regulation one or more of the species covered by the Convention;

(B) divide the Convention waters into areas;
(C) establish one or more open or closed seasons as to each such area;

(D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;

(E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;

(F) require records of operations to be kept by any master or other person in charge of any fishing vessel;

(G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this Act;

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;

(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

(K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention;

except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission.

(4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit—

(A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effective-

ness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(6) IDENTIFICATION AND NOTIFICATION.—

(A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall—

(i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;

(ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and

(iii) publish a list of those Nations identified under clause (i).

(B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.

(7) CONSULTATION.—Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will—

(A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;

(B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and

(C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.

(d)(1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(16) of the Magnuson-Stevens Fishery Conservation and Management Act) in the Convention area.

(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.

VIOLATIONS; FINES AND FORFEITURES; APPLICATION OF RELATED LAWS

SEC. 7. (a) It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 6 of this Act, without regard to the citizenship of the person or vessel which took the fish.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished by such master or person.

(c) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this Act and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accord-

ance with the provisions of this Act, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 6(c) or (d) of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 6(c) or (d) of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6(c) or (d) of this Act.

[(e) The civil penalty and permit sanctions of section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) are hereby made applicable to violations of this section as if they were violations of section 307 of that Act.

[(f) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.]

[(g)] (e) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

ENFORCEMENT

SEC. 8. [(a) Any person authorized in accordance with the provisions of this Act to enforce the provisions of this Act and the regulations issued thereunder may—

[(1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch and, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this Act or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;

[(2) arrest, with or without a warrant, any person who violates the provisions of this Act or any regulation issued thereunder in his presence or view;

[(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

[(4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this Act or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.]

(a) *For additional prohibitions relating to this Act and enforcement of this Act, see section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g).*

(b) To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section 5(b) of this Act for international enforcement, the duly authorized officials of such party shall have the authority to carry out **the enforcement activities specified in section 8(a) of this Act** *enforcement activities with respect to this Act that are otherwise authorized by law* with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out **the enforcement activities specified in section 8(a) of this Act** *enforcement activities with respect to this Act that are otherwise authorized by law* with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

[(c) Notwithstanding the provisions of section 2464 of title 28, United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.]

* * * * *

[ANNUAL REPORT

[SEC. 11. Not later than April 1, 1996, and annually thereafter, the Secretary shall prepare and transmit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report, that—

[(1) details for the previous 10-year period the catches and exports to the United States of highly migratory species (including tunas, swordfish, marlin and sharks) from Nations fishing on Atlantic stocks of such species that are subject to management by the Commission;

[(2) identifies those fishing Nations whose harvests are inconsistent with conservation and management recommendations of the Commission;

[(3) describes reporting requirements established by the Secretary to ensure that imported fish products are in compliance with all international management measures, including minimum size requirements, established by the Commission and other international fishery organizations to which the United States is a party; and

[(4) describes actions taken by the Secretary under section 6.]

SAVINGS CLAUSE

SEC. [12.] 11. Nothing in this Act shall have the effect of diminishing the rights and obligations of any Nation under Article VIII(3) of the Convention.

SEPARABILITY

SEC. [13.] 12. If any provision of this Act or the applications of such provision to any circumstance or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

HIGH SEAS FISHING COMPLIANCE ACT OF 1995

TITLE I—HIGH SEAS FISHING COMPLIANCE

* * * * *

SEC. 104. PERMITTING.

(a) IN GENERAL.—No high seas fishing vessel shall engage in harvesting operations on the high seas unless the vessel has on board a valid permit issued under this section.

(b) ELIGIBILITY.—

(1) Any vessel of the United States is eligible to receive a permit under this section, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and

(A) the foreign nation suspended such authorization because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(B) the foreign nation, within the last three years preceding application for a permit under this section, withdrew such authorization because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restriction in paragraph (1) does not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and manage-

ment measures, and the new owner has provided sufficient evidence to the Secretary demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel.

(3) The restriction in paragraph (1) does not apply if the Secretary makes a determination that issuing a permit would not subvert the purposes of the Agreement.

(4) The Secretary may not issue a permit to a vessel unless the Secretary is satisfied that the United States will be able to exercise effectively its responsibilities under the Agreement with respect to that vessel.

(c) APPLICATION.—

(1) The owner or operator of a high seas fishing vessel may apply for a permit under this section by completing an application form prescribed by the Secretary.

(2) The application form shall contain—

(A) the vessel's name, previous names (if known), official numbers, and port of record;

(B) the vessel's previous flags (if any);

(C) the vessel's International Radio Call Sign (if any);

(D) the names and addresses of the vessel's owners and operators;

(E) where and when the vessel was built;

(F) the type of vessel;

(G) the vessel's length; and

(H) any other information the Secretary requires for the purposes of implementing the Agreement.

(d) CONDITIONS.—The Secretary shall establish such conditions and restrictions on each permit issued under this section as are necessary and appropriate to carry out the obligations of the United States under the Agreement, including but not limited to the following:

(1) The vessel shall be marked in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, or with regulations issued under section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855); and

(2) The permit holder shall report such information as the Secretary by regulation requires, including area of fishing operations and catch statistics. The Secretary shall promulgate regulations concerning conditions under which information submitted under this paragraph may be released.

(e) FEES.—

(1) The Secretary shall by regulation establish the level of fees to be charged for permits issued under this section. The amount of any fee charged for a permit issued under this section shall not exceed the administrative costs incurred in issuing such permits. The permitting fee may be in addition to any fee required under any regional permitting regime applicable to high seas fishing vessels.

(2) The fees authorized by paragraph (1) shall be collected and credited to the Operations, Research and Facilities account of the National Oceanic and Atmospheric Administration. Fees

collected under this subsection shall be available for the necessary expenses of the National Oceanic and Atmospheric Administration in implementing this Act, and shall remain available until expended.

[(f) DURATION.—A permit issued under this section is valid for 5 years. A permit issued under this section is void in the event the vessel is no longer eligible for United States documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.]

(f) VALIDITY.—A permit issued under this section for a vessel is void if—

(1) any other permit or authorization required for the vessel to fish is expired, revoked, or suspended; or

(2) the vessel is no longer documented under the laws of the United States or eligible for such documentation.

* * * * *

DOLPHIN PROTECTION CONSUMER INFORMATION ACT

* * * * *

NORTHERN PACIFIC HALIBUT ACT OF 1982

* * * * *

SEC. 7. It is unlawful—

[(a)] (1) for any person subject to the jurisdiction of the United States—

[(1)] (A) to violate any provision of the Convention, this Act or any regulation adopted under this Act;

[(2)] (B) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search , *investigation*, or inspection in connection with the enforcement of the Convention, this Act or any regulation adopted under this Act;

[(3)] (C) to forcibly assault, resist, oppose, impede, intimidate or interfere with any enforcement officer in the conduct of any search , *investigation*, or inspection described in paragraph (2);

[(4)] (D) to resist a lawful arrest or detention for any act prohibited by this section;

[(5)] (E) to ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any fish taken or retained in violation of the Convention, this Act, or any regulation adopted under this Act; [or]

[(6)] (F) to interfere with, delay or prevent, by any means, the apprehension, arrest or detention of another person, knowing that such person has committed any act prohibited by this [section.] *section*; or

[(b)] (2) for any foreign fishing vessel, and for the owner or operator of any foreign fishing vessel, to engage in fishing for halibut in the fishery conservation zone, unless such fishing is authorized by, and conducted in accordance with the Convention, this Act and regulations adopted under this Act.

* * * * *

NORTHWEST ATLANTIC FISHERIES CONVENTION ACT OF 1995

* * * * *

TITLE II—IMPLEMENTATION OF CONVENTION ON FUTURE MULTILATERAL COOPERATION IN THE NORTHWEST AT- LANTIC FISHERIES

* * * * *

SEC. 207. PROHIBITED ACTS [AND PENALTIES] AND ENFORCEMENT.

(a) PROHIBITION.—It is unlawful for any person or vessel that is subject to the jurisdiction of the United States—

(1) to violate any regulation issued under this title or any measure that is legally binding on the United States under the Convention;

(2) to refuse to permit any authorized enforcement officer to board a fishing vessel that is subject to the person's control for purposes of conducting any search, *investigation*, or inspection in connection with the enforcement of this title, any regulation issued under this title, or any measure that is legally binding on the United States under the Convention;

(3) forcibly to assault, resist, oppose, impede, intimidate, or interfere with any authorized enforcement officer in the conduct of any search, *investigation*, or inspection described in paragraph (2);

(4) to resist a lawful arrest for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this section; or

(6) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that the other person has committed an act prohibited by this section.

[(b)] CIVIL PENALTY.—Any person who commits any act that is unlawful under subsection (a) shall be liable to the United States for a civil penalty, or may be subject to a permit sanction, under section 308 of the Magnuson Act (16 U.S.C. 1858).

[(c)] CRIMINAL PENALTY.—Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (6) of subsection (a) shall be guilty of an offense punishable under section 309(b) of the Magnuson Act (16 U.S.C. 1859(b)).

[(d)] CIVIL FORFEITURES.—

[(1) IN GENERAL.—Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act that is unlawful under subsection (a), and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act that is unlawful under subsection (a), shall be subject to seizure and forfeiture as provided in section 310 of the Magnuson Act (16 U.S.C. 1860).

[(2) DISPOSAL OF FISH.—Any fish seized pursuant to this title may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulations issued by the Secretary.

[(e) ENFORCEMENT.—The Secretary and the Secretary of the department in which the Coast Guard is operating shall enforce the provisions of this title and shall have the authority specified in section 311 (a), (b)(1), and (c) of the Magnuson Act (16 U.S.C. 1861 (a), (b)(1), and (c)) for that purpose.

[(f) JURISDICTION OF COURTS.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this section and may, at any time—

[(1) enter restraining orders or prohibitions;

[(2) issue warrants, process in rem, or other process;

[(3) prescribe and accept satisfactory bonds or other security; and

[(4) take such other actions as are in the interests of justice.]

(b) *ADDITIONAL PROHIBITIONS AND ENFORCEMENT.*—*For additional prohibitions relating to this Act and enforcement of this Act, see section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g).*

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MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

* * * * *

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

* * * * *

SEC. 307. PROHIBITED ACTS.

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(H) 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 section;

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act;

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus*, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan implemented under this title, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.);

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(K) to knowingly steal, or without authorization, to remove, damage, or tamper with—

- (i) fishing gear owned by another person, which is located in the exclusive economic zone, or
- (ii) fish contained in such fishing gear;

(L) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act;

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation;

(N) to strip pollock of its roe and discard the flesh of the pollock;

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A);

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

(ii) to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

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

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

(Q) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation *or any treaty or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party*; or

(R) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or in the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).

For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed

in violation of subparagraph (P). In such subparagraph, the term “naturally attached”, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

(A) in fishing within the boundaries of any State, except—

(i) recreational fishing permitted under section 201(i);

(ii) fish processing permitted under section 306(c);

or

(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);

(B) in fishing, except recreational fishing permitted under section 201(i), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone or areas, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b), (c), or (d); or

(C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(d) or section 306(c) to receive such fish;

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State or special areas, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional

oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

* * * * *

TUNA CONVENTIONS ACT OF 1950

* * * * *

SEC. 2. As used in this Act, the term—

[(a) “convention” includes (1) the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City January 25, 1949, by the United States of America and the United Mexican States, (2) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington May 31, 1949, by the United States of America and the Republic of Costa Rica, or both such conventions, as the context requires;

[(b) “commission” includes (1) the International Commission for the Scientific Investigation of Tuna, (2) the Inter-American Tropical Tuna Commission provided for by the conventions referred to in subsection (a) of this section, or both such commissions, as the context requires;

[(c) “United States Commissioners” means the members of the commissions referred to in subsection (b) of this section representing the United States of America and appointed pursuant to the terms of the pertinent convention and section 3 of this Act;

[(d) “person” means every individual, partnership, corporation, and association subject to the jurisdiction of the United States; and

[(e) “United States” shall include all areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

SEC. 3. The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code. Of such Commissioners—

[(a) not more than one shall be a person residing elsewhere than in a State whose vessels maintain a substantial fishery in the areas of the conventions;

[(b) at least one of the Commissioners who are such legal residents shall be a person chosen from the public at large, and

who is not a salaried employee of a State or of the Federal Government;

[(c) at least one shall be either the Administrator, or an appropriate officer, of the National Marine Fisheries Service; and

[(d) at least one shall be chosen from a nongovernmental conservation organization.]

SEC. 2. DEFINITIONS.

In this Act:

(1) *ANTIGUA CONVENTION.*—The term “Antigua Convention” means the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica, signed at Washington, November 14, 2003.

(2) *COMMISSION.*—The term “Commission” means the Inter-American Tropical Tuna Commission provided for by the Convention.

(3) *CONVENTION.*—The term “Convention” means—

(A) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica;

(B) the Antigua Convention, upon its entry into force for the United States, and any amendments thereto that are in force for the United States; or

(C) both such Conventions, as the context requires.

(4) *PERSON.*—The term “person” means an individual, partnership, corporation, or association subject to the jurisdiction of the United States.

(5) *UNITED STATES.*—The term “United States” includes all areas under the sovereignty of the United States.

(6) *UNITED STATES COMMISSIONERS.*—The term “United States commissioners” means the individuals appointed in accordance with section 3(a).

SEC. 3. COMMISSIONERS.

(a) *COMMISSIONERS.*—The United States shall be represented on the Commission by 4 United States Commissioners. The President shall appoint individuals to serve on the Commission. The United States Commissioners shall be subject to supervision and removal by the Secretary of State, in consultation with the Secretary. In making the appointments, the President shall select United States Commissioners from among individuals who are knowledgeable or experienced concerning highly migratory fish stocks in the eastern tropical Pacific Ocean, one of whom shall be an officer or employee of the Department of Commerce. Not more than 2 United States Commissioners may be appointed who reside in a State other than a State whose vessels maintain a substantial fishery in the area of the Convention.

(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 or of the General Advisory Committee or Scientific Advisory Subcommittee established pursuant to section 4(b), all powers and duties of a United States Commissioner in the absence of any United States 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 United States Commissioners, other than officers or employees of the United States Government, shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

(2) COMPENSATION.—The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as United States 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 to meetings of the Inter-American Tropical Tuna Commission and other meetings the Secretary of State deems necessary to fulfill their duties, in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

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

SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

[(a) APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.—The Secretary, in consultation with the United States Commissioners, shall—

[(1) appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations;

[(2) appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations;

[(3) establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data; and

[(4) fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

[(b) FUNCTIONS.—

[(1) GENERAL ADVISORY COMMITTEE.—The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.]

(a) GENERAL ADVISORY COMMITTEE.—

(1) APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.—

(A) *The Secretary, in consultation with the Secretary of State, shall appoint a General Advisory Committee which shall consist of not more than 25 individuals who shall be representative of the various groups concerned with the fisheries covered by the Convention, including nongovernmental conservation organizations, providing to the maximum extent practicable an equitable balance among such groups. Members of the General Advisory Committee will be eligible to participate as members of the United States delegation to the Commission and its working groups to the extent the Commission rules and space for delegations allow.*

(B) *The chair of the Pacific Fishery Management Council's Advisory Subpanel for Highly Migratory Fisheries and the chair of the Western Pacific Fishery Management Council's Advisory Committee shall be ex-officio members of the General Advisory Committee by virtue of their positions in those Councils.*

(C) *Each member of the General Advisory Committee appointed under subparagraph (A) shall serve for a term of 3 years and is eligible for reappointment.*

(D) *The General Advisory Committee shall be invited to attend all non-executive meetings of the United States delegation 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.*

(E) *The General Advisory Committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this title, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The General Advisory Committee shall publish and make available to the public a statement of its organization, practices and procedures. Meetings of the General Advisory Committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in timely*

fashion. The General Advisory Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(2) *INFORMATION SHARING.—The Secretary and the Secretary of State shall furnish the General Advisory Committee with relevant information concerning fisheries and international fishery agreements.*

(3) *ADMINISTRATIVE MATTERS.—*

(A) *The Secretary shall provide to the General Advisory Committee in a timely manner such administrative and technical support services as are necessary for its effective functioning.*

(B) *Individuals appointed to serve as a member of the General Advisory Committee—*

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

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

(b) *SCIENTIFIC ADVISORY SUBCOMMITTEE.—* SCIENTIFIC ADVISORY SUBCOMMITTEE(1) THE SECRETARY, IN CONSULTATION WITH THE SECRETARY OF STATE, SHALL APPOINT A SCIENTIFIC ADVISORY SUBCOMMITTEE OF NOT LESS THAN 5 NOR MORE THAN 15 QUALIFIED SCIENTISTS WITH BALANCED REPRESENTATION FROM THE PUBLIC AND PRIVATE SECTORS, INCLUDING NONGOVERNMENTAL CONSERVATION ORGANIZATIONS.

(2) *SCIENTIFIC ADVISORY SUBCOMMITTEE.—*

(A) *ADVICE.—The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including—*

(i) *the conservation of ecosystems;*

(ii) *the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and*

(iii) *the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.*

(B) *OTHER FUNCTIONS AND ASSISTANCE.—The Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners, or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include—*

(i) the review of data from the Program, including data received from the Inter-American Tropical Tuna Commission;

(ii) recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research;

(iii) recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments;

(iv) consulting with other experts as needed; and

(v) recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or its equivalent).

(3) ATTENDANCE AT MEETINGS.—The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the **General Advisory Subcommittee** *General Advisory Committee* and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.

SEC. 6. (a) The Secretary of State is authorized to approve or disapprove, on behalf of the United States Government, bylaws and rules, or amendments thereof, adopted by each commission and submitted for approval of the United States Government in accordance with the provisions of the conventions, and, with the concurrence of the Secretary of the Interior,, to approve or disapprove the general annual programs of the commissions. The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, recommendations, and other communications of the commissions, and to take appropriate action thereon either directly or by reference to the appropriate authority.

(b) Regulations recommended by each commission pursuant to the convention requiring the submission to the commission of records of operations by boat captains or other persons who participate in the fisheries covered by the convention, upon the concurrent approval of the Secretary of State and the Secretary of the Interior,, shall be promulgated by the latter and upon publication in the Federal Register, shall be applicable to all vessels and persons subject to the jurisdiction of the United States.

(c) Regulations required to carry out recommendations of the commission made pursuant to paragraph 5 of article II of the Convention for the Establishment of an Inter-American Tropical Tuna Commission shall be promulgated as hereinafter provided by the Secretary of the Interior upon approval of such recommendations by the Secretary of State and the Secretary of the Interior. The

Secretary of the Interior shall cause to be published in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (1) submission of written data, views, or arguments, and (2) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations. After publication in the Federal Register such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary of the Interior shall prescribe, but in no event prior to an agreed date for the application by all countries whose vessels engage in fishing for species covered by the convention in the regulatory area on a meaningful scale, in terms of effect upon the success of the conservation program, of effective measures for the implementation of the commission's recommendations applicable to all vessels and persons subject to their respective jurisdictions. The Secretary of the Interior shall suspend at any time the application of any such regulations when, after consultation with the Secretary of State and the United States Commissioners, he determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the commission's recommendations. The regulations thus promulgated may include the selection for regulation of one or more of the species covered by the convention; the division of the convention waters into areas; the establishment of one or more open or closed seasons as to each area; the limitation of the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed; the limitation or prohibition of the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish; the requiring of such clearance certificates for vessels as may be necessary to carry out the purposes of the convention and this Act; and such other measures incidental thereto as the Secretary of the Interior may deem necessary to implement the recommendations of the commission: *Provided*, That upon the promulgation of any such regulations the Secretary of the Interior shall promulgate additional regulations, with the concurrence of the Secretary of State, which shall become effective simultaneously with the application of the regulations hereinbefore referred to (1) to prohibit the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area; and (2) to prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the com-

mission. In the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the commission's recommendations, the Secretary of the Interior, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the commission and which were taken in the regulatory area. The aforesaid prohibitions shall continue until the Secretary of the Interior is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.】

SEC. 6. RULEMAKING.

(a) *REGULATIONS.*—*The Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department in which the Coast Guard is operating, may promulgate such regulations as may be necessary to carry out the United States international obligations under the Convention and this Act, including recommendations and decisions adopted by the Commission. In cases where the Secretary has discretion in the implementation of one or more measures adopted by the Commission that would govern fisheries under the authority of a Regional Fishery Management Council, the Secretary may, to the extent practicable within the implementation schedule of the Convention and any recommendations and decisions adopted by the Commission, promulgate such regulations as may be necessary to carry out the United States international obligations under the Convention and this Act, in accordance with the procedures established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).*

(b) *JURISDICTION.*—*The Secretary may promulgate regulations as may be necessary to carry out the United States international obligations under the Convention and this Act, applicable to all vessels and persons subject to the jurisdiction of the United States, including United States flag vessels wherever they may be operating, on such date as the Secretary shall prescribe.*

* * * * *

SEC. 8. (a) It shall be unlawful for any master or other person in charge of a fishing vessel of the United States to engage in fishing in violation of any regulation adopted pursuant to [section 6(c) of this Act] *section 6*, or for any person knowingly to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel of the United States or any person on board such vessel to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished; or to fail to stop upon being hailed by a duly authorized official of the United States; or to refuse to permit the duly authorized officials of the United States or authorized officials of the commissions to

board such vessel or inspect its catch, equipment, books, documents, records, or other articles or question the persons on board in accordance with the provisions of this Act, or the convention, as the case may be.

(c) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to [section 6(c) of this Act] *section 6*, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the commission, or any tuna in any form not under regulation but under investigation by the commission, during the period such fish have been denied entry in accordance with the provisions of [section 6(c) of this Act] *section 6*. In the case of any fish as described in this subsection offered for entry into the United States, the Secretary of the Interior shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of [section 6(c) of this Act] *section 6*.

(d) Any person violating any provision of subsection (a) of this section shall be fined not more than \$25,000, and for a subsequent violation of any provisions of said subsection (a) shall be fined not more than \$50,000.

(e) Any person violating any provision of subsection (b) of this section shall be fined not more than \$1,000, and for a subsequent violation of any provision of subsection (b) shall be fined not more than \$5,000.

(f) Any person violating any provision of subsection (c) of this section shall be fined not more than \$100,000.

(g) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(h) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

(i) *ADDITIONAL PROHIBITIONS AND ENFORCEMENT.—For prohibitions relating to this Act and enforcement of this Act, see section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g).*

* * * * *

【SEC. 10. (a) The judges of the United States district courts and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and the regulations issued pursuant thereto.

【(b) Enforcement of the provisions of this Act and the regulations issued pursuant thereto shall be the joint responsibility of the United States Coast Guard, the United States Department of the Interior, and the United States Bureau of Customs. In addition, the Secretary of the Interior may designate officers and employees of

the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities hereunder. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes.

[(c) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this Act.

[(d) Such person so authorized shall have the power—

[(1) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this Act or the regulations issued thereunder;

[(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of the provisions of this Act or the regulations issued thereunder, then to arrest such person.

[(e) Such person so authorized may seize, whenever and wherever lawfully found, all fish taken or retained in violation of the provisions of this Act or the regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to the order of a court of competent jurisdiction, pursuant to the provisions of subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of the Interior.

[(f) Notwithstanding the provisions of section 2464 of title 28 of the United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.]

SEC. 10. ENFORCEMENT.

For enforcement of this Act, see section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g).

* * * * *

SEC. 15. REDUCTION OF BYCATCH IN THE EASTERN TROPICAL PACIFIC OCEAN.

The Secretary of State, in consultation with the Secretary of Commerce and acting through the United States Commissioners, shall seek, in cooperation with other nations whose **[vessel]** *vessels* fish for tuna in the eastern tropical Pacific Ocean, to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The bycatch reduction program shall include measures—

- (1) to require, to the maximum extent practicable, that sea turtles and other threatened species and endangered species are released alive;
- (2) to reduce, to the maximum extent practicable, the harvest of nontarget species;
- (3) to reduce, to the maximum extent practicable, the mortality of nontarget species; and
- (4) to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.

EASTERN PACIFIC TUNA LICENSING ACT OF 1984

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the “Eastern Pacific Tuna Licensing Act of 1984”.

[SEC. 2. DEFINITIONS.

[As used in this Act—

[(1) The term “Agreement” means the Eastern Pacific Ocean Tuna Fishing Agreement, signed in San Jose, Costa Rica, March 15, 1983.

[(2) The term “Agreement Area” means the area within a perimeter determined as follows: From the point on the mainland where the parallel of 40 degrees north latitude intersects the coast westward along the parallel of 40 degrees north latitude to 40 degrees north latitude by 125 degrees west longitude, thence southerly along the meridian of 125 degrees west longitude to 20 degrees north latitude by 125 degrees west longitude, thence easterly along the parallel of 20 degrees north latitude to 20 degrees north latitude by 120 degrees west longitude, thence southerly along the meridian of 120 degrees west longitude to 5 degrees north latitude by 120 degrees west longitude, thence easterly along the parallel of 5 degrees north latitude to 5 degrees north latitude by 110 degrees west longitude, thence southerly along the meridian of 110 degrees west longitude to 10 degrees south latitude by 110 degrees west longitude, thence easterly along the parallel of 10 degrees south latitude to 10 degrees south latitude by 90 degrees west longitude, thence southerly along the meridian of 90 degrees west longitude to 30 degrees south latitude by 90 degrees west longitude, thence easterly along the parallel of 30 degrees south latitude to the point on the mainland where the parallel intersects the coast; but the Agreement Area does not include

the zones within twelve nautical miles of the baseline from which the breadth of territorial sea is measured and the zones within two hundred nautical miles of the baselines of Coastal States not signatories to the Agreement, measured from the same baseline.

[(3) The term “designated species of tuna” means yellowfin tuna, *Thunnus albacares* (Bonnaterre, 1788); bigeye tuna, *Thunnus obesus* (Lowe, 1839); albacore tuna, *Thunnus alalunga* (Bonnaterre, 1788); northern bluefin tuna, *Thunnus thynnus* (Linnaeus, 1758); southern bluefin tuna, *Thunnus maccoyii* (Castelnau, 1872); skipjack tuna, *Katsuwonus pelamis* (Linnaeus 1578); black skipjack, *Euthynnus Lineatus* (Kishinouye 1920); kawakawa, *Euthynnus affinis* (Cantor, 1849); bullet tuna, *Auxis rochei* (Risso, 1810), frigate tuna, *Ausix thazard* (Lacepede, 1800); eastern Pacific bonito, *Sarda chilensis* (Cuvier in Cuvier and Valenciennes, 1831); and Indo-Pacific bonito, *Sarda orientalis* (Temminck and Schlegel, 1844).

[(4) The term “Council” means the body consisting of the representatives from each Contracting Party to the Agreement which is a Coastal State of the eastern Pacific Ocean or a member of the Inter-American Tropical Tuna Commission at the time of entry into force of the Agreement.

[SEC. 3. UNITED STATES REPRESENTATION ON THE COUNCIL.

[(a) The Secretary of State—

[(1) shall appoint a United States representative to the Council; and

[(2) may appoint not more than three alternate United States representatives to the Council.

[(b) An individual is not eligible for appointment as, or to serve as, the United States representative under subsection (a)(1) unless the individual is an officer or employee of the United States Government.

[(c) An individual is not entitled to compensation for serving as the United States representative or an alternate United States representative.

[(d) While away from home or a regular place of business in the performance of service as the United States representative or an alternate United States representative, an individual is entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as individuals employed intermittently in Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

[SEC. 4. SECRETARY OF STATE TO ACT FOR THE UNITED STATES.

[(The Secretary of State shall receive, on behalf of the United States Government, reports, requests, recommendations and other communications of the Council, and, in consultation with the Secretary of Commerce, shall act directly thereon or by reference to the appropriate authorities.

[SEC. 5. APPLICATION TO OTHER LAWS.

[(a) Notwithstanding section 4 of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1874), such Act applies with respect to a sei-

zure by a Contracting Party to the Agreement of a vessel of the United States within the Agreement Area for violation of the Agreement if the Secretary of State determines that the violation is not of such seriousness as to diminish the effectiveness of the Agreement.

[(b) The seizure by a Contracting Party to the Agreement of a vessel of the United States shall not be considered to be a seizure described in section 205(a)(4)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1825(a)(4)(C)) if the seizure is consistent with the Agreement.

[SEC. 6. DISPOSITION OF FEES.

[All fees accruing to the United States under Article III of the Agreement shall be deposited into the Treasury of the United States.

[SEC. 7. REGULATIONS.

[The Secretary of Commerce, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall issue such regulations as may be necessary to carry out the purposes and objectives of the Agreement and this Act. Regulations may be made applicable as necessary to all persons and vessels subject to the jurisdiction of the United States, wherever located. Regulations concerning the conservation of a designated species of tuna may be issued only to implement conservation recommendations made by the Council under Article 3(D) of the Agreement.

[SEC. 8. PROHIBITED ACTS.

[(a) It is unlawful for any person subject to the jurisdiction of the United States—

[(1) to engage in fishing for a designated species of tuna within the Agreement Area unless issued a license under the Agreement authorizing such fishing;

[(2) to engage in fishing for a designated species of tuna within the Agreement area in contravention of regulations promulgated by the Secretary of Commerce under the Agreement;

[(3) knowingly to ship, transport, purchase, sell, offer for sale, export, or have in custody, possession, or control any designated species of tuna taken or retained in violation of regulations issued under section 7;

[(4) to fail to make, keep, or furnish any catch return, statistical record, or other report required by regulations issued under section 7;

[(5) being a person in charge of a vessel of the United States, to fail to stop upon being hailed by an authorized official of the United States, or to refuse to permit officials of the United States to board the vessel or inspect its catch, equipment, books, documents, records, or other articles, or to question individuals on board; or

[(6) to import from any country, in violation of any regulation issued under section 7, any designated species of tuna.

[(b) Any person who is convicted of violating—

[(1) subsection (a)(1), (a)(2), or (a)(3) shall be fined or assessed a civil penalty not more than \$25,000, and for a subsequent violation shall be fined or assessed a civil penalty not more than \$50,000;

[(2) subsection (a)(4) or (a)(5) shall be fined or assessed a civil penalty not more than \$5,000, and for a subsequent violation shall be fined or assessed a civil penalty not more than \$5,000; or

[(3) subsection (a)(6) shall be fined or assessed a civil penalty not more than \$100,000.

[(c) All designated species of tuna taken or retained in violation of subsection (a) (1), (2), (3), or (6), or the monetary value thereof, is subject to forfeiture.

[(d) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

[SEC. 9. ENFORCEMENT.]

[(a) The judges of the United States district courts and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and the regulations issued under section 7.

[(b) The enforcement of this Act and the regulations issued under section 7 shall be the joint responsibility of the department in which the Coast Guard is operating, the Department of Commerce, and the United States Customs Service. In addition, the Secretary of Commerce may designate officers and employees of the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities under this section. When so designated, such officers and employees may function as Federal law enforcement agents for these purposes.

[(c) An individual authorized to carry out enforcement activities under this section has power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this Act.

[(d) An individual so authorized to carry out enforcement activities under this section has power—

[(1) with or without a warrant or other process, to arrest any person subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this Act or the regulations issued under section 7;

[(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if, as a result of the search he has reasonable cause to believe that such vessel or any individual on board is engaging in operations in violation of this Act or any regulation issued thereunder to arrest such person.

[(e) An individual authorized to enforce this Act may seize, whenever or wherever lawfully found, all species of designated tuna taken or retained in violation of this Act or the regulations issued under section 7. Any species so seized may be disposed of pursuant to the order of a court of competent jurisdiction, under subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of Commerce.

[(f) Notwithstanding the provisions of section 2464 of title 28, United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any species of designated tuna seized if the process has been levied, on receiving from the claimant of the species a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the species seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the court, and subject to the direction of the court, the species may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

[SEC. 10. AUTHORIZATION OF APPROPRIATIONS.]

[(There are authorized to be appropriated for fiscal years after fiscal year 1984 such sums as may be necessary to carry out this Act.)]